

**COUNTY OF YORK, VIRGINIA**  
**REQUEST FOR PROPOSALS**  
**RFP**

Issue Date: September 3, 2015

RFP #: 1936

Title: ENGINEERING SERVICES: ON-CALL SERVICES FOR VDOT REVENUE SHARING  
PROJECTS, ANNUAL CONTRACT (MULTIPLE-AWARD)

Classification Code: 92593

Issuing Agency: County of York, Virginia  
Central Purchasing  
120 Alexander Hamilton Blvd.  
P.O. Box 532  
Yorktown, Virginia 23690

Using Agency And/Or Location  
Where Work Will Be Performed: Environmental & Development Services  
105 Service Drive  
Yorktown, Virginia 23690

Sealed Proposals Will Be Received Until 5:00 p.m. on Tuesday, October 6, 2015 At Which Time They Shall Be Opened In Public.

**NOTE:** Two (2) copies of your Proposal (Expression of Interest) will be required.

All Inquiries For Information Should Be Directed To: T. W. Sawyer, Purchasing Agent, Telephone: (757) 890-3680.

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**SEND PROPOSALS DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.**

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In Compliance With This Request For Proposal, The Undersigned Offers To Provide The Requested Service(s) Shown in the Attached/Enclosed (A signed Letter of Transmittal may be substituted for this cover page).

Name and Address of Firm:

\_\_\_\_\_

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

\_\_\_\_\_

By: \_\_\_\_\_

Signature in ink

\_\_\_\_\_

\_\_\_\_\_ Title

\_\_\_\_\_ Zip Code

Telephone No.: ( ) \_\_\_\_\_

Federal Tax ID# \_\_\_\_\_

**1.0 PURPOSE:**

It is the expressed purpose of this Request for Proposals (RFP) to acquire the services of fully qualified and licensed engineering firms (hereinafter "Engineer") to perform various design services for the County of York, Virginia (hereinafter "Owner" or "County") for Virginia Department of Transportation (VDOT) Revenue Sharing Projects. Potential Offers interested in providing such services may submit an 'Expression of Interest' (EOI) as provided herein.

The Owner will award contracts to as many as three qualified firms for providing general design services. Each contract shall consist of a five-year term (first year and four possible renewals) and may be terminated by the County or the Engineer provided either party gives a ten-day written notice. As provided in Code of Virginia section 2.2-4302.2(B), the amount paid for work in any one contract year for any contract may not exceed \$500,000. Plans or drawings shall be prepared and submitted by the Engineer to the County in an electronic format compatible with the County's AutoCAD software and on 24-inch by 36-inch reproducible sheet(s). This project will be developed utilizing VDOT's policies and procedures and Federal Highway Administration Act (FHWA) guidelines. This Request for Proposal does not commit the Owner to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Owner reserves the right to award contracts to more than one qualified firm, 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 Owner to do so. Each contract will be negotiated and awarded following the same procedures set forth in the Commonwealth of Virginia's 2009 Manual for the Procurement and Management of Professional Services ("the 2009 Manual"). The 2009 Manual may be accessed via the internet at <http://www.virginiadot.org/business/gpmps.asp> .

**2.0 SCOPE OF WORK:**

All services shall be performed in accordance with applicable local, State and Federal codes, rules, standards and regulations. The requirement for design services is expected to include, but is not limited to:

1. Hydrology and Hydraulics for Culvert Crossings,
2. Stream Restoration,
3. Traffic Control,
4. Roadway Design,
5. Storm Piping,
6. Environmental Reviews and Permits,
7. Surveying,
8. Geotechnical Analysis and Engineering,
9. Bridge and Structure Design,
10. Utility Coordination and Design,
11. Landscape Architecture.

### 3.0 SUBMITTALS :

3.1 Anyone responding to this RFP (sometimes referred to as “Offeror”) shall submit an Expression of Interest (EOI). Firms will then be ranked in accordance with the 2009 Manual. The Expression of Interest shall be organized in the following order:

- Transmittal letter
- Table of Contents
- Understanding of Scope of Work
- Present workload (see Section 3.2 of the 2009 Manual)
- Team organization chart
- SF 330 with a separate Part II for each firm. SF 330 is attached hereto as Exhibit 1.
- Firm data sheet, Attached hereto as Exhibit 2.
- Certification Regarding Debarment form, attached hereto as Exhibit 3
- Disadvantaged Business Enterprises (DBEs) Commitment and Confirmation Letter (if applicable)

3.2 Furnish three completed copies of current SF 330. The SF330 must specify the number of personnel by discipline for each office where the work is to be performed, list only the full time employees assigned to the office(s) at the time of this submission.

3.3 On the SF 330, indicate KEY PERSONNEL ONLY who will be assigned to this project and give the experience record of each. Key personnel are defined as those to whom the project will be assigned and who will be performing the actual design/services. The project manager shall have a minimum of five years’ experience in managing similar type and size projects.

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, unless Owner approves any changes in writing, which approval shall not be unreasonably withheld. 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.

3.4 *"It is the policy of the Virginia Department of Transportation and the Owner that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site ( <http://www.dmb.state.va.us/> ) under the **DBE Directory** link. Offerors are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the Offeror intends to subcontract a portion of the services on the project, the Offeror is encouraged to seek out and consider DBEs as potential subcontractors.*

*The Offeror is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between the successful Offeror and a DBE whereby the DBE promises not to provide services to other consultants is prohibited."*

In accordance with the Governor's Executive Order No. 33, the Virginia Department of Transportation also requires a utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded consultant contracts. A list of Virginia Department of Minority Business Enterprise (DMBE) certified SWaM firms is maintained on the DMBE Web site (<http://www.dmb.state.va.us/>) under the **SWaM Vendor Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider SWaM firms as potential sub-consultants. The consultant is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited.

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. For further information on the BOWD Center and to view the DBE profiles, go to [www.virginiadot.org/business/BOWD.asp](http://www.virginiadot.org/business/BOWD.asp). The BOWD Center can be contacted at (804) 662-9555 or via email to [BOWDCenter@vdot.virginia.gov](mailto:BOWDCenter@vdot.virginia.gov).

- 3.5 If any firms involved with this submission currently have work with VDOT, indicate the projects, the division managing the projects, the amount of outstanding fee remaining, and the estimated date of completion. For limited services term contracts, include only the amount of all tasks orders executed or under negotiation. Also, include your estimated fees for pending supplemental agreements and any projects for which the firms have been selected, but have not executed an agreement. Work of affiliated and/or subsidiary companies is to be included. The

outstanding workload of any Virginia Department of Minority Business Enterprise certified DBE or SWaM prime or subconsultant is not to be included. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM will be exempted for the next three years. Any workload obtained after graduating from the program will be counted. Work being performed under the Public Private Transportation Act (PPTA) or as a subcontractor on a Design-Build project shall not be included. Work being performed as a prime or joint venture on a Design-Build project shall be included. The outstanding fee remaining is the maximum total compensation payable less the amount previously paid to date. This information shall be submitted using the attached Present Workload with Department form (see 2009 Manual). Please carefully read the instructions on the Present Workload with Department form.

- 3.6 Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If 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.

An affiliate is 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.

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

- 3.8 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 three years.
- Has 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 three 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.

3.9 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, soil drilling, sampling services or laboratory testing, these services must be subcontracted in accordance with State procurement procedures once a contract is executed, with no DBE or SWaM credit in the selection of the most qualified firm or team. Clearly indicate these services in the EOI.

3.10 DPOR and SCC licenses for the firm as well as key personnel are needed.

#### 4.0 GENERAL TERMS AND CONDITIONS:

##### 4.1 OPENING DATE/TIME:

EOIs and amendments thereto, or withdrawal of proposals submitted, if received by the County after the date and time specified for scheduled opening, will not be considered. It will be the responsibility of the Offeror to see that his offer is in this office by the specified time and date. There will be no exceptions. Date of postmark will not be considered. Phone or telegraphic proposals (including FAX) will not be accepted.

##### 4.2 INCONSISTENCIES IN CONDITIONS:

In the event there are inconsistencies between the General Terms and Conditions and the Special Terms and Conditions, and/or other schedules contained herein, the latter two shall take precedence.

##### 4.3 CLARIFICATION OF TERMS:

If any prospective Offeror has questions about the proposal or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of this solicitation. Any revisions to the solicitation will be made only by written addendum issued by the buyer.

##### 4.4 ETHICS IN PUBLIC CONTRACTING:

By submitting their proposal, all Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

##### 4.5 ANTI-DISCRIMINATION:

By submitting its EOI, Offeror certifies to the Owner that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000, the provisions of a. and b. below apply:

- a. During the performance of this Contract, the Engineer agrees as follows:

The Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or 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 Engineer. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Engineer, in all solicitations for advertisements for employees placed in behalf of Engineer, will state that Engineer is an equal opportunity employer.

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.

During the performance of this contract, the Engineer agrees to (i) provide a drug-free workplace for the Engineer'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 contractor's 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 the contractor that the contractor 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 subcontractor or vendor.

- b. Engineer will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- c. In accordance with §2.2-4343.1 of the **Code of Virginia, et. seq.**, the Owner shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of section 2.2-4343.1 the Code of Virginia, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

#### 4.6 IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By signing the proposal, the Offeror certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

#### 5.0 INFORMATION FOR OFFERORS TO PROVIDE SERVICES:

- A. All prices and notations must be in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrections made adjacent in ink and must be initialed and dated in ink by the person signing quotations.
- B. All EOIs must be signed with the firm name and by an officer or authorized employee of the firm. In the case of a corporation, the title of the officer signing must be stated and each officer must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name using the term “member of the firm” or “general partner”.
- C. Verify your EOI before submission as they cannot be withdrawn or corrected after being opened.
- D. If you do not offer, return this sheet and state the reason for returning. Otherwise, your name may be removed from the County’s mailing list.

#### 6.0 GENERAL PROCEDURE:

After evaluation of the proposals, the Central Purchasing Office shall issue a “Notice of Award” to the successful Offeror(s) (the “Engineer”), citing the Contract Number assigned, time period covered, etc.

The County shall initiate each assignment (or “project”) with the issuance of a Purchase Order containing a Scope of Work. The Engineer shall respond with a proposal that itemizes the time and costs required to fulfill the Scope of Work and sets forth a total lump sum on a not-to-exceed basis, and describes the phases (if any) of each project . The actual fee shall be negotiated prior to award of a Purchase Order for the specific assignment, shall incorporate the approved hourly rates for the various services and shall include all expenses for performing the necessary work including associated professional charges and reimbursable expenses.

Individual requests for services shall be submitted to the Central Purchasing Office by the requesting County agency on a Purchase Requisition. Individual Purchase Orders will be issued to the Engineer referencing the contract number and specifics regarding services required. No services shall be authorized without the use of a Purchase Order number; either by the receipt of a written copy of the order or a telephone call from the Central Purchasing Office.

8.0 SPECIAL CONDITIONS:

8.1 Work Site Damages:

Any damages to real property or existing structures resulting from the work shall be repaired to the Owner's satisfaction at the Engineer's expense.

8.2 Work Site Safety and Security:

The Engineer shall undertake such measures as may be necessary to prevent injury to persons, animals, property, materials, and equipment. During operations which might endanger travel or traffic on any public highways, the Engineer shall utilize flagmen and other traffic control devices necessary to protect the public, the Engineer's employees, and the Work. The Engineer shall comply with all applicable local, State, and Federal laws governing safety and health. The Engineer assumes all risks from damages due to trespass, vandalism, natural elements, fire, wind, flood, etc.

8.3 Internal Controls:

All firms submitting an EOI (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 (FAR), Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the Owner within ten work days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten work days, negotiations will be terminated by the Owner and the next most qualified team invited to submit a proposal.

9.0 EVALUATION CRITERIA:

Proposals shall be reviewed by an evaluation committee. The committee shall evaluate each proposal based on the criteria listed below. Offerors should ensure that all elements of the criteria are fully addressed in their proposals.

(20%) A. Qualifications and experience of the firm and key personnel.

(25%) B. Prior experience (including past performance record).

- (20%) C. Experience with the Virginia Department of Transportation, development and delivery of CN projects – inclusive of regulations and permit procedures for special funding programs and other programs that impact work performed by the locality, and experience in Locally Administered Projects Program.
- (25%) D. Proposal preparation and general understanding of the work outlined.
- (5%) E. Current and projected workloads, including staffing requirements for the Project.
- (5%) F. Demonstrated ability to complete projects of similar scope and respects within a specified completion date and budget.

#### 10.0 AWARD OF CONTRACT:

Four, or more, Offerors deemed to be fully qualified and best suited among those submitting proposals would be identified on the basis of the evaluation criteria stated above.

Informal interviews will be held wherein Offerors are encouraged to elaborate on their qualifications, performance data, and staff expertise pertinent to the proposed services.

At the conclusion of the interviews outlined above, on the basis of the evaluation criteria published in this RFP and all information developed in the selection process to this point, the Evaluation committee shall select three Offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations will then be conducted with the three top-ranked Offerors. If contracts, which are satisfactory and advantageous to the County, can be negotiated at prices considered fair and reasonable, the award will be made to those Offerors.

**ENGINEERING SERVICES AGREEMENT  
(SAMPLE CONTRACT)**

Agreement No. \_\_\_\_\_

THIS AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of York, Virginia, hereinafter referred to as "Owner ", which term shall be construed to include any officer, representative or agent having authority to represent or act for it in relation to any part of the subject of this Agreement and with \_\_\_\_\_, with offices located at \_\_\_\_\_, hereinafter referred to as "Engineer".

**W I T N E S S E T H :**

WHEREAS, Engineer shall provide general design services for Revenue-Sharing road projects on an as-needed basis as described in RFP No. \_\_\_\_\_, all as hereinafter stipulated.

NOW, THEREFORE, Owner and Firm in consideration of the mutual covenants and agreements herein contained agree as follows:

**ARTICLE I. PROJECT MANAGER**

Engineer shall provide the professional design services described in this Engineering Service Agreement as an independent contractor and licensed engineer in accordance with the terms and conditions of this Agreement. The Firm shall assign \_\_\_\_\_ as the project manager for the performance of this Agreement. The project manager will be responsible for providing the services set forth in this Agreement. Owner shall be provided with the resume of any proposed substitute and shall be given the opportunity to interview that person prior to a decision to approve or disapprove. [etc. throughout the document]

**ARTICLE II. ENGINEER'S SERVICES**

**A. BASIC SERVICES**

Engineer's basic services shall include design services and such other services as may be necessary for the intended purpose within funding limits. Time is of the essence in the performance of Engineer's duties under this Agreement and failure of the Engineer to perform within the agreed upon time frames set forth for each project shall be considered a breach of this Agreement.

All services shall be performed in accordance with applicable local, State and Federal codes, rules, standards and regulations. The requirement for design services is expected to include, but is not limited to:

1. Hydrology and Hydraulics for Culvert Crossings,
2. Stream Restoration,
3. Traffic Control,
4. Roadway Design,

5. Storm Piping,
6. Environmental Reviews and Permits,
7. Surveying,
8. Geotechnical Analysis and Engineering,
9. Bridge and Structure Design,
10. Utility Coordination and Design,
11. Landscape Architecture.

For each individual project, the Owner shall issue a purchase order which shall describe the scope of work, the phases (if any) of the project, and payment terms.

**B. ADDITIONAL SERVICES**

The following services are not covered under the basic services. If the County in advance of their performance authorizes any of these additional services, they shall be paid for by the County as herein provided:

1. Making further design that might be required beyond the scope of work and lump sum fee negotiated for each specific project.
2. Revising previously approved drawings, plats, or other documents to accomplish changes not initiated by the Engineer that would require a substantial change in the completed document.
3. Providing representation as an expert witness should the County become involved in any legal dispute involving a property.

Before any services rendered by the Engineer shall qualify as additional services, the Engineer shall notify the County in writing of its intention to treat certain services, if performed, as additional services and its reasons therefore. If notice is not given, no claim for additional services will be honored. Notice by the Engineer shall not be construed as proving the validity of the claim.

**ARTICLE III. COUNTY'S RESPONSIBILITIES**

A. County shall provide full information regarding its requirements for each Project.

B. The County shall designate, when necessary, representatives authorized to act in its behalf. The County shall examine documents submitted by the Engineer and render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress of the Engineer's work.

C. The County shall arrange for access to and make all provisions for the Engineer to enter upon public and private property as required for the Engineer to perform its services.

D. The County shall furnish its own legal, accounting and insurance counseling services, as

may be required for each Project, but this shall not relieve the Engineer of the responsibility to make certain that it has obtained the proper insurance coverage as required by this Agreement.

E. The Engineer shall be entitled to rely reasonably on the accuracy of the services, information, reports and other materials that the County furnishes at its expense.

F. After issuance of the Notice to Proceed for the work, the Board of Supervisors' instructions to the Engineer shall be issued through the County's project representative.

#### **ARTICLE IV. DURATION OF AGREEMENT**

The duration of this Agreement shall be one year and may be renewed yearly for four additional years if mutually agreed to by both parties.

#### **ARTICLE V. COMPENSATION**

A. Payments of Engineer's basic services shall be made at the completion of each project, or at the conclusion of each phase in a multi-phase project if so provided in the purchase order. The payment of the Engineer's fee in installments is not to be construed as creating separate contracts, and the Engineer's obligation under this Agreement is an entire one. Compensation for any single project cannot exceed \$100,000, and cannot exceed \$500,000 for multiple projects in any one year

##### **Standard Billing Rate Schedule**

Standard hourly billing rate schedule to be inserted at the end of this document.

B. As compensation for said services as a consultant and for all services set forth for each project, the County agrees to pay the Engineer the amount negotiated and agreed upon for each project, consistent with the standard hourly billing rates attached hereto. Payments to the Engineer shall be made at the completion of each phase of the work but not more frequently than monthly, in proportion to the Engineer's estimate of the work completed as confirmed by the County.

C. Payments for approved additional services shall be made monthly upon presentation of the Engineer's detailed invoice in triplicate.

D. The total fees paid to the Engineer shall not exceed \$100,000.

#### **ARTICLE VI. ENGINEER'S ACCOUNTING RECORDS**

Records of Engineer's direct personnel, consultant and reimbursable expenses pertaining to this Agreement, and records of accounts between the County and the Engineer shall be kept on a generally recognized accounting basis and shall be available to the County or its authorized representatives upon reasonable notice.

#### **ARTICLE VII. TERMINATION OF AGREEMENT**

A. In connection with the work outlined in this contract, it is agreed and fully understood by

the Engineer that the County may cancel, indefinitely suspend further work hereunder, or terminate this Agreement upon ten-days written notice to Engineer with or without cause with the understanding that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease. All plans, field surveys, maps, cross-sections and other data and work related to the Project shall be delivered to the County upon cancellation or termination of this Agreement. If the Work is suspended by the County, the Engineer shall be compensated for Work satisfactorily completed and submitted to the County at the time of such suspension in accordance with the provision of Paragraph B of this Article.

B. If this Agreement is terminated for any reason not the fault of the Engineer, the Engineer shall be paid in accordance with the terms of this Agreement for all work accomplished prior to the receipt of said notice on the basis of either (i) the percentage of the basic fee due at the completion of the phase during which Work is stopped or (ii) the Engineer's rate for additional services whichever is less. Such payment shall be made to the Engineer as a final payment in full settlement for the services hereunder or under any supplemental Agreement hereto. In the event of a termination for breach or default by the Engineer, the County shall have access to all remedies available to it in equity or at law.

C. This Agreement may be terminated by the Engineer upon ten days written notice in the event of a substantial failure by the County to perform in accordance with the terms hereof through no fault of the Engineer. In the event of such termination by the Engineer, the provisions of paragraph B immediately hereinabove shall apply mutatis mutandis, except that the Engineer shall be entitled to no compensation other than that specified in paragraph B by way of a claim for damages arising out of this Agreement or otherwise.

#### **ARTICLE VIII. OWNERSHIP OF DOCUMENTS**

A. Plans or drawings shall be prepared and submitted by the Engineer to the County in an electronic format compatible with the County's AutoCAD software and on 24-inch by 36-inch reproducible sheet(s). All plats shall be submitted on legal size 8½-inch x 14-inch reproducible sheets (or larger) suitable for recordation. All lettering shall be sized so it is clearly legible when the sheets are reproduced in full and half size.

B. All partial or completed documents including, but not limited to tracings, drawings, estimates, specifications, investigations, and studies, shall be the property of the County, and Engineer shall claim no copyright ownership or control in them. The Engineer, its subcontractors, agents and employees shall be liable to the County for any loss or damage to any such documents of which they are in the possession or while being worked upon by the Engineer or anyone connected with the Engineer. All documents so lost or damaged shall be replaced or restored by the Engineer at the Engineer's sole expense.

#### **ARTICLE IX. MISCELLANEOUS PROVISIONS**

A. No reports, information, or data given to or prepared or assembled by the Engineer under this Agreement shall be made available by the Engineer to any individual or organization other than the County without the prior written approval of the County.

B. This Agreement represents the entire or integrated Agreement between the County and the Engineer and supersedes all prior negotiations, representations or Agreements, either written or oral. Only an instrument signed by both the County and the Engineer may amend this Agreement.

C. The Engineer shall maintain insurance to protect it from claims under workers' compensation acts; claims due to personal injury or death of any employee or any other person; claims due to damage of any property; and claims arising out of errors, omissions or negligent acts for which the Engineer is legally liable. The Engineer shall carry insurance in the amount specified below, including the Contractual Liability assumed by the Engineer and shall deliver certificates of insurance from carriers acceptable to the County specifying such limits, along with a proper endorsement naming the "County of York, its Officers, Agents, and Employees" as Additional Insured on a primary basis (form No. GL-20-10) on applicable policies.

1. Workers' Compensation and Employer's Liability  
\$100,000 per Occurrence  
\$100,000/\$100,000 Accident and/or Disease.
2. Comprehensive Automobile Liability, Including Owned, Non-Owned, and Hired Automobile Coverage.  
\$1,000,000 per Occurrence Bodily Injury and  
\$100,000 Property Damage.
3. Comprehensive General Liability including any necessary endorsements to cover the following:  
Contractual liability, including the liability assumed under this contract; completed operations, to remain in full effect until the date of acceptance of the Project; incidental malpractice; broad form property damage, including completed operations' personal injury coverage; employees as additional insured's; blanket explosion, collapse and underground coverage; liquor law liability.  
\$1,000,000 per occurrence Bodily Injury and  
\$100,000 Property Damage
4. Professional Liability Insurance.  
The limit shall be a minimum of \$500,000 or the contract amount whichever is greater.

Prior to the issuance of a Notice to Proceed, the Engineer shall furnish to the County a certificate of insurance evidencing the above categories and stating that the insurance will not be canceled without at least a thirty (30) days prior notice, along with a proper endorsement to the applicable policies listing the County, its officers, agents and employees as an additional insured.

D. By signing this Agreement, the Engineer certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

E. The Engineer shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify the County against and save the County harmless from all claims, demands and judgments made or recovered against the County because of bodily injuries, including death at any time resulting therefrom, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the performance of the Work solely by the Engineer, including acts of the engineer's employees, servants or agents, whether or not such claims are due to any act of omission or commission, including negligence. Compliance by the Engineer with the insurance provisions hereof shall not relieve the Engineer from liability under this provision.

Should the Engineer or the Engineer's employees, servants or agents use any of the County's equipment, tools, employees, or facilities, such use will be gratuitous and the Engineer shall release the County from and indemnify and save harmless the County from and against any claims of personal injuries, including death, arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of the County in permitting the use thereof.

In no event shall the Engineer's duties to defend, save harmless and indemnify the County hereunder be enforceable after the expiration of five (5) years from the date of completion of the services included in this Agreement; provided, however, should any claim as is described in the immediately preceding paragraph relate to services performed by the Engineer after the date of substantial completion, then from the date of the performance of any such services, whichever is later.

F. During the performance of this Agreement, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, religion, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Engineer. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Engineer, in all solicitations or advertisements for employees, will state the Engineer is an equal opportunity employer.

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 Agreement. The Engineer will include the provisions of this paragraph F in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor.

#### **ARTICLE X. RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approvals given by the County shall not constitute nor be deemed a release of the responsibility and liability of the Engineer, or the Engineer's employees, subcontractors, agents or consultants for the

accuracy and competency of designs, working drawings, specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the County for any defect in the designs, working drawing and specifications or other documents prepared by the Engineer , or the Engineer's employees, subcontractors, agents and consultants.

**ARTICLE XI. ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this contract. Neither party shall assign, sublet or transfer any interest in this contract without written authorization of the other.

**ARTICLE XI. COMPLIANCE WITH LAWS, ORDINANCES, ETC.**

The Engineer , and the Engineer 's consultants, agents and employees and subcontractors shall comply with all applicable local, State, and Federal laws, the ordinances of the County of York and with all applicable rules and regulations promulgated by all local, State and national boards, bureaus and agencies in effect on the date when the work is completed.

**ARTICLE XII. ENFORCEMENT AND NOTICES**

A. The parties agree that the Agreement shall be enforceable in the County of York, Virginia, and if legal action is necessary by either party with respect to the enforcement of any or all the terms or conditions hereof, exclusive venue for the enforcement of the same lie in the Circuit Court of York County, Virginia.

B. All written notices given to the County by the Engineer shall be addressed and filed with the Department of Environmental and Development Services, P.O. Box 532, Yorktown, Virginia 23690. All written notices from the County to the Surveyor shall be addressed to the Engineer as follows: \_\_\_\_\_

\_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties have executed this Agreement pursuant to proper authority and in the manner appropriate to them, as witnessed by their signatures below:

COUNTY OF YORK, VIRGINIA:

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
County Attorney

ENGINEER :

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

**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 will result in the Expression of Interest not being considered.

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

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\* YD = DBE Firm Certified by DMBE    N = DBE or SWaM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE or SWaM Status

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

DMBE is the Virginia Department of Minority Business Enterprise

**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 judgement 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
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\_\_\_\_\_  
Name of Firm

### GOOD FAITH EFFORT

(Federally funded project with DBE Goal; **until further notice, DBE goals will not be assigned to consultant service contracts**)

The Department will accept what consultants submit in their EOI 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 five 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 consists of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgment 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 judgment 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.