

REQUEST FOR PROPOSAL

**GENERAL ENGINEERING CONSULTANT
SERVICES**

FOR

SOUTHEASTERN VIRGINIA GEC PROJECTS

Addendum # 2, Feb. 20, 2009



GENERAL

The Virginia Department of Transportation (the “Department”) is seeking expressions of interest from consulting engineering firms who wish to be considered to provide professional engineering services to serve as the general engineering consultant (GEC) for the overall program management for the design, and construction of major infrastructure projects in Southeastern Virginia.

Proposed Projects:

1. Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension (DT/MT/MLK)

Extension (Norfolk and Portsmouth): The Project includes a new two-lane tunnel under the Elizabeth River parallel to the existing Midtown Tunnel; maintenance and safety improvements to the existing Midtown Tunnel; minor modifications to the interchange at Brambleton/Hampton Boulevard in Norfolk; maintenance and safety improvements to the existing Downtown Tunnel; and extending the MLK Boulevard from London Boulevard to Interstate 264 (I-264), with an interchange at High Street.

2. Route 460 Improvement Project (Petersburg to Suffolk): The Project includes the development and operation of a new west-east transportation link extending from an intersection with the existing Route 460 near the existing I-295 interchange in Prince George County to a new interchange with the U.S. Route 58 Bypass in the City of Suffolk. The Project area extends approximately 55 miles.

The total estimated construction cost for the above noted projects is approximately \$ 4,000,000,000.

3. I – 64 Corridor Improvement Projects (Richmond and Hampton Roads Districts): The services on the future I-64 corridor improvements projects will be requested at the Chief Engineer’s sole discretion and approval. Such discretion neither implies or offers a “first right of refusal” to the selected firms nor an obligation on the Department to award any such future work to the firm selected as the GEC for the DT/MT/MLK and Route 460 projects.

The following website will provide additional project information:

Southeastern Virginia GEC Projects:

http://www.virginiadot.org/business/southeastern_virginia_gec_projects.asp

An industry briefing will be held in the Hampton Roads District auditorium on February 12, 2009 at 9:00 a.m. Please see the above noted website for additional information.

Contract Objectives

The Department’s GEC contract objectives are to:

1. Augment the Department’s staffing needs for complex alternative delivery projects;
2. Procure a consultant team capable of successfully and efficiently providing a wide range of program management services where the Department lacks resources and expertise to meet the engineering and business needs of the noted projects.

Point of Contact

The Department's sole Point of Contact ("POC") for the procurement of this Project shall be the person designated below. The POC is the only individual authorized to discuss this Request for Proposal (the "RFP") with any interested party. All communications with the Department's POC shall be in writing. The POC will not respond to oral inquiries.

The Department's POC for the procurement is:

Name: Mr. Milton Pritchett, P.E.
Title: Structural Engineer Supervisor
Address: Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219
Phone: (804) 786-2634
Fax: (804) 786-2988
E-Mail: milton.pritchett@vdot.virginia.gov

The Department disclaims the accuracy of information derived from any source other than the POC noted above, and the use of any such information is at the sole risk of the GEC teams. All written communications to the Department from interested parties shall specifically reference the correspondence as being associated with the "Southeastern Virginia GEC Projects". Nothing herein shall be construed to preclude the Department's POC from speaking with any firm at any time, and the Department expressly reserves all such rights to do so.

This contract will be developed utilizing the Department's policies and procedures and FHWA's guidelines. This RFP does not commit the Department to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Department reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the RFP if it is in the best interest of the Department to do so.

Conflict of Interest

Award of this contract will prohibit all GEC team members, including all affiliated and subsidiary firms of the GEC, from providing any design, construction, traffic, operational or maintenance services on any other contract(s) associated with these GEC Projects. Furthermore, the Department reserves the right to make a determination of Conflict of Interest and take appropriate action during the life of the contract. For information on the Department's policy on Conflict of Interest, reference the Innovative Project Delivery Division's memorandum on Conflicts of Interest at <http://www.virginiadot.org/business/bu-ipd-memo.asp>. If you require clarification of your status on the GEC Projects listed above, please provide a written request for determination to the Department POC prior to submitting an Expression of Interest (EOI) no later than February 27, 2009.

For information on the Department's responses to those firms that have written a determination request to the Department's POC, please visit the following website: <http://www.virginiadot.org/> (to be completed by District)

Conflict of Interest status information will continue to be updated until two weeks prior to deadline for submission of Expressions of Interest as stated in Item 6 of the ADMINISTRATIVE section of this RFP. Firms an Expression of Interest shall separately list all previous, current and pending contract assignments, for each team member, for the projects identified in this RFP as requested in the Expression of Interest Section, Item 7.

In the event that updated information, clarifications or addendums are developed for this RFP, a link to access these updates will be found on the same Department web page where the link to this RFP resides: <http://www.virginiadot.org/business/rfps.asp>

SCOPE OF SERVICES:

The GEC will be responsible for the overall program management services for the Southeastern Virginia GEC Projects that employ various alternative delivery methods. The alternative delivery methods may include, but are not limited to, methods such as PPTA, design-build, design-build-operate-maintain and traditional contracting methods. This contract shall not include any oversight services related to the operation and maintenance of the projects after commencement of service.

The scope of services may include, but are not limited to, the development and administration of the following programs:

- Project Management Program
 - Development, analysis and monitoring of project risks
 - Oversight and implementation of Project controls, including forensic scheduling, estimating, project documentation systems and claim avoidance and review
 - Project communication electronic network for internal and external project participants
 - State and Federal regulatory and policy compliance
- Design Management Program
 - Engineering disciplines such as roadway, structures, tunnels, bridges and other types of infrastructure development
 - Design quality assurance and interaction as the owner's representative
 - Architectural/engineering disciplines for toll and other facilities
- Environmental Management Program
 - Environmental permit review
 - Monitoring and review of construction and mitigation measures
- Right of Way and Utility Management Program
 - Acquisition and relocations oversight
 - Appraisal reviews
 - Utility relocation oversight
- Traffic Management Program
 - Review and /or development of Traffic Management Plans
 - Oversight of congestion management activities, maintenance of traffic
 - Coordination of public information
- Public Affairs/Outreach Programs
 - Public communication plans
 - Provide information technology support services including a "one stop" public information web site/project communication program integrating all active projects
- Safety Program
 - Construction oversight and monitoring
- Construction Management Program
 - Independent assurance of Quality Control processes
 - Construction engineering inspection
 - Project partnering;
- Disadvantage Business Enterprise (DBE) and Small, Women and Minority (SWaM) Owned Business Enterprise Programs
 - Provide administrative support for monitoring DBE and SWaM programs, information collection and reporting, workforce utilization and contractor compliance guidance, supportive services and training programs

- o Business outreach and development programs
- Financial and Administrative Monitoring Program

The selected GEC will be managed by an experienced Department staff, with assistance from the FHWA and the Virginia Transportation Research Council. Department personnel will be available to determine policy and make major decisions as appropriate. The Department reserves the right to supplement the selected GEC or staff if it is in the best interest of the program.

A local program office shall be established by the GEC in the Hampton Roads region. The proposal must discuss how and where the local presence will be established. The location of the local program office will be subject VDOT approval. The local program office shall include secure office space, clerical staff and parking for a minimum of 10 employees of the Department's management staff. This office space must also have conference capabilities for a minimum 50 seat capacity including state-of-the-art teleconferencing and video conferencing capabilities, and provide such facilities for use by the Department and FHWA.

The selected GEC will establish a Civil Rights Office that will assist in the design, implementation and coordination of program areas; focus on business outreach and development, and coordinate employment needs with available resources. The Civil Rights Office should consist of a staff with a Civil Rights Program Manager, DBE/SWaM Technical/Engineering Consultant, and administrative/clerical staff. The Civil Rights Program Office will assist the Department's District Civil Rights offices with coordination and dissemination of program processes with consortiums and contractors involved on the project. Program processes include, but are not limited to, program monitoring mechanisms, information collection and reporting, business development, workforce utilization and contractor compliance guidance, supportive services and training program, and outreach. The selected GEC will establish a Civil Rights Council (CRC) to enhance and maintain cooperative DBE, SWaM, and employment assistance to the community, construction contractors, suppliers, and contractor associations. The selected GEC will establish a Community Resource Board (CRB) comprised of a network of public and private sector representatives that will assist in identifying, coordinating, and providing available resources such as DBE firms and employees.

The selected GEC will be required build, operate, maintain and manage a project communications network to service all project participants to include relevant State, Federal and Consultant personnel (via server, etc.). The network must provide an effective and efficient means for performing electronic communication (i.e. internet access). This includes but is not limited to e-mail communication and the electronic transfer of all types of graphic files, such as project reports, correspondence, schedules, spreadsheets, CADD drawing files, audio and visual communications equipment capable of providing reliable and consistent communications between local offices and field operations, etc. The GEC must also consider file security and timeliness of the electronic transfers in the design of the system. This will include the necessary staff to manage, maintain and troubleshoot this system to ensure continuous operation.

Critical to the success of the projects will be the GEC's ability to foster and facilitate team building/partnering concepts among agencies, design teams, the public, contractors, etc which will encourage an open and honest exchange of information and ideas throughout the entire process.

KEY PERSONNEL

The GEC's Key Personnel shall be permanently assigned to the local program office as long as the Department determines that there is a need for their presence on the project or the Department agrees upon replacement personnel or determines that the position is no longer needed. The availability of Key

Personnel should be flexible to meet the needs of the program and funding environment. The Department will not pay expenses for travel and moving & relocations for the GEC's Key personnel and other members that are permanently assigned to the local program office. Additionally, the GEC's Key Personnel will not be compensated for work hours exceeding 40 hours/week.

The GEC is expected to provide a core group with the appropriate mix of management, technical expertise, and experience. The GEC's staff will be required to show that Key Personnel have experience, expertise, innovation, and other skills in leadership and technical ability in the following areas:

- Program Director and Assistant Program Director: Experience and expertise shall include: administration of alternative project/program delivery projects, leadership roles in the management and delivery of infrastructure projects with a background in the administration of design, construction, operation and maintenance programs. In addition, the Program Director shall have experience in the programmatic oversight of complex projects, to include design-build and/or Public Private Partnership (P3) projects.
- Design and Assistant Design Engineer Managers: Experience and expertise shall include: leadership roles in the development of relevant project designs using alternative delivery methods; marine design and construction; heavy civil, structures and relevant experience working on major transportation corridor projects.
- Construction Engineer and Assistant Construction Engineer Managers: Experience and expertise in administration of complex construction projects including safety compliance, maintenance of traffic and quality assurance processes. These individuals should possess experience in transportation and marine construction methods, scheduling, project controls, specification writing/interpretation, estimating, and claims analysis.
- Specialized Tunneling Expert: Experience and expertise shall include: design and construction of immersed tube tunnels, development and installation of internal tunneling facilities, ventilation, fire protection, development and administration of security programs (assessment, surveillance, enforcement, coordination with local, State and Federal officials, etc.), and other tunnel operational components.
- Traffic Management Expert: Experience and expertise shall include development of maintenance of traffic plans, understanding of traffic modeling and congestion management, and other traffic related issues relevant to construction in a highly urbanized area. This individual may also serve in another capacity as one of the Key Personnel.
- Environmental Manager: Experience and expertise shall include managing and monitoring highly sensitive environmental issues; design constraints on major roadway/bridge/tunnel construction projects including dredging, stormwater management, erosion and sediment control and Section 404 permitting. Environmental Manager should also have experience coordinating with Virginia and Federal environmental and marine agencies and their regulations.
- Safety Manager: Experience and expertise in the development and administration of safety programs, compliance with State and Federal laws and regulations and work zone safety programs.
- Public Relations Manager: Background to manage communication with a diverse audience including private organizations, governmental and other public bodies, and the general public. Expertise in managing public relations and coordinating with the media on major construction projects. A history and experience with the media market in the Hampton Roads region is desired.
- Commercial Manager: Experience and expertise to include managing multiple complex agreements including P3 and/or design-build delivery methods. Expertise in the identification, management and mitigation of risk components, project controls, documentation management, forensic scheduling and claim avoidance. Experience in the administration and interpretation of complex contract provisions.

- Civil Rights Manager: Experience and expertise in the full range of Virginia and Federal civil rights laws and policies and in the establishment of a civil rights program for complex construction projects. Experience in developing successful DBE and SWaM programs, information collection and reporting, workforce utilization and contractor compliance guidance, supportive services and training and outreach programs.
- Real Estate Manager: Expertise in the full range of State & Federal regulations and related requirements affecting right-of-way acquisition in Virginia. Expertise in the oversight and review of acquisition through the public-private teaming process.

GEC QUALIFICATIONS

The GEC should demonstrate relevant qualifications, capacity and capability in performing the Scope of Services listed above and those further defined below. Additionally, the GEC is expected to supply any additional positions to its staff for successful program delivery including any Key Personnel that may not initially be anticipated. At all times, the GEC will be required to show the necessary experience, expertise, technical ability and skill in the areas identified in the Scope of Services and any other areas necessary for successful program delivery.

As noted in the Expression of Interest (EOI) section, the GEC shall emphasize its qualifications in 40 pages or less:

ORGANIZATIONAL CAPABILITY

The EOI should demonstrate the GEC's capability in the following areas:

- To quickly mobilize or adjust staffing and resources in response to changes in project needs, schedule requirements, and funding availability
- To develop a staffing plan including relationships, protocols and processes that describe working with subconsultants to meet compressed schedules
- To meet the established budgets
- To provide the facilities and equipment owned by the consultant, including program office, computer capability, reproduction and communication equipment, laboratory and testing equipment, or other specialized equipment applicable to the project under consideration
- To work cooperatively in a teaming effort to meet the contract objectives and show how the individual firms have worked together in the past
- To develop an appropriate Civil Rights Program
- To build, operate, maintain and manage a project communications network
- To supplement, as necessary, the Owner's workforce with technical support personnel

Each response should include the following items concerning the GEC:

- Provide relevant programmatic project experience focusing on each GEC member's role on the project(s) and how their firm's capabilities were utilized by the Owner.
- Provide a narrative detailing the GEC's understanding of how the proposed organization, resources and capabilities will enhance the success of the proposed projects and how your team will establish organizational protocols to efficiently and effectively administer the development of the proposed projects.
- Provide in a narrative and chart form the organization capacity with existing workload and the proposed workload under this contract. This contract will require providing various services and personnel under concurrent assignments on multiple projects. Based on your workload and competing priorities, please describe how you will meet the expected project deliverables and resources needed to ensuring the highest quality work.

FIRM/GEC'S RELEVANT EXPERIENCE PROVIDING SIMILAR TYPES OF SERVICES

The EOI should demonstrate the GEC's expertise and experience in the following areas:

- Managing, administering, and providing programmatic oversight for complex design and

construction contracts as an owner representative

- AASHTO Geometric Design Standards and AASHTO Bridge Design Specifications (Standard Specification and LRFD Specifications) and both the Department's Road and Bridge Standards and Specifications
- All aspects related to the development (acquisition, design, construction, operation and maintenance) of: highways and bridges; toll facilities; ITS (including knowledge of the Department's existing and planned systems); stormwater capture, conveyance, treatment and release; and all other elements associated with developing transportation facilities
- Developing and reviewing design and construction plans for large complex transportation project to include roadway, structures, bridges, tunnel, railroad, ports in complex urban environment
- Specialized competence of the GEC related to all aspects of review, design, construction, inspection, quality assurance, maintenance and operation of immersed tube tunnels and other related marine structures
- Managing, reviewing, and evaluating the work of others as an owner representative, including other consultants and design-build contractors, as well as the ability to create original work products
- GEOPAK Civil Design Software and Microstation drafting systems used by the Department
- State and Federal requirements for the development of and authorization of right of way plans (including metes and bounds plats) and for the development of complete construction plans
- Overseeing and managing environmental permitting processes and agency coordination for multiple jurisdictions, monitoring during construction, especially in a marine environment, and post-construction establishment period monitoring
- Requirements of the National Environmental Policy Act, National Historic Preservation Act, and other related state federal laws as well and the requirements of FHWA's environmental regulations contained in 23 CFR 771 for reevaluations and supplemental documentation
- Geotechnical expertise in the design and construction of: geotechnical features (foundations, walls, embankments, etc.) for elevated urban structures; marine construction (tunneling, bridge foundations, etc.) ; and complex interchanges
- Coordinating utility designs (utility field inspections) and utility construction activities with the multiple utility companies and third parties that will be involved
- Land Use Permit requirements, issuance and monitoring
- Production of effective graphical presentations techniques (i.e. video-imaging, computer graphics renderings, 4D computer modeling including web based content, etc.) for explaining complicated design and construction procedures, techniques or plans
- Developing transportation demand strategies, maximizing operations improvements of local area networks, work zone incident management techniques, public information and construction sequencing
- Developing and reviewing all aspects of toll facilities, including but not limited to, toll booths, toll plazas, administration buildings and electronic toll systems
- Understanding of the Department's existing and planned intelligent transportation systems (ITS) facilities. In addition, the GEC team must demonstrate expertise in the design, inspection, operation and implementation of complex ITS computer and communications systems/networks
- Working with Federal Aid projects and applying Federal Aid requirements
- Working with minority, women and disadvantaged businesses to provide technical managerial and other assistance
- Facilitating team building and partnering concepts among stakeholders including Federal and State agencies, design teams, the public and contractors to ensure open communication throughout the process for the large complex projects
- Reviewing shop drawings, catalog cuts and other required submittals to include but not limited to erection plans, form work and support drawings, temporary support and sheeting drawings,

cofferdam drawings, dewatering systems, instrumentation system, test results for construction materials, etc., required for construction

- Providing a programmatic documentation tracking system for correspondence, notices, and any other type of project documentation
- Schedule review and analysis and claim avoidance analysis and resolution procedures
- Overseeing and competently maintaining internal budgets and providing oversight of project budgets
- Managing and analyzing construction and field issues and the responses to these situations
- Managing and tracking project costs for escalation during design and construction and applying cost effectiveness strategies and mechanisms for cost containment
- Developing, monitoring, and reporting the effectiveness of congestion management and traffic control plans
- Value engineering procedures and experience in evaluating and analyzing value engineering proposals during construction
- The Department's and FHWA's policies and procedures in the contract administration, project documentation, project inspection and materials testing

Each response should include the following items concerning the GEC:

- Each Firm's experience related to providing the programmatic and project related services noted above, and a description of how the GEC members have sufficient experience to ramp-up and ramp-down support personnel to supplement the Department's technical resources.
- A matrix, table or list of relevant project examples where the GEC members held leadership positions in providing the noted services and describing the GEC member's involvement in the project including the dates and location where the services were performed.
- A narrative providing your team's understanding of how the GEC member's experience and expertise will be utilized as the owner's representative on the proposed projects and how these resources will be effectively utilized to meet the stated contract objectives.

KEY PERSONNEL'S EXPERIENCE IN PROVIDING SIMILAR TYPES OF SERVICES

The EOI should demonstrate the Key Personnel's experience in the following areas:

- Qualifications as described in the RFP to successfully fulfill responsibilities of the proposed contract
- The flexibility and availability of Key Personnel to meet the needs of the program and funding environment, including ramp-up period.
- Demonstrate the current availability and anticipated availability of each of the Key Personnel for the first 2-3 years of the contract based on current commitments and work projections
- The relevant experience on design-bid-build, design-build, and P3 projects including programmatic experience in the development of significant major transportation projects. In addition, Key Personnel's experience should include program development and project management, dispute resolution, design, environmental documentation, permitting, construction management, right of way acquisition, operations, quality assurance, and other support and specialty services as described in the Scope of Services.
- An understanding and in-depth working knowledge of marine constructions methods, tunnel construction, operation, renovation and other services required for the development and operation of tunnels.

Each response should include the following items concerning the Key Personnel:

- A list of relevant projects focused on the Key Personnel's experience. For each Key Personnel position, their project history should include leadership roles in at least one major interstate highway or freeway corridor project, or at least one major bridge project. For Design Manager, Construction Manager and Specialized Tunneling Expert, their project history should include leadership roles in at least one marine tunnel project within the last ten years. This experience should reflect appropriate management, leadership and technical expertise and participation by Key Personnel on the projects provided for evaluation.
- A narrative providing your team's understanding of how the proposed Key Personnel enhance the Department's ability to meet the specific challenges of the proposed projects, how they will be maintained throughout the life of the contract and how their individual experience and expertise will be effectively resourced to meet the stated contract objectives.

QUALIFICATIONS OF THE PROGRAM DIRECTOR

The proposal should demonstrate the Program Director's experience in the following areas:

- Specific experience as an owner's representative in the leadership and management of GEC programs similar in complexity, type and size
- Specific experience as an owner representative in the leadership and management of significant transportation infrastructure projects delivered through traditional and alternative delivery methods (including P3 or design-build) developed by private entities
- Ability to communicate, both orally and in writing, effectively in the administration of the proposed projects and to provide detailed information about multiple disciplines to a diverse group of stakeholders
- Ability to coordinate the activities and efforts of a large organization/team that includes numerous design firms, contractors, public affairs and other disciplines that will be involved in the development and construction of these projects
- Ability to identify, address, and otherwise resolve project challenges, disputes and all administrative issues affecting the successful completion of the projects and identify and mitigate risk items
- Demonstrate using project examples the level of experience in managing similar GEC projects (complexity, type and size)

Each response should include the following items concerning the Program Director:

- A list of relevant projects focused on the Program Director's experience should include experience as the owner's representative for at least one major highway corridor project or at least one major bridge project or at least one immersed tunnel project. This experience should reflect appropriate management, leadership and technical expertise and participation by Program Director.
- A narrative of how the Program Director will coordinate directly with the Department's representatives, facilitate the resolution of multiple challenges on the proposed projects and lead a diverse group of disciplines and individuals to meet the contract objectives. In addition, the narrative should define the Program Director's commitment to the long term success of the projects and how their individual experience will be utilized effectively to administer the comprehensive agreements.

CONTRACT SCOPE AND PROGRAM MANAGEMENT APPROACH

The proposal should demonstrate a clear understanding of Contract Scope of Services and GEC's Program Management philosophy, approach and/or strategy for the successful delivery of the proposed projects.

Each response should include the following elements concerning GEC's Understanding of the Contract Scope of Services and Program Management Approach and Strategies, principally focusing on P3, Design Build, and other alternative project delivery methodologies:

- The GEC's role
- Management and Organization
- Project Control
- Project Implementation– role in supporting the Department through the procurement process for P3 and other alternative project delivery methodologies
- QA/QC
- DBE / SWaM
- Public Relations
- Risk management. Include discussion addressing concession agreements

EXPRESSION OF INTEREST (EOI)

1. The Expression of Interest shall be organized in the following order:
 - Transmittal letter
 - Table of Contents
 - GEC Qualifications (Maximum 40 pages)
 - Response to RFP Expression of Interest Items 2-10
 - Present Workload with Department form
 - GEC Organization Chart
 - GSA Form 255 – one combined for the project team (Section 10 is removed and replaced by GEC Qualifications noted above)
 - GSA Form 254 – one for each firm
 - Firm Data Sheet
 - Certification Regarding Debarment form
 - DBE Commitment and Confirmation Letter
2. Furnish seven copies of current GSA Forms 254 for each firm involved and seven copies of one combined GSA Form 255 for the project team. The GSA Form 255 must specify the number of personnel by discipline for each office where the work is to be performed. In Section 4 of GSA Form 255, list only the full time employees assigned to the office(s) at the time of this submission. Section 8 of GSA Form 255 is limited to ~~one page~~ three pages with not more than ~~10~~ 20 projects total (prime and subconsultants combined) on the ~~one page~~ three pages and should primarily list experience of offices where the work will be performed and of the people shown in the organizational chart. If the experience shown is for a branch office other than where the work will be performed, it should be clearly indicated as such. In Section 9 of GSA Form 255, references to “Federal agencies” are to be replaced by “Virginia Department of Transportation or transportation agencies of other states.”
3. If more than one firm will participate in the contract, state the type of arrangement between the firms, the names and addresses of all firms, description of the work that each firm will perform, and the percentage of work to be performed by each in Section 5 and 6 of GSA Form 255. Indicate office locations at which the work will be performed. A one page organizational chart showing all firms involved and Key Personnel assignments and responsibilities is required to be included (may be 11” x 17”).
4. In Section 7 of GSA Form 255, indicate KEY PERSONNEL ONLY who will be assigned to this contract and give the experience record of each. The Key Personnel are identified above and defined as those to whom the project will be assigned and who will be performing the actual services. In Section 7c, indicate the location of the office where the person is currently working if different from where work is to be performed. In Section 7c, part time personnel, personnel not employed on the date of the form, or personnel used on an “as needed basis” must have their status clearly indicated. Section 7g may be expanded to provide a total of a one page resume per individual.

Furthermore, all individuals identified as Key Personnel in the EOI shall remain on the GEC for the duration of the procurement process and, if the GEC is awarded a contract, the duration of the contract, unless a replacement is approved by the Department. The Program Director shall be required to be 100% available upon the execution of the contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the Department’s Point of Contact, who, at his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the GEC’s Key Personnel at any time during the procurement process may result in elimination of the

GEC from further consideration.

5. Section 10 of GSA Form 255 is replaced by **30 40** page response to demonstrated qualifications previously mentioned under GEC Qualification section of this RFP.
6. It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms are maintained on their web site (<http://www.dmb.state.va.us/>) under the **DBE Directory of Certified Vendors**. GEC 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 GEC 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 GEC is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a GEC 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 11 %.

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 are maintained on the DMBE web site (<http://www.dmb.state.va.us/>) under the **SWaM Vendor Directory** link. The GEC is 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 GEC intends to subcontract a portion of the services on the project, the GEC is encouraged to seek out and consider SWaM firms as potential subconsultants. The GEC is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between the GEC and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited. The SWaM contract goal for this procurement is 29 %

If portions of the services are to be subcontracted to a DBE or SWaM, 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 or SWaM 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 or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

49 CFR Part 26 requires the Department to collect certain data about firms attempting to participate in Department contracts. This data must be provided on the enclosed Firm Data Sheet.

The Department is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.

Any DBE or SWaM firm must become certified (with the Virginia Department of Minority Business Enterprise) prior to your Expression of Interest being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as

the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

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

Business Opportunity and Workforce Development (BOWD) Center - The BOWD Center is a Department 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 GEC is 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 the GEC 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. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdot.virginia.gov.

7. If any firms involved with this submission currently have work with the Department, indicate the projects, the division managing the projects, the amount of outstanding fee remaining, and the estimated date of completion. For limited services term contracts, include only the amount of all tasks orders executed or under negotiation. Also, include your estimated fees for pending supplemental agreements and any projects for which the firms have been selected, but have not executed an agreement. Work of affiliated and/or subsidiary companies is to be included. The outstanding workload of any Virginia Department of 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. Categories A, B, C & D work will be counted in the scoring criteria. This information shall be submitted using the attached Present Workload with Department form. Please carefully read the instructions on the Present Workload with Department form.
8. 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.

9. 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 offerors 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.

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

ADMINISTRATIVE

1. All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at <http://www.state.va.us/scc/division/clk/brg.htm>). Foreign Professional corporations and Foreign Professional Limited Liability Companies 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, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (<http://www.state.va.us/dpor>). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the Commonwealth. All branch offices which offer or render any professional service must have at least one full-time resident professional in responsible charge that is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet this criterion prior to submitting an Expression of Interest to the Department. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.
2. The Department will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
3. The method of payment will be actual costs for each project assignment based on fixed billable rates. Billing shall be based on the hours agreed upon for performing service and supported for each employee classification directly engaged in the work multiplied by the fixed billable rate. For purpose of determining the fixed billable rates, a Project Office overhead rate shall be established in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by the Department and based on the indirect (overhead) local program office costs and program direct labor so that reasonable and representative fixed billable local program office rates can be established. Any project office costs that are reimbursed as direct costs shall be eliminated from the indirect (overhead) local program office cost pool.

The Department will not pay expenses for travel and moving & relocations for the GEC's Key personnel and other members that are permanently assigned to the local program office. Additionally, the GEC's Key Personnel will not be compensated for work hours exceeding 40 hours/week.

4. 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 firms selected for this contract (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the Department within 10 work days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the 10 work days, negotiations will be terminated by the Department and the next most qualified team invited to

submit a proposal.

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

Invoking such exclusion upon submission of the data or other materials for which protection is sought;

Identifying with specificity the data or other materials for which protection is sought; and stating the reasons why protection is necessary.

The Inspector General of the Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it. Notwithstanding the foregoing, the GEC'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 the GEC and/or VDOT associated with such litigation. In no event shall the Virginia Department of Transportation or its officers, employees or agents be liable to the contractor as a result of any disclosure of records or data collected by the Department, its officers, employees or agents, pursuant to an audit, special investigation, or any study requested by the Inspector General's Office, whether or not the Inspector General has determined that the requested exclusion from disclosure under FOIA is necessary to protect the trade secrets or financial records of the private entity, and in no event shall the Virginia Department of Transportation, or its officers, employees, or agents be liable to the contractor for any damages or other claims arising directly or indirectly from a determination that the exclusion from public disclosure will not be granted.

6. 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 GSA Form 254 or 255 elsewhere in the submittal. All information must be submitted in a total of seven (7) sets and received no later than 4:00 p.m. on March 30, 2009. Responses received after this time will not be considered.

US Postal Service regular mail, send to:

Mr. W. W. Barker
Administrative Services Division
Virginia Department of Transportation
1401 E. Broad Street
Richmond, Virginia 23219

Hand delivery, US Postal Service express mail, or private delivery service (FEDEX UPS, etc.), send to:

Mr. W. W. Barker
Administrative Services Division
Virginia Department of Transportation
1st Floor Reception Desk
1201 E. Broad Street
Richmond, Virginia 23219

7. The Department assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
8. The Department does not discriminate against an offerors because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
9. Any offerors 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 in accordance with the Virginia Public Procurement Act, §2.2-4300 et seq. of the Code of Virginia. Public announcement of the award shall be posted on the Department's Business Center Internet site.
10. eVA Business-to-Government Vendor Registration: The eVA Internet electronic procurement solution, web site portal (<http://www.eva.state.va.us>), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detail information regarding eVA, registrations, fee schedule, and transaction fee, use the website link: <http://www.eva.state.va.us>. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal/expression of interest being rejected.
11. The required services will involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements. Once negotiations have been completed and prior to executing a contract, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and offerors will be allowed to replace those individuals. However, if Key Personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked offerors. The Department reserves the right to conduct fingerprint-based CHBC on all employees of the GEC, on any employees of subconsultants or on any

proposed replacements during the term of the contract who will be involved in this project. All costs associated with the fingerprint-based CHBC are the responsibility of the prime consultant. A Department issued photo-identification badge is required for each employee of the GEC or any subconsultant who will need access to Department CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, the Department reserves the right to deny issuance of a Department security clearance or a Department issued photo-identification badge.

PRESENT WORKLOAD WITH DEPARTMENT
(List Amount of Each with VDOT by Division)

PROJECT NUMBER* AND FMS II CONTRACT ID NUMBER	CAT.	MANAGING DIVISION	DATE OF ORIGINAL AGREEMENT	AMOUNT OF CONTRACT ** (\$)	LESS SUB'S AMOUNT (\$)	SUBTOTAL (\$)	LESS FIRM'S APPROVED PAYMENT (\$)	PLUS PENDING SUPPLEMENT *** (\$)	TOTAL REMAINING WORKLOAD (\$)	SCHEDULED COMPLETION DATE
PRIME CONSULTANT										
TOTAL AMOUNT OF PRIME'S CONTRACTS										
SUBCONSULTANTS†										
TOTAL AMOUNT OF SUB'S CONTRACTS										
TOTAL REMAINING WORKLOAD										

* Projects include contracts under negotiation. For limited services term contracts, include the amount of all task orders executed or under negotiation.

Please list all VDOT projects followed by their Category letter. Only those projects in Category A, B, C & D are to be totaled and counted on this selection.

Category A: Term Surveying and Utility Designation/Location Contracts.

Category B: Preliminary Engineering Contracts - includes transportation planning and environmental studies, utility relocation and design, and roadway and bridge design.

Category C: Construction Engineering Contracts - includes construction inspection, preparation of final estimates, and bridge and traffic structure safety inspection.

Category D: Operation and maintenance Contracts - includes operation and maintenance of traffic management systems.

** Amount of contract includes contingency and non-salary direct cost and all executed supplemental agreements.

*** Excluding Subconsultants

For any work that has been exempted by VDOT, you must include a copy of the exemption letter with this submittal.

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 workload of any certified DBE or SWaM prime and 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 or the next three years. Any work obtained after graduating from the program will be counted.

FIRM DATA SHEET

Funding: S/F (S=State F=Federal)

Project No.: Southeastern Virginia GEC Projects

Division: Structure & Bridge

EOI Due Date: March 30, 2009

The GEC 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

* 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 the GEC)

Project: Southeastern Virginia GEC Projects

- 1) The prospective GEC certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, and 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 GEC is unable to certify to any of the statements in this certification, such prospective GEC 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: Southeastern Virginia GEC Projects

- 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

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

EOI NO.: _____

PROJECT: Southeastern Virginia GEC Projects

FIRM: _____

DESCRIPTION: General Engineering Services

SUBS: _____

DATE:

		NUMERICAL VALUE				AVG.	WEIGHT	WEIGHTED EVALUATION
ORGANIZATIONAL CAPABILITY (Ability to complete work in a timely manner, size of firm(s) relative to size of project, proposed project staff resources, proposed use of subconsultants) (1=least, 10=most)		1-10					15%	
FIRM/GEC'S EXPERIENCE PROVIDING SIMILAR TYPES OF SERVICES (Cumulative 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 PROVIDING SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of Key Personnel and team members in providing services as related to the scope of services) (1=least, 10=most)		1-10					20%	
QUALIFICATIONS OF PROGRAM DIRECTOR (Expertise, experience and qualifications in program management as related to the scope of services) (1=least, 10=most)		1-10					10%	
CONTRACT SCOPE AND PROGRAM MANAGEMENT APPROACH (Firm/GEC's understanding of the scope requirements, proposed strategies for implementing the scope of services.) (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) 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.) † (Category A, B, C, D workload are counted on this selection*)	Above \$16,000,000	0					10%	
	14,000,001-16,000,000	1						
	12,000,001-14,000,000	2						
	10,000,001-12,000,000	3						
	8,000,001-10,000,000	4						
	6,000,001-8,000,000	5						
	4,000,001-6,000,000	6						
	3,000,001-4,000,000	7						
	2,000,001-3,000,000	8						
	1,000,001-2,000,000	9						
	0-1,000,000	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.

**When determining total Present Workload with Department, the outstanding workload of each DBE/SWaM subconsultant will not be counted.

† The outstanding workload of any certified DBE or SWaM prime and 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 work obtained after graduating from the program will be counted.

In determining the final short list, the top ranked GEC's and their subconsultants will have their Department Consultant Performance Reports reviewed and/or references checked.

GOOD FAITH EFFORT
(Federally Funded Project with DBE Goal)

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

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

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

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

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

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

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the

process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consist of the Commissioner's DBE Review Panel.

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

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.

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