

CONSULTANT REQUEST FOR PROPOSAL

Glade Creek Greenway Phase 3 Preliminary Engineering

UPC# 124024

Posted 03/04/2025



Roanoke Valley-Alleghany

REGIONAL
commission

GENERAL

The **Roanoke Valley-Alleghany Regional (RVARC)** is seeking expressions of interest from consulting engineering firms who wish to be considered to provide professional engineering services for:

Glade Creek Greenway Phase 3 Preliminary Engineering

The Project is funded by the Virginia Department of Transportation (VDOT) Surface Transportation Block Grant (STBG). The Project will be governed and administered under the VDOT Locally Administered Projects (LAP) Manual, Roanoke County, and Town of Vinton policies and procedures. Project activities are to be performed in accordance with all federal, state, and local laws and regulations.

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

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

PROCUREMENT SCHEDULE

Optional Pre-Proposal Conference (Virtual) – March 12, 2025, at 10:00 AM

Expression of Interest Due Date and Time (Electronic) – April 4, 2025, at 4:00 PM

Interviews/Technical Presentations – NLT April 25, 2025

Final Consultant Selection – NLT May 2, 2025

Selected Consultant Pre-Award Documents Due – NLT May 9, 2025

Completed Negotiations Agreement Due – NLT May 30, 2025

Consultant Contract Signed – NLT June 6, 2025

SCOPE

The scope of work shall consist of providing preliminary engineering for the Glade Creek Greenway Phase 3 alignment between the Glade Creek Greenway Phase 2 Trailhead and the planned Roanoke County's Glade Creek Greenway Phase 4 beginning at the boundary of Vinyard Park. The first segment of the project will include an on-road section from the Glade Creek Greenway Phase 2 Trailhead along Gus Nicks Blvd to the intersection with Pollard St. Product from the consultant will assess current infrastructure and estimate needed improvements, if any. The second and primary section of work will go from the Gus

Nicks Blvd/Pollard St. intersection to the Roanoke County line and Glade Creek Greenway Phase 4, and is largely offroad, featuring crossings of private parcels and paralleling the Norfolk Southern rail line. The planned alignment does not cross Glade Creek itself, but topography is impacted by this stream and the floodplain. The consultant shall provide 30 percent design plans which clearly show any potential challenges with the alignment including right-of-way (ROW) and environmental factors.

Design plans will include the following elements:

- Field investigation of the alignment identified for Glade Creek Phase 3
- Right of Way analysis and identification of ROW strategies
- Initial design of alignment, including cross-sections
- Cost estimates for further design, construction, and land-acquisition costs

Communication with private property owners may be involved as part of this process. Consultant experience with this subject will be considered as part of the qualifications.

All procurement related questions or information should be directed in writing to Andrea Garland at agarland@rvarc.org.

EXPRESSION OF INTEREST (EOI)

1. The Expression of Interest shall be organized in the following order:

- Transmittal letter
- Table of Contents
- Understanding of Scope of Work
- Response to RFP Expression of Interest Items 2-15
- **Standard Form (SF) 330 Part I** – one combined for the project team
- **Standard Form (SF) 330 Part II** – one for each firm
- Team Organization Chart – Section D Standard Form (SF) 330 Part I
- A table or matrix containing the requested information in item 15
- Full size copies of Commonwealth of Virginia SCC and DPOR supporting registration/licensing documentation for each firm (including that of each pertinent branch office)
- Full size copies of Commonwealth of Virginia DPOR registration certificate for the Key Personnel
- Firm Data Sheet
- Certification Regarding Debarment form
- DBE Commitment and Confirmation Letter (if applicable)

2. Furnish current SF 330 Part II for each firm involved, and one (1) combined SF 330 Part I for the project team. Please follow the instructions included on the form, unless indicated otherwise within this RFP.

3. As referenced in SF 330 Part I, Section D (Organizational Chart of Proposed Team), a one-page organizational chart showing all firms involved and key personnel assignments and responsibilities is required to be included.

4. Indicate KEY PERSONNEL ONLY resumes in SF 330 Part I, Section E (Resumes of Key Personnel Proposed for This Contract). Key personnel are defined as those to whom the contract will be assigned and who will be performing the actual management of the work and be responsible for inspection, administrative and design services. Each resume shall be limited to one page per person with a font no less than 10 points.

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

5. In SF 330 Part I, Section F (Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract), limit example projects to no more than ten (10).

6. In SF 330 Part I, Section G (Key Personnel Participation in Example Projects), limit example projects to no more than ten (10). The example projects listed in Section G (#29) should match the example project list provided in Section F.

7. In SF 330 Part I, Section H (Additional Information), the consultant should detail the plan to assure the **Roanoke Valley-Alleghany Regional Commission** that the staff submitted for evaluation will be available for the services requested by the RFP. Section H of SF 330 Part I is limited to a maximum of ten (10) pages with a font no less than 10 point. This section should describe the organization of the proposed project staff indicating the role of each by individual. If subconsultants are proposed, the role of each subconsultant should be discussed. It should also include statements that are responsive to the attached Consultant Short List Score Sheet that will be used to evaluate your submission. This is the ONLY section of the submission which may include pictures or graphics (included in the ten page limit). List any computer and CADD equipment and any specialized computer software packages that you will use on this **Roanoke Valley-Alleghany Regional Commission** project.

8. It is the policy of the Virginia Department of Transportation and the **Roanoke Valley-Alleghany Regional Commission** that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 must have the maximum opportunity to participate in the performance of federally funded contracts. A list of DBE firms certified by the SBSB and MWAA is maintained on SBSB's website (<http://www.sbsd.virginia.gov/>) under the heading of the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. The DBE contract goal for this procurement is 0 %.

a. If portions of the services are to be subcontracted to a DBE, the following needs to be

submitted with your EOI and both must reference the project number(s) for the services:

- Written documentation of the prime's commitment to the DBE firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
 - Written confirmation from the DBE firm that it is participating, including a description of the services to be performed and the percent of participation.
 - 49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.
- b. VDOT is also required to capture DBE payment information on all professional services contracts. The successful prime consultant will be required to complete C-63 form for both state and federally funded projects on quarterly basis.

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

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

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

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

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

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

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

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

- Notice to Proceed – June 6, 2025
- Kickoff Meeting with Locality and RVARC Project Manager – NLT June 20, 2025
- ROW analysis and Design – NLT October 31, 2025
- Documentation – NLT November 21, 2025
- Final Report and Presentation – NLT December 19, 2025

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

- 30% Engineering and design plans
- Right of way and working with private property owners
- Survey and field work
- Experience with private property owners negotiation

12. A project approach discussion is required for this project and shall be limited to a maximum of two page(s).

13. In addition to the page restrictions listed above, a maximum of two additional pages may be included in the Expression of Interest. All pages are to be 8 1/2" X 11" and printed on one side with single-spaced type no smaller than 12 pitch.

14. Please indicate, by executing and returning the attached Certification Regarding Debarment forms, if your firm, subconsultant, subcontractor, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of Federal or State funds:

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

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

15. If the prime consultant or subconsultant does not have the in-house capability to provide non-professional services, each with an estimated cost of \$5,000 or greater, such as diving services, soil drilling, sampling services or laboratory testing, these services must be subcontracted in accordance with State procurement procedures once a contract is executed, with no DBE credit in the selection of the most qualified firm or team. Clearly indicate these services in the EOI.

16. Each business entity (prime and subconsultants) on the proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, should provide evidence including full size copies of appropriate commercial professional registrations and licenses for all main and branch offices proposed for this Project, as well as providing full size copies of appropriate individual registrations/licenses for those professional occupations per the requirements listed below. The EOI should convey the requested information for each regulant by the use of a concise table or matrix. (All full-size copies of the Commonwealth of Virginia State Corporation Commission (SCC) and Department of Professional and Occupational Regulation (DPOR) supporting registration documentations should be included in the EOI and will not be counted towards page restriction):

- The Commonwealth of Virginia SCC registration detailing the name, registration number, type of corporation and status of the business entity.
- For this Project/Contract, the Commonwealth of Virginia DPOR registration information for each office practicing or offering to practice any professional services in Virginia: Provide the business name, address, registration type, registration number, expiration date.
- For this Project/Contract, the Commonwealth of Virginia DPOR license information for each of your Key Personnel practicing or offering to practice professional services in Virginia: Provide the name, the address, type, the registration number, and the expiration date. Provide the office location where each of the Key Personnel is offering to practice professional services.
- For this Project/Contract, the Commonwealth of Virginia DPOR license information for those services not regulated by the Board for Architects,

Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (e.g. real estate appraisal): the business name, the address, the registration type, the registration number, and the expiration date.

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

ADMINISTRATIVE

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

Surveying ___ Specifications ___
Bridge and Structure Plans ___ Materials Analysis ___
Permit Drawings ___ Environmental ___
Hydraulic and Hydrologic Analysis ___ Road Plans ___
Traffic Data ___ Traffic Analysis _x_
Signs and Signals Plans _x_ Lighting Plans _x_
Scour Analysis ___ Geotechnical Borings and Analysis ___
Utility Plans ___ Landscape Plans _x_

2. Prior to the time of submittal of the EOI, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about entity formation can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the **Roanoke Valley-Alleghany**

Regional Commission. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

3. The **Roanoke Valley-Alleghany Regional Commission** will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

4. The method of payment shall be lump sum paid, on the basis of completed and accepted milestones or deliverables completed under the terms of the contract, as described on the budget submitted, by the contractor, for this project and approved by the RVARC during contract negotiations.

5. All firms submitting Expressions of Interest (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All architectural or engineering firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to the **Roanoke Valley-Alleghany Regional Commission** within 10 work days of being notified of their selection, whereby an official of an architectural or engineering firm shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available for architectural or engineering firm's use on VDOT website at <http://www.virginiadot.org/business/gmpms.asp>. Should any firm on the consultant team fail to submit the required audit data and certification within the 10 work days, negotiations may be terminated by the **Roanoke Valley-Alleghany Regional Commission** and the next most qualified team invited to submit a proposal.

6. Records Exclusion from Public Disclosure: Pursuant to the provisions of §2.2-3705.6 (22) of the Code of Virginia, trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Roanoke Valley-Alleghany Regional Commission for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law may, subject to a determination by the Inspector General as described herein, be withheld from public disclosure under the Virginia Freedom of Information Act (FOIA). To enable the Inspector General to identify data or records that may be subject to this exclusion from disclosure under FOIA the private or nongovernmental entity shall, in accord with procedures adopted by the Inspector General, make a written request to the Inspector General of the Virginia Department of Transportation:

- invoking such exclusion upon submission of the data or other materials for which protection is sought;
- identifying with specificity the data or other materials for which protection is sought; and stating the reasons why protection is necessary.

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

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

7. Electronic EOI submittals are required for this EOI, with the entire submittal in a single cohesive PDF file. Submittals shall be prepared simply and economically, providing a straightforward, concise description of the firm's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. Please do not duplicate information furnished in the SF 330 Part I and Part II elsewhere in the submittal. **Electronic copies must be submitted to the eVA system no later than 4:00 PM on April 4, 2025. No hard copies will be accepted.**

eVA Business-to-Government Vendor Registration: The eVA Internet electronic procurement solution, web site portal (<http://www.eva.state.va.us>), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detailed information regarding eVA, registrations, fee schedule, and transaction fee, use the website link: <http://www.eva.state.va.us>.

All bidders or offerors must register in eVA; failure to register may result in the bid/proposal/expression of interest being rejected..

The **Roanoke Valley-Alleghany Regional Commission** assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Department. This requirement

applies to all consulting firms when the contract amount equals or exceeds \$10,000.

The **Roanoke Valley-Alleghany Regional Commission** does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Any offeror who desires to protest the award of a contract shall submit such protest in writing to the Department no later than ten days after the announcement of the award. Public announcement of the award shall be posted on the Department's Business Center Internet site.

Appendix A: Required Forms

FIRM DATA SHEET

Funding: ____ (S=State F=Federal)

Project No.: _____

Division: _____

EOI Due Date: _____

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

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

* YD = DBE Firm Certified by DMBE

N = DBE Firm Not Certified by DMBE

NA = Firm Not Claiming DBE Status

DMBE is the Virginia Department of Small Business and Supplier Diversity

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

Project: _____

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

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

Signature Date Title

Name of Firm

CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS
(To be completed by a Sub-consultant)

Project: _____

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

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

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

Signature Date Title

Name of Firm

CONSULTANT SHORT LIST SCORE SHEET

FEDERALLY / STATE FUNDED PROJECT
(FOR PROFESSIONAL SERVICES)

DIVISION: _____

EOI NO.: _____

PROJECT: _____

FIRM: _____

DESCRIPTION: _____

SUBS: _____

DATE: _____

		NUMERICAL VALUE				AVG.	WEIGHT	WEIGHTED EVALUATION
FIRM/TEAM'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					25%	
PERSONNEL'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					40%	
QUALIFICATIONS OF PROJECT MANAGER (Expertise, experience and qualifications in project management as related to the scope of services) (1=least, 10=most)		1-10					5%	
ORGANIZATIONAL CAPABILITY (Ability to complete work in a timely manner, size of firm(s) relative to size of project, proposed project staff resources, proposed use of sub-consultants) (1=least, 10=most)		1-10					20%	
PRESENT WORKLOAD WITH DEPARTMENT (Dollar value of present outstanding fee including estimated pending contracts under negotiation. For limited services term contracts, include the amount of all task orders executed or under negotiation. Work being performed under the Public Private Transportation Act (PPTA) shall not be included. Work being performed as a prime, joint venture or sub-consultant on a Design-Build project shall be included.) † (Only Category ___ workload is counted on this selection*)	Above \$4,000,000	0					10%	
	3,500,001-4,000,000	1						
	3,000,001-3,500,000	2						
	2,500,001-3,000,000	3						
	2,000,001-2,500,000	4						
	1,500,001-2,000,000	5						
	1,000,001-1,500,000	6						
	750,001-1,000,000	7						
	500,001-750,000	8						
	250,001-500,000	9						
0-250,000	10							
							TOTAL	

***CATEGORIES OF WORKLOAD:**

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

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

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

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 105.06—SUBCONTRACTING
(FEDERAL FUNDED PROJECTS)

February 9, 2017

SECTION 105.06—Subcontracting of the Specifications is amended to include the following:

- (d) According to Commonwealth of Virginia Executive Order 20, the Contractor is encouraged to seek out and consider Small, Women-owned, and Minority-owned (SWaM) businesses certified by the Department of Small Business and Supplier Diversity (DSBSD) as potential subcontractors and vendors. Further, the Contractor shall furnish and require each subcontractor (first-tier) to furnish information relative to subcontractor and vendor involvement on the project.

For purposes of this provision, the term “vendor” is defined as any consultant, manufacturer, supplier or hauler performing work or furnishing material, supplies or services for the contract. The Contractor and, or subcontractor (first-tier) must insert this provision in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). The applicable requirements of this provision are incorporated by reference for work done by vendors under any purchase order, rental agreement or agreement for other services for the contract. The Contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or vendor.

The submission of a bid will be considered conclusive evidence that the Contractor agrees to assume these contractual obligations and to bind subcontractors contractually to the same at the Contractor’s expense.

When an approved Form C-31 “Subletting Request” is required according to IIM-CD-2013-06.01, the Contractor shall indicate on the Subletting Request if a subcontractor is a certified DBE or SWaM business.

The Contractor shall report all DBE, SWaM, and Non SWaM vendor payments quarterly to the District Civil Rights Office. The Contractor shall provide the information in a format consistent with Form C-63, Vendor Payment Compliance Report, subject to the approval of the Engineer.

DBE Participation and reporting shall be in accordance with the Special Provision for Section 107.15 (Use of Disadvantaged Business Enterprises).

If the Contractor fails to provide the required information, the Department may delay final payment according to Specification Section 109.10 of the Specifications.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION**

Form Instructions: 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 and/or SWaM contract goal(s), form C-49 PSC shall be submitted.

After contract award, for Limited Services Term contracts, consultants must submit this form at renewal to document DBE / SWaM utilization to date. If goals are being met for current term, submission of page 1 is sufficient. If goals are not being met at the time of renewal, the full form must be submitted.

After contract award, for Project Specific Contracts, consultant must submit this form if or when supplement agreements are requested. For Program Support Services (PSS) contracts, this form shall be submitted with each Annual Work plan (AWP). If goals on PSS Contract are being met, submission of page 1 is sufficient. If goals are not being met at the time of AWP review & approval, the full form must be submitted.

CONTRACT ID:		Contract Date(s):	
Firm Name:		Renewal Term: If applicable.	
Type of Contract:		UPC # (if Project Specific Contract)	
DBE Goal (As per contract)		SWaM Goal (As per contract)	
DBE Expenses to Date:		SWaM Expenses to Date:	
Submission Date:		Purpose of Submittal*:	

***(Inability to Meet Goal at EOI Submission; Term Renewal; Annual Work Plan; or Supplement Agreement)**

If the DBE and/or SWaM goals established for this contract have not been met at the time of renewal or VDOT requests the submittal thereof, the bidder is required to submit good faith efforts as outlined in the contract.

Explanation / Details To Support Demonstration Of Good Faith Effort: (See Page 6 for Add'l Space)

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID _____ DATE SUBMITTED _____

PENDING WORK FOR DBE / SWAM VENDORS

If consultant has ordered work as part of a project based on contract schedule, executed task orders, or assignment in an Annual Work Plan that includes work to be conducted by DBE / SWaM subconsultants but prosecution of work has not yet occurred, please provide details:

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

Task Order / Assignment Details (ID #s, Description of Work to be Performed)	Amount of Work Assigned VS Amount of Work Paid to Date	Approx Date of Work to Occur

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO. _____ DATE SUBMITTED _____

WORK SOLICITED / REQUESTED BUT DECLINED BY DBE / SWAM SUBCONSULTANT

Provide information on certified DBE / SWaM subconsultants and the dates on which work was solicited / request was made to participate on this proposal / contract. Include the items of work offered and the dates and methods used for following up initial solicitations to determine whether or not DBEs/SWaM subconsultants were Interested.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

NAMES and ID#s of DBEs and/or SWaM FIRMS SOLICITED	DATE OF INITIAL SOLICITATION	NAICS (if DBE) and NIGP Codes (if SWAM)	FOLLOW-UP METHODS AND DATES

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO. _____ DATE SUBMITTED _____

TELEPHONE LOG FOR DBE/SWAM SOLICITATION / REQUEST TO PARTICIPATE

If the DBE / SWaM goal(s) established has not or cannot be met or VDOT requests the submittal thereof, the bidder is required to submit good faith efforts as outlined in this document. Provide names, addresses, and telephone numbers for the firms listed.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

DBE / SWaM FIRMS CALLED	TELEPHONE NUMBER	DATE CALLED	TIME CALLED	CONTACT PERSON OR VOICE MAIL STATUS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO. _____ DATE SUBMITTED _____

ADVERTISEMENTS OR PROOFS OF PUBLICATION

If the DBE / SWaM goal(s) established for this contract has not been met or VDOT requests the submittal thereof, the consultant is required to submit good faith efforts as outlined in this document.

Names and dates of each publication / website in which a request for DBE / SWaM subconsultants participation for the project was placed by the consultant. Attach copies of published advertisements or proofs of publication.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

PUBLICATIONS	DATES OF ADVERTISEMENT

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO. _____ DATE SUBMITTED _____

ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORT

If the DBE / SWaM goal(s) established for this contract has not been met or VDOT requests the submittal thereof, the consultant is required to submit good faith efforts as outlined in this document.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

ADDITIONAL JUSTIFICATION TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORT
Including Details on Future DBE / SWaM Utilization Plan

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CERTIFICATION OF BINDING AGREEMENT WITH
DISADVANTAGED BUSINESS ENTERPRISE FIRMS**

RFP NO _____ CONTRACT ID _____

CONSULTANT NAME _____ PROJECT ID _____

This form is to be submitted in accordance with the Department's Special Provision for DBE Requirements for professional services contracts for consultants.

It is hereby certified by the below signed Contractors that there exists a written quote, acceptable to the parties involved preliminary to a binding subcontract agreement stating the details concerning the work to be performed and the price which will be paid for the aforementioned work. This document is not intended to, nor should it be construed to, contain the entire text of the agreement between the contracting parties. This document does not take the place of, nor may it be substituted for, an official subcontracting agreement in those situations that may require such an agreement. A copy of the fully executed *subcontract agreement* shall be submitted to the Engineer within fourteen (14) business days after contract execution.

It is further certified that the aforementioned mutually acceptable quote and fully executed subcontract agreement represent the entire agreement between the parties involved and that no conversations, verbal agreements, or other forms of non-written representations shall serve to add to, delete, or modify the terms as stated.

The prime Contractor further represents that the aforementioned mutually acceptable quote and fully executed subcontract agreement shall remain on file for a period of not less than one year following completion of the prime's contract with the Department or for such longer period as provisions of governing Federal or State law or regulations may require. For purposes of this form, the term Prime Contractor shall refer to any Contractor utilizing a DBE subcontractor, regardless of tier, in which they are claiming DBE credit toward the contract goal.

Contractors further jointly and severally represent that said binding agreement is for the performance of a "commercially useful function" as that term is employed in 49 C.F.R. Part 26.55 (c), (d).

**TO BE SIGNED BY THE SUBCONTRACTOR TO THE PRIME CONSULTANT, AND ANY LOWER TIER
SUBCONSULTANTS HAVING A CONTRACT WITH THE BELOW NAMED DBE FIRM**

Prime Contractor _____

By: _____
Signature Title

Date: _____

First Tier
Subconsultant, if
Applicable

By: _____
Signature Title

Date: _____

Second Tier
Subconsultant if
Applicable

By: _____
Signature Title

Date: _____

Third Tier
Subconsultant if
Applicable

By: _____
Signature Title

Date: _____

DBE Consultant

By: _____
Signature Title

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
PROJECT SPECIFIC CONTRACTS

C-111 PSC
June 15, 2023

RFP / CONTRACT ID _____ DATE SUBMITTED _____

PROJECT NO _____ FHWA NO _____

INSTRUCTIONS: This form shall be used by the Consultant to submit the names of DBE /SWaM firms to be used on the contract. The Consultant shall indicate the scope of work that each will perform and the allowable credit.

DBE REQUIREMENT _____% **DBE PERCENT ATTAINED BY OFFEROR** _____%

Name(s) of DBE(s) To Be Used	Certification #	Scope of Work / NAICS Codes	\$ Amount of Allowable Credit
TOTAL \$			
Total Contract Value \$ _____		x Required DBE % = \$ _____	

SWaM REQUIREMENT _____% **SWaM PERCENT ATTAINED BY OFFEROR** _____%

Name(s) of SWaM (s) To Be Used	Certification #	Scope of Work / NIGP Codes	\$ Amount of Allowable Credit
TOTAL \$			
Total Contract Value \$ _____		x Required DBE % = \$ _____	

I/We certify that the DBE(s) listed will be used on this contract as stated hereon and assure that during the life of the contract I/We will meet or exceed the participation established hereon.

Offeror

BY _____
Signature

Title

BY _____
Date



VDOT Consultant Title VI Evaluation Form

Introduction

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964, as amended and other nondiscrimination laws and authorities. Title VI of the Civil Rights Act of 1964, and other directives prohibit agencies and sub-recipients receiving federal assistance from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability, or low-income. The United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations (49 Code of Federal Regulations (CFR), Part 21, and 23 CFR, Part 200 respectively, and other applicable orders and authorities provide guidelines, actions, and responsibilities for VDOT's implementation of the Title VI Program. These laws and regulations include but are not limited to the following:

- **The 1970 Uniform Act (42 USC 4601)** – prohibits unfair treatment of displacees
- **Section 504 of the 1973 Rehabilitation Act (29 USC 790)** – prohibits discrimination based on disability
- **The Federal-Aid Highway Act 1973 (23 USC 324)** – prohibits discrimination based on gender
- **The 1975 Age Discrimination Act (42 USC 6101)** – prohibits age discrimination (any age)
- **The Civil Rights Restoration Act of 1987** – clarified the original intent of nondiscrimination organization-wide
- **Executive Order 12898 on Environmental Justice (EJ)** addresses disproportionately high and adverse human health and environmental effects on minority and low-income populations
- **Executive Order 13166 on Limited English Proficiency (LEP)** - ensures people who are limited English proficient (LEP) have meaningful access to services

In brief, these laws and regulations prohibit discrimination in federally assisted programs and activities. Title VI of the 1964 Civil Rights Act states that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

By contracting with VDOT, a contractor is obligated to comply with the laws and regulations listed above and within the Memorandum of Agreement (MOA) executed

between the Department and the contractor. VDOT's Civil Rights Division with the assistance from each applicable division's Program Manager, monitors an organization's compliance with the non-discrimination provisions.

To monitor compliance, each contractor and all sub-contractors are required to submit a Title VI Evaluation Form. This requirement is applicable for all contractors.

The Title VI Evaluation Form provides documentation that a contractor has procedures in place to prevent discrimination in programs and services based on Title VI.

VDOT will request a Title VI Evaluation Form within ten (10) days of notification of selection for new contractors or contractors that do not have a current assessment on file with VDOT. The Assessment Form should be submitted to the Program Manager in the division that is negotiating the contract. These are the divisions we currently receive Title VI Evaluation Forms from:

Right of Way & Utilities Division
Location & Design Division
Environmental Division
Structure & Bridge
Innovative Project Delivery
Materials Division
Transportation & Mobility Planning Division

Once the Title VI Evaluation Form is provided to VDOT, the Title VI Coordinator in the Civil Rights Division reviews the information and issues a pre-award letter within fifteen (15) days of receiving documentation or may schedule an on-site review within the same time frame to confirm information provided in the Assessment Form. VDOT Program Managers have access to a Title VI Log that is updated monthly on the Civil Rights Website. The Title VI Coordinator may request additional information and/or recommend corrective actions. The Title VI Coordinator may randomly schedule on site compliance reviews at the contractor's office.

If the report is approved, a letter is sent out with an expiration date for one year from the date of the approval letter. Typically the letter remains current and on file with VDOT for a period of one year. An updated report is required annually for contractors who continue to perform under a contract with VDOT. It should be noted that if VDOT conducts an on site compliance review the contractor can still be found to be out of compliance during the one year period.

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.

Should you have any questions about VDOT's Title VI Program or the Evaluation Form, contact Corina Herrera at 804-786-2730 or at corina.herrera@vdot.virginia.gov

VDOT TITLE VI EVALUATION FORM

This Title VI Evaluation Form is used as a Pre-award Review and Post-award Review. VDOT is required to conduct routine assessments prior to releasing funds to ensure Title VI compliance. A pre-award review assists VDOT in determining whether applicants operate in a nondiscriminatory manner. Pre-award reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their services as a condition of receiving contracts. Pre-award reviews represent a frontline approach to eliminating and preventing discrimination before it occurs.

Post-Award Reviews are generally conducted after a contractor begins the scope of work. However to minimize the burden on VDOT's contractors, VDOT has developed a form that serves as both a pre-award and post-award compliance tool.

VDOT must also conduct on-site reviews of prime contractors periodically to ensure that the contractor remains in compliance with Title VI and to verify that the contractor has preventive measures to ensure nondiscrimination by their sub-contractors.

Name of Preparer:
[Click here to enter text.](#)

Preparer's Title:
[Click here to enter text.](#)

Phone #:
[Click here to enter text.](#)

Email Address:
[Click here to enter text.](#)

Name of Organization:
[Click here to enter text.](#)

Address of Organization:
[Click here to enter text.](#)

Address of Virginia location where project will be done:
[Click here to enter text.](#)

Type of Contractor/Organization:

- Private Organization Supplier
 Governmental Agency Other

Workforce for Virginia Location(s)

Total Click here to enter text.	% Minority Click here to enter text.	% Female Click here to enter text.
---	--	--

Business Ownership/Control

- Minority Female DBE Certified SWaM Certified

Does your organization currently have contracts or subcontracts with VDOT?

- Yes No

What is your organization's most recent date of Title VI approval? [Click here to enter text.](#)

Status of Project(s):
[Click here to enter text.](#)

Value of current Contract(s):
[Click here to enter text.](#)

What does your organization have in place to ensure nondiscrimination in your VDOT scope of work and your programs and services?
[Click here to enter text.](#)

Virginia Workforce

CONSULTANT EQUAL EMPLOYMENT OPPORTUNITY WORKFORCE ANALYSIS

Employment at this establishment – Report all permanent full and part-time employees including apprentices and on-the job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered zeros.

Job Categories	Number of Employees (Report employees in only one category)															Total Col A-N
	Race/Ethnicity															
	Hispanic or Latino		Not Hispanic or Latino													
	Male	Female	Male							Female						
White			Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races			
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Executive/Sir. Level Officials & Managers (1.1)																
First/Mid-Level Officials & Managers (1.2)																
Professionals (2)																
Technicians (3)																
Sales Workers (4)																
Administrative Support Workers (5)																
Craft Workers (6)																
Operatives (7)																
Laborers & Helpers (8)																
Service Workers (9)																
TOTAL (10)																
PREVIOUS YEAR TOTAL (11)																

Organization, Staffing, & Training

1. What type of services will your organization provide VDOT?
Click here to enter text.
2. Identify the person responsible for the administration of Title VI policies and procedures (a Title VI Coordinator). Provide the name, position, title, and contact information. **Click here to enter text.**

Title VI/Nondiscrimination

1. Is your Title VI Coordinator, project managers, and other staff made aware of Title VI compliance and regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21 and the Federal Highway Administration's 23 Code of Federal Regulations 200? Please explain how they are made aware. **Click here to enter text.**
2. What procurement procedures does your organization have in place to ensure nondiscrimination in the selection and retention of subcontractors including procurements of materials and leases of equipment? *** Please note N/A is not an acceptable response, please provide a complete answer**

Click here to enter text.
3. How does your organization notify your subcontractors and suppliers of their obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability and low income populations? *** Please note N/A is not an acceptable response, please provide a complete answer**

Click here to enter text.
4. Are facilities and meeting areas fully accessible to persons with disabilities? **Click here to enter text.**
5. Does your organization have a system in place to accommodate persons with disabilities? If yes, how does your organization notify the public? If no, please explain. *** Please note N/A is not an acceptable response, please provide a complete answer**
Click here to enter text.

6. How are limited English proficient persons made aware that they can receive translation services for access to services? * **Please note N/A is not an acceptable response, please provide a complete answer**
Click here to enter text.

7. Has your organization been reviewed by any governmental agencies for compliance with Title VI and other laws and regulations? If yes, provide a copy of the letter identifying the review findings? **Click here to enter text.**

8. Does your organization receive federal assistance (grants, loans, donations of property, or detail of personnel) from any Federal government entity? **Click here to enter text.**

9. List any discrimination complaints and/or lawsuits received in Virginia during the reporting period. Include the basis for the complaint (ethnicity, gender, etc.) and summarize the outcome or resolution. If applicable, include a copy of the investigation report. **Click here to enter text.**

Disadvantaged Business Enterprises (DBE)

1. Did your organization award any contracts/subcontracts related to VDOT work to DBEs during the reporting period?
 Yes No
 If yes, provide the following:
 - The DBE's name and amount awarded **Click here to enter text.**
 - Total # of contracts awarded to DBEs **Click here to enter text.**
 - Total dollar amount of contracts awarded to DBEs **Click here to enter text.**

I certify that the data given in this report is correct to the best of my knowledge. (Report has to be submitted with original signature, not a photocopy.)

Signature:

(Authorized Officer)

(Title)

(Date)

For Office Use Only:

Provide award? Yes _____ No _____

Recommendations:



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER SIXTY ONE (2017)

EXECUTIVE ACTION TO ENSURE EQUAL OPPORTUNITY AND ACCESS FOR ALL VIRGINIANS IN STATE CONTRACTING AND PUBLIC SERVICES

Importance of the Initiative

Virginia's founding creed is that all people "are by nature equally free and independent," and that they share the inherent rights to "the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." (Virginia Declaration of Rights, Section 1 (1776)). Indeed, it is the very function of our government to ensure these rights to all Virginians.

Our modern society is more reflective of this fundamental belief than ever before. Virginia today welcomes people from across the globe, of every background, to join in building a prosperous and free society. The work of my administration has been committed to this end of building a new Virginia economy—an economy that embraces the diverse world in which we live.

Recent events have demonstrated the negative effects of allowing prejudice, while also showing the positive growth that comes from an open and inclusive state government. States and localities that have promoted discriminatory laws are seeing businesses abandon development projects. States and localities that have pursued more inclusive policies have reaped the benefits of businesses expanding and relocating to their jurisdictions. Companies with whom Virginia does business, including those critical for building a new Virginia economy with high-paying jobs, have increasingly implemented their own policies prohibiting discrimination based on sexual orientation and gender identity. The global economy in which Virginia must compete demands a dynamic workforce that is competitive, diverse, and educated.

Additionally, federal procurement policy prohibits federal contractors from discrimination based on sexual orientation and gender identity. Federal contractors have thus already changed their internal policies and practices accordingly and are unlikely to reverse course, even if the federal requirement is adjusted. Many federal contractors also deliver services to the Commonwealth. Current procurement policy in Virginia is not sufficiently aligned with these non-discrimination policies to promote economy and efficiency in state procurement. Having Virginia policy align with this federal non-discrimination policy will not only further my administration's goal of building a more diverse, open, and welcoming Virginia, but also will give uniformity to contractors that serve many government entities, resulting in economic benefits to Virginia taxpayers.

Accordingly, by the power vested in me as the Chief Executive by Article V of the Constitution of Virginia and the laws of the Commonwealth, I hereby order the following:

I. Require future state contracting to require prohibitions on discrimination in employment, subcontracting, and delivery of goods and services, including discrimination based on sexual orientation or gender identity.

It is hereby ordered as the policy of the Executive Branch that it will only contract with those who abide by the non-discrimination policies set forward in Executive Order 1 (2014), namely that discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status is prohibited.

All Executive Branch entities are ordered to include in their procurement contracts valued over \$10,000 a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. They must also include a term that the contractor will include the same requirements in every subcontract or purchase order over \$10,000, so that the same provisions will be binding upon each subcontractor or vendor on state procurement contracts. This requirement shall not apply to procurements that have, as of the date of this Order, already progressed to a stage at which changes in contract requirements would materially and adversely impact the completion of a procurement contract. Specific contracts with certain private child-placing agencies pursuant to § 63.2-1709.3 may also be exempted from this requirement.

The Department of General Services and the Virginia Information Technologies Agency are directed to promulgate appropriate policies and regulations to require the same, including consideration of any other applicable laws or regulations. They are also directed to impose appropriate sanctions under the Virginia Public Procurement Act, including but not limited to

termination of the contract and debarment from state contracting for any violations of this contract term.

II. Prohibit discrimination, including that based on sexual orientation or gender identity, in the provision of state services.

Building on the requirements of Executive Order 1 (2014), I hereby order that no state employee or agent within the Executive Branch may engage in discrimination in the provision of public services based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. Any state employee or agent who engages in such discrimination will be subject to appropriate disciplinary action.

The Department of Human Resource Management is directed to promulgate appropriate policies in the Commonwealth's Standards of Conduct to implement these requirements in accordance with any other applicable laws and regulations.

No Third-Party Rights Created

This Executive Order is intended to provide direction for Executive Branch entities and does not create any rights or remedies enforceable by third parties.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 5th Day of January, 2017.




Terence R. McAuliffe, Governor

Attest:


Kelly Thomasson, Secretary of the Commonwealth

ATTACHMENT A

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

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

A. Disadvantaged Business Enterprise (DBE) Program Requirements

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

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

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

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

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

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

B. DBE Certification

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

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

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

1. That the Offeror/Consultant agrees to comply with the project construction and administration obligations of the USDOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
2. Consultant shall comply fully with the DBE Program requirements in the execution and performance of the contract. Consultant acknowledges that failure to fulfill the DBE subcontracting commitments made may result in sanctions being invoked for noncompliance.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Consultant certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Consultant further certifies that the Consultant shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Consultant and a DBE whereby the DBE promises not to provide quotations for performance of work to other Consultants are prohibited.
4. Consultant shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request for Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, the specific work that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
5. Offeror further certifies, by signing its Proposal, it has committed to use each DBE firm listed for the work specified to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subconsultants. The Consultant shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.
6. Once awarded the contract, the Consultant shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBE firms at or above the amount or percentage

of the dollar value specified in the proposal documents. Further the Consultant understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Consultant's own forces or those of an affiliate of the Consultant without the prior written consent of Department as set out within the requirements of this Special Provision.

7. Once awarded the contract, the Consultant shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Consultant during any 12 month period.
8. Once awarded the contract, the Consultant shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Consultant, DBE firm, or any other firm retained by the Consultant has failed to comply with federal or Department DBE Program requirements, the Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Consultant any remedies available at law or provided in the contract.
9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the Consultant, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Consultant in accordance with the requirements of this specification.

D. DBE Program Compliance Procedures

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

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

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

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

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

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

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

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

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

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

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

- (a) Soliciting through reasonable and available means, such as but not limited to, ~~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 subconsultanting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;
 - 2. Consultant should, using good business judgment, consider a number of factors in negotiating with subconsultants, and should take a DBE firm's price, qualifications, and

capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Consultant's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Consultant to perform the work with its own organization does not relieve the Consultant of the responsibility to make diligent good faith efforts. Consultants are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Consultant to be excessive, unreasonable, or greater than would normally be expected by industry standards;

- (e) A Consultant cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, are not legitimate causes for the rejection or non-solicitation of bids in the Consultant's efforts to meet the contract goal for DBE participation;
- (f) Making efforts to assist interested DBE firms in obtaining or related assistance or services subject to the restrictions contained in this Special Provision;
- (g) Effectively using the services of appropriate personnel from VDOT and from 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 reconsider 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 efforts to meet the DBE goal. Consultant must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

M. Suspect Evidence of Criminal Behavior

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

Suspected DBE Fraud

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

N. Availability of Records

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

Appendix 17 E – U.S. DOT 1050.2A Appendices

APPENDIX A

Contractor/ Consultant/Supplier Agreement: U.S. DOT 1050.2A -- Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally- assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub-contractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Sub-contractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non• discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a Sub-contractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

Contractor/Consultant/Supplier Agreements: U.S. DOT 1050.2A- Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1975, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibited discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Part 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq*)

Appendix B: Sample Contract

CONTRACT BETWEEN THE ROANOKE VALLEY-ALLEGHANY REGIONAL COMMISSION AND [CONTRACTOR NAME] FOR [SCOPE OF SERVICES]

This Contract is dated MM DD, YYYY, between the Roanoke Valley-Alleghany Regional Commission, a Virginia public body corporate and politic, hereinafter referred to as the "RVARC, and [CONTRACTOR NAME], [CONTRACTOR ADDRESS], hereinafter referred to as the "Consultant,"

WITNESSETH:

WHEREAS, Consultant has been awarded this Contract by the RVARC for [BRIEF DESCRIPTION OF WORK] in accordance with this Contract and the documents referred to herein, all such items or services also being referred to hereinafter as the "Work" or "Study".

NOW, THEREFORE, THE RVARC AND THE CONSULTANT AGREE AS FOLLOWS:

SECTION 1: WORK TO BE PERFORMED AND DOCUMENTS.

For and in consideration of the money hereinafter specified to be paid by the RVARC to the Consultant for the Work provided for in this Contract to be performed by the Consultant, the Consultant hereby covenants and agrees with the RVARC to fully perform the services, provide any materials needed to complete the Work called for by this Contract in a good and workmanlike manner in accordance with this Contract and the documents referred to herein in order to fully and properly complete this Contract within the time stipulated, time being made of the essence for this Contract. It is also agreed by the parties hereto that the documents to this Contract consist of this Contract and the following documents listed below (Contract Documents), all of which are and constitute a part of this Contract as if attached hereto or set out in full herein, viz:

1. Insurance Requirements (Exhibit 1).
2. Scope of Work (Exhibit 2).
3. Service Schedule & Proposed Fees (Exhibit 3).
4. [RFP NOTICE OR OTHER REFERENCES AS NECESSARY]

The parties agree that if there are any differences between the provisions of the above referenced documents, the provisions of the RVARC documents and this Contract will control over any Consultant supplied documents or information.

SECTION 2: CONTRACT AMOUNT.

The RVARC agrees to pay the Consultant for the Consultant's complete and satisfactory performance of the work describes, in the manner and at the time set out in this Contract, but the total amount for all such requests will not exceed [FEE], as provided for in this Contract and that this Contract amount may be increased or decreased by additions and/or reductions in the Study as may be authorized and approved by the RVARC, and the Contract amount may be decreased by the RVARC's assessment of any damages against the Consultant, as may be provided for in this Contract or by law, and the RVARC retains the right of setoff as to any amounts of money the Consultant may owe the RVARC.

SECTION 3: TERM OF CONTRACT.

A. The term of this Contract shall be from [MONTH, DAY, YEAR], through [MONTH, DAY, YEAR], at

which time it will terminate, unless sooner terminated pursuant to the terms of the Contract or by law or unless extended as set forth herein at the option of the RVARC.

B. All terms and conditions shall remain in force for the term of this Contract and for any extension period unless modified by mutual agreement of both parties.

SECTION 4: TIME OF PERFORMANCE.

The Consultant shall commence the Work to be performed under this Contract on such date as is established and fixed for such commencement by written notice (which may be initially given verbally in an emergency situation) to proceed given by the RVARC representative to the Consultant, and the Consultant covenants and agrees to fully construct, perform, and provide the services called for by this Contract established by such notice. The Consultant further agrees that the work shall be started promptly upon receipt of such notice and shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the Contract Documents and that Consultant will cooperate and coordinate with the other RVARC employees doing other work or using the area where Consultant is working.

SECTION 5: PAYMENT.

A. The RVARC agrees to pay Consultant for the Consultant's complete and satisfactory performance of the work, in the manner and at the time set out in this Contract. The RVARC retains the right to setoff as to any amounts of money Consultant may owe the RVARC. A written progress report may be requested by the RVARC to accompany payment request and, if so, such progress report shall detail the work completed. Also, sufficient documentation of all costs, expenses, materials supplies, and/or hours worked may be requested by the RVARC and, if so, may be required prior to the processing of any such request for payment. Payment will only be made for work actually performed integral to the Study, all of which need be approved and accepted by the RVARC prior to such payment, unless otherwise provided for in the Contract documents. The Consultant shall submit a request for payment to each appropriate division and department not more than once each month. The payment requested shall be for services completed for the Project and approved by the RVARC. The request for payment, or invoice, shall take into account those tangible items relative not only to the Scope of Services, but requirements of the work as set forth by **[ORIGINAL GRANTOR OR FUNDER, IF APPLICABLE]**

B. Once a payment request has been received by the RVARC, the RVARC will process such payment request. If there are any objections or problems with the payment request, the RVARC will notify the Consultant of such matters. If the payment request is approved and accepted by the RVARC, payment will be made by the RVARC to the Consultant not more than 30 days after such request has been approved.

SECTION 6: INSPECTION.

The RVARC shall have a reasonable time after receipt of work items and before payment to inspect all such items for conformity to this Contract. If all or some of the items delivered to the RVARC do not fully conform to the provisions hereof, the RVARC shall have the right to reject and return such nonconforming items, at the sole cost of the Consultant.

SECTION 7: PAYMENTS TO OTHERS BY CONSULTANT.

The Consultant agrees that Consultant will comply with the requirements of Section 2.2-4354 of the Code of Virginia regarding Consultant's payment to other entities and the Consultant will take one of the two actions permitted therein within 7 days after receipt of amounts paid to Consultant by the RVARC. Consultant further agrees that the Consultant shall indemnify and hold the RVARC harmless for any lawful claims resulting from the failure of the Consultant to make prompt payments to all persons supplying the Consultant equipment, labor, tools, or material in connection with the

work provided for in the Contract. In the event of such claims, the RVARC may, in the RVARC's sole discretion, after providing written notice to the Consultant, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if the RVARC determines it to be appropriate to do so.

SECTION 8: HOLD HARMLESS AND INDEMNITY.

Consultant shall indemnify and hold harmless the RVARC and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Consultant's or its employees, agents, or subconsultants actions, activities, or omissions, negligent or otherwise, on or near RVARC's property or arising in any way out of or resulting from any of the work or items to be provided under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Consultant agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

SECTION 9: COMPLIANCE WITH LAWS AND REGULATIONS, AND IMMIGRATION LAW.

Consultant agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Consultant further agrees that Consultant does not and shall not during the performance of its Contract; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 10: INDEPENDENT CONSULTANT.

The relationship between Consultant and the RVARC is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Consultant shall, at all times, maintain its status as an independent Consultant and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. Consultant shall be responsible for causing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subconsultants. Consultant will be responsible for all actions of any of its subconsultants, and that they are properly licensed.

SECTION 11: REPORTS, RECORDS, AND AUDIT.

Consultant agrees to maintain all books, records, electronic data, and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. The RVARC, its authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to request, examine, copy, and/or audit any such materials during the term of the Contract and such retention period, upon prior written notice to Consultant. This includes the RVARC's right to audit and/or examine any of the Consultant's documents and/or data as the RVARC deems appropriate to protect the RVARC's interests.

SECTION 12: INSURANCE REQUIREMENTS.

Consultant and any of its subconsultants involved in this Contract shall maintain the insurance coverages set forth in Exhibit 1 to this Contract and provide the proof of such insurance coverage as called for in Exhibit 1, including worker's compensation coverage regardless of the number of Consultant's employees. Such insurance coverage shall be obtained at the Consultant's sole expense and maintained during the life of the Contract and shall be effective prior to the beginning of any work or other performance by the Consultant under this Contract. Additional insured

endorsements, if required, must be received by the RVARC within 30 days of the execution of this Contract or as otherwise required by the RVARC's Finance Director.

SECTION 13: DEFAULT.

If Consultant fails or refuses to perform any of the terms of this Contract, including poor services, work or materials, the RVARC may, by written notice to Consultant, terminate this Contract in whole or in part. In addition to any right to terminate, the RVARC may enforce any remedy available at law or in equity in connection with such default, and Consultant shall be liable for any damages to the RVARC resulting from Consultant's default. The RVARC further reserves the right to immediately obtain such work or services from other entities in the event of Consultant's default.

SECTION 14: NONWAIVER.

Consultant agrees that the RVARC's waiver or failure to enforce or require performance of any term or condition of this Contract or the RVARC's waiver of any particular breach of this Contract by the Consultant extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the Consultant and does not bar the RVARC from requiring the Consultant to comply with all the terms and conditions of the Contract and does not bar the RVARC from asserting any and all rights and/or remedies it has or might have against the Consultant under this Contract or by law.

SECTION 15: FORUM SELECTION AND CHOICE OF LAW.

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions. Venue for any litigation, suits, and claims arising from or connected with this Contract shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Contract voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

SECTION 16: NONDISCRIMINATION.

A. During the performance of this Contract, Consultant agrees as follows:

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

B. Consultant will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subconsultant or vendor.

SECTION 17: DRUG-FREE WORKPLACE.

A. During the performance of this Contract, Consultant agrees to (i) provide a drug-free workplace for Consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace

and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Consultant that Consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subconsultant or vendor.

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

SECTION 18: ASSIGNMENT.

Consultant may not assign or transfer this Contract in whole or in part except with the prior written consent of the RVARC, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Consultant from any of the covenants or undertakings contained in this Contract and the Consultant shall remain liable for the Contract during the entire term thereof.

SECTION 19: CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Contractor notice from the RVARC to the Consultant that the RVARC disputes the amount of Consultant's request for final payment. However, written notice of the Consultant's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Consultant. A written decision upon any such claims will be made by the RVARC Executive Director or designee (hereafter Executive Director) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the Executive Director. The Consultant may not institute legal action prior to receipt of the RVARC's decision on the claim unless the Executive Director fails to render such decision within 120 days from submittal of Consultant's claim. The decision of the Executive Director shall be final and conclusive unless the Consultant within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Code of Virginia. Failure of the RVARC to render a decision within said 120 days shall not result in the Consultant being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the RVARC's failure to render a decision within said 120 days shall be Consultant's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365 of the Code of Virginia has been established for contractual claims under this Contract.

SECTION 20: SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Contract shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 21: HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

SECTION 22: COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 23: AUTHORITY TO SIGN.

The persons who have executed this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the party for whom they are signing.

SECTION 24: NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To RVARC:
Roanoke Valley-Alleghany Regional Commission
Attn: [NAME]
313 Luck Avenue, SW
Roanoke, VA 24016
Email: [EMAIL ADDRESS]
Phone: 540-343-4417

If to Consultant:
[CONTRACTOR NAME]
[CONTRACTOR CONTACT NAME]
[CONTRACTOR ADDRESS]
[CONTRACTOR ADDRESS 2]
Email: [CONTRACTOR EMAIL ADDRESS]
Phone: [CONTRACTOR PHONE]

Notices shall be deemed to be effective one day after sending if sent by overnight courier or three (3) days after sending it by certified mail, return receipt requested.

SECTION 25: PROTECTING PERSONS AND PROPERTY.

The Consultant expressly undertakes both directly and through its subconsultants, to take every reasonable precaution at all times for the protection of all persons and property at the location of the Work or in the vicinity of the Work or that may be affected by the Consultant's operation in connection with the Work. The Consultant will maintain adequate protection of all Consultant's Work to prevent damage to it and shall protect the RVARC's property from any injury or loss arising in connection with this Contract and to protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Consultant agrees to be responsible for the entire Work and will be liable for all damages to the Work, including, but not limited to, damages to any property of the RVARC or to any property in the vicinity or adjacent to the Work. All damage with respect to the Work caused by vandalism, weather, or any other cause, other than resulting from the sole negligence of the RVARC shall be the responsibility of the Consultant. Consultant shall also be responsible for any inventory shortages and discrepancies of any type.

SECTION 26: CONTRACT SUBJECT TO FUNDING.

This Contract is subject to funding and/or appropriations from federal, state, and/or local governments and/or agencies. If any such funding is not provided, withdrawn, or otherwise not made available for this Contract, the Consultant agrees that the RVARC may terminate this Contract on seven (7) days written notice to Consultant, without any penalty or damages being incurred by the RVARC. Consultant further agrees to comply with any applicable requirements of any grants and/or agreements providing such funding.

SECTION 27: NOTICE TO PROCEED.

Work to be performed by the Consultant under this Agreement shall begin within five (5) days after receipt of official notice from the RVARC to proceed. Written notice to proceed will be given by the RVARC prior to any work being done on any element of this Agreement. The RVARC will not be responsible for payment for services performed in advance of such notice.

SECTION 28: SUSPENSION OR TERMINATION OF CONTRACT BY RVARC.

The RVARC, at any time, may order Consultant to immediately stop work on this Contract, and/or by seven days (7) written notice may terminate this Contract, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Consultant shall immediately discontinue all services

affected (unless the notice directs otherwise), and deliver to the RVARC all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Contract whether completed or in process (unless otherwise directed by the notice).

1. If the termination or stop work order is due to the failure of the Consultant to fulfill any of its Contract obligations, the RVARC may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the RVARC for any damages allowed by law, and upon demand of RVARC shall promptly pay the same to RVARC.

2. Should the Contract be terminated or work is stopped not due in any way to the fault of the Consultant, the Consultant shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by the RVARC and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.

3. The rights and remedies of the RVARC provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and RVARC may pursue any and all such rights and remedies against Consultant as it deems appropriate.

SECTION 29: ETHICS IN PUBLIC CONTRACTING.

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Code of Virginia, pertaining to bidders, offerors, Consultants, and subconsultants are applicable to this Contract.

SECTION 30: COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA.

Consultant shall comply with the provisions of Code of Virginia Section 2.2-4311.2, as amended, which provides that a Consultant organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Consultant shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The RVARC may void the Contract if the Consultant fails to remain in compliance with the provisions of this section.

SECTION 31: OWNERSHIP OF REPORTS AND DOCUMENTS.

Consultant agrees that all reports and any other documents (including electronic data) prepared for, obtained in connection with, and/or required to be produced in connection with this Contract shall be delivered by the Consultant to the RVARC and all such items shall become the sole property of the RVARC. The Consultant agrees that the RVARC shall own all rights of any type in and to all such items, including but not limited to copyrights and trademarks, and the RVARC may reproduce, copy, and use all such items as the RVARC deems appropriate, without any restriction or limitation on their use and without any cost or charges to the RVARC from Consultant. Consultant hereby transfers and assigns all such rights and items to the RVARC. Consultant further agrees Consultant will take any action and execute any documents necessary to accomplish the provisions of this Section. The Consultant also warrants that Consultant has good title to all materials, equipment, documents, and supplies which it uses in the Work or for which it accepts payment in whole or in part.

SECTION 32: SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or

circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall not be affected and all other terms and conditions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

SECTION 33: ENTIRE CONTRACT.

This Contract, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

SIGNATURE PAGE TO FOLLOW.

SIGNATURES: The parties hereto agree to abide by all the provision of this Contract.

IN WITNESS WHEREOF, the parties sign and cause this Contract to be executed on this [DATE OF CONTRACT]

Jeremy Holmes, Executive Director
Roanoke Valley-Alleghany Regional Commission

Date

Witness
Roanoke Valley-Alleghany Regional Commission

Date

[CONSULTANT NAME AND TITLE]
[CONSULTANT COMPANY]

Date

Witness
[CONSULTANT COMPANY]

Date

**EXHIBIT 1
TO CONTRACT
BETWEEN ROANOKE VALLEY-ALLEGHANY REGIONAL COMMISSION AND [CONTRACTOR
NAME]
FOR [WORK TO BE COMPLETED]**

REFERENCE: [RFP REFERENCE NUMBER OR NAME IF APPROPRIATE]

INSURANCE REQUIREMENTS

The Consultant shall comply with the insurance requirements set forth in the Contract, including the items set forth below:

A. Neither the Consultant nor any subconsultant shall commence work under this Contract until the Consultant has obtained and provided proof of the required insurance coverages to the RVARC, and such proof has been approved by the RVARC. The Consultant confirms to the RVARC that all subconsultants have provided Consultant with proof of such insurance or will do so prior to commencing any work under this Contract.

B. The minimum insurance policies and/or coverages that shall be provided by the Consultant, including its subconsultants, include the following:

(1) Commercial General Liability: \$1,000,000.00

\$1,000,000.00 General Limit (other than Products/Completed Operations);

\$1,000,000.00 Products/Completed Operations Limit;

\$1,000,000.00 Personal Injury Liability (including liability for slander, libel, and defamation of character);

\$1,000,000.00 each occurrence limit; and

Naming of RVARC as additional insured.

(2) Automobile Liability: \$1,000,000.00 combined single limit, and naming RVARC as additional insured

(3) Workers' Compensation and Employer's Liability:

Workers' Compensation: statutory coverage for Virginia Employer's Liability:

\$100,000.00 Bodily Injury by Accident each occurrence;

\$500,000.00 Bodily Injury by Disease Policy Limit; and

\$100,000.00 Bodily Injury by Disease each employee.

(4) The required limits of insurance for this Contract may be achieved by combining underlying primary coverage with an umbrella liability coverage to apply in excess of the general and automobile liability policies, provided that such umbrella liability policy follows the form of the underlying primary coverage.

(5) Such insurance policies and/or coverages shall provide for coverage against any and all claims and demands made by a person or persons or any other entity for property damages or bodily or personal injury (including death) incurred in connection with the services, work, items, and/or other matters to be provided under this Contract with respect to the commercial general liability coverages

and the automobile liability coverages. With respect to the workers' compensation coverage, Consultant's and its subconsultants' insurance company shall waive rights of subrogation against the RVARC and its officers, employees, agents, assigns, and volunteers.

(6) Contractor shall provide such other insurance policies and/or coverages that may be required by other parts of this Contract. If required by the Contract, such policies and/or coverages could include, but are not limited to, Errors and Omissions/Professional Liability, Crime/ Fidelity, Environmental and/or Pollution, Builder's Risk, Umbrella/Excess.

(7) Should any required insurance coverage be canceled or materially altered before the expiration term of the contract, it is the responsibility of the Consultant to notify the RVARC of such within thirty (30) days of the effective date of the change.

D. Proof of Insurance Coverage:

(1) Consultant shall furnish the RVARC with the above required certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies.

(2) Where waiver of subrogation is required with respect to any policy of insurance required under this Section, such waiver shall be specified on the certificate of insurance.

E. Insurance coverage shall be in a form and with an insurance company approved by the RVARC, which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Contract shall be authorized to do business in the Commonwealth of Virginia and have an AM Best rating of "A" or better.

F. The Consultant's insurance policies and/or coverages shall not contain any exclusions for the Consultant's subconsultants.

G. The continued maintenance of the insurance policies and coverages required by the Contract is a continuing obligation, and the lapse and/or termination of any such policies or coverages without approved replacement policies and/or coverages being obtained shall be grounds for termination of the Consultant for default.

H. Nothing contained in the insurance requirements is to be construed as limiting the liability of the Consultant, and/or its subconsultants, or their insurance carriers. The RVARC does not in any way represent that the coverages or the limits of insurance specified are sufficient or adequate to protect the Consultant's interest or liabilities but are merely minimums. The obligation of the Consultant, and its subconsultants, to purchase insurance shall not in any way limit the obligations of the Consultant in the event that the RVARC or any of those named above should suffer any injury or loss in excess of the amount actually recoverable through insurance. Furthermore, there is no requirement or obligation for the RVARC to seek any recovery against the Consultant's insurance company before seeking recovery directly from the Consultant.

END OF EXHIBIT 1

**EXHIBIT 2
TO CONTRACT
BETWEEN ROANOKE VALLEY-ALLEGHANY REGIONAL COMMISSION AND [CONTRACTOR
NAME]
FOR [WORK TO BE COMPLETED]**

REFERENCE: [RFP REFERENCE OR NAME IF APPROPRIATE]

SCOPE OF WORK

[DESCRIBE IN SUFFICIENT DETAIL WORK TO BE COMPLETED, INCLUDING REPORTING REQUIREMENTS AND SCHEDULE]

END OF EXHIBIT 2

**EXHIBIT 3
TO CONTRACT
BETWEEN ROANOKE VALLEY-ALLEGHANY REGIONAL COMMISSION AND [CONTRACTOR
NAME]
FOR [WORK TO BE COMPLETED]**

REFERENCE: [RFP REFERENCE OR NAME IF APPROPRIATE]

SERVICE SCHEDULE & PROPOSED FEES

Project Schedule and Milestone*

Schedule	Milestone and/or proposed fee payment
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]
[DATE]	[MILESTONE]

* Schedule may be refined during the kick-off process to reflect local preferences for meeting times and deliverables.

END OF EXHIBIT 3

**EXHIBIT X
TO CONTRACT
BETWEEN ROANOKE VALLEY-ALLEGHANY REGIONAL COMMISSION AND [CONTRACTOR
NAME]
FOR [WORK TO BE COMPLETED]**

REFERENCE: [RFP REFERENCE IF APPROPRIATE]

Appendix C: Good Faith Effort

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

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

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

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

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

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

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of

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

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

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

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

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

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

intensity of these efforts.

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

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

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

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

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

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

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

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

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

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