

**MANUAL
FOR THE
PROCUREMENT & MANAGEMENT
OF
PROFESSIONAL SERVICES**

July 15, 2022



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PREFACE



A. Purpose

This Manual is intended to serve as the Virginia Department of Transportation's (VDOT) policy for the procurement and management of professional engineering/consultant services related to contracts for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Commissioner of Highways. It shall be used in conjunction with the following applicable statutes and regulations:

1. Title 2.2, Chapter 43, cited as the Virginia Public Procurement Act ("VPPA"), (<https://law.lis.virginia.gov/vacode/title2.2/chapter43/>)
2. 23 CFR 172 – Procurement, Management and Administration of Engineering and Design Related Services Contracts (Appendix B) [eCFR :: 23 CFR Part 172 -- Procurement, Management, and Administration of Engineering and Design Related Services](#)
3. Public Law 92-582, cited as "The Brooks Act" <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1278.pdf#page=2>

For the purpose of this manual, "contract" and "Memorandum of Agreement (MOA)" are synonymous.

B. Consulting Engineering Services

The terms "Consulting Engineering" used in this Manual includes not only consultation, advice, and expert testimony, but also the furnishing of extensive and diversified services by engineering consultants especially organized and maintained for that purpose. Such "Consultant(s)" draw upon the combined talents of designers, technical analysts, specification writers, technicians, inspectors, surveyors, and other experienced engineers. They also utilize the expertise of practitioners and specialists in other fields.

48 CFR 2.101 defines architect/engineer as:

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

The VPPA defines "professional services" as work performed by an independent consultant/contractor within the scope of the practice of accounting, actuarial services,

architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering. Virginia law defines "Professional Engineer" as a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer. The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The "practice of engineering" does not include the service or maintenance of electrical or mechanical systems.

Professional engineering/consultant services may include, but not limited to, the following:

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

C. Consultant Professional Responsibility

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

The Consultant is often responsible for coordinating and planning expenditures that may commit VDOT to large sums of money. The benefits of the work to be constructed from this planning and its suitability for the project(s) intended function must often be accepted at face value by VDOT which may be unfamiliar with the technical aspects of such work. Consultant services must be performed in a competent, efficient and effective manner and on a highly ethical plane.

D. VDOT Roles and Responsibilities

1. Professional Services Procurement Office (PSPO) – PSPO is responsible for development and implementation of policies and procedures for professional services contract procurement and administration. PSPO procures all professional services procurements and provides oversight on contract administration. As part of the oversight role, PSPO may perform audits on a periodical basis to ensure compliance with this manual.
2. Procurement Officer – a representative of the Professional Services Procurement Office (PSPO) with responsibility to administer the consultant procurement process as outlined in this manual.
3. Selection Committee Members – those responsible for the selection of the consultant team using the process outlined in this manual and under the guidance of the Procurement Officer.
4. Selection Committee Chairperson – a member of the Selection Committee with the added responsibilities of leading and coordinating committee activities to include preparation of consultant interview questions, selection decision narratives, etc.
5. Lead Division Administrator (LDA) – the Central Office Division Administrator (or their designee) responsible for approval of the narrative statements and final selection.
6. VDOT Project Manager – assigned to deliver the project or task order assignment(s) and manage associated consultant activities.
7. Contract Administrator – Manages all facets of a contract to assure the consultant performance is in accordance with the terms and conditions of the contract.
8. Lead Negotiator – Assigned by Division Administrator to provide oversight on all professional engineering services contract negotiations for the division.
9. Chief of Administration – Commissioner of Highways designee to oversee Professional Service procurements and execute agreements.

CHAPTER 1

DETERMINATION OF NEED FOR OUTSIDE SERVICES



1. CHAPTER 1 – DETERMINATION OF NEED FOR OUTSIDE SERVICES

1.1. Determination of Need

VDOT requires outside services to augment its professional staff and to carry out VDOT's goals and mission effectively. The Lead Division Administrator (LDA) is responsible for determining when outside services are needed to accomplish their work objectives or to assist the districts.

Professional engineering/consultant services are generally retained when:

- A project needs to be expedited, and VDOT staff are assigned to other important projects and cannot be released without jeopardizing those projects;
- The division's workload may be substantially larger than normal or anticipated for future years and it would not serve VDOT to augment with permanent VDOT staff for a short period of time;
- The unusual character of a project requires specialized knowledge, expertise, or experience beyond the everyday scope of VDOT staff;
- An opinion, advice or skill which is needed only temporarily, and which is not available within the agency or from another state agency;
- Outside expertise to provide a broader perspective or objective opinion on critical or sensitive issues;
- Benefit of developments in industry, university or foundation, research;
- The opinions of experts whose national or international prestige can contribute to the success of important projects;
- A deliverable that is an individually tailored application of a product already developed by an outside consultant and is available more economically and expeditiously than a comparable product developed in-house;
- Performance of one-time tasks or activities of limited duration that does not warrant augmentation of permanent staff.

1.2. Request for Professional Services Procurement

All procurement of professional engineering/consultant services will be performed by the Professional Services Procurement Office in the Central Office. At the time the need is identified, the Lead Division shall submit a PSPO-0 form request. This form is a notification of intent to submit a request for a Professional Services Procurement.

The formal request for Professional Services Procurement must be made using PSPO-1 form available on the Inside VDOT page [Professional Services Procurement Office - Home \(sharepoint.com\)](#). All requests should be made by submitting the form to pspo@vdot.virginia.gov. All requests should come from Central Office Lead Division. The PSPO-1 package including the PSPO-1 form and supporting information noted on the PSO-1 form should be submitted only after review and approval by the LDA.

For project specific procurements, the Lead Division requesting the procurement should ensure that Infrastructure Investment Division has been notified in writing and a written

verification on availability of funding (Form IID-4C) has been obtained.

1.3. Coordination and approval from Federal Highway Administration (FHWA)

Coordination and approval from Federal Highway Administration (FHWA) for the following project types is required in advance of advertisement to determine oversight and approval requirements set forth in the Stewardship and Oversight Agreement:

1. For projects with an estimated total cost of \$500,000,000 or more.
2. For contracts where the consultant will act in a management role for VDOT based on 23 CFR 172.9.
3. For projects identified based on Risk-Based Stewardship and Oversight Plan. The FHWA Area Engineer should clearly communicate this to VDOT project staff.

If FHWA approval action is retained, then coordination should also occur prior to termination of any professional service contracts.

1.4. High Risk Review

In accordance with § 2.2-4303.01 of the Virginia Public Procurement Act, any professional service solicitation and the resulting contract(s) that meet one or more of the following criteria are subject to advance review and approval by the Office of the Attorney General (OAG):

1. An anticipated contract value in excess of \$10,000,000 over the initial term, or
2. A contract which is anticipated to cost in excess of \$5,000,000 over the initial term and meets at least one of the following criteria:
 - a. The services are being procured by two or more state public bodies;
 - b. The anticipated term of the initial contract, excluding renewals, is greater than five years;
 - c. The state public body procuring the services has not procured similar services within the last five years.

CHAPTER 2
REQUEST FOR PROPOSALS (RFP)
AND
ADVERTISING REQUIREMENTS



2. CHAPTER 2 – REQUEST FOR PROPOSALS (RFP) AND ADVERTISING REQUIREMENTS

2.1. RFP Development

The written RFP shall comply with Section 2.2-4302.2., of the Code of Virginia, as amended, and will describe, in general terms, that which is being procured.

The RFP should include the following:

1. General requirements
2. DBE/SWaM goals (if applicable)
3. Pre-proposal conference date/time (if applicable)
4. Due date/time for submittal of EOIs
5. Scope of Work, list of classifications , Key Personnel classifications including the number of personnel in each classification
6. Confidentiality and Conflict of Interest requirements
7. General Terms and Conditions
8. Escalation terms
9. Home/Field Office requirements
10. Regulatory requirements
11. Evaluation Criteria and Weightage
12. Information requested for the Firm Data Sheet, Firm and Key Personnel Registrations, and Present Workload with Department
13. Request a list of Affiliated/Subsidiary Companies
14. Estimated contract value/Type of Contract
 - a. Limited Services Term (Single or Multiple award(s)). RFP will state the number of awards up to but not exceeding a specific number.
 - b. Project Specific – Single Award only
 - c. Project Specific, Multi-Phase Contract. If the Scope of Services for all phases or stages of the work cannot be clearly defined until some of the initial work is completed, then a multi-phase professional services contract may be used. Different compensation methods may be used for each phase.
15. Type of Compensation (Lump Sum, Cost Plus Net Fee, or Fixed Billable Rate)
16. Expressions of Interest; Volumes I and II (submittal requirements)
17. Certification regarding Debarment
18. Title VI/Nondiscrimination paragraph from the U.S. DOT Standard Title VI Assurances

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

2.2. Conflict of Interest

Consultant and/or sub consultants providing services to VDOT on an existing contract may create potential conflict and be prohibited from participating on a contract. The consultants are responsible to evaluate potential conflicts in accordance with the VDOT's policy and submit a request for Conflict determination in writing to the PSPO prior to submitting an Expression of Interest in response to any RFP. The Conflict of Interest determination will be made in accordance with the Department's policy. The policy is available at: http://www.virginiadot.org/business/resources/APD_Docs/APD_Office_Page/IIM-APD-2.2_Final_11-9-2017.pdf

2.3. Advertisements and Notifications

2.3.1. Publications

Except in unusual circumstances, the public notice of the RFP shall be published not less than 14 calendar days from the date of issuance of the RFP. The RFP information will be published as follows:

1. VDOT Web Site: General information will be provided about the RFP and a link to Bid Express for registration and access (<https://www.bidexpress.com>).
2. eVA Procurement: All professional engineering/consultant services procurements will be advertised on eVA. eVA is an electronic procurement site provided by the Virginia Department of General Services ("DGS"), Division of Purchases and Supply ("DPS"), (<http://eva.virginia.gov>) to notify the general public of the Commonwealth of Virginia's (COVA) intent to purchase goods or services. Emergency and sole source procurements are exempt from advertisement in eVA; however, such procurements require award notices to be posted on eVA.

2.3.2. RFP Inquiries

Inquiries will only be accepted through the "Ask a Question" identifier in the Q & A section in Bid Express. Clarifications on the Questions will be provided through Bid Express. If specific questions require a change to the RFP, an Addendum will be posted in Bid Express. After the RFP has been advertised, Offerors are prohibited from discussing the project with any VDOT personnel.

2.3.3. Pre-Proposal Meeting

A pre-proposal meeting may be conducted for certain projects to help Offerors understand the requirements fully, and to supply more detail as needed. If a pre-proposal meeting is to be held, it will be outlined in the RFP and will indicate whether attendance is mandatory or optional.

CHAPTER 3
**SELECTION
PROCEDURE**



3. CHAPTER 3 – SELECTION PROCEDURE

VDOT uses "competitive negotiation" as defined in Title 2.2, Chapter 43, of the Code of Virginia, as amended, to select consultants. VDOT also adheres to Public Law 92-582 (The Brooks Act). This Act establishes a qualifications-based selection process, in which contracts for architects/engineers are negotiated on the basis of demonstrated competence and qualification for the type of professional engineering/consultant services required at a fair and reasonable price; price quotations are not a consideration in the selection process.

3.1. Receipt of Expressions of Interest (EOI)

VDOT utilizes the Bid Express.com platform for advertisement and receipt of EOIs. EOIs are received only through BidExpress.com. Public opening of EOIs is not required and will not be conducted.

The Procurement Officer will verify that all required information per the RFP is provided. If all required information has not been submitted, the Procurement Officer shall further review its applicability as related to the RFP requirements. If the EOI is determined to be incomplete or non-responsive, the Procurement Officer shall notify the consultant in writing. Such EOIs will not be considered for evaluation purposes.

3.2. Selection Committee

1. The Selection Committee will typically consist of three members. All members will be VDOT employees.
2. At least one, but no more than two, shall be from the Central Office Lead Division. All members shall not be from the same Division or District Office. Any exceptions must be approved by the PSPO Director.
3. The Chairperson should have previously served on a Selection Committee and possess expertise in the field of services being procured. If the services require a license issued by the Virginia Department of Professional and Occupational Regulation (DPOR), then the Chairperson should hold the appropriate license.
4. The other two Selection Committee members should be senior level personnel that are qualified and experienced in services similar to that which is being procured.
5. All Selection Committee members are required to complete "Consultant Selection Committee Training" prior to performing their duties in the procurement process. This is certified by execution of the Non-Conflict of Interest and Training Form.
6. The Selection Committee is approved by the LDA.

3.3. Selection Committee Meetings

Selection Committee meetings are confidential meetings that are not open to the general public. As such, all attendees must sign a conflict of interest and confidentiality certification/agreement prior to attending the meetings. The following are roles and restrictions for meeting attendees outside of the selection committee members:

1. Procurement Officer: Provides oversight and ensures the selection process is conducted in a fair and consistent manner to maintain integrity of the procurement. Any PSPO representative(s) assisting the Procurement Officer are considered non-voting members and can be present during short list meetings and technical presentations.
2. City/County Representative: Representative in the employment of a city or county may attend technical presentations only as an observer and a non-voting participant for projects in their jurisdiction. This individual is allowed to provide comments but shall not be present during deliberation and ranking of consultants.
3. General Public: Not allowed to attend any meetings.
4. Technical Expert/Advisor: This individual must demonstrate specific qualifications related to his/her expertise to be designated as a Technical Expert. Technical Expert will not be permitted for disciplines/ expertise already represented by the panel members. Technical Expert must attend all Technical Presentation/ Interview. Technical Expert will attend as a non-voting participant and must not ask any questions to the consultants during the meeting. After the Technical Presentation/ Interview is over, Technical Experts may offer comments regarding the presentation and consultant responses to questions relative to their specific expertise. This individual must leave the room during final deliberation and ranking of consultants.

During final deliberation and ranking of consultants, no one other than the Selection Committee members, and representatives of the PSPO may be present.

3.4. Distribution of EOIs

Selection committee members are required to complete training as specified by the PSPO prior to distribution of EOIs. Additionally, selection committee members are required to sign two forms: a Confidentiality Statement and a Conflict of Interest form, indicating that they have no conflict with any of the proposed firms, and to certify that they have completed the required training. Once completed Confidentiality and Conflict of Interest forms are received by the Procurement Officer, Volume I of each EOI is available to the selection committee members for evaluation. The Procurement Officer shall distribute EOIs to the selection committee members only.

The Procurement Officer will provide copies of Firm data sheet from all EOIs to Civil Rights Division (CRD) in accordance with Appendix B requirements.

3.5. Selection Factors

Factors that will be considered by VDOT in determining the most appropriate and qualified consultant for a particular project include, but may not be limited to, the following:

3.5.1. Administrative Requirements (non-scoring)

1. The Offeror and proposed subconsultants must be in good professional standing, and responsible charge employees of the Offeror's proposed team must be registered professional engineers in the Commonwealth of Virginia. The Department of Professional and Occupational Regulation (DPOR) is the registration and licensing entity for the COVA (<http://www.dpor.virginia.gov>).

2. To conduct business in the COVA, the Offeror's business and their subconsultants must meet the registration and licensing requirements with the State Corporation Commission (<https://www.scc.virginia.gov/>), as well as DPOR at the time of submitting EOIs.
3. Prior to submitting an EOI, each Offeror shall conduct an internal review of its current affiliations regarding firm and/or personnel involvement relative to the anticipated procurement, and shall require its team members to identify any potential conflicts of interest (COI), or real or perceived competitive advantage. If a potential COI or competitive advantage is identified, the Offeror shall submit the information to the Procurement Officer for review. VDOT, in its sole discretion, will make a determination if a COI or competitive advantage exists, and its ability to mitigate such conflict. If VDOT determines that the potential COI or competitive advantage cannot be mitigated, the Offeror and/or team member with the COI shall not be allowed to participate in the procurement. Failure to abide by VDOT's determination may result in a proposal being deemed non-responsive.

3.5.2. Offeror/Team Experience (all relevant experience, not just with VDOT)

1. Demonstrated understanding of the Scope of Work.
2. Experience in performing the services outlined in the RFP.
3. Specialized experience, design, and technical competence of the team, joint venture, or association regarding the desired services.
4. Qualifications of the team, including familiarity with applicable regulatory requirements, criteria, and standards/procedures with respect to planning, design, and approval of the Scope of Work.

3.5.3. Personnel Experience

1. Expertise and experience in performing the services outlined in the RFP.
2. Qualifications of proposed team members.
3. Availability of the proposed Key Personnel relative to other VDOT assignments.

3.5.4. Qualifications of the Project Manager (or other responsible charge position)

1. Demonstration of expertise and experience in a project management role related to the services outlined in the RFP.
2. Qualifications of the team member proposed to serve in the contract leadership role.
3. Availability of the proposed Project Manager relative to other VDOT assignments in the same leadership role.

3.5.5. Organizational Capability

1. Ability of the proposed team to complete services in a timely manner and/or within VDOT's established schedule.
2. Size of proposed team relative to the project size.
3. Proposed staffing resources.

4. Proposed use of subconsultants.

3.5.6. Workload

1. The Procurement Officer calculates the present workload with VDOT for the proposed team based on the available data. The objective of considering the VDOT present workload for the team is to accomplish an equitable distribution of contracts among qualified firms.
2. All of the prime's outstanding dollar balances for current and pending contracts (excluding their subconsultants' contract dollar amounts) should be reported under the prime consultant's workload.
3. All of the proposed subconsultants' outstanding dollar balances for current and pending contracts should be reported under each subconsultants' workload.
4. For Limited Services Term Contracts, include the total amount of all task orders executed or under negotiation for the current year of the contract.
5. The outstanding dollar balances of all primes and subs that have been certified as a DBE/SWaM by the Department of Small Business and Supplier Diversity (DSBSD) or the Metropolitan Washington Airports Authority ("MWAA") up to \$4,000,000 will not be counted. Balances above \$4,000,000 will be counted. When DBE/SWaM firms graduate from the program, their workload incurred while a DBE/SWaM will be exempted for the next three years. Only workload obtained after graduating from the program will be counted.
6. Any firm claiming that some of its current workload has been exempted must submit a letter from the appropriate Chief or the LDA authorizing the exemption. If a firm has changed its name and is still working on VDOT projects acquired under the previous firm name, this workload will be counted as workload for the new firm. If firms merge and create a new firm, all workload acquired under the previous firm names will be counted as workload for the new firm.
7. See the Present Workload with VDOT's worksheet in the RFP and the Sample of Determination of Present Workload below.

SAMPLE OF DETERMINATION OF PRESENT WORKLOAD	
Prime consultant has one present Category B professional contract with VDOT	
Amount of contract/Total value of all task orders:	\$1,400,000
Less subconsultant's amount of this contract:	- \$180,000
Subtotal	\$1,220,000
Less prime's approved payment as of RFP closing date:	- \$500,000
Subtotal	\$720,000
Approved pending supplement:	+ \$25,000
Prime's Subtotal	\$745,000
Category A Survey Work worth \$500,000 (Prime Consultant) ¹	\$0
DBE Sub Consultant (Category B Work worth \$300,000) ²	\$0
Prime's Total	+ \$745,000
Outstanding balance including all supplements:	\$87,000
Under contract negotiation with another prime ³ :	+ \$30,000
Sub's Total	\$117,000
Team's Grand Total	\$862,000

¹ In addition, the prime consultant has a Category A district survey contract with an upper limit of \$500,000. This is not included in the total because the contract is for services in a different category.

² The DBE subconsultant has a Category B professional contract for \$300,000. Since the firm is a certified DBE, none of its workload is counted as workload for DBE's up to \$4 million is exempted.

³ Another subconsultant with the prime, which is not a DBE or SWaM, has a Category B professional contract and has been selected with a different prime on another project.

8. In case of a discrepancy in the outstanding present workload provided in the EOI, the Department will make appropriate correction based on available information at its discretion.
9. Workload shall be evaluated accordingly:
 - Above \$4,000,000 0
 - \$3,500,001 - \$4,000,000 1
 - \$3,000,001 - \$3,500,000 2
 - \$2,500,001 - \$3,000,000 3
 - \$2,000,001 - \$2,500,000 4
 - \$1,500,001 - \$2,000,000 5
 - \$1,000,001 - \$1,500,000 6
 - \$750,001 - \$1,000,000 7
 - \$500,001 - \$750,000 8
 - \$250,001 - \$500,000 9
 - \$0 - \$250,000 10

3.6. Short List Meeting

A Short List Meeting is held to combine the individual scores of the selection committee members and determine the final score/ranking for each Offeror's EOI. No one other than the Selection Committee members, and representatives of the PSPO may be present during Shortlist meeting.

Prior to the short list meeting, the Selection Committee should notify the Procurement Officer regarding:

1. Evidence of an existing VDOT employee proposed by the Offeror as consultant personnel.
2. Evidence of a Prime Consultant and any of its personnel serving as a subconsultant on another team.
3. Submission of multiple proposals for the same solicitation from an individual, partnership, corporation, or joint venture under the same or different names, which are considered "affiliates" as defined in the VDOT Request for Proposal. The Procurement Officer must disqualify all EOIs received from these entities.

The following will take place during the Short List Meeting:

Selection Committee members will meet to compile short list scores. In cases where this is not feasible, such as a district representative having legitimate business reasons that prevent him/her from being able to attend a meeting in person, the score sheets and certification of that individual

may be submitted to the Procurement Officer prior to the start of the meeting. Such member(s) must be available via conference call during the committee's meeting.

Each EOI shall be independently evaluated, the score sheet signed in ink or electronically signed in accordance with the Memorandum for electronic approvals and signatures, and dated by each Selection Committee member prior to the meeting. If a change must be made to a score, the original score will be lined through and the new score entered and initialed in ink or electronically signed in accordance with the Memorandum for electronic approvals. The committee member should provide comments in writing as to why the change was necessary for procurement records.

A recheck on present workload computation should be made effective the day the meeting. The Selection Committee will verify the dollar amount of present workload with the Department for the apparent short listed consultants and subconsultants. Only the short listed teams will have their outstanding workload verified. To facilitate this process, the task of workload verification may be performed by support staff with the results and documentation given to the Chairperson for use by all members in scoring.

VDOT's web site should be checked to see if any of the firms has recently been selected for another project. If the present workload has not been reported correctly, the ranking of the EOI's may change. This could result in a team being dropped from the short list and replaced by another.

The Selection Committee Members will determine how many teams are to participate in the interview/technical presentation phase, which is dictated for state and federal funded projects as follows:

- On State funded projects, the Code of Virginia requires two (2) or more teams.
- On Federally funded projects, Federal Regulations, Public Law 92-572, requires three (3) or more teams.

If the top scores are relatively close, then more teams may be invited to make presentations.

The Certification Regarding Debarment forms of the apparent short listed consultants and subconsultants should be reviewed by using the federal debarment list on the following Internet site: <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>. Procurement Officer may prepare this list prior to the meeting. A copy of this list may be printed prior to the meeting. If a consultant or subconsultant has been debarred, the team should be removed from the short list and the reason noted on their scoresheet.

The Selection Committee will then access the Consultant Performance Library and review the reports (see Appendix D) for all prime consultants and subconsultants that are on the apparent short list. Past performance scores for the last three years will be considered. Any scores over three years old which have not been removed from the database will not be considered. If a firm is new to VDOT or has no performance reports on file, the committee may check some of the references shown in the EOI and document their finding as part of the file.

If ratings less than 3 are discovered, the committee will review the actual performance reports

for that firm. Ratings below 3 that are not supported with written comments must be discussed with the rater before they may be used to adjust the score. A copy of performance reports may be provided by the Procurement Officer at the meeting. After this review, all committee members will have the opportunity to adjust their scores, if they find sufficient justification exists to do so. If a change must be made to a score, the original score will be lined through and the new score entered and initialed in ink or electronically signed in accordance with the Memorandum for electronic approvals with the reason for making the change. A copy of the Consultant Performance Report with low ratings that justified the change in score will be attached to the score sheet.

If changes in scores result in a firm being removed from the short list, the next ranked firm will be added to the short list, the workload and debarment status verified, and the performance reports reviewed.

3.7. Short List Certification and Notification

The Procurement Officer will notify the short-listed Offerors selected for technical presentations in writing. The notification should include the following information, at a minimum:

1. Date, time, and place of the technical presentations
2. Any attendance limitations or specific requirements
3. Subconsultants that are shared by the short listed Offerors, which will not be allowed to attend the question/answer segment of the technical presentation
4. Focus areas to be addressed during the technical presentation

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

3.8. Project Briefing Meeting (if required)

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

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

____ Typically, these briefings are anticipated on Project specific contracts. However, project

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

Interview/Technical Presentation Phase

When the interviews/technical presentations are held, the teams are allowed appropriate time to make a presentation of their qualifications as well as their personnel's qualifications (as given in the EOI), highlight specific personnel manning assignments, present project concepts, and any comments they feel will be valuable in evaluating their team, including a brief description of their approach to providing the needed services.

Consultant shall notify VDOT prior to interview/ technical presentation of any changes and reasons for changes of any personnel. Substitutions or changes of any personnel will only be permitted due to voluntary or involuntary termination of employment, retirement, death, disability, incapacity, or as otherwise approved by the Department. New résumés and organizational charts shall be submitted. Such changes will be taken into consideration in the final ranking.

Any changes in Offeror's team structure (sub consultants) are not permitted.

The Selection Committee may elect to compile a list of questions or points of discussion for the consultant interviews/technical presentations concerning the project assignment and the firm's qualifications. Previously requested points of discussion and pre-compiled questions related to the project may be asked to each team. Furthermore, each committee member may ask additional questions for clarification. The Procurement Officer will ensure that any impromptu questions are appropriately documented along with the responses.

Subconsultants that are part of multiple shortlisted teams are permitted to attend the Technical Presentation/ Interviews; however, they will not be permitted to attend the questions and answer part of the Interview.

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

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

Alternative means for Interview/Technical Presentation may be used at Department's sole discretion in situations where in-person Technical Presentations cannot be conducted.

3.9. Final Ranking

The Selection Committee will discuss and rank the teams using narrative statements based on the Offeror's EOI, response to focus areas and additional questions/scenarios (if applicable), and the overall technical presentation.

3.10. Final Selection and Notification

For each RFP that is issued, only the top ranked Consultant is selected, unless the RFP allows for multiple awards. Upon approval from the PSPO Director, the Procurement Officer notifies the top ranked Consultant(s) of their selection. The Procurement Officer will notify all unsuccessful short listed Offerors. A list of all short-listed Offerors, in final ranking order, will post on VDOT's web site.

3.11. Consultant Debriefings

A formal debrief meeting will only be provided to new consultants that made the short list as a prime consultant for the first time. If a new consultant requests a formal debriefing, it will be conducted by the Chairperson who is familiar with the rationale of the selection decision at the earliest possible time following contract award.

3.12. Freedom of Information Act (FOIA) Requests/Protest

The following information is available to consultants at the designated milestone during the procurement process:

1. Short list: Prime Consultant's own Score Sheet and relative standing.
2. Final selection: Shortlisted Prime Consultants can request their own team narrative.
3. Negotiations Complete: Narratives, Score Sheet, and EOIs of the shortlisted firms (except proprietary information) are open to Prime Consultants that competed for the procurement.
4. MOA Execution: Procurement records (except proprietary information) are open to the public (subject to FOI request).

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

Following execution of the MOA, the award date will be posted on VDOT's website and eVA. Any consultant submitting an EOI in response to the RFP has the option of protesting the award or decision to award a contract by submitting such protest in writing to the Procurement Officer no later than ten (10) calendar days after public notice of the award.

3.13. Retention of Records

All procurement records should be maintained in accordance with records retention and disposition schedule. The EOIs from firms that were short listed will be retained until five (5) years after the contract is completed. The Procurement Officer shall keep a copy of all procurement documents in the project file including, original copies of the scoresheets of individuals and the combined score sheet, certifications of non-conflict of interest, short list certifications, short list approval, final selection certification, final narratives, and final selection approval. The Procurement Officer should be advised of any changes that would affect the consultant selection at any point in the process so that proper documentation can be made.

CHAPTER 4
**CONTRACT
NEGOTIATION**



4. CHAPTER 4 – CONTRACT NEGOTIATION

4.1. General

This chapter has been developed in an effort to bring consistency into negotiations of Professional Service contracts across VDOT and provides guidelines for negotiations.

VDOT is required to procure consultants using Qualifications Based Selection. It must be noted that Qualifications Based Selection process ends at the time of selection and ranking of the shortlisted consultant without consideration of price. All ranked firms are qualified to do the work.

Few Important code requirements on negotiations are as follows:

- Code of Virginia §2.2-4302.2 (4) - “... *Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract **satisfactory and advantageous to the public body** can be negotiated **at a price considered fair and reasonable** and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.*”
- 23 CFR §172.7 (a)(1)(v)(B) - “ *Independent estimate - Prior to receipt or review of the most highly qualified consultant's cost proposal, the contracting agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation.*”
- 23 CFR §172.11(2)(ii) - “*To provide for fair and reasonable compensation, considering the classification, experience, and responsibility of employees necessary to provide the desired engineering and design related services, contracting agencies may establish consultant direct salary or wage rate limitations or “benchmarks” based upon an objective assessment of the reasonableness of proposed rates performed in accordance with the reasonableness provisions of the Federal cost principles.*”
- 23 CFR §172.7 (a)(1)(v)(E) - “*The contracting agency shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 2 CFR 200.333. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract, as specified in §172.11(c).*”

4.2. Scope of Work Meeting (Project Specific Contracts only)

Prior to actual negotiation, a scoping meeting may be scheduled with the top ranked consultant to review all matters pertaining to the scope, schedule, character, complexity, and method of compensation for the proposed services.

This meeting generally orients the consultant in its prospective work with VDOT, and allows for discussion regarding the consultant's fee proposal submittal. Prior to the consultant preparing their fee proposal, VDOT and the consultant should reach a thorough understanding of the scope of work it will provide.

4.3. Fee Proposal Request/Preparation (Pre-Award)

The Procurement Officer will provide instructions and a pre-award template to the prime consultant for preparation of the fee proposal. This may include a draft MOA and any additional information required. The pre-award submittal must comply with the RFP including the list of classifications, and the number of personnel allowed in each classification. The key personnel identified in the EOI must remain in the same role and classification. The pre-award submittal should also align with the EOI.

The consultant has ten (10) business days to submit the required pre-award documentation electronically to the Procurement Officer. Failure to submit the required documentation may result in the selection awarded to the next highest ranked consultant. If Incomplete or inaccurate pre-award documentation is submitted, the likely result is a delay in the pre-award review.

4.4. Title VI Evaluation Report

The top ranked consultant team (prime and all subconsultants) is required to submit their current Title VI Letter of Approval within ten (10) business days of the date of the selection notification or a Title VI Evaluation Report Form (current version) in the absence of approval. VDOT may begin negotiating with the next ranked firm upon receiving approval from Civil Rights Division (CRD). Copies of completed Title VI evaluation Report forms will be forwarded to the CRD for review and written approval. CRD will make its determination for approval or request revisions within five (5) business days from submittal. In the event of a finding of non-compliance, the Procurement Officer may seek resolution with the consultant with the assistance of the CRD. If resolution is not reached, VDOT will go to the next ranked firm to negotiate the contract. If the firm(s) has a current Title VI Evaluation Report on file with VDOT and it will not expire prior to a contract being executed, then a new Title VI Evaluation form is not required. Title VI Evaluation Letters of Approval are maintained in the project file and should be updated every two years by the consultant. The consultant must provide a copy of the approval to VDOT Contract Administrator.

4.5. Insurance Requirements

The consultant is required to carry adequate professional liability insurance throughout the life of the contract and to provide a certificate from the insurance carrier that such a policy is in effect. VDOT must be listed as the certificate holder on the certificate. Insurance Certificates are maintained in the project file and shall be updated annually by the consultant prior to expiration. Stipulated insurance shall be obtained prior to commencing work and shall be maintained during the entire term of the contract.

Further, by signing the MOA, the consultant certifies that it will maintain the required insurance coverage during the entire term of the contract. Since VDOT's contract is with the prime consultant, VDOT does not require subconsultants to have insurance except for worker's compensation insurance. However, it is recommended that the prime consultants ensure that the sub consultants are carrying appropriate amount of professional liability insurance.

The amount of professional liability insurance that should be carried by a consultant is based on their firm size and exposure to risk and is a function of the complexity and total number of projects or work assignments.

The limits mentioned below are minimums and may be increased for large value contracts. The consultant coverage for Architecture and Professional Engineering services shall not be less than \$2 million per occurrence, \$6 million aggregate, but shall not be less than the greatest of 5% of the estimated construction cost of all VDOT projects which the consultant has under contract or \$1,000,000. The amount of any deductible shall not be over an amount which can be covered by the firm's funds on hand or readily available. The consultant will be required to have Worker's Compensation, Employers Liability, Commercial General Liability, and Automobile Liability insurance coverage. Worker's Compensation shall be a Standard Virginia Worker's Compensation Policy with an insurer authorized to transact the business of worker's compensation insurance in the Commonwealth of Virginia with statutory requirements and benefits. Employers Liability shall be for a minimum of \$100,000. Commercial General Liability shall be for a minimum of \$500,000 combined single limit coverage. Automobile Liability shall be for a minimum of \$500,000 combined single limit for bodily injury and property damage per occurrence.

4.6. VDOT's Fee Estimate

In accordance with 23 CFR §172.7, prior to receipt or review of the most highly qualified consultant's cost proposal, VDOT shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation. Furthermore, this estimate is confidential and must not be shared with the consultants. The independent fee estimate is not required for a limited services term contract.

4.7. Fee Proposal Evaluation by VDOT

The fee proposal will be reviewed for accuracy, errors, deficiencies, omissions, etc., and the consultant notified of any required corrections.

4.7.1. Contingency (Project Specific Contracts)

As the scope of work may not be totally defined on a Cost Plus Net Fee contract, a contingency is usually allowed on those contracts. Minor changes in the scope of work may be permitted by use of contingency without a supplemental agreement. Contingency also provides for adjustment in the indirect cost rate at the time of final review (audit). The contingency rate is five percent (5%). Contingency is calculated on the fee base (Direct

Labor + Payroll Burden + Indirect Cost) and non-salary direct cost. Subconsultant contingency is included in its proposal, and the prime receives no contingency on the subconsultant's services. Only with written permission from VDOT Project Manager shall contingency be used by the prime consultant or subconsultant. VDOT Project Manager shall consult and coordinate with the Lead Division before releasing such contingency.

4.7.2. Hourly Wage Rates

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

4.7.3. Indirect Cost Rate

1. The prime and all subconsultants are required to include indirect cost rates accepted by VDOT.
2. Contracts awarded for engineering and design services by State transportation agencies must follow the cost principles contained in 48 CFR Part 31. Consultants are required to submit an indirect cost-rate audit report to the VDOT Assurance and Compliance Office (VDOT-ACO) for their most recent fiscal year. The link to the Indirect Cost Rate policy is http://www.virginiadot.org/business/indirect_cost_rate_audit_home_page.asp.
3. VDOT's policy is that indirect cost rates are not negotiated. However, the consultant may offer lower indirect cost rates. The indirect cost rate is not allowed on non-salary direct costs (direct expenses) or subconsultant expenses.
4. Indirect Cost Rates are fixed for a contract term.
5. Please refer to section 5.3.5 for applicability of Indirect Cost Rates at the time of contract renewals.

4.7.3.1. Home Office Indirect Cost Rate

Home Office, as defined in 48 CFR Part 31, is an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It

typically establishes policy for, and provides guidance to, the segments in their operations. It performs management, supervisory, or administrative functions, and may perform service functions in support of operations of the various segments. An organization, which has intermediate levels, such as groups, may have several home offices reporting to a common home office. An intermediate organization may be both a segment and a home office.

VDOT requires use of the most current approved home office indirect cost rate at the time of pre-award submittal. This rate should not be older than 18 months from the date of contract award. Refer to ACO policy for Annual Indirect Cost Rate Submittal Requirements

(http://www.viriniadot.org/business/indirect_cost_rate_audit_home_page.asp).

VDOT will require the consultants to obtain a letter from ACO containing approved Home Office Indirect Cost Rate for use in the contract.

4.7.3.2. Field Office Indirect Cost Rate

A Field Office is defined as any office, which the consultant specifically establishes, or is provided for them at or near the project site. The office is used exclusively for project purposes. The office may be a trailer, building, room or series of rooms established for the consultant personnel. Neither the number of personnel nor their mix by personnel classification shall have any bearing on this definition. VDOT generally requires its consultants to perform contracted services from their established home (or branch) offices. A separate audited field office indirect cost rate must be submitted if the consultant is required to establish a field office, or work out of a VDOT provided office.

VDOT requires use of the most current approved field office indirect cost rate at the time of pre-award submittal, which should not be older than 18 months from the date of contract award. VDOT will require the consultants to obtain a letter from ACO containing approved Field Office Indirect Cost Rate for use in the contract.

4.7.4. Facility Cost of Capital (FCC)

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

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

All travel related costs (including, but not limited to mileage, lodging, meals, and incidentals) shall be in accordance with the General Services Administration (GSA)/VDOT Travel Guidelines in place at the time which travel occurs, and is subject to advance written Department approval. VDOT does not pay the following for either the prime or sub-consultant:

- Travel time
- Relocation of personnel to a Virginia office
- Airfare for out-of-state travel to perform the work

VDOT may request an individual/expert for a specific task, and may pay for out of state travel, to include airfare, in accordance with the GSA/VDOT Travel Guidelines in place at the time which travel occurs, subject to advance written approval from the VDOT Project Manager. The air travel must be reasonable and will be reimbursed for economy or coach class accommodations.

4.7.6. Non-Salary Direct Costs (Direct Expenses)

Non-salary direct costs are items consumed by the project, and may be directly billable to VDOT.

Sufficient documentation must be provided with the fee proposal to support the basis for all proposed direct expenses. For goods and services, other than professional engineering/consultant services, written or telephone quotes from a minimum of one (1) DSBSD small or micro vendor, if available, is acceptable as a support for the proposed prices for acquisitions up to \$10,000. Telephone (verbal) quotes are acceptable, if adequate supporting documentation (name and telephone number of the person furnishing the price quote) is provided. The acquisition of any individual item or service costing more than \$10,000, but no more than \$100,000, shall be supported by at least four (4) written quotes from DSBSD small or micro vendor, if available. When an acquisition of any individual item or service is expected to exceed \$100,000, competitive sealed bidding or competitive negotiation shall be used. Solicit from a minimum of six (6) valid sources, including a minimum of four (4) DMBE-certified small businesses, if available. Public advertisement is required.

Consultants which normally work on a unit price basis may not be able to provide support for their unit prices for services such as geotechnical, aerial photography, laboratory tests, drilling, etc. However, they should provide a copy of their standard fee schedule (charged to the general public), and shall attest that the fees contained thereon are their normal fees for such services. All direct expenses are considered pass-through costs which shall not include a markup.

Non-consumable items include, but are not limited to, fax machines, computers, software, computer license fees, cell phones, books, refrigerators, copy machines, helmets, tape measures and fire extinguishers. These costs should be recovered in the consultant's indirect cost rate and are not billable to VDOT, unless specifically stated otherwise in published VDOT guidance.

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

If a consultant proposes to purchase or lease computer hardware and/or software for use on a project, the proposal must be reviewed by Information Technology Division (“ITD”). The purchase or lease of any hardware and/or software, which a consultant should normally possess to perform the required services, generally will not be allowed. Please also refer to Mobile Communications Devices for Construction Engineering and Inspection Professional Services Consultant Contracts memo (https://www.virginia.gov/business/resources/const/CEI_MobileCommunicationMemo.pdf).

4.7.7. Escalation Rate

Consultants are allowed escalation of their hourly wage rates to allow for inflationary increases. The escalation rate will be established using the Employment Cost Index, Table 9, Professional, Scientific and Technical Services which will be effective on July 1st each year. The escalation rates will be limited to a range of 1% to 3% which will be applied to the direct salary (labor) rate.

Escalation is not permitted for Non-Salary Direct Costs or vendor costs. Escalation may be permitted on Task orders that extend into future years. Task Orders shall be based on the Fixed Billable Rates current at the time of task order execution. Payment for work performed beyond the last term of the contract will remain at the rates of the most recent term renewal.

1. Limited Services Term Contracts:

- a. The fixed billable rate table for term one (1) and term two (2) will be established in the contract at half (1/2) the established rate for term one (1) and fully established rate for term two (2).
- b. Any additional terms beyond the first two terms will be renewed using VDOT’s published escalation rate effective on the date of renewal.
- c. No escalation is allowed beyond the final term of the contract.

2. Project Specific Contracts:

The consultant may be paid an escalation on hourly wage rates at the established rate for the work performed in consecutive or subsequent years beyond the agreed upon schedule. However, if the project is suspended or placed on hold for an extended time period (i.e. more than three (3) years), the consultant will be required to submit a current

FAR audited indirect cost rate and salary schedule for VDOT's review and approval prior to beginning or restarting the work.

4.7.8. Management of Subconsultants

Prime consultant mark-up of costs for managing the subconsultants is not allowed.

4.7.9. eVA Fee

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

4.8. Net Fee

Net fee is established during negotiations to cover the consultant's profit, miscellaneous expenses, and other factors that may not be otherwise paid. Since cost plus a percentage of the cost contracts are prohibited, the expression of the net fee as a percentage of consultant costs should be used by VDOT only as a test of the prudence of the net fee proposal and not as a substitute for negotiation.

VDOT has established that the net fee shall vary from 8% to 12% of the base wage rate (which includes escalation, indirect cost rate and facilities cost of capital rate); however, the indirect cost rate shall not exceed 156% in determining the net fee. The contingency shall be included in the net fee determination.

The establishment of net fee shall be project specific. The determination of the amount of net fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The factors listed may not apply to large valued mega projects such as GEC. Net fee is based on the overall scope of services and not on the particular part to be performed by the prime or subconsultant. The following factors should be used as a guide for determining the maximum allowable net fee on a project with the actual net fee being a negotiated amount:

1. Complexity/Relative Difficulty of Work – the extent to which the consultant applies his engineering knowledge, experience, technical skills, and independent judgment as listed below from the simplest to the most complex with the more complex/difficult services receiving the larger net fee percentages. Projects or structures of simplest, utilitarian character which are without complication of design or detail and require a minimum of detail, design or effort. Projects or structures of conventional character and detail, requiring normal detail, design or effort. Projects or structures of moderate complexity requiring a moderate amount of detail, design or effort. Projects or structures of exceptional character and complexity requiring comparatively large amounts of detail, design or effort. Monumental projects or structures requiring precise detailing, consummate design skills or extraordinary effort. The complexity needs to be reviewed for the services being provided and not that of the project itself. As such, for large value contracts like GECs and PSS, where the consultants are not providing final design services, are considered to be low complexity as there is no

professional liability associated with signing and sealing compared to project specific design contracts.

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

Net fee is not allowed on Non-Salary Direct Costs, nor on a subconsultant's expenses.

For a project specific contract with Cost Plus Net Fee compensation, the net fee remains fixed regardless of any differences between the estimated and actual costs for the services performed in accordance with the MOA. Net fee is compensated proportionally to the work performed.

4.9. Negotiation Process

VDOT will conduct negotiations on the scope of work and compensation with the top ranked consultant(s). Only one (1) consultant may be negotiated with at any one time. If a fair and reasonable contract cannot be negotiated with that consultant, VDOT shall formally terminate the negotiations in writing. Once negotiations are terminated with a consultant, VDOT may not enter into further negotiations with that consultant at a later date. Negotiations shall then be initiated with the next-ranked consultant and so on until such a contract can be negotiated at a fair and reasonable price. All negotiation records required by 23 CFR §172.7 (a) (1) (v) (E) between the consultant and VDOT shall be provided to PSPO at the conclusion of negotiation for the procurement file.

When the RFP states that multiple contracts may be awarded, negotiations can be initiated concurrently with top ranked consultants up to the number of anticipated awards.

CHAPTER 5

MEMORANDUM OF AGREEMENT



5. CHAPTER 5 – MEMORANDUM OF AGREEMENT

5.1. General

The Memorandum of Agreement (MOA) is VDOT’s contractual document utilized for professional engineering/consultant services. The General Terms and Conditions to the MOA shall not be modified.

5.2. Methods of Compensation

No public contract shall be awarded on the basis of cost plus a percentage of cost (VPPA Section 2.2-4331). Acceptable methods of compensation shall be addressed in the RFP and are as follows:

5.2.1. Lump Sum

This method of compensation is a single lump sum payment, appropriate only if the scope, complexity, character and duration of the work required can be established and evaluated by all parties at the time of negotiations. This method may be applicable to contracts with well-defined scopes. Lump Sum performance periods should not exceed one (1) year, and amounts should not exceed \$2,000,000 without approval by the Deputy Chief Engineer. If utilizing Lump Sum payment method for a task order on a limited services term contract, the value of the task order shall not exceed \$1,000,000 without the prior approval of the Deputy Chief Engineer.

If the project is cancelled prior to completion of the services, the payment shall be made for the percentage of work completed and will not be eligible for the entire Lump Sum payment.

5.2.2. Cost Plus Net Fee

This method of compensation is appropriate when the scope, complexity, character or duration is not clearly defined. The consultant is reimbursed for incurred costs and receives a pre-determined fixed amount as a Net Fee. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a pre-determined amount as a Net Fee.

5.2.3. Fixed Billable Rates:

This method of compensation is more suited for Limited Service term Contracts where VDOT needs additional resources to augment its staff. The consultant is paid at Fixed Billable rate, also referred to as actual cost, which includes negotiated wage rate, indirect cost rate, net fee, FCC and escalation for each personnel classification. If utilizing the fixed billable rate payment method for a task order on a limited services term contract, the value of the task order shall not exceed \$1,000,000 without the prior approval of the Deputy Chief Engineer.

5.3. Types of Contracts

5.3.1. Project Specific Contracts

This contract type provides for all the work associated with a specific project and requires a detailed scope of work. Contracts of this type provide for all work to be placed under one (1) contract at the same time depending on availability of funds. Cost Plus Net Fee is the preferred payment method.

5.3.2. Multi-Phase Contracts

This contract type includes provisions for one or more future phases, with the fee for each phase to be negotiated at a later date. The initial contract is only for phase I services. VDOT is not obligated to use the same consultant for all phases of a project. Any subsequent phases of the contract will be further defined, negotiated, and executed through a Supplemental Agreement. To continue with a consultant, who has completed a previous phase of the project, will depend upon:

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

In the event that VDOT and the consultant cannot agree on a fair and reasonable compensation for the additional phases, VDOT reserves the right to terminate the contract.

5.3.3. Limited Services Term Contracts (On-Call Contracts)

This type of contract is anticipated to be primarily utilized for small/medium projects/tasks that are similar in nature, require similar experience, and where the cost of advertising the project as an individual contract is high compared to the cost of the project, or where sufficient time does not exist to procure consultant services through the normal procurement process.

Limited Services term contracts shall be limited to one (1) year, or when the cumulative total of approved task assignment fees reaches the value per term, whichever occurs first. The limits and the duration of the terms are governed by the prevailing provisions of the Virginia Public Procurement Act. At VDOT's option, the contract may be extended three (3) additional terms, one (1) year at a time, or when the maximum value per term is reached, whichever occurs first. The value of each additional term shall be equal to the initial term. Any amount not obligated through a task assignment under the current term cannot be carried over to future term.

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

Individual task orders (Letter of Agreement; LOA) are assigned under these contracts,

and fees established are based on the Fixed Billable Rates for each personnel classification. No LOAs or task orders can be issued after the final term of the contract expires.

The task order value shall be based on the threshold established by each Division and shall be limited to \$1,000,000 or less unless otherwise approved by the Deputy Chief Engineer.

5.3.4. Limited Services Term Contracts – Multiple Awards

Task assignments shall be issued by VDOT in an established order, which should normally be based on the selected firms' ranking at the final decision for selection and order of awards.

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

1. Potential conflict of interest
2. Availability of consultant personnel to complete the project within the required timeframe
3. Workload assigned under current contract
4. Fair distribution of assignments in terms of value
5. Continuity of services
6. Location of firm, if a major factor in the task assignment

Justification and approval of the LDA or their designee for deviation from the task assignment described in the items above shall be maintained in the file and submitted for review at term renewal.

5.3.5. Renewal of Limited Service Term Contract

The contract term shall expire when the cumulative total of obligated fees for project assignments reaches the maximum total compensation or the term expiration date, whichever occurs first. The Lead Division must monitor the use of the contract to ensure that the renewal takes place prior to full utilization of the term amount or prior to the expiration date of the term.

To ensure enough time for the renewal process, Contract Administrators should identify contracts eligible for renewal 90 days prior to the expiration date or when 90% of the maximum term limit has been obligated on executed task orders. The Consultant Renewal Request letter should be sent to the consultant with a request for the consultant to provide the rate tables for the next term of the contract. The escalation rate for the upcoming term will be confirmed within the renewal request.

Contract Administrators must review the rate tables for accuracy prior to submitting to PSPO. The MOA will include the rate tables for the first two (2) terms of the agreement (year 1 and year 2). Escalation will be applied in accordance with the MOA terms and

conditions. If the Department chooses to renew the contract for an additional term, the consultant and the Contract Administrator should review Section 4.7.7 and the escalation rate memo posted on VDOT's external Consultant Procurement site at: [//www.virginiadot.org/business/gmpms.asp](http://www.virginiadot.org/business/gmpms.asp). The date of the consultant renewal request letter will establish the applicable rate.

The Lead Division Contract Administrator must submit the following information to the PSPO mailbox a minimum of 60 days prior to the expiration of the current term or the anticipated early renewal date:

- PSPO-2 Form
- Signed Consultant Renewal Acceptance Letter with Escalation Rate included
- Narrative for upcoming workload
- A minimum of two consultant performance evaluations from the current term (if available)
- Current DBE/SWaM utilization percentages
- If the consultant fails to meet the goal, the district should document the consultant's efforts to date and encourage DBE/SWaM usage
- Task Order Assignment Tracking Log
- Certification that PSCRS is current and accurate for all data entry of task orders and invoices
- Proposed rate table for the upcoming term, reviewed by the Contract Administrator for accuracy

Contract Administrators may access the PSPO-2 Renewal Instructions and forms from the PSPO InsideVDOT site at [Professional Services Procurement Office - Home \(sharepoint.com\)](#)

Contract Administrators should refer to the steps outlined in the Term Contract Renewal Instruction provided on the Inside VDOT Consultant Procurement SharePoint page [Professional Services Procurement Office - Home \(sharepoint.com\)](#) ..

Failure to renew the contract prior to the expiration date will result in an expired contract. It is generally understood that the work will, under a task order, continue to be performed by the consultants until completed, even if beyond the expiration of the contract. However, no new LOAs/task orders, including any supplements, or scope additions of any kind to an existing LOA/task order, shall be issued after the contract expires. Assigning task order/ LOA on an expired contract is prohibited by law.

At the time of Renewal, the current approved Indirect Cost rates will be utilized in the developing the Fixed Billable Rate Table by the Department. In case of early renewal within first 12 months, the contract Indirect Cost rates will remain in effect unless the escalation rate is adjusted in accordance with Section 4.7.7.

5.4. MOA Execution, Consultant

A PDF of the final MOA is sent to the prime consultant for review and signature by the consultant.

Consultant signature requirements:

1. Individuals: A contract with an individual shall be signed by that individual. A contract with an individual doing business as a consultant shall be signed by that individual, and the signature shall be followed by the individual's typed name and the words, "an individual doing business as (insert name of consultant)".
2. Partnerships: A contract with a partnership shall be signed in the partnership name, followed by the typed name and title of the person authorized to sign.
3. Corporations: A contract with a corporation shall be signed in the corporate name, followed by the signature and typed name and title of the person authorized to sign.

5.5. Confidentiality

The Consultant and its employees, while providing services under the subject contract, may have access to sensitive records and/or information, by virtue of working on a project or being co-located with VDOT. These records and/or information are to be considered confidential and proprietary; VDOT is the owner and custodian of this information. Any information and/or records that the Consultant has access to while providing services under this contract, shall be held in confidence and shall not be used other than for the purposes of providing services to VDOT under this Contract. The Consultant and its employees shall not engage in any activities that may give the Consultant any competitive advantage for future contracts or that may cause a real or perceived conflict of interest. All Consultant employees co-located with VDOT at any VDOT offices, or a project office, irrespective of the period of co-location, shall sign the Confidentiality Certification (to be provided by VDOT).

Unless ordered by a court of competent jurisdiction, or demanded by the Virginia Attorney General's Office, or otherwise required by law, the Consultant and its employees shall not divulge any confidential information to any entity or person outside of VDOT, including but not limited to the media, or any member of the public, without the prior permission of VDOT. Confidential information exchanges may have to be conducted as necessary and appropriate between the project team and VDOT to perform assigned tasks under the subject Contract; provided that the Consultant and its employees shall only communicate such information with individuals who are similarly obligated to VDOT under a confidentiality agreement and/or certification.

In the event of any unauthorized disclosure of such confidential information, VDOT reserves the right to take any necessary actions including but not limited to terminating the subject contract and precluding the Consultant and its employee(s) from working on any existing and/or future contracts with VDOT.

5.6. MOA Execution, VDOT

The Chief of Administration has been designated by the Commissioner to execute professional service contracts. The procurements are intended to be completed through an award (MOA execution) within stipulated schedule published in the RFP and are not intended to remain

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open for an extended period of time. Procurements that do not reach MOA execution within 6 months of the Selection Notification may be cancelled unless otherwise approved by the Chief of Administration.

5.7. MOA Distribution

After the MOA has been executed, copies of the executed agreement are distributed to the consultant and appropriate VDOT personnel electronically.

5.8. Notice to Proceed

A notice to proceed shall not be issued prior to full execution of the MOA. The VDOT Project Manager will send a written notice to proceed to the consultant. The consultant shall not proceed with any work prior to receipt of a written notice to proceed.

CHAPTER 6

PAYMENT PROCESS/ INVOICE



6. CHAPTER 6 – PAYMENT PROCESS/INVOICE

6.1. General

After the agreement has been fully executed, the VDOT Project Manager or the VDOT Contract Administrator should furnish the consultant with the invoice format that is required by VDOT.

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

6.2. Cardinal Financial Management System (Cardinal)

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

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

Each contract and supplemental agreement will be added to Cardinal by the Procurement Officer following contract execution.

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

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

6.3. Consultant Invoice and Progress Report Submissions

Unless otherwise noted in the MOA, the frequency for submittal of invoices for all contracts is once every thirty (30) days. Invoices are to be submitted only when accumulated charges exceed a total of \$500.00 (including subconsultant charges). Prime consultants are required to submit a invoice for its team once every thirty (30) days even if there are no Prime Consultant charges.

When the invoice contains billings from subconsultants, the first sheet of each subconsultant's invoice should be distinctly labeled “SUBCONSULTANT” in large, bold print.

The consultant is required to submit monthly progress reports in the format provided by VDOT, along with its invoice, to show the status of the services. The progress report should show the percentage of work accomplished, a narrative of the actual work performed this period, and significant activities anticipated for the next month. These progress reports should note important milestones along the life of the project.

6.4. Review of Invoices & Progress Reports

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

Common invoice errors made by consultants include the following:

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

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

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

On projects involving multiple elements (bridges, roadway, etc.), the progress report must indicate the percent completion of each individual element.

The VDOT Contract Administrator will review the invoice to determine if the progress claimed by the consultant is reasonable and consistent based on knowledge of the project progress. The VDOT Project Manager will also assure the billing is reasonable and in accordance with the MOA and other written authorizations. No consultant is to be allowed to perform or invoice for any services beyond the original or supplemented contract scope of services without

a fully justified and properly executed supplemental agreement. The total net fee that is billed with each invoice should match the overall progress of the completed activities for the project, irrespective of the amount of monies that have been expended.

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

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

Consultant per diem rates shall be in accordance with VDOT Travel Guidelines / Policy at the time which travel occurs.

VDOT does not pay for consultants to relocate personnel to a Virginia office in order to perform work in a Virginia office.

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

- 1) Prior written approval from VDOT
- 2) Evidence of overtime payment (paystub) to the individual(s) performing overtime
- 3) Timesheet(s) demonstrating more than 40 hours per week on the Contract

In accordance with Section 4.7.1 of this manual, the Contingency shall not be used without written permission from VDOT.

Once the invoice and progress schedule have been checked by the VDOT Project Manager/ Contract Administrator and found to be in agreement, the Contract Administrator/ Project Manager shall prepare the Voucher Transmittal. For details regarding the Voucher Transmittal preparation and fiscal requirements, please refer to the VDOT Fiscal Division's [Accounts Payable Procedures](#) on InsideVDOT.

Divisions and Districts are responsible for maintaining records of invoice payments and are subject to review of pertinent Chief or his/her designee. The invoice payment information should be entered in the Professional Services Contract Reporting System (PSCRS) as soon as the invoice is approved.

VDOT does not withhold retainage on consultant invoices. Prime consultants shall not withhold retainage on subconsultants.

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

6.5. Annual FAR Audits

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

6.6. Invoice Package Distribution

The package distribution should be as noted below:

Invoice and Cardinal Data	1 - Project File 1 - Fiscal Division (original) 1 - Other Divisions Involved
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6.7. Final Reviews

ACO performs final reviews after the completion of the project on Cost Plus Net Fee and upon close out of Fixed Billable Rate contracts, based upon a risk-based approach. ACO will issue an email with findings, if applicable, to the appropriate consultant representative with copies of the report provided to the appropriate VDOT personnel.

6.8. Final Review Payment

If, as a result of the final review, the consultant owes VDOT a reimbursement of some payments, the Assurance and Compliance Office will secure the reimbursement. If VDOT owes the consultant additional compensation, the VDOT Project Manager and/or VDOT Contract Administrator will have the consultant submit another invoice to claim the payment. If the project has been closed-out to charges, the VDOT Project Manager and/or VDOT Contract Administrator will have to get the project re-opened for additional charges.

CHAPTER 7
**CONTRACT
ADMINISTRATION**



7. CHAPTER 7 – CONTRACT ADMINISTRATION

7.1. Contract Administration

VDOT’s Lead Division shall assign or designate a Project Manager and a Contract Administrator to deliver the project and to oversee the contract and ensure that the consultant performs in accordance with the terms, conditions, and specifications of its contract. Furthermore, the VDOT Contract Administrator and the Project manager must administer the contract in accordance with this manual and maintain records for internal or external audits. In the event records are requested, they shall be made available immediately.

Contract Administrators (CA) are responsible for the control of their assigned contracts. They must be fully knowledgeable of the Contract. This responsibility includes coordination with contract users to assure consistent contract compliance.

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

- Coordinating contract “start-up” activities with the appropriate personnel (facilities, security, etc.).
- Assurance that services are delivered in accordance with the contract price, terms and conditions.
- Coordinates the development of contract task order assignments to include project description, scope of work, schedule, and fee proposal with support from the VDOT Project Manager.
- Obtains signature approval of task order assignments from the Lead Division Administrator and distributes final approved task orders for implementation.
- Collecting and filing of mandatory documentation such as subconsultant agreements, insurance forms, etc. Maintain appropriate contract documentation.
- Maintain and negotiate consultant staff roster updates.
- Maintain executed Confidentiality certifications in accordance with the MOA.
- PSCRS and Cardinal (task orders, invoices, etc.) must be updated every time a Task order is issued or Invoice is approved.
- Prompt reporting of delivery failures or consultant performance problems should be made using Consultant Performance Reports.
- Coordinates the preparation and submittal of the Consultant Performance Reports with support from the VDOT Project Manager.
- Ensure that the modifications and supplemental agreements are coordinated with the Lead Division and PSPO.
- Ensure that contract renewals are processed on-time following the established Contract Renewal process.
- Coordinate, cooperate and comply with contract audits.

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

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

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

- Day to day coordination for the delivery of the consultant services.
- Coordinate contract “start-up” activities with the appropriate personnel.
- Develop overall project goals, plans, and schedules.
- Maintain complete project files and satisfy the requirements for record keeping, filing, and reporting.
- Manage staffing roster and process requests for addition or deletion.
- Provide liaison with consultants in preliminary stage, design stage and during construction.
- Ensures that no work is done or costs incurred until written authorization is given by VDOT.
- Monitor the consultant’s progress on work assignments to ensure on time, on budget delivery of expected quality product.
- Review and approve consultant invoices and status reports. Process invoices for payment in a timely fashion. Ensures project data is input into Cardinal.
- Gather, coordinate and transmit information required to complete the contractual services.
- Work with other functional specialists and divisions to coordinate plans and schedules, obtain commitments, and resolve problems.
- Coordinate and provide liaison with other entities such as FHWA, city, county, and State regulatory agencies, environmental resource agencies, citizen groups, and elected and appointed government officials.
- Review preliminary, intermediate, pre-final and final plans and special provisions, etc. prepared by the consultant(s) for accuracy and completeness prior to submitting them for the designated activity.
- Distribute and obtain approval of plans and special provisions from other divisions and outside agencies.
- Answer inquiries relating to VDOT's practices and specifications, including AASHTO modifications and geometric standards.
- Prepare Consultant Performance Reports, at a minimum, in December and June of each year and upon expiration of the agreement. Interim Performance evaluations should be performed in the event of delivery failures or consultant performance problems. Perform a final closeout evaluation within sixty calendar (60) days after the completion of the work.
- Identify changes to scope of services, review man-hour estimates and prepare contract amendments (supplemental agreements). Supplemental agreements are processed by PSPO.
- Participate in the review of consultant claims and time extension requests.
- Coordinate, cooperate and comply with contract audits.

7.2. Consultant Staff Roster Changes

The consultants are expected to provide adequate staffing levels for each labor classification identified in the MOA to perform the anticipated workload throughout the life of the contract. At the time of contract award, the roster created for each contract will be a full list of personnel approved to work on the contract.

The addition of staff to a contract should be driven by business needs. When firms need to add staff an existing contract, the prime firm will contact the Contract Administrator or designated VDOT Project Manager and advise of impending request for a staff addition prior to any work being conducted by the newly proposed staff. Any personnel changes will require the submission and approval of a Staff Personnel Change Roster prior to consultant billing.

The VDOT CA or PM and firm will review, discuss, and agree upon the classification (or Class / Working Title) for the newly proposed staff. Firm will need to provide certified payroll to verify the rate. A sample of payroll data may suffice if multiple positions being added. Existing hourly rates on contract will not change due to the addition of staff. Requests for additions should be reviewed as expeditiously as possible to ensure work is not delayed. If no response is received within 30 calendar days, the roster change will be considered approved.

Changes to Key Personnel are subject to requirements as stated in the contract and require the submission of a resume.

If the Contract was awarded utilizing the previously established Standard Classifications, then Standard Classifications will continue to be used for any additions. If the contract was awarded utilizing Classes and Working Titles, then Classes and Working Titles will continue to be used for any additions. If the appropriate Class does not exist on the contract for the firm requesting the addition, it will be necessary to complete a supplement agreement and pre-award roster. Contact PSPO for additional guidance.

Firms will also notify VDOT of any removals of staff from the contract along with the reason for the removal. Notifications will need to be provided as soon as possible, and no later than the next billing cycle in which the removal is necessary.

Finalized Staff Revisions Rosters will be provided to PSPO upon acceptance by the Lead Division.

7.2.1 Promotions (reclassification of employees)

Promotions include changes in Classes, Working Titles, and responsibilities under the contract. These changes may also include the addition of professional licensure or certifications as recognized by DPOR, state boards, or other transportation related certifications indicated in the current list of Class/Working Title documentation. Requests for promotions may be considered by the Lead Division Contract Administrator for one or more of the following reasons:

1. Change in role on the contract – a comprehensive increase in qualifications, demonstrated increase in project leadership, increase in responsibility and impact on contract.
2. Change in role within the firm – a promotion with a documented increase in responsibility of role, supervisory leadership, project management, supported by documented pay increases, etc.

3. Business need for the contract – a justification of how & why this promotion to a higher Class will positively affect the results for this specific contract.

An increase in years of experience or rate of pay will not constitute a need to change Classes levels. Any promotion granted for one individual on any one contract will not affect any Class or Working Title for that individual on any other contract.

Division Guidance – The Lead Division is responsible to review and verify the supporting documentation for its completeness and justification prior to approving the change in level of Class/Working Title. In addition to the above justification, a completed Staff Personnel Change Roster is required. Upon acceptance by the LD Contract Administrator, the finalized Roster shall be provided to PSPO.

7.3. Evaluation of Consultant Performance and Services

It will be the responsibility of the VDOT Project Manager/ Contract Administrator and each division involved in the contract to evaluate the consultant’s performance. At least one performance evaluation per contract per firm (prime and sub consultants) must be completed for the performance period of January to June, and July to December. A final Performance evaluation (closeout evaluation) is also required in addition to the bi-annual evaluations upon expiration of the agreement. However, additional performance evaluation reports may be filed at any time over the duration of the project as deemed necessary by the Project Manager and/or Contract Administrator. The Lead Division will be responsible for monitoring and ensuring timely completion of these reports. In instances where there no work activity was performed by a firm (prime or subconsultant), a performance evaluation form must still be filled out identifying “No Significant Activity” during this period and submitted. For “No Significant Activity”, the form does not require the consultant’s signatures.

The [Consultant Performance Report](#) will be used for the evaluation. The analysis must be completely fair and honest; personal dislikes and biased opinions of the firm must be set aside. Ratings shall be based on facts and documentation. The evaluation should only consider the performance of the consultant during the production of the project. Attention must be paid to the rating values. A consultant that fully meets the terms and conditions of the contract receives a score of three. Scores higher than three must result from exceptional performance from which VDOT realizes some benefit to the schedule or budget and must have supporting comments. Scores of less than three without any supporting comments will result in the performance report being returned to the rater for the comments to be added. Attention must be paid to the utilization of DBEs/SWaMs and appropriate scores given.

The following steps shall be taken with the report for signature and approval:

- Reviewed by the consultant and the consultant given an opportunity to respond back with written comments. The Consultant must acknowledge the receipt of the evaluation and should sign the evaluation with their comments as soon as possible but no later than a week from the receipt. In the event a Consultant does not respond or sign due to disagreement or other reasons, the report will be considered final and uploaded in the library for future consideration in selection process.
- Reviewed and approved by the VDOT Project Manager, Lead Division Program Manager, Assistant Division Administrator or a senior level individual knowledgeable of

the services being provided by the consultant, as determined by the Lead Division/District.” (Reviewer). Reviewer must be the Rater’s supervisor or in a position above him.

- Filed in Professional Services Consultant Performance Evaluation library along with the firm’s written comments.

Division Administrators must provide a certification regarding completion of Consultant Performance Reports for all their contracts to PSPO before August 1 and February 1 of each year for the performance period ending in June and December respectively.

Once the evaluation is completed, the consultant may appeal the evaluation to the Division Administrator. If the Division Administrator agrees to make a revision, the VDOT Project Manager and/or VDOT Contract Administrator will create a new report and finalize it in the database. Upon finalizing the new report, VDOT Contract Administrator should request PSPO to remove copies of the disputed report. Consultant Performance Reports shall be retained in the performance database for five (5) years after the completion of the contract.

The reports will be used as back-up data for future justification in using that firm for work. The Consultant Performance Reports shall be uploaded to the Consultant Performance Evaluation library for use by Selection Committees. Individual scores for each item rated will be in the SharePoint table, not just the average score. This will allow committee members to see if there are any individual category low scores while the average score is still high.

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

7.4. Final Consultant Performance Evaluation

A final Consultant Performance Evaluation (Final Closeout Evaluation) for the prime consultant and all the sub consultants is required to be completed within sixty calendar (60) days after the completion of the work from the prime, and subconsultant(s). Work will be considered complete after payment of the final invoice. If errors are found in the plans during construction, the procedure outlined in the MOA should be followed and an additional Consultant Performance Report should be completed and filed. The report must be reviewed with the consultant and the consultant given the opportunity to submit written comments regarding an unsatisfactory evaluation.

7.5. Title VI Evaluation Report

Title VI Evaluation Reports (T6-2-3-09) must be updated every two years by consultants. A copy of the report is furnished to the CRD for their review and approval. A copy of the Title VI approval should be submitted to the VDOT Contract Administrator upon approval for inclusion in project files.

In the event of a finding of non-compliance, the VDOT Contract Administrator may seek

resolution with the consultant with the assistance of the CRD.

7.6. Insurance

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

7.7. Annual FAR Reviews

FAR audit information and new overhead and payroll burden rate must be submitted annually and approved by ACO. Please refer to ACO webpage (<https://www.virginiadot.org/business/business.asp>) for guidance on documentation and submittal requirements.

7.8. Plan Errors and Omissions

7.7.1. General

VDOT's policy is to take all reasonable steps to preclude significant design errors/omissions both by its own designers and by consultants. Upon discovery of an alleged design error/omission, immediate action is mandatory to minimize potential delay costs. This should include communication with the designer to determine appropriate course of action.

The consultant will be made aware of the circumstances and put on notice as soon as possible that there may be a claim against them for errors/omissions. The consultant will be given an opportunity to help resolve problems that arise during construction as a result of unforeseen conditions or alleged or potential plan errors/omissions.

VDOT will seek to recover costs incurred as a result of design errors/omissions determined to be the liability of a consultant. If the error/omission results in additional quantities being added to the project that would have been required anyway, no compensation will be sought from the consultant unless:

1. Obtaining the additional quantities caused a delay in the project and there were other costs associated with the delay; or
2. There were premium costs created because new pay items had to be set up to pay for additional quantities.

All alleged design errors/omissions relating to this policy and known facts surrounding the alleged error will be carefully and fully reviewed by VDOT personnel and the affected consultant. If necessary, a review committee shall establish the official position of VDOT with respect to liability for additional costs incurred as a result of a particular alleged design error/omission. All decisions shall be subject to appeal to the appropriate Chief at the option of the consultant.

7.7.2. Process

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

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

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

1. Review all available information, including costs, and determine the appropriateness of attempting to secure reimbursement from the consultant for the legally recoverable additional costs incurred as a result of the alleged error.
2. Request assistance from the Attorney General's Office if legal interpretation is required.
3. Drop further action if it would not be appropriate to pursue reimbursement from a cost viewpoint, or proceed to next step.
4. If the decision is to proceed, schedule a meeting of a review committee.
5. Lead the review committee in its deliberations to determine if the consultant has responsibility for the alleged error/omission, if reimbursement should be pursued, and amount of reimbursement.
6. If the review committee determines the Consultant committed an error/omission and the consensus of the committee is to recommend reimbursement, notify the consultant and the appropriate Chief of the decision and outline the options for repayment or appeal.

Take the following steps when applicable:

- Negotiate a settlement. Settlements of \$250,000 or larger require coordination with OAG's office for approval from Governor's office.
- Acceptable methods of settlement include cash payment, installment cash payments, services in kind in lieu of money, and withholding payment from future invoices.
- If the consultant agrees to reimburse VDOT through deductions from other payments due, notify Fiscal Division to make appropriate deductions and release the consultant from further liability.
- If the consultant repays in full, acknowledge receipt and tender release from further liability for the specific error/omission.
- If the consultant refuses repayment, does not appeal the decision, and has payments due from other agreements, notify Fiscal Division and advise him/her to withhold payments due the consultant.
- If the consultant refuses repayment, does not appeal the decision, and has no other payments due, notify the Office of Attorney General to proceed with legal action.
- If the consultant requests an appeal of the decision, notify the appropriate Chief that

the consultant wishes to appeal the decision. Provide all pertinent details concerning the alleged error and actions and decisions to date.

- Notify the consultant of any actions taken.

7.9. Ethics in Contracting

Article 6 of the VPPA, and Department of Personnel and Training Policy and Procedures Policy 1.60 discuss ethics in contracting. Governmental business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in VDOT-consultant relationships.

7.10. Critical Infrastructure Information/Sensitive Security Information (CII/SSI)

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

Consultants shall protect CII/SSI at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it. The use and storage of CII/SSI shall conform to the following guidelines: During working hours, reasonable steps shall be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

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

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

By copying, downloading, or receiving a copy of any documentation containing CII/SSI, or any part thereof, the consultant or any other recipient acknowledges and agrees to the terms of

the MOA and will advise any individual using these documents, or any part thereof, that they too shall be responsible for safeguarding the CII/SSI in their custody or under their control. All costs associated with performing these CII/SSI requirements are the responsibility of the prime consultant.

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

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

CHAPTER 8
**MODIFICATIONS AND
SUPPLEMENTAL AGREEMENTS**



8. CHAPTER 8 – MODIFICATIONS AND SUPPLEMENTAL AGREEMENTS

8.1. Modifications

A contract modification is the process used to document changes to the MOA that do not affect the scope of work or maximum compensation value. Only the Procurement Officer is authorized to make modification to a contract. The VDOT Contract Administrator or Project Manager may make recommendations for contract modifications.

8.2. Supplemental Agreements

The MOA provides that supplemental agreements may be needed to amend the services and/or compensation that were agreed upon in the original contract. The additional work required must fall within the original scope and provides for services that are essentially the same as those in the original contract. Supplemental agreements will state the proposed changes of work, and adjustment of fees to be paid, if any. Adding new classification, or sub consultant will require a contract supplement. Depending on the Lead Division / PSPO workload, supplemental agreements may require approximately 90 calendar days to process from the time a complete supplemental agreement request, including all supporting documentation, has been received by PSPO. Supplemental agreements may require ACO review and as such, may require additional time depending on the ACO review timeframe.

8.3. Allowable Uses of Supplemental Agreements

Supplemental agreements may increase or decrease the consultant's compensation and/or time and are used for the following:

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

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

8.4. Non-Allowable Uses of Supplemental Agreements

Supplemental agreements cannot be used for:

- Any changes which are outside the general scope of services defined in the RFP and/or MOA. Such changes would have the effect of making the services performed substantially different from the services negotiated at the time the original contract was awarded (i.e. a contract for road design work may not have a bridge added to it if there was no bridge design work in the original RFP and MOA).
- Transferring authorized amounts among the consultants working on a project does not require a supplemental agreement as long as the transfer does not change the total maximum compensation. Transfers may be from the prime consultant to subconsultant(s), subconsultant(s) to subconsultant(s), or subconsultant(s) to prime consultant. To document the transfer, a letter which outlines the changes must be submitted by the involved prime consultant, to each affected subconsultant, and the LDA.
- Supplemental agreements will not be processed to compensate the consultant for changes in overhead.
- If there is any question as to whether or not the extra work is within the scope of the MOA, the Attorney General's office shall be consulted.

8.5. Justification of Supplemental Agreements

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

Evidence to justify a supplemental agreement should, at a minimum, address the following:

- Project continuity
- Time savings
- Cost effectiveness
- Learning curve for a new consultant.

Proposals will be submitted and reviewed by the Procurement Officer for any supplemental agreement.

8.6. Net Fee

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

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

agreement. The net fee for the additional services should be a negotiated amount based on the factors identified in Section 4.8.

8.7. Execution of Supplemental Agreement

The process for executing a supplement is the same as used in the original agreement. FHWA shall be notified when any of the instances set forth in Chapter 1, Section 1.2, of this Manual apply. It must be verified that funds are available to perform the additional services. The general procedure for negotiating the fee proposal is similar to the original MOA. Once the supplemental fee proposal has been negotiated, and man-hours and fees have been agreed upon, the process for approval is the same as with the original MOA. The supplemental agreement will state the proposed changes of work or services, extension of time and completion, and adjustments of fees to be paid, if any. Supplemental agreements must be signed by the same entity as the original agreements of which they are to become a part.

Once approved, the supplement should be sent to everyone who received a copy of the original contract.

8.8. Notice to Proceed

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

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

CHAPTER 9

SMALL PURCHASE PROCEDURES



9. CHAPTER 9 - SMALL PURCHASE PROCEDURES

9.1. Small Purchase Procedures for Professional Services

Divisions requiring the use of professional services are authorized to procure such services in the following manner if the anticipated contract amount is expected to be \$80,000 or less. The LDA will:

1. Develop a scope of services and proposed schedule for the project.
2. From a list of firms which have performed similar services over the previous two biennium or which are available to perform a specialty service, select not less than three (3) firms which appear to be most qualified and suitable to render the required services. Consideration should be given to the current amount of existing work with VDOT and to selecting a business to meet VDOT's overall DBE/SWaM goal.
3. Solicit interest from the selected firms to determine their current personnel's qualifications, experience, workload, capacity, past performance on similar projects, and ability to perform the scope of services and meet the proposed schedule. Written documentation of the interviews must be made a part of the project file. It shall include the names and addresses of the firms contacted, the description of the required services, the names of the persons requesting and receiving the information, and the date the information was obtained. Professional service procurements of \$80,000 or less are not advertised on eVA.
4. Rank the firms in the order deemed most qualified and include written documentation of the reasons for the ranking in the project file. Past performance on VDOT projects will be considered. Consideration should be given to the number and value of previous VDOT contracts awarded to each firm and the work should be spread around to avoid favoritism or the appearance of favoritism.
5. Negotiate a fee for the service with the first ranked firm. If negotiations fail to obtain a satisfactory agreement which is advantageous to VDOT and at a fair and reasonable fee, negotiations shall be formally terminated and the second ranked firm shall be selected for negotiation. This procedure shall be continued until a contract can be negotiated at a fair and reasonable fee.
6. Prepare a MOA using the latest guide agreement approved by the Attorney General's office. The agreement shall be on a lump sum or on a unit cost (hourly rate) basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by VDOT and shall be determined by the Division Administrator to be reasonable. No pre-award audit will be required.
7. The agreement shall be executed by the LDA designated to execute an agreement of this nature.
8. A written notice shall be issued identifying the consulting firm to be hired, the type of work to be performed, and the date the contract was or will be awarded. This notice shall be sent to the ASD with a request to post it in a public place for 10 workdays. The notice of award must be posted on the On-Line Bids page of eVA: <https://www.eva.virginia.gov/>.
9. If the anticipated contract amount is expected to be less than \$5,000, it is only necessary to solicit interest from one firm.
10. The remainder of the procurement and contract administration process follows that of a regular contract.

11. See the DGS, Division of Engineering & Building's *Construction and Professional Services Manual* for additional information.

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

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

1. Purchases made pursuant to these procedures do not require public bid openings or newspaper and eVA advertising.
2. Small purchase procedures shall provide for competition wherever practicable.
3. Single Quotation (Up to \$10,000): Where the estimated cost of goods or nonprofessional services is \$10,000 or less, purchases shall be made upon the receipt of one (1) written or telephone (oral) quotation from at least one (1) DSBSD-certified micro business, if available. Additional sources may also be solicited. A record of the quotation shall be kept to document the name and address of the vendors contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving prices and the date the information was obtained. If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder.
4. Unsealed Bidding (Over \$10,000 to \$100,000): Solicit written bids or quotes for goods and nonprofessional services from \$10,000 to \$100,000. Solicit four (4) valid sources, including a minimum of four (4) DSBSD-certified micro businesses, if available, in writing or electronically. A record of the solicitation and responses shall be kept. If fewer than the required number of sources are solicited, the reasons shall be documented. The award will be made to the lowest responsive and responsible bidder.
5. Unsealed Proposals (Over \$10,000 to \$100,000): Solicit written offers for goods and nonprofessional services from \$10,000 to \$100,000 using an informal RFP. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, any general terms and conditions including unique capabilities or qualifications that will be required. Solicit four (4) valid sources, including a minimum of two (2) DSBSD-certified micro businesses, if available, by mail, fax, or electronically. All responses must be received at the designated location by the date and hour stated in the solicitation. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the selected Offeror. A record of the solicitation, the responses, and the evaluations shall be kept. If fewer than the required number of sources are solicited, the reasons shall be documented.

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

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

CHAPTER 10

**SOLE
SOURCE /
EMERGENCY
CONTRACTS**



10. CHAPTER 10 – SOLE SOURCE/ EMERGENCY CONTRACTS

10.1. General

Section 2.2-4303 of the Code of Virginia provide for sole source and emergency contracts. Written determination must be made of the need for a sole source or emergency contract and retained in the file. A written notice must be posted on eVA (<http://www.eva.state.va.us>). The notice must include the determination of need and identify that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Sole source or emergency procurements are improper if used only for the administrative convenience of VDOT.

10.2. Sole Source Contracts

A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Sole source procurements up to \$50,000 are approved by the Director of Administrative Services Division. Sole source contracts exceeding \$50,000 shall be approved by the Chief of Administration and DGS/DPS. Submissions for approval shall address the following four points in the order given: explain why this is the only product or service that can meet the needs of the purchasing agency; explain why this vendor is the only practicably available source from which to obtain this service; explain why the price is considered reasonable; and describe the efforts that were made to conduct a non- competitive negotiation to get the best possible price for the taxpayer. Sole source requests that exceed \$10,000 must be submitted to ASD in accordance with Section 8 of the ASD Procurement Procedures Manual. ASD will seek the necessary approvals.

The ASD maintains a central file of all VDOT sole source requests.

ASD will post the public notice in eVA.

Sole source procurements up to \$10,000 are not posted to eVA.

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

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

10.3. Emergency Contracts

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

The Division Administrator shall:

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

7. The agreement shall be executed by the Chief of Administration. The agreement transmittal letter shall include a description of the contractor's qualifications, experience and background to provide the emergency service and the basis on which this consultant was selected over other qualified firms. Also include an explanation of how you concluded that the cost is fair and reasonable since competition was not conducted.
8. For emergency procurements over \$10,000, notices of award must be posted on the eVA website and at a minimum state that the procurement has been declared an emergency, what is being procured, the contractor selected, and the date the contract was or will be awarded.
9. See the DGS/DPS's Agency Procurement and Surplus Property Manual, Chapter 9, for additional information.

CHAPTER 11

**CONSULTANT
ENGINEERING
INSPECTION**



11. CHAPTER 11 – CONSULTANT ENGINEERING INSPECTION

11.1. General

The purpose of this Chapter is to provide additional guidance related to Construction Engineering Inspection services. Any programmatic policy outlined in other chapters of this manual shall govern in case of a conflict between this chapter and rest of the Manual.

For the purposes of this section, the following terms shall be interpreted as follows:

1. Construction Inspection Coordinator (CIC): A consultant employee that coordinates consultant inspection staff on a statewide, regional, or districtwide basis and maintains a working knowledge of consultant staff capabilities and availability.
2. Cure Notice: A written notice that informs the consultant that it is in default of the contract and states what the consultant shall do to correct the deficiency and become compliant with all contract requirements.
3. Programmatic Support Contract: Provides professional engineering resources and services as necessary to support multiple facets of project development and project delivery, including, but not limited to design, procurement, construction, and post construction activities.
4. Task Order Manager: VDOT employee (i.e. Area Construction Engineer, Project Controls Engineer, Construction Manager, etc.) responsible for the internal management of VDOT task orders. Ensures that the scope of work, schedule and budget identified in the task order meets requirements.

11.1.1. Professional Service Construction Contracts

Consultant CEI services should only be obtained through the use of Construction Division Contracts. Any district may utilize the Central Office Staff Augmentation contract or another district's contract for CEI services, with the exception of Northern Virginia District, provided the RFP scope of work allows it and the required resources are not available from the current District's contracts. Northern Virginia contracts are not allowed to be used in other districts due to the increased Cost of Living Index for the region without the written approval of Construction Division.

Use of contracts from other districts requires the written concurrence of both District Construction Engineers (DCEs), identifying the scope of services, personnel, and task order amount.

11.1.2. General Contract Administration Responsibilities

Effective contract administration ensures that deliverables are provided in accordance with the requirements of the contract. Each active contract must be assigned to a Contract Administrator. Each task order must be assigned to a Task Order Manager.

Contract Administrators are required to complete the Contract Administration and Ethics Training available on VDOT University.

General responsibilities of the Contract Administrator include, but are not limited to the following:

- Confirm Certificates of Insurance (COI) remain in compliance with the minimum insurance limits for the duration of the contract. These certificates shall be kept on file as contract records
- Review Title VI reports to ensure consultants maintain an approved status
- Initiate and coordinate completion of Consultant Performance Evaluations (also referred as CPE)
- Ensure compliance with contract/task order terms and conditions, hourly rates, non-salary direct cost, and classifications included in task orders and invoices
- Coordinate Task Order Manager reviews and approvals
- Execute task orders and process and approve invoices
- Conduct post award kick-off/coordination meetings with consultants
- Determine task order assignments and coordinate with CIC
- Enter task order and invoice data into PSCRS at a minimum on a biweekly basis
- Coordinate contract renewals, contract modifications, consultant CPEs and associated staff approvals
- Request new contracts, when appropriate and gather supporting documentation
- Coordinate the review of qualifications for proposed consultant personnel and ensure that staffing requests are aligned with contract classifications and objectives
- Organize and electronically file all documents (contract agreements/modifications, renewals, Title VI Compliance, CPE's, COI's, etc.)
- Issue the formal/written Notice to Proceed (NTP) for each task prior to work beginning on the task order
- Maintain Confidentiality Certification for all consultant staff in accordance with the executed MOA, See [Exhibit R](#)

11.1.3. General Task Order Manager Requirements

Task Order Managers are responsible for the management and oversight of assigned task orders. They must be fully aware of the task order scope, objectives, deliverables, consultant staff assigned, budget constraints and schedule requests. General responsibilities of a VDOT Task Order Manager include, but are not limited to the following:

- Manage day-to-day coordination of service delivery and monitor progress
- Manage task order scope, hours, budget, deliverables, and schedule
- Regular communication with the CIC during the delivery of the consultant services identified in the task order
- Monitor expenditures to ensure the budget for the task order is not exceeded
- Monitor consultant performance and communicate concerns in writing to the Contract Administrator and the CIC
- Review and approve weekly timesheets, monthly invoices, mileage logs and progress reports in a timely manner
- Review qualifications of proposed consultant personnel
- Provide performance related feedback on the CPE

11.1.4. Contract Administration Team

All parties involved in the development and administration of CEI contracts need to be aware of modifications, renewals, expirations, executed task orders, contract supplements, staff changes, etc. Each contract should have a Contract Administration Team consisting of contract end users and individuals that have a stake in the success of the contract. This may include, but are not limited to the following:

- Contract Administrator
- District Construction Engineers
- Central Office Construction Division Representative(s)
- Task Order Manager(s)

11.1.5. Contract Records

The Contract Administrator shall ensure that all contract records are organized and maintained during the duration of the contract. Contract records include, but are not limited to the following:

- Expression of Interest (EOI) from the successful consultant team(s)
- Memorandum of Agreement (MOA) which includes the Request for Proposals (RFP) with any addendum(s)
- RFP or MOA referenced documents (i.e. CD IIMs or memoranda pertaining to vehicles, mileage, cell phone services, travel reimbursements, etc.)
- Contract modifications which occur during the life of the contract
- Contract renewal documents and approvals
- Certificates of Insurance (COI) (prime and subconsultant)
- Record of Title VI approvals for the consultant team
- Monthly progress reports
- Staffing reports
- Executed and revised task orders

11.2. Resource Forecasting and Acquisition

The Construction Division serves as the lead division for the procurement of consultant CEI services.

11.2.1. Procurement Coordination & Request

Nine months prior to needing an executed “on-call” consultant CEI contract, the Contract Administrator shall submit a request for consultant CEI services to the Construction Division. The request shall include a justification of needs statement that clearly identifies:

- Current available manpower
- Projected workload over the next five (5) years based on the SYIP
- Fiscal burn rate on active CEI contracts
- Requested value of each contract
- Requested number of awards

- Requested MOA execution date
- Scope of services and labor categories for the Request for Proposal (RFP)
- Focus questions for the RFP
- The recommended selection committee members (Refer Section 3.)

Refer to [Exhibit O](#) for a Sample Procurement Request Email.

Construction Division will utilize this information to complete the PSPO-1 form and establish an estimated procurement timeline, term value for each contract, and total number of contract awards. Once all documentation has been reviewed and approved, the State Construction Engineer will submit the PSPO-1 (Consultant Procurement Request) form to PSPO.

11.2.2. DBE/SWaM Goals

The DBE/ SWaM goals are established by Civil Rights Division. The appropriate language needs to be used based on the Civil Rights guidance.

11.2.3. Maximum Hourly Rates for Inspection Classification

The Construction Division has established maximum hourly rates (“capped rates”) for various consultant classifications. Construction Division may adjust the capped rates on an annual basis by applying the prevailing Employment Cost Index (ECI). The current capped rates can be found by referencing the current version of the [CEI Inspection Classification Hourly Rate Pay Limitations memo](#).

11.3. Post Award Coordination

Once a contract is awarded, a post award coordination/kick-off meeting should be held with the awarded firm(s). The purpose of the meeting is to review the technical, administrative, and fiscal requirements with the prime consultant(s) and review VDOT’s upcoming workload. Although subconsultants do not typically attend the post award coordination meeting, Contract Administrators should encourage the prime consultant to share information with the entire consultant team.

The post award coordination meeting should be held prior to the consultant beginning any work and include the following topics:

- Roles and responsibilities - communication structure
- Task order, distribution, development, and management
- Invoice requirements
- Progress Report requirements
- Expectations for Deliverables
- DBE requirements
- Title VI requirements
- CPE process
- Upcoming workload
- Other essential contract requirements

- Confidentiality Certification Requirements

Attendees may include, however are not limited to the following:

- Contract Administrators
- Task Order Managers
- Project Control Engineers
- Central Office Construction Division
- Prime Consultant CIC and staff deemed necessary from the prime consultant firm

A checklist identifying all post award coordination tasks and meeting topics can be found in [Exhibit A, Consultant Contract Post Award Checklist](#).

11.3.1. Post Award Coordination Responsibilities

Construction Division:

- Attend post award coordination meeting(s)

Contract Administrators:

- Host post award coordination meeting within 60 days of contract award
- Invite meeting attendees and distribute agenda
- Conduct the post award coordination meeting
- Distribute meeting minutes
- Ensure all necessary parties are involved in the meeting
- Review the Consultant Contract Post Award Checklist to ensure all applicable items have been addressed
- Review Task Order Manager Commitment Letter ([Exhibit H](#)) with all potential Task Order Managers that may use the MOA.
- Discuss the content and format for Invoices and Progress Reports

Task Order Managers:

- Attend the post award coordination meeting when requested by the Contract Administrator
- Lead discussions regarding projected workload, technical requirements, and expectations for deliverables (including the frequency and approval process for time sheet submittals)

11.4. Task Order Management

Construction Division's primary contract type for consultant CEI services are Limited Services Term Contracts in which task orders are issued on an on-call or as needed basis. Prior to issuing task orders, it is important to ensure that the following details are clearly defined in the task order:

- Scope of work for each task/project
- Anticipated hours broken down by classification
- Names of consultant staff and classifications assigned
- Any associated non-salary direct cost
- Maximum allowable compensation

No task orders shall be executed on contracts that have expired. Once initially executed, task orders shall not have their value increased.

The guidance in this chapter is for fixed billable rate task orders on limited service term contracts. For guidance related to lump sum task orders see [Exhibit P](#).

11.4.1. Task Order Requirements

Contract Administrators and Task Order Managers serve a pivotal role in the development, execution, management, and closeout of task orders. The written approval of both the Contract Administrator and Task Order Manager is required for executing task orders and approving invoice payments.

Contract Administrators:

- Determine consultant for the task order assignments based on distribution requirements in accordance with Section 5.3.4.
- Initiate communication with CIC for selected consultant and submit task order request form to CIC
- Review resumes for staffing proposals to ensure alignment with the contract rates and classifications
- Review draft task orders prior to execution
- Approve task orders once they have been reviewed and determined to comply with contract requirements
- Serve as the point of contact for the CIC regarding all contractual elements and payments (hourly rates, Non Salary Direct Costs, etc.)
- Track contract and task order expenditures and enter them in PSCRS
- Close out task orders after work is complete or budget is expended

Task Order Managers:

- Prepare the Task Order Request Form and submit it to the Contract Administrator as soon as consultant services are determined to be needed

- Verify funding sources are open and available for charges
- Review resumes of proposed consultant staff to ensure candidate's skills and experience are adequate and appropriate for the task order requirements and match requested classifications
- Review and recommend the Contract Administrator approve or deny the consultant's draft task order
- Monitor the consultant's performance as it relates to the scope of work, schedules and budget identified in the task order
- Serve as the point of contact for the CIC regarding work performance and technical aspects of the work
- Approve task orders, mileage logs, timesheets, and invoice charges
- Notify the Contract Administrator when work is complete or when consultant services will no longer be needed
- Ensure that any Department resources (ID badges, laptops, etc.) are returned or transferred at the completion of work and when the consultant contract is no longer active

11.4.2. Task Order Distribution and Assignment

During the development of task orders, the aggregate total compensation already approved on previous task orders should be monitored. The aggregate total compensation of all approved task orders in a term shall not exceed the maximum term amount stated in the Memorandum of Agreement (MOA).

Consistent with Section 5.3.4, Task orders for contracts with multiple awards shall be distributed in an established order. This shall be accomplished by the Contract Administrator establishing the order in which the selected firms are assigned task orders and assigning task orders in that order for the full duration of the contract.

Task orders may be assigned out of order only when it is determined that deviating from the original order is justified and in VDOT's best interest. The District Construction Engineer's approval is required to assign tasks out of order. Justification for deviation may include, but not be limited to, the following criteria:

1. Potential Conflict of Interest
2. Availability of consultant personnel to complete the project within the required timeframe
3. Workload assigned under current contract
4. Fair distribution of assignments in terms of value
5. Continuity of services
6. Location of firm when that is a major factor in the task assignment

Contract Administrators shall keep a task order distribution-tracking log to record the distribution of task orders to consultants on multiple award contracts. The requirements of the tracking log are as follows:

- The established order must be easily identifiable

- Each task order assignment must be entered in chronological order
- Deviations in rotation are clearly documented and include the specific justifications previously outlined

The tracking log shall be submitted to Construction Division CEI Program Office with each request for a contract term renewal. A Task Order Tracking Log example can be found in Exhibit I.

Contract Administrators should continuously review the task order distribution-tracking log for imbalances of more than 25% total task order value to consultants within the same award cycle and executed under the same RFP. If this occurs, the Contract Administrator should attempt to identify opportunities to bring the task order values closer together.

11.4.3. Task Order Development and Management Process

When a Task Order Manager identifies the need for consultant services on a project/assignment, the following actions should be taken:

1. Task Order Manager completes the task order request (See [Exhibit B](#)) form electronically and submits it to the Contract Administrator. The task order request form will specify the following:
 - Estimated project/assignment begin and end dates
 - Task Order Number
 - Project Number(s)
 - All Charge Codes required for Cardinal entry (updated as changes occur)
 - Equipment and resources that will be provided by VDOT
 - Equipment and resources that are requested to be provided by the consultant
 - Personnel classification, skills, and certifications needed to successfully complete the task
 - Approximate number of regular and overtime hours per classification
 - Detailed description of the task scope of services
2. Contract Administrator reviews the request for accuracy, assigns a consultant to perform the services, and contacts the CIC to request a draft task order (Current Task Order Template can be found on the [CEI homepage](#)). When possible, the CIC should be provided a minimum of three (3) business days to respond with an acceptable draft task order and resumes of qualified staff matching the classifications requested.
3. The Contract Administrator reviews the draft task order scope and fee to ensure it complies with the MOA.
4. The Task Order Manager reviews the draft task order scope to ensure the level of effort and staff resumes are appropriate, directly with the CIC and in conjunction with the Contract Administrator.
5. If the proposed candidates do not have the experience required to perform the work identified in the request within budget and schedule constraints, the Task Order

- Manager must notify the Contract Administrator. The Contract Administrator will determine if further negotiation is necessary and if not will notify the CIC and forward the task order request to the next consultant in the rotation.
6. Once an acceptable task order is received, the Contract Administrator will instruct the CIC to sign and return the task order. Once the task order is fully executed, the Contract Administrator will send the executed task order to the CIC. This will serve as the written Notice to Proceed for the task.
 7. The Contract Administrator will update PSCRS after each task order is executed.

All task orders must be assigned a task order number to serve as a unique identifier. Contract Administrators are encouraged to include the task order term and task order number in each task order name.

Example: The first task in the first term of the contract can be identified as Task Order # 1.001.

Alternatively, task 101 in the second term could be identified as Task Order # 2.101.

Task orders must use the fixed billable rates for the year of the contract in which the task order is executed for the entire duration of the task (even if the task extends into the subsequent year(s)). Task order durations shall not extend longer than 18 months and task order budgets shall not exceed \$1,000,000 without the written approval of Deputy Chief Engineer. Task orders greater than \$1,000,000 in value should be considered for a project specific procurement. In addition, task orders should be written for specific assignments. Any task order written for more than 100 hours must have a specific scope of work and/or specific project codes associated with it. No task orders shall be written on terms or contracts that have expired.

11.4.4. Billable Hours Allowed for the CIC

The Consultant Inspection Coordinator may bill their time at a maximum 5% of the total billed hours for each task. This is for work that is specific to the task and not for general supervision and support of the consultant's inspection staff.

11.4.5. Conflict of Interest - Final Records Review

Due to the unique nature of the construction final record reviews, no employee of a consultant firm shall be permitted to audit work on any project in which that firm performed any consultant CEI services.

11.4.6. Non-Salary Direct Costs/ Direct Expenses

Non-salary direct costs represent actual costs incurred by consultant to provide tangible items on a task. VDOT will reimburse the consultant for actual costs incurred, unless otherwise addressed in the MOA. Non-salary direct costs that are identified in the MOA shall be paid at the rates indicated in the MOA for the duration of the contract.

Non-salary direct cost not identified in the MOA shall follow the guidance for Small Purchase Procedures for Goods and Services identified in earlier Chapters.

11.4.6.1. Consultant Engineering Inspection Equipment and Tools

With the exception of nuclear density gauges, the consultant firm shall provide all material testing or measuring equipment as tools of the trade. The cost of these items shall be included in overhead. Any testing device that will be used for acceptance/rejection of materials will need evidence of applicable calibration.

If the consultant does not come to the jobsite with the appropriate tools and equipment, the Contract Administrator and Task Order Manager are encouraged to document these occurrences when completing consultant performance evaluations.

11.4.6.2. Smart Phones, Tablets, Computers and Software Licenses

Mobile communications devices such as smart phones and tablets shall be allowed as a non-salary direct cost as identified in the VDOT Mobile Communication Device Memorandum.

Contract Administrators should refer to Section 4.7.6 for the acquisition of any hardware and/or software not identified in the Mobile Communications Device Memorandum.

11.4.6.3. Vehicles and Mileage Reimbursement

Reimbursement for consultant CEI vehicles is identified in IIM-CD-2017-02.01, Consultant Construction Engineering and Inspection Vehicles, Instructional and Informational Memorandum (I&IM) and the Advance Agreement FAQ Sheet.

- CEI Advanced Agreement I&IM - <https://www.virginiadot.org/business/resources/const/IIM-CD-2017-02-01.PDF>
- Advanced Agreement FAQ Sheet - https://www.virginiadot.org/business/resources/const/IIM-CD-2017-02-01_FAQs.PDF

Consultants must choose to bill for vehicles either monthly or hourly on all contracts subject to the I&IM and must choose the same reimbursement method for all VDOT contracts. Contracts grandfathered by the I&IM will be addressed individually. If a consultant selects the hourly rate, they are not eligible for mileage reimbursement. Mileage logs shall be provided per the Vehicle Reimbursement I&IM when a consultant has decided to use the monthly reimbursement (See [Exhibit G](#)). All consultants must verify their vehicle reimbursement selection by December 1st of each year to the CEI Program Manager.

The mileage reimbursement rate for vehicles used on Construction Engineering Inspection contracts is based on the rate established by the Internal Revenue Service (IRS) and identified annually in a memo to the consultant community from the State Construction Engineer.

Standard and Reduced Mileage Rate Memo -
<https://www.virginiadot.org/business/const/ceis.asp>

11.4.6.4. Overnight Travel

Consultants may be reimbursed for overnight travel expenses included in executed task orders. The overnight travel must be approved in writing in advance by the VDOT Task Order Manager and conform to the most current VDOT travel procedures.

11.4.7. Overtime

Consultants may work overtime if overtime hours and rates are included in the task order and the VDOT Task Order Manager authorizes the overtime in writing prior to the overtime work beginning. Overtime is only billable for authorized hours over 40 that are worked on any VDOT project in a given week. Billed overtime work should be clearly identified on timesheets and on invoices. If a classification does not have an overtime rate assigned in the MOA, hours worked over 40 will be billed at the total Fixed Billable Wage Rate.

11.4.8. Task Order Revisions

Minor changes to the task duration and staffing may occur after the task order is executed. These changes must be clearly indicated on the task order, coordinated with the Contract Administrator, and initialed by the Task Order Manager and the CIC. Once the Task Order Manager and CIC have initialed the revised task order, a copy must be provided to the Contract Administrator.

Task orders are commonly revised to the following:

- Decrease the amount of the task order
- Extend the completion date of the task order
- Change personnel assigned to the task order

Increasing the total compensation or changing the scope of work identified in the task order is not allowed for any reason. When the value of a task order needs to be increased, a new task order must be written. A new task order cannot be issued once the contract has expired.

11.4.9. Task Order Closure

When all work under a specific task is complete and all associated invoices have been paid, the task order may be closed. Once the task order is closed, the Contract Administrator may reduce the value of the closed task order to the final amount invoiced for the task.

This will return the unspent task amount and increase the current contract capacity if the term has not yet expired.

11.5. Other Contract Administration Responsibilities

Contract administration activities include:

- Contract renewals
- Contract modifications
- Certificates of Insurance
- Title VI compliance
- District contract reviews
- Monitoring progress
- Quality assurance
- Acceptance of work
- Payment
- Contract closeout
- Performance evaluations
- Other activities as required

11.5.1. Limited Services Term Contract Renewals

Limited Service Term contracts have an initial term of one (1) year with the option to renew for three (3) additional one (1) year terms. Each term expires when either the total value of all task orders executed during the term reaches the maximum term limit (dollar value) or the date of term expiration is reached. Any amount not obligated through an executed task order in the current term cannot be carried forward to future terms. The total value of all task orders executed in any given contract term shall not exceed the term limit in the MOA.

To ensure enough time for the renewal process, Contract Administrators should identify contracts eligible for renewal 90 days prior to the expiration date and/or when 90% of the maximum term limit has been obligated on executed task orders.

The Consultant Renewal Request letter should be sent to the consultant with a request for the consultant to provide the rate tables for the next term of the contract. The escalation rate for the upcoming term will be confirmed within the renewal request.

Contract Administrators must review the rate tables for accuracy prior to submitting to Construction Division. The MOA will include the rate tables for the first two (2) terms of the agreement (year 1 and year 2). Escalation will be applied in accordance with the MOA terms and conditions. If the Department chooses to renew the contract for an additional term, the consultant and the Contract Administrator should review Section 4.7.7 and the escalation rate memo posted on VDOT's external Consultant Procurement site at: [//www.virginiadot.org/business/gpmps.asp](http://www.virginiadot.org/business/gpmps.asp). The date of the consultant renewal request letter will establish the applicable rate.

If the Contract Administrator wishes to renew the contract, they must submit the

following information to the Construction Division a minimum of 60 days prior to the expiration of the current term or the anticipated early renewal date:

- PSPO-2 Form
- Signed Consultant Renewal Acceptance Letter
- Narrative for upcoming workload
- A minimum of two consultant performance evaluations from the current term (if available)
- Current DBE/SWaM utilization percentages
- If the consultant fails to meet the goal, the district should document the consultant's efforts to date and encourage DBE/SWaM usage
- Task Order Assignment Tracking Log
- Certification that PSCRS is current and accurate for all data entry of task orders and invoices
- Proposed rate table for the upcoming term, reviewed by the Contract Administrator for accuracy

Contract Administrators may access the PSPO-2 Renewal Instructions and forms from the PSPO InsideVDOT site at [Professional Services Procurement Office - Home \(sharepoint.com\)](#)

See [Exhibit Q](#) for the Limited Services Term Contract Renewal Checklist.

11.5.2. Contract Modifications:

A contract modification is the process used to make changes to the MOA. Contract modification as used in this section does not differentiate between Supplement and Contract modification as defined in other sections of the manual. Contract modifications cannot substantially alter the scope of work or increase the maximum term limit. The Contract Administrator (with input from the CIC) ensures contract modifications do not affect the consultant's ability to meet the DBE Goal identified in the MOA and submits requested contract modifications to the Construction Division for coordination with PSPO. All Contract modifications shall be in accordance with Chapter 8 of this manual.

11.5.3. Certificates of Insurance

The prime consultant shall annually submit Certificates of Insurance evidencing that the insurance coverages required by the MOA are in effect by emailing the copies of the certificate of insurance to ConstructionCEI@VDOT.Virginia.gov. Construction Division will populate a central document library of Certificates of Insurance on the Construction Division, CEI SharePoint site. The Contract Administrator is responsible for ensuring the Certificate of Insurance filed with VDOT is up to date.

11.5.4. Title VI

Title VI of the Civil Rights Act of 1964, as amended, is the federal law that protects individuals from discrimination on the basis of race, color and national origin. By contracting with VDOT, a consultant is obligated to comply with the laws and regulations listed in [Exhibit L](#). In turn, State Highway Agencies are required to conduct Title VI reviews of consultant contractors (23 CFR, 200.9).

All consultants are required to have a current Title VI letter of approval on file in order to continue to perform under a contract with VDOT. Failure to comply with the nondiscrimination provisions may result in cessation of negotiations, withholding of payments, cancellation, termination, or suspension of the contract in whole or in part.

Contract Administrators are responsible for ensuring Title VI approvals for prime and sub consultants on assigned VDOT contracts are up to date. A copy of the Title VI Log can be found on Civil Rights Division SharePoint site.

11.5.5. Consultant Performance Reports

Please refer to Chapter 7 and the [VDOT Performance Evaluation Guidelines](#) on SharePoint for guidance relative to performance evaluations.

11.5.6. District Contract Reviews

Construction Division may review/audit the administration of any consultant contract for compliance with this manual to ensure statewide consistency. See [Exhibit M](#) for the Contract Audit Checklist. Any findings of the review will be discussed with the Contract Administrator.

11.5.7. Contract Close-out

Prior to the expiration of the last term for a consultant contract the Contract Administrator should:

- Ensure PSCRS and Cardinal systems are accurate and up to date
- Coordinate with the CIC to verify VDOT's records in PSCRS and Cardinal match the consultant's records
- Confirm all executed task orders were issued within the appropriate term limits (time and money)

11.6. Invoices

Prime consultants must submit invoices electronically to the Contract Administrator in .pdf format and in accordance with the Invoice Instructions and Template included in [Exhibit D](#).

Contract Administrators shall return invoices to the consultant when the net receivable amount is less than \$500.00 or when invoices are received more frequently than once every 30-calendar days with the exception of the final invoice. In these cases, the consultant shall carry over the value of work to the next monthly billing cycle.

The Contract Administrator shall coordinate the review of invoices with Task Order Managers to ensure that all charges are accurate prior to approving the invoice. All invoices require approval by the Contract Administrator and all applicable Task Order Managers.

The Contract Administrators and/or Task Order Managers:

- Review the invoice
- Review progress reports
- Request supporting documentation (as necessary)
- Prepare the invoice transmittal
- Submit to the Fiscal Office
- Enter invoice details into the PSCRS “Vouchers” tab

Invoices for task orders based on fixed billable rates shall:

- Be based on actual verified hours worked
- Only include the fixed billable hourly rates identified in the executed task order(s), regardless of when the work is performed
- Only include non-salary direct costs authorized in the executed task order(s) (including but not limited to travel, vehicles, and communication devices)

Invoices for task orders based on lump sum shall:

- Be paid based on a percentage of the lump sum fee identified in the task order that is equal to the percentage of work complete

Invoices must be reviewed in a matter such that Voucher Transmittals can be submitted to the District Fiscal Office within 10 business days of receiving a complete and accurate invoice.

11.6.1. Invoice Review

Contract Administrators shall review all invoices. Minimally this shall include:

- Verify the appropriate billable rates are used for personnel and the labor classifications identified in the task order
- Verify the total previously billed amount and previous hour totals are accurate
- Verify home and field office rates are charged appropriately
- Verify all project related data is accurate
- Verify total compensation is mathematically correct
- Coordinate with task order managers for reviews outlined below

Task Order Managers shall assist the Contract Administrator in the review of invoices. Minimally, this shall include the following for all tasks identified on the invoice that are assigned to the Task Order Manager:

- Confirm the progress reports have been submitted and are acceptable
- Verify the hours billed/progress is accurate for the invoice period, based on first-hand knowledge of the task schedule, staff assignments, task progress and deliverables

- Verify that non-salary direct costs were included on the executed task orders, approved in advance when applicable (i.e. Travel and overtime) and consumed by the task/project
- Provide a recommendation to approve or reject the charges for their specific task orders (recommendations to reject task order charges must be supplemented with supporting documentation)

11.6.2. Supporting Documentation Review

In addition to the invoice review, Contract Administrators shall review supporting documentation for a minimum of 10% of all invoices received for each contract. Once requested, consultants shall provide the supporting documentation within two (2) business days, per the [2013 Memorandum on Professional Services Consultant Invoices](#). Review of supporting documentation includes the following:

- Timesheets
- Overnight travel expenses (hotel receipts and applicable per diem)
- Non-salary direct cost, receipts or lease agreements
- Any other documentation that may be required to substantiate invoiced costs

Questions resulting from this review shall be resolved with the CIC before the invoice is processed for payment. If there are unresolved issues or errors during invoice review, Contract Administrators should review a larger sample size to ensure the error is not repeated across all invoices.

11.6.3. Progress Reports

A detailed progress report shall be submitted with the invoice by the prime consultant for all work performed during the invoice period. Format and content should be as discussed at the contract kick-off meeting, otherwise as identified in [Exhibit F](#). No invoice shall be paid without a progress report covering the period of the invoice.

The progress report shall include:

- Summary of Consultant Voucher Information – Current Estimate Information and totals for the Prime and Subconsultants (See [Exhibit E](#))
- A list of all task orders for the current term and all active task orders from all terms
- Identification of task orders that are complete and have closed during the current invoice period
- Issues encountered this invoice period that affected the deliverables or delayed the completion of tasks

Once each task reaches 90% of the executed task amount, the Task Order Manager and CIC should forecast the remaining amount of effort necessary to complete the task. If additional funds will be required to complete the assigned task, a new task order must be written. Invoices should not be approved when the invoiced amount for a task is more

than 10% ahead of the work completed until the Task Order Manager and the CIC have discussed the reasons for the imbalance.

During the contract post award coordination meeting, the Contract Administrator may also request the consultant provide the following reports with each invoice:

- Consultant Overtime Report
- Staffing Report
- CIC Work Summary Report
- Other reports as requested

11.6.4. Rejection of Invoices

Upon discovery of errors in the invoice review or supporting documentation review, the Contract Administrator shall reject the invoice in writing clearly identifying the errors or disputed charges. The consultant shall make the necessary corrections to the invoice and resubmit the invoice with a revised invoice date. This process shall continue until the Department receives an accurate invoice from the consultant.

11.6.5. Voucher Transmittal and Payment

Once the Contract Administrator and Task Order Manager(s) have reviewed and approved the invoice (including supporting documentation) the Contract Administrator shall prepare the Voucher Transmittal per their District's fiscal processing requirements. For details regarding the Voucher Transmittal preparation and fiscal requirements, users should refer to the VDOT Fiscal Division's [Accounts Payable Procedures](#) on SharePoint.

Voucher Transmittals must be submitted to District Fiscal Office within 10 business days of receiving a complete and accurate invoice (including any requested supporting documentation). Invoices received after business hours will be dated as received on the following business day.

11.6.6. Closed UPCs

Consultants are encouraged to invoice for VDOT services within 60 days of the work being performed. This helps VDOT ensure that projects will be open to charges when invoices are received. In the event a project is closed to charges, the Contract Administrator shall coordinate with the District Planning and Investment Management (PIM) Office to request that the appropriate phase of the project be re-opened to charges. After coordination with the District PIM office, request may be sent to Central Office Opening and Closing Request ProgDev-OpeningClosingRequests@vdot.virginia.gov, as necessary.

If the project budget has been overspent and there are no funds remaining to pay the consultant, the Contract Administrator shall notify the Task Order Manager to work with the PIM office and have appropriate funds identified and added to the project, or identify an alternative charge code for the expenses. Closed UPCs do not extend the 10-business day processing period for invoices.

11.6.7. Special Instructions for Project Specific Invoicing & Payment

On project specific CEI contracts, consultants may invoice personnel at their actual payroll rate (plus overhead, escalation, net fee, etc.) because it is a cost-plus net fee contract. Ultimately, it is the consultant's responsibility to manage the contract budget to ensure all performance requirements are met and the project is delivered within the total maximum compensation agreed upon in the MOA (not including contingency). Once the project is complete, the consultant may bill the Department the remainder of the net fee negotiated in the original contract even if the total maximum compensation agreed to in the MOA is not spent.

In addition, Contract Administrators must review the net fee on each invoice to ensure that the total net fee billed on all invoices to date correlates to the overall progress of the completed activities on the project.

11.6.8. Consultant Contract Final Invoice

Once all work performed on executed task orders is accepted by VDOT, the consultant shall provide the Contract Administrator with a final invoice for processing. The first page of the invoice shall be marked "Final Invoice".

Once the final invoice is received, the Contract Administrator should email the consultant to confirm it is the final invoice. After the final invoice has been reviewed and determined to be acceptable, the contract Administrator will create the voucher transmittal form indicating "Closeout Contract" in the payment message block.

If the final invoice was not indicated as the final voucher when processed, the Contract Administrator should add the following steps to those outlined above:

- Create a zero-dollar voucher (See example in [Exhibit J](#))
- Use current date for invoice, receipt and services date(s)
- Enter line amount "\$0.00"
- Check final invoice in Cardinal
- Use your CSC since there is no project code (recommended)

Once processed, contact Construction Division to select final invoice in PSCRS.

11.6.9. Final Audit

Once Fiscal Division has processed the final invoice, the Contract Administrator shall send an email to the ACO mailbox ACO@VDOT.Virginia.Gov stating that the final invoice has been processed and requesting ACO perform the final audit within 12 months. The email shall contain the following information:

- The location where electronic copies of invoices are available
- The type of contract (Fixed Billable, Cost Plus Net Fee, etc.)

- The contract number, name of the prime, and all sub consultants
- An electronic pdf copy of the MOA and any supplements/modifications
- An electronic pdf copy of the first invoice and final invoice (and/or supplemental final invoice, if applicable)

ACO may request electronic copies of various invoices at a later date if necessary to complete the review. ACO will coordinate directly with the Contract Administrator if further action is required.

11.7. Professional Services Contract Reporting System

The purpose of the Professional Services Contracts Reporting System (PSCRS) is to provide a database and reporting mechanism for monitoring consultant engineering contracts. Construction Division uses information in PSCRS to develop monthly consultant CEI utilization reports that are distributed to the State Construction Engineer and all District Construction Engineers (among others). For this reason, it is important that the Contract Administrators keep PSCRS regularly updated. This includes entering all applicable task order information within fourteen (14) days of task order execution and all applicable invoice information within fourteen (14) days of invoice approval. The Construction Division will verify accuracy of PSCRS data prior to the execution of a contract renewal or modification.

The primary module utilized for administration and management of CEI contracts is the Contract List. This module contains a list of professional services contracts (agency wide) that can be filtered by District, Division, Contract Type and Project Status. Contracts can be selected to display and edit the Contract Specific Details, along with its Administrators, Vendors, Term Details, Task Details and Voucher Details.

See the PSCRS Job Aid in [Exhibit K](#) for a step-by-step tutorial on PSCRS task.

CHAPTER 11 EXHIBITS

The exhibits listed below include acronyms, forms, checklist and formats that may be utilized or referenced when administering Consultant Construction contracts. These exhibits can be obtained from the Construction Division webpage (<http://www.virginiadot.org/business/const/ceis-manual.asp>).

- EXHIBIT A** – CONSULTANT CONTRACT POST AWARD CHECKLIST
- EXHIBIT B** – TASK ORDER REQUEST FORM
- EXHIBIT C** – TASK ORDER FORM
- EXHIBIT D** – INVOICE INSTRUCTIONS & TEMPLATE
- EXHIBIT E** – CONSULTANT INFORMATION FORM – CURRENT ESTIMATE
- EXHIBIT F** – PROGRESS REPORT
- EXHIBIT G** – MILEAGE LOG FIXED PROJECTS & MOBILE PROJECTS
- EXHIBIT H** – TASK ORDER MANAGER COMMITMENT LETTER
- EXHIBIT I** – TASK ORDER ROTATION TRACKING LOG EXAMPLE
- EXHIBIT J** – ZERO DOLLAR VOUCHER EXAMPLE
- EXHIBIT K** – PSCRS JOB AID
- EXHIBIT L** – TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, MONITORING
- EXHIBIT M** – CEI CONTRACT AUDIT CHECKLIST
- EXHIBIT O** – SAMPLE PROCUREMENT REQUEST EMAIL
- EXHIBIT P** – LUMP SUM TASK ORDERS
- EXHIBIT Q** – LIMITED SERVICES TERM CONTRACT RENEWAL CHECKLIST
- EXHIBIT R** – CONFIDENTIALITY CERTIFICATION

APPENDIX A

23 CFR 172



APPENDIX A – 23 CFR 172

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

§172.1 Purpose and applicability.

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

§172.3 Definitions.

As used in this part:

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

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

(1) A Federal agency;

(2) A State transportation agency of the State where the consultant's accounting and financial records are located;

or

(3) A State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the State transportation agency identified in paragraph (2) of this definition.

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

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

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

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

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

Engineering and design related services means:

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

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

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

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

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

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

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

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

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

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

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

§172.5 Program management and oversight.

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

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

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

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

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

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

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

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

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

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

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

(1) Preparing a scope of work and evaluation factors for the ranking/selection of a consultant;

- (2) Soliciting interests, qualifications, or proposals from prospective consultants;
 - (3) Preventing, identifying, and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the requirements of this part.
 - (4) Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CFR part 180;
 - (5) Evaluating interests, qualifications, or proposals and the ranking/selection of a consultant;
 - (6) Determining, based upon State procedures and the size and complexity of a project, the need for additional discussions following RFP submission and evaluation;
 - (7) Preparing an independent agency estimate for use in negotiation with the selected consultant;
 - (8) Selecting appropriate contract type, payment method, and terms and incorporating required contract provisions, assurances, and certifications in accordance with §172.9;
 - (9) Negotiating a contract with the selected consultant including instructions for proper disposal of concealed cost proposals of unsuccessful bidders;
 - (10) Establishing elements of contract costs, accepting indirect cost rate(s) for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with §172.11;
 - (11) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
 - (12) Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
 - (13) Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
 - (14) Closing-out a contract;
 - (15) Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
 - (16) Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
 - (17) Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
 - (18) Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.
- (d) A contracting agency may formally adopt, by statute or within approved written policies and procedures as specified in paragraph (c) of this section, any direct Federal Government or other contracting regulation, standard, or procedure provided its application does not conflict with the provisions of 23 U.S.C. 112, the requirements of this part, and other laws and regulations applicable to the FAHP.

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

§172.7 Procurement methods and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

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

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

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

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

(D) From the proposal evaluation and any subsequent discussions which may have been conducted, the contracting agency shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria. In instances where only two qualified

consultants respond to the solicitation, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, a contracting agency may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation as specified in paragraph (a)(3)(iii)(C) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Establishment of a contract participation goal.

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

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

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

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

- (A) The employee, officer, or agent;
- (B) Any member of his or her immediate family;
- (C) His or her partner; or
- (D) An organization that employs or is about to employ any of the above.

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

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

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

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

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

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

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

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

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

§172.9 Contracts and administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Contract administration and monitoring—(1) Responsible charge.* A full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, as specified in §172.7(b)(5), or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the contracting agency shall designate a public employee as being in responsible charge. A public employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Procure the services under a new solicitation;

(ii) Perform the work itself using contracting agency staff; or

(iii) Use a different, existing contract under which the services would be within the scope of work.

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

§172.11 Allowable costs and oversight.

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

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

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

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

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

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

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

(iii) When the indirect cost rate has not been established by a cognizant agency in accordance with paragraph (b)(1)(ii) of this section, a STA or other recipient shall perform an evaluation of a consultant's or subconsultant's indirect cost rate prior to acceptance and application of the rate to contracts administered by the recipient or its

subrecipients. The evaluation performed by STAs or other recipients to establish or accept an indirect cost rate shall provide assurance of compliance with the Federal cost principles and may consist of one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;

(B) Certified public accountant or other STA workpaper reviews;

(C) Other analytical procedures;

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

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

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

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

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

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

Certificate of Final Indirect Costs

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

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

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

Firm:

Signature:

Name of Certifying Official:

Title:

Date of Execution:

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

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

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

(d) *Prenotification; confidentiality of data.* FHWA, recipients, and subrecipients of FAHP funds may share audit information in complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

APPENDIX B

DBE/SWaM POLICY

APPENDIX B – SWaM/DBE POLICY

SWaM/DBE PROCEDURES FOR CONSULTANT PROCUREMENT

RFP Requirements Matrix:

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

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

Use of Disadvantaged Business Enterprises (DBEs) for Project Specific Consultant Projects

A. Disadvantaged Business Enterprise (DBE) Program Requirements

Any Consultant, subconsultant, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations, and the Virginia Department of Transportation's (VDOT or the Department) DBE Program rules and regulations in accordance with this Special Provision.

For the purposes of this provision, Consultant is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of Qualification or Proposal for the work contemplated there under; Consultant is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Work; and subconsultant is defined as any supplier, manufacturer, or subconsultant performing work or furnishing material, supplies or services to the contract. The Consultant shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subconsultant having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements as outlined in this Special Provision, the Consultant, for itself and for its subconsultants and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal DBE Program and State legal requirements. By submitting a Proposal on this contract, and by accepting and executing this contract, the Consultant agrees to assume these contractual obligations and to bind the Consultant's subconsultants contractually to the same at the Consultant's expense.

The Consultant and each subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Consultant exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated in F of this provision and current at the time of the proceedings. Where applicable, the Department will notify the Consultant of any changes to the appeal requirements, processes, and procedures after receiving notification of the Consultant's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Small Business and Supplier Diversity's website: <http://www.sbsd.virginia.gov>.

C. DBE Program-Related Certifications Made by Offerors/Consultants

By submitting a Proposal and by entering into any contract on the basis of that Proposal, the Offeror/Consultant certifies to each of the following DBE Program-related conditions and assurances:

1. That the Offeror/Consultant agrees to comply with the project construction and administration obligations of the USDOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
2. Consultant shall comply fully with the DBE Program requirements in the execution and performance of the contract. Consultant acknowledges that failure to fulfill the DBE subcontracting commitments made may result in sanctions being invoked for noncompliance.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Consultant certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Consultant further certifies that the Consultant shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Consultant and a DBE whereby the DBE promises not to provide quotations for performance of work to other Consultants are prohibited.
4. Consultant shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request for Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, the specific work that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
5. Offeror further certifies, by signing its Proposal, it has committed to use each DBE firm listed for the work specified to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subconsultants. The Consultant shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.
6. Once awarded the contract, the Consultant shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBE firms at or above the amount or percentage of the dollar value specified in the proposal documents. Further the Consultant understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Consultant's own forces or those of an affiliate of the Consultant without the prior written consent of Department as set out within the requirements of this Special Provision.
7. Once awarded the contract, the Consultant shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Consultant during any 12 month period.
8. Once awarded the contract, the Consultant shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Consultant, DBE firm, or any other firm retained by the Consultant has failed to comply with federal or Department DBE Program requirements, the Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Consultant any remedies available at law or provided in the contract.

9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the Consultant, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Consultant in accordance with the requirements of this specification.

D. DBE Program Compliance Procedures

The following procedures shall apply to the contract for DBE Program compliance purposes:

1. **DBE Goal, Good Faith Efforts Specified:** At the time of the submittal of the Expression of Interest, the Offeror will include form C-48 PSC. This form represents the Consultants solicitation of subconsultants to be used for the contract to meet the DBE goal.

If, at the time of submitting the Expression of Interest, the offeror knowingly cannot meet or demonstrate good faith efforts in meeting the required DBE contract goal, form C-49 PSC shall be submitted.

Upon completion of negotiation, Form C-111 shall be submitted electronically or may be faxed to the Department, but in no case shall the offeror's Form C-111 be received later than two business days after the negotiated contract value has been determined. A revised Form C-48 must be received within ten (10) business days after the negotiated contract value has been determined.

If, at the time of submitting its offer, the offeror knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 PSC exhibiting the DBE participation it commits to attain. The offeror shall then submit Form C-49, DBE Good Faith Efforts Documentation, within two (2) business days after the negotiated contract value.

The top-ranked offeror must submit its properly executed Form C-112, Certification of Binding Agreement, with the C-111 two business days after the negotiated contract value has been determined. DBE offerors responding as prime contractors are not required to submit Form C-112 unless they are utilizing other DBE firms as subconsultants.

If, after review of the selected Offeror, the Department determines the DBE requirements have not been met, the selected Offeror must submit Form C-49, DBE Good Faith Efforts Documentation, which must be received by the Department within two (2) business days after official notification of such failure to meet the aforementioned DBE requirements.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:
<http://vdotforms.vdot.virginia.gov/>

If the most highly qualified (top-ranked) firm does not meet the goal or demonstrate a good faith effort, the Department may terminate negotiations and initiate negotiations with the number two-ranked firm.

2. **Good Faith Efforts Described:** Department will determine if Consultant demonstrated adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE firm participation sufficient to meet the DBE Program requirements and DBE Goal.

Good faith efforts may be determined through use of the following list of the types of actions the Consultant may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- (a) Soliciting through reasonable and available means, such as but not limited to, ~~a~~ pre-proposal meetings, advertising, and written notices to DBE firms who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting

documentation, including dates advertised. DBE firms shall have no less than five (5) business days to reasonably respond to the solicitation. Consultant shall determine with certainty if the DBE firms are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.

- (b) Selecting portions of the work to be performed by DBE firms in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out work items into economically feasible units to facilitate DBE firm participation, even when the Consultant might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- (c) Providing interested DBE firms with adequate information about the scope and requirements of the contract in a timely manner, which will assist the DBE firms in responding to a solicitation;
- (d) Negotiating for participation in good faith with interested DBE firms;
 - 1. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBE firms that were considered; dates DBE firms were contacted; a description of the information provided regarding the scope and requirements of the contract for the work selected for subconsulting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;
 - 2. Consultant should, using good business judgment, consider a number of factors in negotiating with subconsultants, and should take a DBE firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Consultant's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Consultant to perform the work with its own organization does not relieve the Consultant of the responsibility to make diligent good faith efforts. Consultants are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Consultant to be excessive, unreasonable, or greater than would normally be expected by industry standards;
- (e) A Consultant cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, are not legitimate causes for the rejection or non-solicitation of bids in the Consultant's efforts to meet the contract goal for DBE participation;
- (f) Making efforts to assist interested DBE firms in obtaining or related assistance or services subject to the restrictions contained in this Special Provision;
- (g) Effectively using the services of appropriate personnel from VDOT and from SBSB; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

E. Documentation and Administrative Reconsideration of Good Faith Efforts

During Proposal Submission:

In the Expression of Interest, the Offeror is expected to identify those firms whose participation in the contract will achieve the DBE contract goal requirements.

During Negotiation: If the Department changes the scope of services in such a fashion as to affect the ability of the firm to meet the DBE contract goal requirements, the Civil Rights Division will re-consider the goal and inform the Offeror of the revised goal.

If a DBE, through no fault of the Consultant, is unable or unwilling to fulfill his agreement with the Consultant, the Consultant shall immediately notify the Department and provide all relevant facts.

In order to award a contract to a Offeror that has failed to meet DBE contract goal requirements, the Department will determine if the Offeror's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, if the Offeror knowingly cannot meet or exceed the required DBE contract goal, the Offeror must submit Form C-49, DBE Good Faith Efforts Documentation. The Offeror shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firm's participation in the proposed work.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Consultant may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of whom took part in the initial determination that the Consultant failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Consultant in writing of its decision and explain the basis for finding that the Consultant did or did not meet the DBE goal or make adequate good faith efforts to do so. The decision of the Administrative Reconsideration Panel shall be administratively final.

During the Contract: If a DBE, through no fault of the Consultant, is unable or unwilling to fulfill his agreement with the Consultant, the Consultant shall immediately notify the Department and provide all relevant facts. If a Consultant relieves a DBE subconsultant of the responsibility to perform work under their subcontract, the Consultant is encouraged to take the appropriate steps to obtain another DBE firm to perform the remaining subcontracted work for the amount that would have been paid to the original DBE firm. In such instances, Consultant is expected to seek DBE participation towards meeting the goal during the performance of the contract.

Before the Consultant transmits to the Department its request to terminate and/or substitute a DBE subconsultant, the prime consultant must give notice in writing to the DBE subconsultant, with a copy to the Department, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime consultant must give the DBE firm five days to respond to the prime consultant's notice. The DBE firm may respond to the Department and the prime consultant the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the prime consultant's action.

If at any point during the execution and performance of the contract it becomes evident that the remaining dollar value of allowable DBE goal credit for performing the subcontracted work is insufficient to obtain the DBE contract goal, and the Consultant has not taken the preceding actions, the Consultant and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as sufficient progress toward achievement of the DBE goal is achieved or evidenced.

Project Completion: If, at final completion, the Consultant fails to meet the DBE goal, and fails to adequately document that it made good faith efforts to achieve sufficient DBE goal, then Consultant and any prime contractual affiliates, as in the case of a joint venture, may be subject to sanctions being invoked for noncompliance.

Prior to such sanctions being invoked, the Consultant may submit documentation to the Department's designee to substantiate that failure was due solely to the elimination of the scope of work subcontracted to DBEs, or to circumstances beyond the Consultant's control and that all feasible means had been used to achieve the DBE goal. The Department's designee, upon verification of such documentation shall determine whether Consultant has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Consultant may request an appearance before the Department's

Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of who took part in the initial determination that the Consultant failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Consultant in writing of its decision and explain the basis for finding that the Consultant did or did not meet the DBE goal or make adequate good faith efforts to do so.

The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to invoke sanctions for failure to perform any or all of the responsibilities contained herein, the Department may declare the Consultant to be non-responsive with respect to renewal and future contracts to include enjoyment from responding or participating on Department procurement opportunities for a period of 180 days.

F. DBE Participation for Contract Goal Credit

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

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

G. Performing a Commercially Useful Function (CUF)

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

Monitoring CUF Performance: It shall be the Consultant's responsibility to confirm that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the DBE goal, perform a CUF. Further, the Consultant is responsible for and shall confirm that each DBE firm fully performs the DBE firm's designated tasks in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this Special Provision the DBE firm's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased

by the DBE firm, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the Consultant or an affiliate of the Consultant.

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

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

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

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

H. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Consultant and DBE subconsultants, the Consultant shall submit to the Department's Civil Rights Office (CRO), a copy of the fully executed subcontract agreement for each DBE firm used to claim credit in accordance with the requirements stated on Form C-111. The subcontract shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subconsultant.

The Consultant shall also furnish, and shall require each subconsultant to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the CRO within five (5) business days after the reporting period may result in delay of approval of the Consultant's scheduled payment. The names and certification numbers of DBE firms provided by the Consultant on the various forms indicated in this Special Provision shall be exactly as shown on SBSB's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Consultant. If DBE firms are used which have not been previously documented with the Consultant's minimum DBE requirements documentation and for which the Consultant now desires to claim credit toward the contract goal, the Consultant shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE firm beginning work. Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

Prior to beginning any major component of the work to be performed by a DBE firm not previously submitted, Consultant shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any such DBEs for which Consultant seeks DBE goal credit. Consultant shall obtain the prior approval of the Department for any assistance it may provide to the DBE firm beyond its existing resources in executing its commitment to perform the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If Consultant is aware of any assistance beyond a DBE firm's existing resources that Consultant, or another subconsultant, may be contemplating or may deem necessary and that have not been previously approved,

Consultant shall submit a new or revised narrative statement for Department's approval prior to assistance being rendered.

If the Consultant fails to correctly complete and any of the required documentation requested by this Special Provision within the specified time frames, the Department will withhold payment until such time as the required submissions are received by Department. Where such failures to provide required submittals or documentation are repeated, Department will move to enjoin the Consultant and any prime contractual affiliates, as in the case of a joint venture, from responding or participating Department projects until such submissions are received.

I. Documentation Required for Semi-final Payment

Consultant must submit Form C-63 to the CRO sixty (60) days prior to date of final completion, set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the accepted creditable work. The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. Department will use this certification and other information available to determine applicable DBE credit allowed to date by Department and the extent to which the DBE firms were fully paid for that work. The Consultant acknowledges by the act of filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract. A letter of certification, signed by both the Consultant and appropriate DBE firms, will accompany the form, indicating the amount that remains to be paid to the DBE firm(s).

J. Documentation Required for Final Payment

In anticipation of final payment, Consultant shall submit a final Form C-63 marked "Final" to the CRO, within thirty (30) days of the anticipated date of final completion, as set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the creditable work. Department will use this form and other information available to determine if Consultant and DBE firms have satisfied the DBE goal and the extent to which credit was allowed. Consultant acknowledges by the act of signing and filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract.

K. Prompt Payment Requirements

In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4347 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the Department, or shall notify the Department and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. Invoices shall be submitted no more frequently than once every 30 calendar days and not less than every 60 calendar days. Sub-consultant invoices must be submitted within 60 calendar days of receipt by the Consultant.

For purposes of this Special Provision, a subconsultant's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by Department. If Department has made partial acceptance of a portion of the contract, then Department will consider the work of any subconsultant covered by that partial acceptance to be satisfactorily completed.

Upon Department's payment of the subconsultant's portion of the work as shown on the application for payment and the receipt of payment by Consultant for such work, the Consultant shall make compensation in full to the subconsultant for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subconsultant's portion of the work shall mean the Consultant has issued payment in full, to the subconsultant for that portion of the subconsultant's work that Department paid to Consultant pursuant to the applicable application for payment.

By accepting and executing this contract, the Consultant agrees to assume these obligations, and to bind the Consultant's subconsultants contractually to these obligations.

Nothing contained herein shall preclude Consultant from withholding payment to the subconsultant in accordance with the terms of the subcontract in order to protect the Consultant from loss or cost of damage due to a breach of the subcontract by the subconsultant.

L. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility: When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Consultant has made a commitment to use a DBE firm that is not currently certified, thereby making the Consultant ineligible to receive DBE goal credit for work performed, the ineligible DBE firm's work does not count toward the DBE goal. Consultant shall meet the DBE goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the CRO that it has made good faith efforts to do so.
2. When a Consultant has executed a subcontract with a DBE firm prior to official notification of the DBE firm's loss of eligibility, Consultant may continue to use the firm on the contract and shall continue to receive DBE credit toward DBE goal for the subconsultant's work.
3. When Department has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after VDOT issued the notice of its ineligibility shall be counted toward the contract goal.

Termination of DBE: If a DBE subconsultant is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, Consultant must promptly request approval to substitute or replace that DBE firm in accordance with this section of this Special Provision.

Consultant, shall notify DCRO in writing before terminating and/or replacing the DBE firm that is being used or represented to fulfill DBE-related contract obligations during the term of the contract. Written consent from the DCRO for terminating the performance of any DBE firm shall be granted only when the Consultant can demonstrate that the DBE firm is unable, unwilling, or ineligible to perform its obligations for which the Consultant sought credit toward the DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE firm shall not be based on the Consultant's ability to negotiate a more advantageous contract with another subconsultant whether that subconsultant is, or is not, a DBE firm.

1. All Consultant requests to terminate, substitute, or replace a DBE firm shall be in writing, and shall include the following information:
 - (a) The date the Consultant determined the DBE to be unwilling, unable, or ineligible to perform.
 - (b) The projected date that the Consultant shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE firm giving rise to Consultant's assertion that the DBE firm is unwilling, unable, or ineligible to perform;
 - (d) A brief statement of the DBE firm's capacity and ability to perform the work as determined by the Consultant;
 - (e) A brief statement of facts regarding actions taken by the Consultant, that Consultant believes constitute good faith efforts toward enabling the DBE firm to perform;
 - (f) The current percentage of work completed by the DBE firm;
 - (g) The total dollar amount currently paid for work performed by the DBE firm;

- (h) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and with which the Consultant has no dispute;
 - (i) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the Consultant and/or the DBE firm have a dispute.
2. Consultant's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

Consultant shall send a copy of the "request to terminate and substitute" letter to the affected DBE firm and make best efforts to ensure its receipt by the DBE firm, in conjunction with submitting the request to the DCRO. The DBE firm may submit a response letter to the DCRO and Department within two (2) business days of receiving the notice to terminate from the Consultant. If the DBE firm submits a response letter, then Consultant shall, as part of its subcontract, obligate the DBE firm to explain its position concerning performance on the committed work. The Department will consider both the Consultant's request and the DBE firm's response and explanation before approving the Consultant's termination and substitution request.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Consultant is unsuccessful in notifying the affected DBE firm, the Department will verify that the DBE firm is unable or unwilling to continue performing its subcontract let with respect to the contract. Department will timely approve the Consultant's request for a substitution.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Consultant shall use reasonable good faith efforts to replace the terminated DBE firm. The termination of such DBE firm shall not relieve Consultant of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

When a DBE substitution is necessary, the Consultant shall submit an amended Form C-111 to the DCRO for approval with the name of another DBE firm, the proposed work to be performed by that DBE firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the original DBE firm.

Should Consultant be unable to commit the remaining required dollar value to the substitute DBE firm, the Consultant shall provide written evidence of good faith efforts made to obtain the substitute value requirement. Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by Department as merely superficial or pro-forma will not be considered good faith effortsto meet the DBE goal. Consultant must document the steps taken that demonstrated its good faith effortsto obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

M. Suspect Evidence of Criminal Behavior

Failure of Consultant or any subconsultant to comply with the Standard Specifications, this Special Provision, or any other contract document wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

Suspected DBE Fraud

In appropriate cases, Department will bring to the attention of the United States Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

N. Availability of Records

Requests for information concerning any aspect of the DBE Program, the Department complies with provisions of the Federal and Virginia Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a) and Code of Virginia § 2.2 -3700.

APPENDIX C

**QUALIFICATION &
PAYROLL
CERTIFICATION FOR
CONSULTANT
EMPLOYEE(S)**

APPENDIX C – QUALIFICATION & PAYROLL CERTIFICATION FOR CONSULTANT EMPLOYEE(S)

XYZ Company requests to add the following employee(s) to the Employee Classification roster for Contract #XXXX.

XYZ Company hereby certifies that John Doe meets minimum experience and qualifications represented by all individuals listed in the same classification table. Furthermore, John Doe’s hourly wage (direct salary) rate is within the payroll rate of the individuals listed in the same classification of the original contract #XXXX. XYZ Company acknowledges that in the event the hourly wage rates are misrepresented, the Department reserves the right to request actual payroll register(s) for any or all individuals in the contract and adjust the compensation paid to the Consultant to reflect the difference.

I, the undersigned, certify that the hourly wage rate(s) of the proposed individual(s) as presented in this requested is accurate.

Signed: _____ Title: _____ Date: _____

SUBMITTAL INSTRUCTIONS:

The certification referenced above is to be completed and submitted to VDOT by the firm’s representative with contractual authority. Additionally, provide resume(s) of the proposed individual(s) with this submittal. The certification must be signed by an Officer of the firm authorized to sign contracts on behalf of the firm.

Example of Payroll documentation:

Job Class:	<i>Senior Engineer - Structures</i>				
Empl ID #	Last Name, Suffix	First Name, MI	Office Location	Enter Hourly Wage Rate	Negotiated/Capped Rates
56123	Employee 1	First	Richmond	\$ 74.96	
78910	Employee 2	Second	Fairfax	\$ 74.23	
57896	Employee 3	Third	Richmond	\$ 61.31	
Average:				\$ 70.16	

(The individual providing certification shall ensure that the hourly wage rate of the proposed individual(s) is between \$74.96 and \$61.31)

APPENDIX D

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

APPENDIX D – GUIDELINES FOR THE USE OF CONSULTANT PERFORMANCE REPORTS IN THE SELECTION PROCESS

BACKGROUND

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

PROCESS

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

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

Procurement Officer, in his/her opinion, finds the committee has not made a decision in accordance with these guidelines or they have not properly documented their decision, the Procurement Officer will submit the documentation and reasons for not approving the short list to the Lead Division Administrator for review. In most cases, it is expected that the concerns will be resolved with the Lead Division Administrator. However, if after review by the Lead Division Administrator, the Procurement Officer still feels the decision is not in accordance with the guidelines or has not been properly documented, the Procurement Officer will ask for a review by the Chief of Administration. The Chief of Administration's decision will be final. The reason for the decision made by the Lead Division Administrator or the Chief of Administration will be included in the selection documentation.

CONSIDERATIONS

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

1. It is not the intent of the process for a single rating less than 3 to remove a firm from consideration to provide services for VDOT. A firm's total work performance history will be taken into consideration prior to any score being changed. It is important that we remain mindful that it is the Chief of Administration's desire that we should not be using firms that perform poorly.
2. There is no set rule for the number of low ratings that requires a firm's short list scores to be changed. This is an individual decision of each Selection Committee member.
3. Low ratings may exist in areas on other projects which are not relative to your project and the committee may choose to rate this information accordingly. The consultant may also be using different personnel on your project. However, the general guidance is the Chief of Administration wants firms to consistently perform well in all areas.
4. The Selection Committee need only review the performance reports in the same disciplines of work being procured. If a procurement is solely for bridge design, only the Structure and Bridge Division performance reports need to be reviewed. When surveying work is included as part of a road design contract, the term surveying and Location and Design Division reports will be reviewed. When a bridge design consultant is required to provide construction inspectors on unique types of construction, both the Structure and Bridge Division and construction inspection reports will be reviewed. A consultant's performance with other divisions within the same category may be considered if determined to be relevant to the current procurement. If a firm has no performance reports on file related to the requested services, the committee will check some of the references shown in the EOI and document their findings as part of the file.
5. A rating of 3 indicates the consultant met the terms and conditions of their contract and is not considered to be a bad rating. Fractional ratings less than three may be given to indicate that a firm did not totally meet expectations, but their work was not of such poor quality for them not to be considered for future work. Committee members need to refer to the rater's comments. Any rebuttal comments by the consultant should also be considered.

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