

# **VDOT**

**Virginia Department of Transportation**

## **REQUEST FOR PROPOSALS**

**A DESIGN-BUILD PROJECT**

**US Route 15/29 Improvements at Vint Hill**

**From: 0.96 Miles South of Route 215  
To: Intersection of US 29 and Route 215**

**Fauquier County, Virginia**

**State Project No.: 0029-030-843, P101, R201, C501**

**Federal Project No.: HSIP-5B01(020)**

**Contract ID Number: C00114713DB105**

**DATE: February 4, 2019**

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## **PART 1**

### **INSTRUCTIONS FOR OFFERORS**

#### **1.0 INTRODUCTION**

The Virginia Department of Transportation (VDOT) submits this Request for Proposals (RFP) to solicit design-build Proposals (Proposals) from those entities (Offerors) interested in contracting to serve as the Design-Builder for the US Route 15/29 Improvements at Vint Hill in Fauquier County, Virginia (Project). The purpose of this RFP is to determine which Offeror (the “Successful Offeror”) will be awarded the Design-Build contract (Design-Build Contract) for the Project.

The Project priorities are:

- Scope and Cost – Obtain the most scope for the maximum contract value as identified in this RFP.

#### **1.1 Project Overview**

The Project is located along US Route 15/29 in Fauquier County, Virginia. The US-15/29 and VA-215 (Vint Hill Road) intersection consistently ranks as the #1 highest Targeted Safety Need in the Culpeper District with the highest potential for safety improvement based on statewide statistical data. High speed approaches and heavy volumes create conditions where substandard geometrics contribute to frequent crashes due to motorists overdriving conditions. The existing vertical curves approaching the US-15/29 and Vint Hill Road intersection provide sight distance for an equivalent 35 mph design speed, well below the 60 mph design speed of the corridor.

The purpose of the US Route 15/29 Improvements Project at Vint Hill is to address safety by improving the current substandard stopping sight distance in the northbound lanes of US Route 15/29 (Lee Highway) in Fauquier County, from approximately 0.96 miles south of the Route 215 to the intersection of Route 215. The proposed improvements include improving the vertical alignment of the northbound lanes of US Route 15/29 approaching the traffic signal at Vint Hill Road. Refer to Part 2 of the RFP (Technical Requirements) for the scope of work, technical information and requirements.

Offeror’s are encouraged to realize the maximum incentive for Interim Milestone Completion Date before August 2, 2019, and shall meet the Final Completion Date of the Project prior to September 30, 2019.

#### **1.2 Base Scope and Scope Alternatives**

For budgeting reasons, the Project will be procured utilizing a Base Scope and Scope Alternatives. All Offerors shall provide, at a minimum, the base scope. The Scope Alternatives

are listed in sequential order by priority and shall be provided in sequential order. For example, Scope Alternative 2 shall not be provided unless Scope Alternative 1 is also provided. The general descriptions of the Base Scope and Scope Alternatives are listed below.

**1.2.1** The Base Scope of the Project includes the following:

- Improve the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 50 mph. The horizontal alignment shall be designed using a 60 mph design speed.

**1.2.2** Scope Alternative 1 includes the following:

- Improve the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 55 mph. The horizontal alignment shall be designed using a 60 mph design speed.

**1.2.3** Scope Alternative 2 includes the following:

- Improve the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 60 mph. The horizontal alignment shall be designed using a 60 mph design speed.

**1.3 Procurement Overview**

VDOT will use a single-phase selection process on the Project. In accordance with the requirements of this RFP, interested Offerors will submit a Proposal consisting of a Letter of Submittal, Attachments to the Letter of Submittal, and Price Proposal consistent with Part 1, Section 4.0. Additionally, the Offeror who submits the lowest Proposal Price with the most scope alternatives, as defined in the RFP, will develop and deliver the Post Notice of Intent to Award Submittal consistent with Part 1, Section 4.4 within three (3) business days of Notice of Intent to Award.

An Offeror's Proposal must meet all requirements established by this RFP. Requirements of this RFP generally will use the words "shall", "will", or "must" (or equivalent terms) to identify a required item that must be submitted with an Offeror's Proposal. Failure to meet an RFP requirement may render an Offeror's Proposal non-responsive.

**Price Proposals for the Project shall be an "all in" price; provisions for scope validation and differing site conditions shall not apply for this project. Offerors are expected to bid the risk to design and construct the project based on information provided in the RFP.**

Offerors shall submit a Price Proposal for the Base Scope and Scope Alternatives within VDOT's maximum contract value in accordance with Part 1, Section 4.3. The Offeror whose Proposal is deemed responsive, who submitted the most scope alternative for the lowest price,

and whose Price Proposal does not exceed VDOT's maximum contract value for design and construction will be recommended to the Chief Engineer for an award of a fixed price Design-Build Contract by the Commonwealth Transportation Board (CTB). The Successful Offeror will be determined in accordance with Part 1, Section 5.1. The award of the contract will be made to the Successful Offeror in accordance with Part 1, Section 8.0 of the RFP.

## 2.0 BACKGROUND INFORMATION

### 2.1 Legislative Authority

§ 33.2-209(B) of the *Code of Virginia* authorizes VDOT and the Commonwealth Transportation Board (CTB) to develop and award contracts using the Design-Build contracting method. In accordance with the law, VDOT completed the Finding of Public Interest (FOPI) dated February 4, 2019. The FOPI is available for inspection upon request.

### 2.2 Maximum Contract Value

VDOT's current maximum contract value (MCV) for this Project is \$3,500,000. An Offeror's Price Proposal shall not exceed the maximum contract value. A Price Proposal that exceeds the maximum contract value will render an Offeror's Proposal non-responsive.

### 2.3 Procurement Schedule and Project Milestones

**2.3.1** VDOT has established incentives for early completion of the Interim Milestone. A description of the Interim Milestone and requirements to achieve the associated incentive are included in the Attachment to Part 3 Article 5 (Provision for "No Excuses" Incentives). VDOT currently anticipates conducting the procurement of the Project in accordance with the following list of milestones leading to award of the Design-Build Contract. This schedule is subject to revision and VDOT reserves the right to modify this schedule as it finds necessary, in its sole discretion.

.1	Advertise RFP	02/04/2019
.2	Pre-Proposal Meeting w/ Offerors	02/15/2019 (10:00 AM prevailing local time)
.3	Utility Meeting w/ Offerors	02/15/2019 (10:30 AM prevailing local time)
.4	RFP Questions Due to VDOT	02/20/2019 (4:00 PM prevailing local time)
.5	VDOT responses to Questions or Clarifications	02/26/2019
.6	Letter of Submittal and Price Proposal Due Date	03/15/2019 (4:00 PM prevailing local time)
.7	Open Price Proposals	03/19/2019 (9:00 AM prevailing local time)
.8	Notice of Intent to Award	03/22/2019
.9	CTB Approval/Notice to Award	04/10/2019
.10	Design-Build Contract Execution	04/16/2019
.11	Notice to Proceed	04/17/2019
.12	Interim Milestone	08/02/2019

.13 Final Completion

09/30/2019

**2.3.2** VDOT has established the following milestones for contract completion dates for the Project, and Offerors shall base their proposals on such milestones.

- .1 Interim Milestone and Final Completion shall be no later than the date(s) set forth in Part 1, Section 2.3.1. For the avoidance of doubt, the date for Final Completion shall include the Work for the Base Scope and Scope Alternatives.
- .2 If an Offeror proposes Interim Milestone and/or Final Completion date(s) earlier than that shown in Part 1, Section 2.3.1 above, then such proposed date(s) will be deemed by VDOT as the contractual completion date(s) for the Design-Build Contract for all purposes, including liquidated damages.

## **2.4 Status of NEPA**

In accordance with the requirements of the National Environmental Policy Act (“NEPA”) and in cooperation with Federal Highway Administration (FHWA), a NEPA document concurrence was approved to utilize a Categorical Exclusion on December 12, 2018. The coordination of the Categorical Exclusion is currently ongoing. The NEPA process is anticipated to be complete prior the scheduled date for project award. A working draft of the NEPA document and associated environmental documents including scoping responses are included in the RFP Information Package.

**The project will not be awarded prior to completion of NEPA related work.** NEPA related work is expected to be complete prior to March 2019.

## **2.5 VDOT’s Point of Contact**

VDOT’s sole point of contact (POC) for matters related to the RFP shall be Joseph Clarke, PE. VDOT’s POC is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with VDOT’s POC about the Project or this RFP shall be in writing, as required by applicable provisions of this RFP.

Name:	Joseph A. Clarke, PE
Address:	Virginia Department of Transportation 1401 East Broad Street Annex Building, 5 <sup>th</sup> Floor Richmond, VA 23219
Mailing Address:	1401 East Broad Street Richmond, VA 23219
Phone:	(804) 371-4316
Fax:	(804) 786-7221

E-Mail: joseph.clarke@vdot.virginia.gov

VDOT disclaims the accuracy of information derived from any source other than VDOT's POC, and the use of any such information is at the sole risk of the Offeror.

All communications and requests for information shall be submitted by the Offeror's Point of Contact identified in the Letter of Submittal. Written communications to VDOT from Offerors shall specifically reference the correspondence as being associated with "US Route 15/29 Improvements, Contract No. C00114713DB105".

## **2.6 RFP Information Package**

An RFP Information Package is available for interested Offerors on CD for \$50. Interested Offerors should complete the RFP Information Package Order Form included as Attachment 2.6. The instruction for submittal and payment are included on the form.

The contents of the RFP Information Package are listed in Part 2 of the RFP.

## **2.7 RFP Documents**

**2.7.1** The documents included in this RFP (collectively the "RFP Documents") consist of the following parts and any addenda, as well as any attachments and exhibits contained or identified in such sections:

PART 1 – REQUEST FOR PROPOSALS, INSTRUCTIONS FOR OFFERORS  
PART 2 – PROJECT TECHNICAL INFORMATION AND REQUIREMENTS,  
INCLUDING RFP INFORMATION PACKAGE (CD-ROM)  
PART 3 – LUMP SUM DESIGN-BUILD AGREEMENT  
EXHIBIT 1 to PART 3 – PROJECT SPECIFIC TERMS  
PART 4 – GENERAL CONDITIONS  
PART 5 – DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS

VDOT has developed standard template Part 3, 4 and 5 (November 2016) documents. These documents have been compiled into a standard package available for download at the following location: <http://www.virginiadot.org/business/design-build.asp>. Standard template Parts 3, 4 and 5 will be incorporated into the Final Contract by reference.

**2.7.2** Each Offeror shall review the RFP Documents and provide questions or requests for clarification, including but not limited to terms that it considers to be ambiguous or to which it takes exception. Such questions or requests for clarification will be submitted to VDOT's POC within the time specified in Part 1, Section 2.3.1 of this RFP. VDOT will review all questions and/ or requests for clarification received and, if it deems appropriate, in its sole discretion, may modify the RFP Documents through an Addendum. Offerors shall base their Proposals on the terms and conditions of the RFP Documents included in the latest issued Addendum.



**2.7.3** Addenda to the RFP Documents, if any, will be posted on the VDOT public website. Hard copies of the RFP Documents and Addenda on file will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Documents or Addenda, the hard copy on file shall control.

## **2.8 Deviations from the RFP Documents**

No deviations from the requirements of the RFP Documents will be valid unless they are set forth in an Addendum prior to receipt of the Offeror's Letter of Submittal.

## **2.9 Obligation to Meet All of the Requirements of the RFP Documents**

If awarded the Design-Build Contract, the Design-Builder will be obligated to meet all of the requirements of the RFP Documents for the Contract Price and within the Contract Time(s). Offerors are on notice that VDOT's review of Attachments to the Letter of Submittal, as well as its issuance of any Addendum, shall not be construed as relieving the Design-Builder of this obligation. Offerors are on further notice that VDOT will review, comment and/or approve the Design-Builder's final design after the award of the Design-Build Contract, in accordance with Part 4, Article 2.

## **3.0 GENERAL PROCEDURES AND REQUIREMENTS**

Part 1, Section 3.0 provides general information, procedures and requirements related to the pre-submittal period to be followed by all Offerors.

### **3.1 Offeror's Pre-Submittal Responsibilities and Representations**

**3.1.1** Each Offeror shall be solely responsible for examining the RFP Documents, including any Addenda issued to such documents, and any and all conditions which may in any way affect its Proposal or the performance of the work on the Project, including but not limited to:

- .1 Examining and carefully studying the RFP Documents, including any Addenda and other information or data identified in the RFP Documents;
- .2 Visiting the Project Site and becoming familiar with the general, local, and Site conditions that may affect the cost, progress, or performance of its work on the Project;
- .3 Offerors are prohibited to access VDOT right of way and private property within the Project limits to perform any activities other than to observe the conditions of the site, unless otherwise approved in writing by VDOT's POC identified in Part 1, Section 2.4. Furthermore, the Offerors are on notice that any unauthorized access to VDOT right of way and private property within the Project may be considered sufficient for the disqualification of the Offeror or may render the Offeror's Proposal non-responsive or both;

- .4 Contacting each utility owner with facilities existing within the project limits to determine the scope of work for each owner's utility relocation. The Offeror shall address all potential impacts with each affected utility owner and ensure resolution of all such impacts have been included in the Offeror's Letter of Submittal and Attachments and Price Proposals;
- .5 Addressing all potential impacts with third parties and ensuring all such impacts have been included in the Offeror's Letter of Submittal and Attachments and Price Proposals;
- .6 Becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project;
- .7 Determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Project; and
- .8 Notifying VDOT in writing, in accordance with the processes set forth in Part 1, Section 7.0, of all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents.

Any failure to fulfill these responsibilities is at the Offeror's sole risk and no relief will be provided by VDOT.

### **3.2 Pre-Proposal Meeting**

VDOT will hold a Pre-Proposal Meeting of potential Offerors on the date and time set forth in Part 1, Section 2.3.1 at the VDOT Culpeper District Office, 1601 Orange Road, Culpeper, VA 22701 in the District Auditorium.

### **3.3 Utility Meeting**

VDOT will hold a Utility Meeting of potential Offerors on the date and time set forth in Part 1, Section 2.3.1 at the VDOT Culpeper District Office, 1601 Orange Road, Culpeper, VA 22701 in the District Auditorium.

### **3.4 Acknowledgment of Receipt of RFP, Revisions, and/or Addenda**

Offeror shall provide VDOT the Acknowledgement of Receipt of RFP, Revisions, and/or Addenda (Form C-78-RFP), set forth as Attachment 3.4, signed by the Offeror's Point of Contact or Principal Officer, with submission of the Proposal, which will serve as acknowledgement that Offeror has received this RFP.

#### **4.0 CONTENTS OF PROPOSALS**

Part 1, Section 4.0 describes specific information that must be included in the Proposal. The format of such information is described in Part 1, Section 6.

##### **4.0.1 Offerors will submit a two-part Proposal:**

.1 The Letter of Submittal will consist of all information required under Part 1, Section 4.1 and Section 4.2 and will be submitted in a sealed package by the date and time set forth in Part 1, Section 2.3.1, and separate from that submitted for the Price Proposal. Offerors shall complete the Letter of Submittal Checklist, Attachment 4.0.1.1, and include it with their Letter of Submittal. The purpose of the Letter of Submittal Checklist is to aid the Offeror in ensuring all submittal requirements have been included in the Offeror's Letter of Submittal and to provide a page reference indicating the location in the Letter of Submittal of each submittal requirement. It shall also include an original signed copy of Acknowledgement of Receipt of RFP, Revisions and/or Addenda (Form C-78-RFP), Attachment 3.4.

.2 The Price Proposal will consist of the information required by Part 1, Section 4.3 and will be submitted in a sealed package by the date and time set forth in Part 1, Section 2.3.1, and separate from that submitted for the Letter of Submittal. Offerors shall complete the Price Proposal Checklist, Attachment 4.0.1.2, and include it with their Price Proposal. The purpose of the Price Proposal Checklist is to aid the Offeror in ensuring all submittal requirements have been included in the submittal.

**4.0.2** Offerors shall be aware that VDOT reserves the right to conduct an independent investigation of any information, including prior experience, identified in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means. VDOT also reserves the right to request additional information from an Offeror during the evaluation of that Offeror's Proposal.

**4.0.3** If an Offeror has concerns about information included in its Proposal that may be deemed confidential or proprietary, the Offeror shall adhere to the requirements set forth by Part 1, Section 11.1.2.

#### **4.1 Letter of Submittal**

**4.1.1** The Letter of Submittal shall be on the Offeror's letterhead and identify the full legal name and address of the Offeror. The Offeror is defined as the legal entity who will execute the Contract with VDOT. The Letter of Submittal shall be signed by an authorized representative of

Offeror's organization. All signatures on the Letter of Submittal shall be original and signed in ink.

**4.1.2** Declare Offeror's intent, if selected, to enter into a contract with VDOT for the Project in accordance with the terms of this RFP.

**4.1.3** Pursuant to Part 1, Section 8.2, declare that the offer represented by the Price Proposal will remain in full force and effect for one hundred twenty (120) days after the date the Price Proposal is submitted to VDOT ("Letter of Submittal & Price Proposal Due Date").

**4.1.4** Identify the name, title, address, phone and fax numbers, and e-mail address of an individual who will serve as the Point Of Contact for the Offeror.

**4.1.5** Identify the name, address and telephone number of the individual who will serve as the Principal Officer for the Offeror. (e.g., President, Treasurer, Chairperson of the Board of Directors, etc.).

**4.1.6** Identify whether the Offeror will be structured as a corporation, limited liability company, general partnership, joint venture, limited partnership or other form of organization. Identify the team members who will undertake financial responsibility for the Project and describe any liability limitations. If the Offeror is a limited liability company, partnership or joint venture, describe the bonding approach that will be used and the members of such organizations who will have joint and several liability for the performance of the work required for the Project. A single 100% performance bond and a single 100% payment bond shall be provided regardless of any co-surety relationship.

**4.1.7** Identify the full legal name of the Lead Contractor, the Lead Designer, and Quality Assurance firm for this Project. The Lead Contractor is defined as the Offeror that will serve as the prime/ general contractor responsible for overall construction of the Project and will serve as the legal entity who will execute the Contract with VDOT. The Lead Designer is defined as the prime design consulting firm responsible for the overall design of this Project. The Quality Assurance firm is defined as the firm proposed by the Offeror to provide the Quality Assurance Manager for the Project.

**4.1.8** State the Offeror's VDOT prequalification number and current VDOT prequalification status (active, inactive, etc.) in the Letter of Submittal. An 8.5" x 11" copy of the Offeror's VDOT prequalification certificate or evidence indicating Offeror is currently prequalified will be provided in the Attachments to the Letter of Submittal. The Offeror must be in good standing and prequalified to bid on the Project as outlined in VDOT's Rules Governing Prequalification Privileges at the time of the Letter of Submittal & Price Proposal Due Date. In order to prequalify as a Joint Venture, a completed "Joint Venture Bidding Agreement" must be submitted to and approved by VDOT and evidence of the approval shall be included in the attachments to the Letter of Submittal.

**4.1.9** Provide a written statement within the Letter of Submittal that the Offeror is committed to achieving a fifteen percent (15%) DBE participation goal for the entire value of the contract.

**4.1.10** Provide Interim Milestone and Final Completion Dates. The proposed dates herein shall be no later than the date(s) set forth in Part 1, Section 2.3.1. Earlier Interim Milestone and Final Completion date(s) will be deemed by VDOT as the contractual completion date(s) for the Design-Build Contract for all purposes, including liquidated damages in accordance with Part 3, Section 5.5.

## **4.2 Attachments to the Letter of Submittal**

**4.2.1** Provide the full legal name and address of all affiliated and/or subsidiary companies of the Offeror on Attachment 4.2.1. Indicate which companies are affiliates and which companies are subsidiaries. An affiliate shall be considered as any business entity which is closely associated to another business entity so that one entity controls or has 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 that 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 to be affiliates.

If the Offeror does not have any affiliated and/or subsidiary companies, other than the Offeror's legal business entity, indicate this on Attachment 4.2.1.

The Offeror shall not submit more than one Proposal for this Project. If more than one Proposal is submitted by an individual, partnership, Corporation, or any party of a Joint Venture, then all Proposals submitted by that individual, partnership, Corporation or Joint Venture shall be disqualified. If more than one Proposal is submitted by an affiliate or subsidiary company of an individual, partnership, Corporation or any party of a Joint Venture, then all Proposals submitted by that individual, partnership, Corporation or Joint Venture shall be disqualified.

**4.2.2** Execute and return the attached Certification Regarding Debarment Form(s) Primary Covered Transactions, set forth as Attachment 4.2.2(a) and Certification Regarding Debarment Form(s) Lower Tier Covered Transactions, set forth as Attachment 4.2.2(b) for the Lead Contractor, Lead Designer and Quality Assurance firm.

If Lead Contractor, Lead Designer and Quality Assurance firm are unable to execute the certification, then prospective participant shall attach an explanation to its Certification Regarding Debarment Form. Failure to execute the certification will not necessarily result in denial of award, but will be considered in determining the Offeror's responsibility. Providing false information may result in federal criminal prosecution or administrative sanctions.

**4.2.3** Provide an 8.5” x 11” copy of the Offeror’s VDOT prequalification certificate or evidence indicating Offeror is currently prequalified as outlined in Section III H in VDOT’s Rules Governing Prequalification Privileges shall be satisfied.

**4.2.4** Include a letter from a surety or insurance company (with a Best’s Financial Strength Rating of A minus and Financial Size Category VIII or better by A.M. Best Co.) stating that the Offeror is capable of obtaining a performance and payment bond based on the current estimated contract value referenced in Part 1, Section 2.2, which bonds will cover the Project and any warranty periods (per RFP Part 4). The letter of surety shall clearly state the rating categorization noted above and reference the estimated contract value as identified in Part 1, Section 2.2, in a manner similar to the notation provided below:

*“As surety for [the above named Contractor], [XYZ Company] with A.M. Best Financial Strength Rating [rating] and Financial Size Category [Size Category] is capable of obtaining 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods as provided for in the Contract Documents on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project.”*

**4.2.5** All business entities on the Offeror’s proposed team must comply with the law with regard to their organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, commercial, individual, or professional in nature, and nothing herein is intended to contradict, nor to supersede, State and Federal laws and regulations regarding the same. All business entities on the Offeror’s proposed team shall be eligible at the time of their Proposal, under the law and relevant regulations, to offer and to provide any services proposed or related to the Project. All business entities on the Offeror’s proposed team shall satisfy all commercial and professional registration requirements, including, but not limited to those requirements of the Virginia State Corporation Commission (SCC) and the Virginia Department of Professional and Occupational Regulations (DPOR).

For the Lead Contractor, Lead Designer and Quality Assurance firm, provide full size copies of DPOR licenses and SCC registrations, or evidence indicating the same, should be included in the appendix of the Letter of Submittal. Additionally, the following information should be provided on Attachment 4.2.5:

- .1 The SCC registration information for the Lead Contractor, Lead Designer and Quality Assurance firm. Provide the name, registration number, type of corporation and status.
- .2 For this Project, the DPOR registration information for each office practicing or offering to practice professional services in Virginia. For the Lead Designer and Quality Assurance firm, provide the business name, address, registration type, registration number and expiration date.

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

**4.2.6 Complete the Work History Forms for both the Lead Contractor and Lead Designer.**

Identify on the Lead Contractor Work History Form (Attachment 4.2.6(a)) three (3) relevant projects by the Lead Contractor for this Project as identified in Part 1, Section 4.1.7, focusing on what the Offeror considers most relevant in demonstrating the Lead Contractor's qualifications to serve as the Lead Contractor for this Project. Relevant experience to be identified on the Lead Contractor Work History Form shall include:

- .1 Three (3) primary arterial roadway projects with a minimum construction value of \$3,000,000 that achieved on-time or early contract completion.

If work identified on the Lead Contractor Work History Form was performed by an affiliated or subsidiary company of the Lead Contractor, explain the justification for utilizing an affiliated or subsidiary company to satisfy the relevant project experience on this Project and the control the Lead Contractor will exercise over the affiliated or subsidiary company on this Project. Additionally, identify the full legal name of the affiliated or subsidiary company, describe their role on this Project, and discuss how the Lead Contractor will be responsible for the work performed by the affiliated or subsidiary company on this Project. For all projects on the Lead Contractor Work History Form, identify the prime design consultant responsible for the overall project design of the projects listed on the Lead Contractor Work History Form.

Identify on the Lead Designer Work History Form (Attachment 4.2.6(b)) three (3) relevant projects by the Lead Designer for this Project identified in Part 1, Section 4.1.7, focusing on what the Offeror considers most relevant in demonstrating the Lead Designer's qualifications to serve as the Lead Designer for this Project. Relevant experience to be identified on the Lead Designer Work History Form shall include:

- .1 Three (3) primary arterial roadway projects with a minimum construction value of \$3,000,000.

For all projects on the Lead Designer Work History Form, identify the prime/ general contractor responsible for overall construction of the projects listed on the Lead Designer Work History Form.

**4.2.7 Provide Conceptual Roadway Plans showing the general Project layout. Include 11" x 17" copies of (a) plan view indicating the number of lanes specified in the RFP Information Package, and (b) typical sections of the proposed improvements to US Route 15/29. Minimally, the Conceptual Roadway Plans shall meet the requirements of the Design Criteria Table**

(Attachment 2.2 of Part 2), indicate that the limits of construction are within the existing/proposed right-of-way limits shown in the RFP Conceptual Plans, and, as applicable, identify:

- .1 Lane widths
- .2 Shoulder widths
- .3 Median widths
- .4 Horizontal curve data and associated design speeds
- .5 Minimum pavement sections
- .6 Cross slopes
- .7 Location of stormwater management facilities (if applicable)

### **4.3 Price Proposal**

The information and attachments provided in Part 1, Section 4.3 shall be submitted on the due date and time set forth in Part 1, Section 2.3.1. If the sealed Price Proposal is not submitted on the above specified date and time, then the Offeror shall be deemed non-responsive and will be disqualified from participating in the design-build procurement for this Project. Offerors shall complete the Price Proposal Checklist, Attachment 4.0.1.2, and include it with their Price Proposal. The purpose of the Price Proposal Checklist is to aid the Offeror in ensuring all submittal requirements have been included in the submittal. Additionally, the Offeror shall:

**4.3.1** Specify, on the form set forth in Attachment 4.3.1, a Cost Breakdown Summary in whole numbers for the Base Scope and Scope Alternatives and the Proposal Price, in both numbers and words, which is a sum for the Base Scope and any Scope Alternatives provided within (i.e. not to exceed) VDOT's Maximum Contract Value. Offerors are advised that the prices set forth above shall be considered full compensation to Offeror for all design and construction of this Project, to include: labor, material, equipment, permits, taxes, overhead, profit and any other expenses of any kind applicable to the work to be undertaken by Offeror associated with such work, including but not limited to any escalation, extended site overhead, acceleration of schedule, and/or shift of construction sequencing.

**4.3.2** Provide the required information set forth in Part 3, Section 6.3, Adjustments to Asphalt, Fuel and Steel Prices for the Base Scope and Scope Alternatives Price Proposal.

**4.3.3** Provide the Proposal Guaranty required by Section 102.07 of Division I Amendments to the Standard Specifications for the Base Scope and Scope Alternatives Price Proposal. A copy of the Proposal Guaranty Form C-24 may be found at <http://vdotforms.vdot.virginia.gov/> . **If the Price Proposal Guaranty is not submitted with the Price Proposal, then the Offeror shall be deemed non-responsive and will be disqualified from participating in the Design-Build procurement for this Project.**

**4.3.4** Provide the Sworn Statement Forms (C-104, C-105), as set forth in Attachments 4.3.4(a) and 4.3.4(b) respectively.



#### 4.4 Post Notice of Intent to Award Submittals

Within three (3) calendar days of Notice of Intent to Award, the Successful Offeror shall deliver to VDOT documents required by this Section for its review and approval. VDOT may seek clarifications on any such documents. If VDOT disapproves any such submittal, VDOT may, in its sole discretion, disqualify the Successful Offeror.

**4.4.1** Furnish an organizational chart showing the “chain of command” of all companies (including affiliated or subsidiary), including individuals responsible for pertinent disciplines, proposed on the Offeror’s team. Identify major functions to be performed and their reporting relationships in managing, designing and constructing the Project. The organizational chart should show a clear separation and independence of a contractual relationship of any kind with the Quality Control (QC) and Quality Assurance (QA) programs for construction activities. This includes separation between QA and QC inspection and field/laboratory testing in accordance with the Minimum Requirements for Quality Assurance and Quality Control on Design Build and P3 Projects, July 2018.

**4.4.2** Provide the identity of and information about the following Key Personnel listed below. This information is to be provided on the Key Personnel Resume Form attached hereto as Attachment 4.4.2. The Key Personnel shall be employed full time by the respective firms shown on the Organizational Chart at the time of submitting a Proposal.

- .1 **Design-Build Project Manager (DBPM)** – This individual shall be responsible for the overall Project design and construction and shall have the necessary expertise and experience required to supervise and exercise a degree of control of the Work. Work is comprised of all Design-Builder’s design, construction, quality management, contract administration and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents in a timely manner. The individual should be capable of answering questions/inquiries relevant to the project. The DBPM shall be responsible for meeting the Design-Builder’s obligations under the Contract and avoiding and resolving disputes under Section 10.2.2 of RFP Part 4 - General Conditions of Contract. This individual shall also coordinate any required public outreach and public meetings.
- .2 **Quality Assurance Manager (QAM)** – This individual shall be from an independent firm that has no contractual relationship of any kind with the Quality Control (QC) firm and no involvement in construction operations (to include QC inspection and testing) for the Project. The QAM shall be responsible for the quality assurance (QA) inspection and testing of all materials used and ensure the overall quality of the work performed on the Project, to include monitoring of the contractor's quality control (QC) program. The QAM will ensure that all work and materials, testing, and sampling are performed in conformance with the contract requirements and the "approved for construction" plans and

specifications. This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

- .3 **Design Manager (DM)** – This individual shall be responsible for coordinating the individual design disciplines and ensuring the overall Project design is in conformance with the Contract Documents. The DM shall be responsible for establishing and overseeing a QA/QC program for all pertinent disciplines involved in the design of the Project, including, review of design, working plans, shop drawings, specifications, and constructability of the Project. This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.
- .4 **Construction Manager** – This individual, **who will be required to be on the Project site for the duration of construction operations**, shall be responsible for managing the construction process to include all Quality Control (QC) activities to ensure the materials used and work performed meet contract requirements and the “approved for construction” plans and specifications. This individual shall hold a Virginia Department of Environmental Quality (DEQ) Responsible Land Disturber (RLD) Certification and a VDOT Erosion and Sediment Control Contractor Certification (ESCCC) or a statement shall be included indicating this individual will hold these certifications prior to the commencement of construction. Provide a current list of assignments and the anticipated duration of each assignment for all projects in which the Construction Manager is currently obligated.

**4.4.3** In accordance with the requirements set forth in Part 1, Section 4.2.5, the following information should be provided on Attachment 4.4.3:

- .1 The SCC registration information for each business entity on the Offeror’s proposed team. Provide the name, registration number, type of corporation and status.
- .2 For this Project, the DPOR registration information for each office practicing or offering to practice professional services in Virginia for each business entity on the Offeror’s proposed team. Provide the business name, address, registration type, registration number and expiration date.
- .3 For this Project, the DPOR license information for each Key Personnel practicing or offering to practice professional services in Virginia. Provide the name, the address, type, the registration number, expiration date and the office location where each Key Personnel member is offering to practice professional services in Virginia.
- .4 For this Project, the DPOR license information for those services not regulated by the Board for Architects, Professional Engineers, Land Surveyors, Certified

Interior Designers, and Landscape Architects (i.e. real estate appraisal). Provide the name, address, type, the registration number, and the expiration date of the individual offering services in Virginia.

**4.4.4** Provide a Proposal Schedule for the entire Project outlining the Offeror’s proposed plan to accomplish the Work (inclusive of the Base Scope and any applicable Scope Alternatives). The Proposal Schedule submission should include:

- .1 **Proposal Schedule:** The Proposal Schedule should depict the Offeror’s proposed overall sequence of work, and times during each work task and deliverable required to complete the Project will be accomplished. This shall include all Work necessary to achieve the Interim Milestone and Final Completion dates. The Proposal Schedule should be organized using a hierarchical Work Breakdown Structure (WBS), broken down into major phases of the Project (i.e. project milestones, project management, design, public involvement, environmental, right-of-way, utility, and construction, etc.) The Proposal Schedule should depict the anticipated project critical path (based on the longest path), reviews by Department, FHWA, other regulatory agencies; and work by suppliers, subcontractors, and other involved parties, as applicable.
- .2 **Proposal Schedule Narrative:** A Proposal Schedule Narrative shall be provided for the Proposal Schedule submitted that describes the Offeror’s proposed overall plan to accomplish the Work and, if applicable, to attain incentive(s) including, but not limited to the overall sequencing, a description and explanation of the Critical Path, proposed means and methods, and other key assumptions on which the Proposal Schedule is based.

In addition to hard copy, the Offeror shall provide “PDF” copies of the Proposal Schedule and narrative; as well as a back-up copy of the Proposal Schedule’s source document in any of the following electronic file formats: “XER”, “PRX”, ”MPP”, or “MPX”, on a CD-ROM. Offerors are to note that in addition to the Proposal Schedule, the Design-Builder will develop and submit a Preliminary Schedule and a Baseline Schedule in accordance with Part 3, Section 11.1.

**4.4.5** Provide a Schedule of Items for the Base Scope and Scope Alternatives Price Proposal utilizing the Schedule of Items Form attached hereto as Attachment 4.4.5. This Schedule of Items shall identify the material quantities and costs of each proposed pay item that make up the total Contract Price. The material quantities and costs listed for each proposed pay item shall, to the extent possible, correspond to VDOT’s list of standard and non-standard pay items. Any items considered for price adjustments shall be identified. The value associated with each pay item shall be inclusive of all direct and indirect costs, overhead, profit and any other expenses of any kind. The items and quantities shall be clearly supported by the escrowed pricing documents.

Payment for mobilization shall not be scheduled prior to the initiation of construction work. The pay item for mobilization shall be distributed between two separate installments. The first installment of fifty percent (50%) of the Design-Builder's total mobilization cost may be scheduled following partial mobilization and initiation of construction work. The second installment may be scheduled following completion of substantial mobilization, including erection of the Design-Builder's offices and buildings, if any. Preliminary engineering items including, but not limited to, surveying, geotechnical investigations and utility coordination shall not be considered as construction work for the purpose of mobilization.

**4.4.6** Submit, for the Price Proposal, a proposed monthly payment schedule showing the anticipated monthly earnings schedule on which funds will be required.

**4.4.7** Provide the Escrow Proposal Documents in accordance with Part 1, Section 11.7.

## **5.0 PROPOSAL EVALUATION AND RESPONSIVENESS REVIEW**

**5.0.1** VDOT will open and read the Price Proposals publicly on the date and time set forth in Part 1, Section 2.3.1.

**5.0.2** After opening the Price Proposals, VDOT will determine if the Proposal of the Offeror with the lowest Proposal Price for the Project is responsive.

**5.0.3** If VDOT considers the Proposal of the Offeror with the lowest Proposal Price to be non-responsive, then VDOT will determine if the Proposal of the Offeror with the next lowest Proposal Price is responsive.

### **5.1 Price Proposal Evaluation Factors**

VDOT will open and read the Price Proposals publicly on the date and time set forth in Part 1, Section 2.3.1. The Successful Offeror will be determined based on the following:

.1 VDOT will only consider Price Proposals that do not exceed VDOT's maximum contract value. A Price Proposal that exceeds the maximum contract value will render an Offeror's Proposal non-responsive.

.2 The Offeror who submits: (a) a responsive Proposal; (b) offers the most Scope Alternatives (in sequential order as specified in Section 1.3); and, in the event that another Offeror offers the same number of Scope Alternatives, (c) has the lowest Price Proposal shall be considered the Successful Offeror.

.3 In the event of tie Price Proposals with the Base Scope and an identical number of Scope Alternatives, the Successful Offeror will be decided by giving preference to Virginia persons, firms, or corporations; otherwise, the tie will be decided by lot in accordance with the VDOT Road and Bridge Specifications, Section 103.02.

## **6.0 PROPOSAL SUBMITTAL REQUIREMENTS**

Part 1, Section 6.0 describes the requirements that all Offerors must satisfy in submitting Proposals. Failure of any Offeror to submit its Proposal in accordance with this RFP may result in rejection of its Proposal.

### **6.1 Due Date, Time and Location**

**6.1.1** All Proposals must be received by the Due Date and time set forth in Part 1, Section 2.3.1. All submissions, including hand-delivered packages, US Postal Service regular mail, US Postal Service express mail, or private delivery service (FEDEX, UPS, courier, etc.) must be delivered to the following individual at the following address:

Commonwealth of Virginia  
Department of Transportation (VDOT)  
Central Office Mail Center  
Loading Dock Entrance  
1401 E. Broad Street  
Richmond, Virginia 23219  
Attention: Joseph A. Clarke, PE (APD Division)

Neither fax nor email submissions will be accepted. Offerors are responsible for effecting delivery by the deadline above, and late submissions will be rejected without opening, consideration, or evaluation, and will be returned unopened to the sender. VDOT accepts no responsibility for misdirected or lost Proposals.

### **6.2 Format**

**The Proposal format is prescribed below. If VDOT determines that a Proposal does not comply with or satisfy requirements of this Section, VDOT may find such Proposal to be non-responsive and may be disqualified from participating in the design-build procurement for this Project.**

**6.2.1** Two (2) separate sealed parcels, one (1) containing the Letter of Submittal and Attachments to the Letter of Submittal and one (1) containing the Price Proposal shall be submitted by the Due Date and time set forth in Part 1, Section 2.3.1. Parcels shall be clearly marked to identify the Project and the Offeror, and to identify the contents as the “Letter of Submittal and Attachments” or “Price Proposal” as applicable.

**6.2.2** Each Offeror shall deliver one (1) copy of the Letter of Submittal and Attachments to the Letter of Submittal, which must bear original signatures, and one (1) CD-ROM or DVD-ROM containing the entire Letter of Submittal and Attachments to the Letter of Submittal in a single cohesive Adobe PDF file. Photos and graphics contained in the PDF copy shall be compressed to 220 pixels per inch (ppi) or less prior to conversion in order to minimize the file size to the greatest extent possible.

The Letter of Submittal and Attachments to the Letter of Submittal shall be securely bound with an identity on its front cover. **Three ring binders are not permissible.**

The Letter of Submittal and Attachments to the Letter of submittal shall be:

- Divided into two volumes:
  - Volume I shall:
    - Include all requirements of the Letter of Submittal, including appendices, with the exception of design concept graphics and proposal schedule.
    - Be prepared on 8.5” x 11” white paper (Charts, exhibits and other illustrative information included in the Letter of Submittal may be submitted on 11” x 17” paper, but must be folded to 8.5” x 11”.)
    - Include proposal schedule narrative prepared on 8.5” x 11” paper.
    - The appendices to Volume I should be organized at the end of the Volume I.
  - Volume II shall:
    - Include all design concept graphics drawn to an identifiable scale.
    - Include proposal schedule.
    - Be prepared on 11” x 17” paper unfolded
- Typed on one (1) side only
- Separated by numbered tabs with sections corresponding to the order set forth in Part 1, Section 4. 1 and Section 4.2.
- Page number references should be included in the lower right hand corner on each page of Volume I and Volume II of the Letter of Submittal.
- Animated videos/ motion pictures are prohibited.
- The Letter of Submittal Checklist and Form C-78-RFP shall be provided in the front of the Letter of Submittal

The format and appearance of the Work History Forms should not be modified. The Work History Forms shall not exceed one (1) page per project for each the Lead Contractor and the Lead Designer.

All printing, except for the front cover of the Letter of Submittal and any appendices, should be Times New Roman, with a font of 12-point. (Times New Roman 10 point font may be used for filling out information on charts, tables and/ or exhibits).

**6.2.3** Each Offeror shall deliver one (1) paper copy of the Price Proposal, which must bear original signatures on the Price Proposal Form, and one (1) CD-ROM or DVD-ROM containing the entire Price Proposal in a single cohesive Adobe PDF file.

The Price Proposal shall be securely bound and contained in a single volume. **Three ring binders are not permissible.** Additionally, the Price Proposal shall be typed on one (1) side only and separated by numbered tabs with sections corresponding to the order set forth in Part 1, Section 4.3. The Price Proposal Checklist shall be provided in the front of the Price Proposal.

**6.2.4** Within three (3) calendar days of Notice of Intent to Award, the Successful Offeror shall deliver a sealed parcel containing one (1) paper copy of the Post Notice of Intent to Award Submittals, excluding the Escrow Proposal Documents, and one (1) CD-ROM or DVD ROM containing the entire Post Notice of Intent to Award Submittals, excluding the Escrow Proposal Documents in a single cohesive Adobe PDF file.

The Post Notice of Intent to Award Submittals shall be securely bound and contained in a single volume. **Three ring binders are not permissible.** Additionally, the Post Notice of Intent to Award Submittals shall be typed on one (1) side only and separated by numbered tabs with sections corresponding to the order set forth in Part 1, Section 4.4.

Except for charts, schedules, exhibits, and other illustrative and graphical information, all information shall be prepared on 8.5" x 11" white paper. Charts, schedules, exhibits, and other illustrative and graphical information may be on 11" x 17" paper, but must be folded to 8.5" x 11". The format and appearance of the Key Personnel Resume Form should not be modified. The Key Personnel Resume Forms shall not exceed two (2) pages for each Key Personnel.

All printing, except for the front cover of the Post Notice of Intent to Award Submittals and any appendices, should be Times New Roman, with a font of 12-point (Times New Roman 10 point font may be used for filling out information on charts, tables and/ or exhibits).

## **7.0 QUESTIONS AND CLARIFICATIONS**

**7.0.1** All questions and requests for clarification regarding this RFP shall be submitted to VDOT's POC in writing in electronic format (submission by email is acceptable). All questions and requests for clarification shall be submitted in Microsoft Office Word format. No requests for additional information, clarification or any other communication should be directed to any other individual. **NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.**

**7.0.2** All questions or requests for clarification must be submitted by the due date and time set forth in Part 1, Section 2.3.1. Questions or clarifications requested after such time will not be answered, unless VDOT elects, in its sole discretion, to do so.

**7.0.3** VDOT's responses to questions or requests for clarification shall be in writing, and may be accomplished by an Addendum to this RFP. VDOT will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an Addendum.

**7.0.4** VDOT, in its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Proposal.

## **8.0 AWARD OF CONTRACT, PROPOSAL VALIDITY AND CONTRACT EXECUTION**

VDOT has determined that the Negotiation and Award of Contract will be made in the following manner:

### **8.1 Negotiations and Award of Contract**

**8.1.1** VDOT will review the Proposal submitted by the Offeror with the lowest price that provides the most scope alternatives. If the Proposal is responsive and the Proposal Price is within VDOT's maximum contract value, then VDOT will issue a Notice of Intent to Award to the Successful Offeror.

**8.1.2** Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Successful Offeror to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Successful Offeror.

**8.1.3** Pursuant to 23 CFR 636.404, if the Proposal Price for the Base Scope submitted by all Offerors is not within VDOT's maximum contract value, VDOT may establish a competitive range among the Offerors who have submitted a responsive Proposal.

**8.1.4** Pursuant to 23 CFR 636.402, 636.404, and 636.406, prior to VDOT establishing a competitive range, VDOT may hold communications with only those Offerors whose exclusion from or inclusion in, the competitive range is uncertain. Communications will (a) enhance VDOT's understanding of Proposals; or (b) allow reasonable interpretation of the Proposal.

**8.1.5** Pursuant to 23 CFR 636.404, after VDOT establishes the competitive range, VDOT will notify any Offeror whose Proposal is no longer considered to be included in the competitive range.

**8.1.6** Pursuant to 23 CFR 636.506, 636.507, and 636.508, VDOT will hold discussions with all Offerors in the competitive range. Offerors are advised that VDOT may, in its reasonable discretion, determine that only one Offeror is in the competitive range.

**8.1.7** Pursuant to 23 CFR 636.510, VDOT may determine to further narrow the competitive range once discussions have begun. At which point, VDOT will notify any Offeror whose Proposal is no longer considered in the competitive range.

**8.1.8** Pursuant to 23 CFR 636.509, at the conclusion of discussions, VDOT, will request all Offeror(s) in the competitive range to submit a final Proposal revision, also called Best and Final Offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one request for a revised Proposal (*i.e.*, only one BAFO).



**8.1.9** Pursuant to 23 CFR 636.512, VDOT will review the final Proposals in accordance with the review and selection criteria and complete a final ranking of the Offerors in the competitive range, and then VDOT will issue a Notice of Intent to Award to the Successful Offeror.

**8.1.10** Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Successful Offeror to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Successful Offeror.

## **8.2 Proposal Validity**

**8.2.1** The offer represented by the Proposal will remain in full force and effect for one hundred twenty (120) days after the Letter of Submittal/Price Proposal Due Date set forth in Part 1, Section 2.3.1. If Award of Contract has not been made by the CTB within one hundred twenty (120) days after the Letter of Submittal/Price Proposal Due Date, each Offeror that has not previously agreed to an extension of such deadline shall have the right to withdraw its Proposal.

## **8.3 Submittals after Notice of Intent to Award**

**8.3.1** Within three (3) calendar days of Notice of Intent to Award, the Successful Offeror shall deliver to VDOT all of the information required by Part 1, Section 4.4.

**8.3.2** Within fifteen (15) days of Notice of Intent to Award, the Successful Offeror shall deliver to VDOT all pertinent documents in accordance with Section 103 of the Division I Amendments to the Standard Specifications.

**8.3.3** Failure to comply with submittal requirements provided in Part 1, Sections 8.3.1 and 8.3.2 above may result in disqualification of the Offeror by VDOT in its sole and reasonable discretion.

## **8.4 Contract Execution and Notice to Proceed**

**8.4.1** Upon Award of Contract, VDOT will deliver an executed copy of the Design-Build Contract to the Successful Offeror, who shall execute and deliver such copy to VDOT within seven (7) days of receipt.

**8.4.2** VDOT reserves the right to issue Notice to Proceed within fifteen (15) days after execution of the Design-Build Contract.

## **9.0 RIGHTS AND OBLIGATIONS OF VDOT**

### **9.1 Reservation of Rights**

**9.1.1** In connection with this procurement, VDOT reserves to itself all rights (which rights shall be exercisable by VDOT in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

- .1 The right to cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to the execution by VDOT of the Design-Build Contract, without incurring any obligations or liabilities.
- .2 The right to issue a new RFP.
- .3 The right to reject any and all submittals, responses and Proposals received at any time.
- .4 The right to modify all dates set or projected in this RFP.
- .5 The right to suspend and terminate the procurement process for the Project, at any time.
- .6 The right to waive or permit corrections to data submitted with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
- .7 The right to issue addenda, supplements, and modifications to this RFP.
- .8 The right to permit submittal of Addenda and supplements to data previously provided with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
- .9 The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding of the responses to this RFP.
- .10 The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.
- .11 The right to permit Offerors to add or delete firms and/or key personnel until such time as VDOT declares in writing that a particular stage or phase of its review has been completed and closed.
- .12 The right to add or delete Offeror responsibilities from the information contained in this RFP.

- .13 The right to waive deficiencies, informalities and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal.
- .14 The right to disqualify any Offeror that changes its submittal without VDOT approval.
- .15 The right to change the method of award at any time prior to submission of the Proposals.
- .16 The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.
- .17 The right to negotiate the allocation of prices identified for specific portions of the work depicted within a Price Proposal.
- .18 The right to disqualify and/or cease negotiations with an Offeror if VDOT, in its sole discretion, determines that the Offeror's Post Notice of Intent to Award Submittals are not acceptable or its Price Proposal contains unbalanced pricing among the specific portions of work identified therein.

## **9.2 No Assumption of Liability**

**9.2.1** VDOT assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Offeror and its team members.

**9.2.2** In no event shall VDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) a contract, in form and substance satisfactory to VDOT, has been executed and authorized by VDOT and, then, only to the extent set forth therein.

## **10.0 PROTESTS**

This Section simply summarizes protest remedies available with respect to the provisions of the Code of Virginia that are relevant to protests of awards or decisions to award Design-Build Contracts by VDOT. This section does not purport to be a complete statement of those provisions and is qualified in its entirety by reference to the actual provisions themselves.

In accordance with §2.2-4360, of the *Code of Virginia*, if an unsuccessful Offeror wishes to protest the award or decision to award a contract, such Offeror must submit a protest in writing to VDOT's POC no later than ten (10) calendar days after the award or the announcement posting the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. No protest shall lie for a claim that the selected Offeror is not a responsible bidder.

Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. However, if the protest of any Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, of the *Code of Virginia*, then the time within which the protest must be submitted shall expire ten (10) calendar days after those records are available for inspection by such Offeror under § 2.2-4342, of the *Code of Virginia*.

VDOT shall issue a decision in writing within ten (10) calendar days of the receipt of any protest stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) calendar days of receipt of the written decision, by instituting legal action in accordance with § 2.2-4364, of the *Code of Virginia*.

Pursuant to § 2.2-4362, of the *Code of Virginia*, an award need not be delayed for the period allowed a bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination by the Commissioner, or his designee, that proceeding without delay is necessary to protect the public interest or unless the Design-Build Proposal would expire. Further, pursuant to § 2.2-4361, of the *Code of Virginia*, pending a final determination of a protest or appeal, the validity of the contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed.

## **11.0 MISCELLANEOUS**

### **11.1 Virginia Freedom of Information Act**

**11.1.1** All Proposals submitted to VDOT become the property of VDOT and are subject to the disclosure requirements of Section 2.2-4342 of the Virginia Public Procurement Act and the Virginia Freedom of Information Act (FOIA) (Section 2.2—3700 et seq.). Offerors are advised to familiarize themselves with the provisions of each Act referenced herein to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In no event shall the Commonwealth, the Commissioner of Highways, or VDOT be liable to an Offeror for the disclosure of all or a portion of a Proposal submitted pursuant to this request.

**11.1.2** If a responding Offeror has special concerns about information which it desires to make available to VDOT but which it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its Proposal and state in writing why protection of that information is needed. The Offeror should make a written request to VDOT's POC. The written request shall:

- .1 Invoke such exemption upon the submission of the materials for which protection is sought.

- .2 Identify the specific data or other materials for which the protection is sought.
- .3 State the reasons why the protection is necessary.
- .4 Indicate that a similar process with the appropriate officials of the affected local jurisdictions is or will be conducted. Failure to take such precautions prior to submission of a Proposal may subject confidential information to disclosure under the Virginia FOIA.

**11.1.3** Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VDOT to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VDOT by applicable law, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).

**11.1.4** In the event VDOT receives a request for public disclosure of all or any portion of a Proposal identified as confidential, VDOT will attempt to notify the Offeror of the request, providing an opportunity for such Offeror to assert, in writing, claimed exemptions under the FOIA or other Commonwealth law. VDOT will come to its own determination whether or not the requested materials are exempt from disclosure. In the event VDOT elects to disclose the requested materials, it will provide the Offeror advance notice of its intent to disclose.

**11.1.5** Because of the confidential nature of the negotiation process associated with this Project, and to preserve the propriety of each Offeror's Proposal, it is VDOT's intention, subject to applicable law, not to consider a request for disclosure until after VDOT's issuance of a Notice of Intent to Award. Offerors are on notice that once a Design-Build Contract is executed, some or all of the information submitted in the Proposal may lose its protection under the applicable laws of the Commonwealth.

## **11.2 Conflict of Interest**

**11.2.1** Implementation guidelines for VDOT's policy on organizational conflicts of interest relating to Design-Build procurement are documented in the Alternative Project Delivery Division Memorandum IIM-APD-2.

<http://www.virginiadot.org/business/resources/LocDes/IIM-APD-2.pdf>

Each Offeror shall require its proposed team members to identify potential conflicts of interest of a real or perceived competitive advantage relative to this procurement. Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the Project or VDOT's design-build program may present a conflict of interest or a competitive advantage. If a potential conflict of interest or competitive advantage is identified, the Offeror shall submit in writing the pertinent information to VDOT's POC.

VDOT, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated, shall not be allowed to participate as a Design-Build team member for the Project. Failure to abide by VDOT's determination in this matter may result in a Proposal being declared non-responsive.

**11.2.2** Conflicts of interest and a real or perceived competitive advantage are described in state and federal law, and, for example, may include, but are not limited to the following situations:

1. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria for the Project.
2. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria as part of the programmatic guidance or procurement documents for VDOT's Design-Build program, and as a result has a unique competitive advantage relative to the Project.
3. An organization or individual with a present or former contract with VDOT to prepare planning, environmental, engineering, or technical work product for the Project, and has a potential competitive advantage because such work product is not available to all potential Offerors in a timely manner prior to the procurement process.
4. An organization or individual with a present contract with VDOT to provide assistance in Design-Build contract administration for the Project.

**11.2.3** VDOT reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis.

**11.2.4** VDOT may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to review under this section. If documents have been designated as proprietary by Virginia law, the Offeror will be given the opportunity to waive this protection from disclosure. If Offeror elects not to disclose, Offeror may be declared non-responsive.

**11.2.5** The firms listed below will not be allowed to participate as a Design-Build team member due to a conflict of interest:

- Schnabel Engineering, Inc.
- DMY Engineering Consultants, Inc.
- Rice Associates
- Accumark

- Geomni
- Reynolds, Smith and Hills, Inc. (RS&H)

Any Proposals received in violation of this requirement will be rejected.

### **11.3 Ethics in Public Contracting Act**

VDOT may, in its sole discretion, disqualify the Offeror from further consideration for the award of the Design-Build Contract if it is found after due notice and examination by VDOT that there is a violation of the Ethics in Public Contracting Act, § 2.2-4367 of the *Code of Virginia*, or any similar statute involving the Offeror in the procurement of the contract.

### **11.4 Requirement to Keep Team Intact**

The team proposed by Offeror, including but not limited to the Offeror's organizational structure, the lead contractor, the lead designer, Key Personnel, and other individuals identified pursuant to Part 1, Section 4.4, shall remain on Offeror's team for the duration of the procurement process and, if the Offeror is awarded the Design-Build Contract, the duration of the Design-Build Contract. The Offeror shall not change or substitute any Key Personnel except due to voluntary or involuntary termination of employment, retirement, death, disability, incapacity, or as otherwise approved by the Department. Any proposed change, Key Personnel must be submitted in writing to VDOT's POC, who, in his sole discretion, will determine whether to authorize a change. Unauthorized changes to the Offeror's team at any time during the procurement process may result in the elimination of the Offeror from further consideration. Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Design-Build Contract.

### **11.5 Disadvantaged Business Enterprises (DBE's)**

**11.5.1** Any Design-Builder, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; VDOT's DBE Program rules and regulations, VDOT's Road and Bridge Specifications and Part 5 Exhibit 107.15 (Special Provision for Use of Disadvantaged Business Enterprise for Design-Build Projects).

**11.5.2** It is the policy of VDOT that DBEs, as defined in 49 CFR Part 26, shall have every opportunity to participate in the performance of construction/consultant contracts. The DBE contract goal for this procurement is identified in Part 1, Section 4.9. Offerors are encouraged to take all necessary and reasonable steps to ensure that DBEs have every opportunity to compete for and perform services on contracts, including participation in any subsequent supplemental contracts. If a portion of the work on the Project is to be subcontracted out, Offerors must seek out and consider DBEs as potential subcontractors. DBEs must be contacted to solicit their interest, capability and qualifications. Any agreement between an Offeror and a DBE whereby

the DBE promises not to provide services to any other Offeror or other contractors/consultants is prohibited.

**11.5.3** After Award of the Contract the Design-Builder shall submit documentation related to the use of DBEs for the Project in accordance with the procedures set for in Part 5 Exhibit 107.15 (Special Provision for Use of Disadvantaged Business Enterprise for Design-Build Projects). The DBE must become certified with the Virginia Department of Small Business and Supplier Diversity (SBSD) prior to the performance of any work for the Project. In the case where the DBE is to be utilized to achieve the DBE participation goal, the DBE must be certified prior to the submission to VDOT of Forms C-111 (Minimum DBE Requirements), C-112 (Certification of Binding Agreement with DBE Firms) and Form C-48 (Subcontractor/Supplier Solicitation and Utilization). If the DBE is a prime, the firm will receive full credit for the planned involvement of their own workforce, as well as the work they commit to be performed by DBE subcontractors. DBE primes are encouraged to make the same outreach. DBE credit will be awarded only for work actually performed by DBEs themselves. When a DBE prime or subcontractor subcontracts work to another firm, the work counts toward the DBE goals only if the other firm itself is a DBE. A DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce.

**11.5.4** DBE certification entitles a firm to participate in VDOT's DBE Program. However, it does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular type of work.

**11.5.5** When preparing bids for projects with DBE goals, VDOT encourages prospective bidders to seek the assistance of the following offices:

Virginia Department of Small Business and Supplier Diversity  
101 N. 14th Street  
11<sup>th</sup> Floor  
Richmond, VA 23219  
Phone: (804) 786-6585  
<http://www.sbsd.virginia.gov/>

Metropolitan Washington Airports Authority  
Department of Supplier Diversity  
1 Aviation Circle  
Washington, DC 20001  
Phone: (703) 417-8625  
<http://www.metwashairports.com/>

Contractors are also encouraged to seek help from the VDOT Districts Equal Employment Opportunity ("EEO") Offices, Central Office Civil Rights Office and the VDOT Business Opportunity and Workforce Development ("BOWD") Center as listed below:



VDOT Central Office  
1221 East Broad Street  
Richmond, VA 23219  
(804) 786-2085

Lynchburg District  
4219 Campbell Avenue  
Lynchburg, VA 24506  
(434) 856-8169

Bristol District  
870 Bonham Drive  
Bristol, VA 24203  
(276) 669-9907

Northern Virginia District  
4975 Alliance Drive  
Fairfax, VA 22030  
(703) 259-1775

Culpeper District  
1601 Orange Road  
Culpeper, VA 22701  
(540) 829-7523

Richmond District  
2430 Pineforest Drive  
Colonial Heights, VA 23834  
(804) 524-6091

Fredericksburg District  
87 Deacon Road  
Fredericksburg, VA 22405  
(540) 899-4562

Salem District  
731 Harrison Avenue  
Salem, VA 24153  
(540) 387-5453

Hampton Roads District  
1700 N. Main Street  
Suffolk, VA 23434  
(757) 925-2519

Staunton District  
811 Commerce Road  
Staunton, VA 24401  
(540) 332-7888

BOWD  
1602 Rolling Hills Drive  
Suite 110  
Richmond, VA 23229  
Phone: (804) 662-9555

The following informational websites may also be of assistance:

[www.virginiadot.org/business/bu\\_bizDev.asp](http://www.virginiadot.org/business/bu_bizDev.asp)

[www.virginiadot.org/business/bu-civil-rights-home.asp](http://www.virginiadot.org/business/bu-civil-rights-home.asp)

**11.5.5** This Project has federal funding. In accordance with the Governor's Executive Order No. 20, VDOT requires utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded projects. A list of Department of Small Business and Supplier Diversity (SBSD) certified SWaM firms is maintained on the SBSBD web site ([www.sbsd.virginia.gov](http://www.sbsd.virginia.gov)) under the SWaM Vendor Directory link. Offerors are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services in the design-build contract. If the Offeror intends to subcontract a portion of the services on the Project, the Offeror is encouraged to seek

out and consider SWaM firms as potential subconsultants. The Offeror is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between an Offeror and a SWaM firm whereby the SWaM firm promises not to provide services to other Offerors is prohibited.

## **11.6 Trainee and Apprenticeship Participation**

VDOT will require trainee and apprenticeship participation for this Project. The on-the-job trainee goal for this Project is three (3) individuals.

## **11.7 Escrow Proposal Documents**

### **11.7.1 Scope**

Pursuant to Part 1, Section 11.7.5.1 below, the Successful Offeror shall submit to the individual set forth in Part 1, Section 6.1.1 one copy of all documentary information generated in preparation of its Proposal within three (3) calendar days of Notice of Intent to Award. This material is hereinafter referred to as Escrow Proposal Documents (“EPDs”). The EPDs will be held in a secure location at the VDOT Central Office until immediately prior to award of the Project. The EPDs of the Successful Offeror will be transferred to and then held in escrow at the banking institution specified in Part 1, Section 11.7.6.

An Escrow Proposal Documents Checklist has been provided for reference in Attachment 11.7.1.

### **11.7.2 Ownership**

- .1 The EPDs are, and shall always remain, the property of the Successful Offeror, subject to joint review by VDOT and the Successful Offeror, as provided herein.
- .2 VDOT stipulates and expressly acknowledges that the EPDs constitute trade secrets. This acknowledgement is based on VDOT's express understanding that the information contained in the EPDs is not known outside Successful Offeror's business, is known only to a limited extent and only by a limited number of employees of the Successful Offeror, is safeguarded while in Successful Offeror's possession, is extremely valuable to Successful Offeror and could be extremely valuable to Successful Offeror's competitors by virtue of its reflecting Successful Offeror's contemplated techniques of design and construction. VDOT further acknowledges that Successful Offeror expended substantial sums of money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. VDOT further acknowledges that the EPDs and the information contained therein are made available to VDOT only because such action is an express prerequisite to Award of Contract. VDOT further acknowledges that the EPDs include a compilation of the information used in Successful Offeror's business, intended to

give Successful Offeror an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

### **11.7.3 Purpose**

EPDs may be used to assist in the negotiation of price adjustments and change orders and in the settlement of disputes and claims.

### **11.7.4 Format and Contents**

- .1 Successful Offerors may submit EPDs in their usual cost estimating format provided that all information is clearly presented and ascertainable. It is not the intention of this section, Part 1, Section 11.7, to cause the Successful Offeror extra work during the preparation of the Proposal, but to ensure that the EPDs will be adequate to enable complete understanding and proper interpretation for their intended use. The EPDs shall be submitted in the language (i.e., English) of the Specifications.
- .2 It is required that the EPDs clearly itemize the estimated costs of performing the work of each item contained in Successful Offeror's schedule of items. Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review. A hard copy of the quotes for the Lead Contractor, Lead Designer and for all subcontractors and subconsultants in the Offeror's Organization Chart shall be provided. The EPDs shall include: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and equipment, add/deduct sheets, geotechnical reviews and consultant reports, and all other information used by the Successful Offeror to arrive at the prices contained in the Proposal. Estimated costs shall be broken down into estimate categories for each bid items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Successful Offeror's allocation of indirect costs, contingencies, and mark-up shall be identified.
- .3 All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and mark-up, as applicable, are allocated.

- .4 RFP Documents provided by VDOT should not be included in the EPDs unless needed to comply with these requirements.

#### **11.7.5 Submittal**

- .1 The EPDs shall be submitted in a sealed container to the individual set forth in Part 1, Section 6.1.1 above, which container shall be clearly marked on the outside with the Offeror's name, date of submittal, Project name, and the words "Escrow Proposal Documents."
- .2 Prior to Award of Contract, EPDs of the Successful Offeror will be examined, organized, and inventoried by representatives of VDOT, together with members of the Successful Offeror's staff who are knowledgeable in how the Proposal was prepared. The examination is to ensure that the EPDs are legible and complete. It will not include review of, and will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of any RFP Documents or the Design-Build Contract. Examination will not alter any condition or term of the Design-Build Contract. EPDs that are legible and complete will be transferred to the banking institution referenced in Part 1, Section 11.7.6 after examination.
- .3 If all the documents required by this section, Part 1, Section 11.7, have not been included in the original submittal, additional documentation may be submitted, at VDOT's discretion, prior to Award of Contract.
- .4 If the Design-Build Contract is not awarded to the Successful Offeror, the EPDs of the next Offeror to be considered for award shall be processed as described above.
- .5 Timely submission of complete EPDs is an essential element of the Successful Offeror's responsibility and a prerequisite to Award of Contract.
- .6 If the Successful Offeror's Proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds ten percent (10%) of the Proposal Price proposed by the Successful Offeror, shall provide separate Escrow Documents to be included with those of the Successful Offeror. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the Successful Offeror.
- .7 If the Design-Builder wishes to subcontract any portion of the work after Award of Contract, VDOT retains the right to require the Design-Builder to submit Escrow Documents from the subcontractor before the subcontract is approved.

#### **11.7.6 Storage**

The Successful Offeror's EPDs shall be stored at SunTrust Bank (Escrow Agent) at the following address:

SunTrust Bank  
ATTN: Charles Henderson  
919 East Main Street, 7<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 782-7087

Generally, the EPDs will be delivered to the Escrow Agent after the Escrow Review Meeting with VDOT. The Successful Offeror shall provide or have on file with the Escrow Agent a copy of the firm's current Tax Form W-9, Certificate of Incumbency, and Articles of Incorporation. The cost for storing the EPDs will be paid by the Successful Offeror to the Escrow Agent. This annual fee is currently \$2,500 with initial payment due at the time of document delivery to the Escrow Agent.

#### **11.7.7 Examination**

- .1 The EPDs shall be examined by VDOT and the Design-Builder, at any time deemed necessary by VDOT.
- .2 VDOT may delegate review of EPDs to members of VDOT's staff or consultants. The foregoing notwithstanding, the EPDs and information contained therein may be used in the resolution of any claim or dispute before any entity selected to resolve disputes and in any litigation or arbitration commenced hereunder. No other person shall have access to the EPDs.
- .3 Access to the documents will take place in the presence of duly designated representatives of both VDOT and the Design-Builder, except that, if the Design-Builder refuses to be present or to cooperate in any other way in the review of the documents, VDOT may upon notice to the Design-Builder, review such documents without the Design-Builder being present.

#### **11.7.8 Final Disposition and Return of EPDs**

The EPDs of the Successful Offeror will be returned once the work has been determined to be finally complete and the Successful Offeror has been notified in writing of the determination of Final Acceptance in accordance with Part 4, Section 6.6. This release is contingent upon notification from the Department's Project Manager to the Department's Alternative Project Delivery (APD) Division that the Final Application for payment has been submitted by the Successful Offeror in accordance with Part 4, Section 6.6.3. Upon receipt of this notification, APD will contact and coordinate with the Successful Offeror for the transfer of the EPD's at a mutually convenient time at the expense of the Successful Offeror, as applicable.

### **11.7.9 Execution of Escrow Agreement**

The Successful Offeror, as a condition of Award of Contract, agrees to execute the Escrow Agreement in the form set forth in Attachment 11.7.9.

### **11.8 Administrative Requirements**

In addition to the specific submittal requirements set forth in Part 1, Sections 3.0 and 4.0 above, all Offerors shall comply with the following:

**11.8.1** All business entities, except for sole proprietorships, are required to be registered with the Virginia State Corporation Commission. 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 proprietorship must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Decorators and Landscape Architects. Board regulations require that all professional corporations and business entities that have branch offices located in Virginia that 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 that 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 criteria prior to a contract being executed by VDOT.

**11.8.2** VDOT will not consider for award any Proposals submitted by any Offerors and will not consent to subcontracting any portions of the proposed Design-Build 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.

**11.8.3** All Offerors must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48 CFR 31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23 CFR 172, "Administration of Engineering and Design Related Service Contracts."

**11.8.4** VDOT 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) when requested by VDOT to respond to the RFP. This requirement applies to all consulting firms with fifteen (15) or more employees.

**11.8.5** VDOT does not discriminate against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

The Offeror shall be in compliance with Commonwealth of Virginia Executive Order 61 Ensuring Equal Opportunity and Access for all Virginians in state contracting and public services. The Offeror shall maintain a non-discrimination policy, which prohibits discrimination by the Offeror on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. This policy shall be followed in all employment practices, subcontracting practices, and delivery of goods or services. The Offeror shall also include this requirement in all subcontracts valued over \$10,000.

**11.8.6** Offerors shall note and comply with the requirements relative to the eVA Business-to-Government Vendor system. 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 Offerors must register in eVA; failure to register will result in a Proposal being rejected.

**11.8.7** The required services may involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections are required to sign CII/SSI Non-Disclosure Agreements and 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. VDOT reserves the right to conduct fingerprint-based CHBC on all employees of the Design-Builder's team members, 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 Offeror or Design-Builder. A VDOT issued photo-identification badge is required for each employee of the Offeror's or Design-Builder's team who will need access to VDOT CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VDOT reserves the right to deny access to CII/SSI material and issuance of a VDOT security clearance or a VDOT issued photo-identification badge.

CII/SSI material is not available for the Project and is not included in the Information Package. CII/SSI Non-Disclosure Agreements are not required to respond to the RFP. VDOT's CII/SSI Policy Guide and the forms necessary to obtain CII/SSI material can be found using the following website link: [http://www.virginiadot.org/business/bridge\\_safety\\_inspection.asp](http://www.virginiadot.org/business/bridge_safety_inspection.asp). A completed CII/SSI form must be submitted to VDOT's Point of Contact provided in Part 1, Section 2.4 prior to distribution of CII/SSI material.

## 11.9 Compliance with the Law in Virginia

Failure to comply with the law with regard to those legal requirements in Virginia (whether federal or state) regarding your ability to lawfully offer and perform any services proposed or related to the Project may render your RFP submittal, in the sole and reasonable discretion of VDOT, non-responsive and/or non-responsible, and in that event your RFP submittal may be returned without any consideration for selection of contract award.

### 11.10 Attachments

The following attachments are specifically made a part of, and incorporated by reference into, these Instructions for Offerors:

- ATTACHMENT 2.6 -- RFP INFORMATION PACKAGE ORDER FORM
- ATTACHMENT 3.4 -- FORM C-78-RFP (ACKNOWLEDGEMENT OF RECEIPT OF RFP, REVISIONS, AND/OR ADDENDA)
- ATTACHMENT 4.0.1.1 -- LETTER OF SUBMITTAL CHECKLIST
- ATTACHMENT 4.0.1.2 -- PRICE PROPOSAL SUBMITTAL CHECKLIST
- ATTACHMENT 4.2.1 -- AFFILIATED/ SUBSIDIARY COMPANIES LIST
- ATTACHMENT 4.2.2(a) -- CERTIFICATION REGARDING DEBARMENT (PRIMARY COVERED TRANSACTIONS)
- ATTACHMENT 4.2.2(b) -- CERTIFICATION REGARDING DEBARMENT (LOWER TIER COVERED TRANSACTIONS)
- ATTACHMENT 4.2.5 -- LICENSE AND REGISTRATION INFORMATION - BUSINESSES
- ATTACHMENT 4.2.6(a) -- LEAD CONTRACTOR WORK HISTORY FORM
- ATTACHMENT 4.2.6(b) -- LEAD DESIGNER WORK HISTORY FORM
- ATTACHMENT 4.3.1 -- PRICE PROPOSAL FORM
- ATTACHMENT 4.3.4(a) -- FORM C-104 (BIDDER'S STATEMENT)
- ATTACHMENT 4.3.4(b) -- FORM C-105 (BIDDER'S CERTIFICATION)
- ATTACHMENT 4.4.2 -- KEY PERSONNEL RESUME FORM
- ATTACHMENT 4.4.3 -- LICENSE AND REGISTRATION INFORMATION - INDIVIDUALS
- ATTACHMENT 4.4.5 -- SCHEDULE OF ITEMS FORM
- ATTACHMENT 11.7.1 -- ESCROW PROPOSAL DOCUMENTS CHECKLIST
- ATTACHMENT 11.7.9 -- ESCROW AGREEMENT FORM

END OF PART 1  
INSTRUCTIONS FOR OFFERORS



**ATTACHMENT 2.6**

**DESIGN-BUILD  
ORDER FORM**

**US ROUTE 15/29 IMPROVEMENTS AT VINT HILL  
REQUEST FOR PROPOSALS (RFP) INFORMATION PACKAGE**

FIRM NAME \_\_\_\_\_

COMPLETE MAILING  
ADDRESS \_\_\_\_\_

\_\_\_\_\_  
(PLEASE GIVE BOTH STREET ADDRESS AND POSTAL DELIVERY ADDRESS)

FIRM TELEPHONE NUMBER \_\_\_\_\_ FIRM FAX NUMBER \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

SIGNED: \_\_\_\_\_

FOR QUESTIONS REGARDING THE RFP INFORMATION PACKAGE CONTACT:

**JOSEPH A. CLARKE, PE  
VIRGINIA DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219  
(804) 371-4316**

TO ORDER THE RFP INFORMATION PACKAGE BY TELEPHONE/MAIL/FAX CONTACT:

**THE CONSTRUCTION DIVISION PLAN ROOM  
VIRGINIA DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-1898  
FAX TELEPHONE NO. (804) 786-2788** (Ordering by fax using a Mastercard or Visa credit card is the preferred method)

MASTERCARD/VISA NO. \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

THE RFP INFORMATION PACKAGE WILL NOT BE ISSUED PRIOR TO RECEIPT OF PAYMENT

Dear Sir/Madam:

Please send the RFP Information Package designated below. Enclosed is check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ made payable to the Treasurer of Virginia.

RFP NO.	PROJECT	PACKAGES REQUESTED	TOTAL (\$50.00 per package, price includes 5% Virginia Sales Tax)
		#	\$
<b>C00114713DB105</b>	<b>0029-030-843</b>		

**FOR DEPARTMENTAL USE ONLY**

RFP PACKAGE MAILED \_\_\_\_\_  
TO BE MAILED \_\_\_\_\_

MAILED BY \_\_\_\_\_  
CHECKED BY \_\_\_\_\_

**ATTACHMENT 3.4**

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION**

**PROJECT:** US Route 15/29 Improvements at Vint Hill  
**RFP NO. :** C00114713DB105  
**PROJECT NO.:** 0029-030-843

**ACKNOWLEDGEMENT OF RFP, REVISION AND/OR ADDENDA**

Acknowledgement shall be made of receipt of the Request for Proposals (RFP) and/or any and all revisions and/or addenda pertaining to the above designated project which are issued by the Department prior to the Letter of Submittal submission date shown herein. Failure to include this acknowledgement in the Letter of Submittal may result in the rejection of your proposal.

By signing this Attachment 3.4, the Offeror acknowledges receipt of the RFP and/or following revisions and/or addenda to the RFP for the above designated project which were issued under cover letter(s) of the date(s) shown hereon:

1. Cover letter of RFP – February 4, 2019  
*(Date)*
2. Cover letter of \_\_\_\_\_  
*(Date)*
3. Cover letter of \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

**ATTACHMENT 4.0.1.1**

**US Route 15/29 Improvements at Vint Hill, C0114713DB1050**

**LETTER OF SUBMITTAL CHECKLIST AND CONTENTS**

Offerors shall furnish a copy of this Letter of Submittal Checklist, with the page references added, with the Letter of Submittal.

<b>Letter of Submittal Component</b>	<b>Form (if any)</b>	<b>RFP Part 1 Cross Reference</b>	<b>Page Reference</b>
<b>Letter of Submittal Checklist and Contents</b>	Attachment 4.0.1.1	Section 4.0.1.1	
<b>Acknowledgement of RFP, Revisions, and/or Addenda</b>	Attachment 3.4 (Form C-78-RFP)	Sections 3.4; 4.0.1.1	
<b>Letter of Submittal</b>	NA	Sections 4.1	
Letter of Submittal on Offeror's letterhead	NA	Section 4.1.1	
Offeror's full legal name and address	NA	Section 4.1.1	
Authorized representative's original signature	NA	Section 4.1.1	
Declaration of intent	NA	Section 4.1.2	
120 day declaration	NA	Section 4.1.3	
Point of Contact information	NA	Section 4.1.4	
Principal Officer information	NA	Section 4.1.5	
Offeror's Corporate Structure	NA	Section 4.1.6	
Full Legal Name of Lead Contractor, Lead Designer, and QA Firm	NA	Section 4.1.7	
Offeror's VDOT prequalification information	NA	Section 4.1.8	
DBE statement confirming Offeror is committed to achieving the required DBE goal	NA	Section 4.1.9	
Interim Milestone and Final Completion Date(s)	NA	Section 4.1.10	

**ATTACHMENT 4.0.1.1**

**US Route 15/29 Improvements at Vint Hill, C0114713DB1050**

**LETTER OF SUBMITTAL CHECKLIST AND CONTENTS**

<b>Letter of Submittal Component</b>	<b>Form (if any)</b>	<b>RFP Part 1 Cross Reference</b>	<b>Page Reference</b>
<b>Attachments to the Letter of Submittal</b>	NA	Section 4.2	
Affiliated and/ or Subsidiary Companies	Attachment 4.2.1	Section 4.2.1	
Certification Regarding Debarment Forms	Attachment 4.2.2(a) Attachment 4.2.2(b)	Section 4.2.2	
Offeror's VDOT prequalification certificate	NA	Section 4.2.3	
Evidence of obtaining bonding	NA	Section 4.2.4	
Full size copies of DPOR licenses and SCC registrations	NA	Section 4.2.5	
SCC registration information - businesses	Attachment 4.2.5	Section 4.2.5.1	
DPOR registration information - businesses	Attachment 4.2.5	Section 4.2.5.2	
Lead Contractor Work History Form	Attachment 4.2.6(a)	Section 4.2.6	
Lead Designer Work History Form	Attachment 4.2.6(b)	Section 4.2.6	
Conceptual Roadway Plans	NA	Section 4.2.7	

**ATTACHMENT 4.0.1.2**

**DESIGN-BUILD PRICE PROPOSAL  
CHECKLIST**

**Project Name: US Route 15/29 Improvements at Vint Hill  
Contract ID Number: C00114713DB105**

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➤ **Contents of Price Proposal:**

- Cost Breakdown Summary in whole numbers for the Base Scope and Scope Alternatives and the Proposal Price, in both numbers and words, which is the sum for the Base Scope and Scope Alternatives provided (Attachment 4.3.1) within VDOT's Maximum Contract Value.**
  - Price Adjustment Information and Forms for Fuel, Steel, and Asphalt, including identification of pay items and associated quantities eligible for adjustment for the Base Scope and Scope Alternatives (Part 3, Section 6.3, Attachments 6.3)**
  - Proposal Guaranty (C-24) required by Section 102.07 of Part 5, Division I Amendments to the Standard Specifications for the Base Scope and Scope Alternatives**
  - Sworn Statement Forms (C-104, C-105, Attachments 4.3.4(a) and 4.3.4(b))**
  - CD-ROM containing the entire Price Proposal in a single cohesive Adobe PDF file**
-

**ATTACHMENT 4.2.1**

**State Project No. 0029-030-843**

**Affiliated and Subsidiary Companies of the Offeror**

Offerors shall complete the table and include the addresses of affiliates or subsidiary companies as applicable. By completing this table, Offerors certify that all affiliated and subsidiary companies of the Offeror are listed.

<input type="checkbox"/> <b>The Offeror does not have any affiliated or subsidiary companies.</b>
<input type="checkbox"/> <b>Affiliated and/ or subsidiary companies of the Offeror are listed below.</b>

<b>Relationship with Offeror (Affiliate or Subsidiary)</b>	<b>Full Legal Name</b>	<b>Address</b>

**ATTACHMENT 4.2.2(a)**

**CERTIFICATION REGARDING DEBARMENT  
PRIMARY COVERED TRANSACTIONS**

**Project No.: 0029-030-843**

1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and

d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm

**ATTACHMENT 4.2.2(b)**

**CERTIFICATION REGARDING DEBARMENT**  
**LOWER TIER COVERED TRANSACTIONS**

**Project No.: 0029-030-843**

- 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



## **ATTACHMENT 4.2.5**

### **State Project No. 0029-030-843**

#### **SCC and DPOR Information**

Offerors shall complete the table and include the required state registration and licensure information. By completing this table, Offerors certify that their team complies with the requirements set forth in Section 4.2.5 and that all businesses listed are active and in good standing.

<b>SCC &amp; DPOR INFORMATION FOR BUSINESSES (RFP Sections 4.2.5.1 and 4.2.5.2)</b>							
<b>Business Name</b>	<b>SCC Information (4.2.5.1)</b>			<b>DPOR Information (4.2.5.2)</b>			
	<b>SCC Number</b>	<b>SCC Type of Corporation</b>	<b>SCC Status</b>	<b>DPOR Registered Address</b>	<b>DPOR Registration Type</b>	<b>DPOR Registration Number</b>	<b>DPOR Expiration Date</b>

**ATTACHMENT 4.2.6(a)**

**LEAD CONTRACTOR - WORK HISTORY FORM**

**(LIMIT 1 PAGE PER PROJECT)**

a. Project Name & Location	b. Name of the prime design consulting firm responsible for the overall project design.	c. Contact information of the Client or Owner and their Project Manager who can verify Firm's responsibilities.	d. Contract Completion Date (Original)	e. Contract Completion Date (Actual or Estimated)	f. Contract Value (in thousands)		g. Dollar Value of Work Performed by the Firm identified as the Lead Contractor for this procurement.(in thousands)
					Original Contract Value	Final or Estimated Contract Value	
Name:  Location:	Name:	Name of Client/ Owner: Phone: Project Manager: Phone: Email:	MM/YYYY	MM/YYYY			
<p>h. Narrative describing the Work Performed by the Firm identified as the Lead Contractor for this procurement. If the Offeror chooses to submit work completed by an affiliated or subsidiary company of the Lead Contractor, identify the full legal name of the affiliate or subsidiary and the role they will have on <u>this</u> Project, so the relevancy of that work can be considered accordingly. The Work History Form shall include only one singular project. Projects with multiple phases, segments, elements, and/or contracts shall not be considered a single project. If a project listed includes multiple phases, segments, elements, and/or contracts, the Offeror's Proposal may be rendered non-responsive. In any case, only the first phase, segment, element, and/or contract listed will be evaluated.</p>							



**ATTACHMENT 4.2.6(b)**

**LEAD DESIGNER - WORK HISTORY FORM**

**(LIMIT 1 PAGE PER PROJECT)**

a. Project Name & Location	b. Name of the prime/ general contractor responsible for overall construction of the project.	c. Contact information of the Client and their Project Manager who can verify Firm's responsibilities.	d. Construction Contract Start Date	e. Construction Contract Completion Date (Actual or Estimated)	f. Contract Value (in thousands)		g. Design Fee for the Work Performed by the Firm identified as the Lead Designer for this procurement.(in thousands)
					Construction Contract Value (Original)	Construction Contract Value (Actual or Estimated)	
Name:  Location:	Name:	Name of Client.: Phone: Project Manager: Phone: Email:	MM/YYYY	MM/YYYY			
h. Narrative describing the Work Performed by the Firm identified as the Lead Designer for this procurement. Include the office location(s) where the design work was performed and whether the firm was the prime designer or a subconsultant. The Work History Form shall include only one singular project. Projects with multiple phases, segments, elements, and/or contracts shall not be considered a single project. If a project listed includes multiple phases, segments, elements, and/or contracts, the Offeror's Proposal may be rendered non-responsive. In any case, only the first phase, segment, element, and/or contract listed will be evaluated.							

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**ATTACHMENT 4.3.1**

**PRICE PROPOSAL FORM**

**4.3.1** For the Based Scope and Scope Alternatives (if included), Offeror shall specify the pricing information for the items below, the dollar amount shall be in whole numbers:

Price Proposal Cost Breakdown Summary;

Design Services, LS	\$ _____
Construction Services (exclude QA/QC), LS	\$ _____
Quality Assurance (QA) (Construction), LS	\$ _____
Quality Control (QC) (Construction), LS	\$ _____
All Other Costs), LS	\$ _____

Offeror shall specify the included Scope Alternatives:

**Scope Alternatives** (Place an **X** next to the included Scope Alternatives);

Scope Alternative 1	_____
Scope Alternative 2	_____

**Base Scope plus Scope Alternatives Price;** (Specify the Total Lump Sum price in both numbers and words, this price shall **equal** to the total sum of the items listed above)

Lump Sum (LS): \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_)

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

Design-Builder: \_\_\_\_\_

Vendor No.: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION**

PROJECT:

FHWA:

This form must be completed, signed and returned with bid; and failure to do so may result in the rejection of your bid. **THE CONTRACTOR SHALL AFFIRM THE FOLLOWING STATEMENT EITHER BY SIGNING THE AFFIDAVIT AND HAVING IT NOTARIZED OR BY SIGNING THE UNSWORN DECLARATION UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES.** A SEPARATE FORM MUST BE SUBMITTED BY EACH PRINCIPAL OF A JOINT VENTURE BID.

**STATEMENT.** In preparation and submission of this bid, I, the firm, corporation or officers, agents or employees thereof did not, either directly or indirectly, enter into any combination or arrangement with any persons, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Article 1.1 or Chapter 12 of Title 18.2 (Virginia Governmental Frauds Act), Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

**AFFIDAVIT**

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
County (City), STATE

\_\_\_\_\_  
(Name of Firm) By: \_\_\_\_\_ Title (print)  
(Signature)

STATE of \_\_\_\_\_ COUNTY (CITY) of \_\_\_\_\_

To-wit:

I \_\_\_\_\_, a Notary Public in and for the State and  
County(City) aforesaid, hereby certify that this day \_\_\_\_\_

personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
My Commission expires \_\_\_\_\_

Notary Public

**OR  
UNSWORN DECLARATION**

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
County (City), STATE

\_\_\_\_\_  
(Name of Firm) By: \_\_\_\_\_ Title (print)  
(Signature)

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
AFFIDAVIT**

PROJECT: 0029-030-843

FHWA: HSIP-5B01(020)

This form must be completed, signed, notarized and returned with bid; and failure to do so, may result in the rejection of your bid. A separate form must be submitted by each principal of a joint venture bid.

1. I, the firm, corporation or officers, agents or employees thereof have neither directly nor indirectly entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, the effect of which is to prevent competition or increase the cost of construction or maintenance of roads or bridges.

During the preceding twelve months, I (we) have been a member of the following Highway Contractor's Associations, as defined in Section 33.1-336 of the Code of Virginia (1970). (If none, so state).

NAME	Location of Principal Office
_____	_____
_____	_____
_____	_____

2. I (we) have \_\_\_\_\_, have not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that I/We have \_\_\_\_\_, have not \_\_\_\_\_, filed with the joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor [41 CFR 60-1.7(b)(1)], and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contract or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contract and subcontract unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Continued)

**ORDER NO.:**  
**CONTRACT ID. NO.:**

Form C-105  
page 2

3. The bidder 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 offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation 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 above; and
  - (d) Where the bidders is unable to certify to any of the statements in this certification, the bidder shall show an explanation below.

Explanations will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any explanation noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administration sanctions. The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of change circumstances.

The undersigned is duly authorized by the bidder to make the foregoing statements to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
County (City), STATE

By: \_\_\_\_\_  
(Name of Firm) (Signature) Title (print)

STATE of \_\_\_\_\_ COUNTY (CITY) of \_\_\_\_\_

To-wit:

I \_\_\_\_\_, a Notary Public in and for the State and  
County(City) aforesaid, hereby certify that this day \_\_\_\_\_

personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**ATTACHMENT 4.4.2**

**KEY PERSONNEL RESUME FORM**

<b>Brief Resume of Key Personnel anticipated for the Project.</b>
a. Name & Title:
b. Project Assignment:
c. Name of all Firms with which you are employed at the time of submitting Letter of Submittal. In addition please denote the type of employment (Fulltime/Part Time):
d. Employment History: With this Firm ____ Years With Other Firms ____ Years Please list chronologically (most recent first) your employment history, position, general responsibilities, and duration of employment for the last fifteen (15) years. (NOTE: If you have less than 15 years of employment history, please list the history for those years you have worked. Project specific experience shall be included in Section (g) below):
e. Education: Name & Location of Institution(s)/Degree(s)/Year/Specialization:
f. Active Registration: Year First Registered/ Discipline/VA Registration #:
g. Document the extent and depth of your experience and qualifications relevant to the Project. <ol style="list-style-type: none"><li>1. <i>Note your role, responsibility, and specific job duties for each project, not those of the firm.</i></li><li>2. <i>Note whether experience is with current firm or with other firm.</i></li><li>3. <i>Provide beginning and end dates for each project; projects older than fifteen (15) years will not be considered for evaluation.</i></li></ol> <b>(List only three (3) relevant projects* for which you have performed a similar function. If additional projects are shown in excess of three (3), the Offeror's response to the RFP may be rendered non-responsive. In any case, only the first three (3) projects listed will be evaluated.)</b>
<small>* On-call contracts with multiple task orders (on multiple projects) may not be listed as a single project.</small>
h. For Key Personnel required to be on-site full-time for the duration of construction, provide a current list of assignments, role, and the anticipated duration of each assignment.

**ATTACHMENT 4.4.3**

**State Project No. 0029-030-843**

**SCC and DPOR Information**

Offerors shall complete the table and include the required state registration and licensure information. By completing this table, Offerors certify that their team complies with the requirements set forth in Section 4.4.3 and that all businesses and individuals listed are active and in good standing.

<b>SCC &amp; DPOR INFORMATION FOR BUSINESSES (RFP Sections 4.4.3.1 and 4.4.3.2)</b>							
<b>Business Name</b>	<b>SCC Information (4.4.3.1)</b>			<b>DPOR Information (4.4.3.2)</b>			
	<b>SCC Number</b>	<b>SCC Type of Corporation</b>	<b>SCC Status</b>	<b>DPOR Registered Address</b>	<b>DPOR Registration Type</b>	<b>DPOR Registration Number</b>	<b>DPOR Expiration Date</b>

**ATTACHMENT 4.4.3**

**State Project No. 0029-030-843**

**SCC and DPOR Information**

<b>DPOR INFORMATION FOR INDIVIDUALS (RFP Sections 4.4.3.3 and 4.4.3.4)</b>						
<b>Business Name</b>	<b>Individual's Name</b>	<b>Office Location Where Professional Services will be Provided (City/State)</b>	<b>Individual's DPOR Address</b>	<b>DPOR Type</b>	<b>DPOR Registration Number</b>	<b>DPOR Expiration Date</b>

**Attachment 4.4.5**  
**State Project 0029-030-843**

**SCHEDULE OF ITEMS (ver. 4-15-2014)**

This Schedule of Items shall identify the total material quantities and costs of each proposed pay item, using item codes and units of measure that are consistent with VDOT's list of standard and non-standard item codes. The Schedule of Items shall be used to cost-load the project schedule, which will serve as the basis for progress payments. Any pay items considered for price adjustments shall be identified. The values and quantities shall be clearly supported by the escrowed pricing documents.

Date:

<b>VDOT Item Code<sup>1</sup></b>	<b>Item Description</b>	<b>Fuel (F) or Price (P) Adjustment</b>	<b>Approximate Quantity</b>	<b>Units<sup>1</sup></b>	<b>Budgeted Cost (\$)</b>

<sup>1</sup> Use five-digit work item codes and units of measure that are consistent with VDOT's list of standard and non-standard item codes (i.e. 00100-Mobilization; 00120-Regular Excavation, etc...).

ATTACHMENT 11.7.1

**ESCROW PROPOSAL DOCUMENTS  
CHECKLIST**

**Project Name: US Route 15/29 Improvements at Vint Hill  
Contract ID Number: C00114713DB105**

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➤ Format:

- Usual cost estimating format as long as information is clearly presented and ascertainable
- Submitted in the language (i.e., English) of the Specifications

➤ Subcontractors

- If Offeror's Proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds ten percent (10%) of the Total Proposal Price proposed by the Offeror, shall provide separate Escrow Documents to be included with those of the Offeror. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the highest-scored Offeror.

➤ Cost Items (All costs shall be identified)

- Clearly itemizes the estimated costs of performing the work of each item contained in Offeror's schedule of items.
- Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review.

- Includes estimates for:
    - design professionals and consultants itemized by discipline for development of the design
    - all quantity take-offs
    - crew size and shifts
    - equipment
    - calculations of rates of production and progress
    - copies of quotes from subcontractors and suppliers
    - memoranda, narratives, drawings and sketches showing site or work area layouts and equipment
    - add/deduct sheets
    - geotechnical reviews and consultant reports
    - all other information used by the Offeror to arrive at the prices contained in the Proposal.
  
  - Broken down into estimate categories for each bid items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed.
  
  - Allocation of indirect costs, contingencies, and mark-up shall be identified.
  
  - For cost items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and mark-up, as applicable, are allocated.
-

**ATTACHMENT 11.7.9**  
**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (Agreement) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and among the Virginia Department of Transportation (Department), \_\_\_\_\_ (“Successful Offeror”) and **Sun Trust Bank** (Escrow Agent) with reference to the following facts:

WHEREAS, Department has issued a Request for Proposals dated February 4, 2019 (RFP) for the completion of the US Route 15/29 Improvements at Vint Hill, in Fauquier County, Virginia (Project); and

WHEREAS, Successful Offeror has submitted to Department a proposal (Proposal) in response to the RFP; and

WHEREAS, as part of the Proposal, Successful Offeror is submitting one copy of all information regarding the assumptions made in developing the Proposal, as required under Part 1, Section 11.7 of the RFP, in one (1) separately sealed and labeled boxes (EPDs); and

WHEREAS, Department and Successful Offeror wish to employ the services of Escrow Agent to act as the escrow holder with regard to the EPDs for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Deposit.** Successful Offeror hereby deposits with Escrow Agent the EPDs. Escrow Agent hereby acknowledges receipt of such EPDs, and such EPDs shall be held in escrow under the terms and conditions of this Agreement.

2. **Holding of EPDs.** Escrow Agent shall hold the EPDs in escrow in a designated area on the premises of Escrow Agent located at **919 East Main St., 7<sup>th</sup> Floor, Richmond, VA 23219** on a confidential basis. The EPDs shall be stored in an area which is locked at all times. No third party, including the employees of Escrow Agent, shall be allowed access to any of the EPDs except as provided in Section 3 hereof, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes.

3. **Review of EPDs.** Escrow Agent shall provide facilities for joint review of the EPDs by representatives of Department and Successful Offeror in accordance with the terms of the RFP, upon at least one business days’ advance notice.

**4. Release of EPDs.** Escrow Agent shall release the EPDs as follows:

- a) The EPDs of the Successful Offeror shall be returned once the work is determined to be finally complete and the Successful Offeror has been notified in writing of the determination of Final Acceptance in accordance with RFP Part 4, Section 6.6. This release is contingent upon notification from the Department's Project Manager to the Department's Alternate Project Delivery Office (APDO) that the Final Application for Payment has been submitted by the Successful Offeror in accordance with RFP Part 4, Section 6.3.3.
- b) Upon receipt of this certification, APDO shall contact the Escrow Agent and authorize release of the EPDs. The Escrow Agent shall then contact and coordinate with the Successful Offeror for transfer of the EPDs at a mutually convenient time at the Successful Offeror's expense, as applicable.

**5. Representation and Warranty.** Successful Offeror represents and warrants to Department that, prior to delivery of the EPDs to Escrow Agent, the EPDs were personally examined by an authorized representative of Successful Offeror and that they constitute all the documentation and information used in the preparation of the Proposal.

**6. Rights of Escrow Agent.** If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

- a) withhold and stop all further proceedings in, and performance of, this escrow;
- b) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves, or
- c) deliver all EPDs with seals intact to another location to be selected by Department within thirty (30) days after Escrow Agent delivers notice thereof to Department.

**7. Fees.** Successful Offeror shall be responsible for an annual escrow fee of \$2,500 payable directly to the Escrow Agent within the required timeframe. If Successful Offeror fails to pick up the EPDs under Section 4(b), Successful Offeror shall pay any fees accruing thereafter.

**8. Notices.** All notices which may be or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:



If to the Successful Offeror:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_

If to Department:

\_\_\_\_\_  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219  
Attention: **[PM-APD]**  
E-Mail Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_

If to Escrow Agent:

\_\_\_\_\_  
Sun Trust Bank  
919 East Main Street, 7<sup>th</sup> Floor  
Richmond, Virginia 23219  
Attention: Charles Henderson  
E-Mail Address: Charles.Henderson@SunTrust.com  
Phone #: (804) 782-7087

or to such other addressees and such other places as any party hereto may from time to time designate by written notice to the others.

**9. Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

**10. Headings.** The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or

considered in construing this Agreement.

**11. Governing Law.** The laws of the Commonwealth of Virginia, excluding its conflict of laws, shall govern this Agreement.

**12. Attorneys' Fees.** If either Department or Successful Offeror commences or engages in any action by or against the other party directly or indirectly arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in the action and in preparation for said action and any subsequent appeal. All parties agree to indemnify and hold Escrow Agent harmless from and against all costs, expenses, and reasonable attorneys' fees in connection with any such action.

**IN WITNESS WHEREOF**, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

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

Name: Jeffrey A. Roby, P.E., DBIA

Title: Design-Build Program Manager

**SUCCESSFUL OFFEROR**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The escrow provided for this Agreement is hereby accepted by Escrow Agent.

Sun Trust Bank: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## **PART 2**

### **TECHNICAL INFORMATION & REQUIREMENTS**

#### **1.0 DESIGN-BUILDER'S SCOPE OF WORK**

##### **1.1 Project Description**

The Project is located in Fauquier County, Virginia, and involves improving the vertical alignment of the northbound lanes of US Route 15/29 approaching the existing traffic signal at Vint Hill Road (Route 215). The limits of the Project are from approximately 0.96 miles south of Vint Hill Road (Route 215) to the existing intersection of US 15/29 and Vint Hill Road (Route 215), for a total length of approximately 0.96 miles. It is noted that the description and length are approximate only and are based on the RFP Conceptual Plans shown in the RFP Information Package and the location of the short term closure of the northbound lanes of US 15/29 beginning at Riley Road in order to construct the project. The final Project length may vary depending on the Design-Builder's final design; however, any change in the project limits requires approval by VDOT.

A Willingness to hold a public hearing was posted for this Project on January 23, 2019. The major design features of the Project have not yet been approved by the Chief Engineer. The conceptual design contained in the RFP Information Package reflects a basic line, grade, typical sections, minimum pavement structures, major cross drainage pipes. These elements are considered to be the basic Project configuration. The Design- Builder is responsible for final design in accordance with the Contract Documents. The PDF copy of the RFP Conceptual Plans shall supersede the electronic drawing files (DGN) contained in the RFP Information Package.

The Design-Builder shall bring the necessary resources and expertise to efficiently and effectively execute this project with the ultimate goal to meet the interim milestone and final completion dates and realize the maximum incentive for the interim milestone date for the Project outlined in Attachment to Part 3 Article 5.

##### **1.2 Anticipated Scope of Work**

The anticipated scope of work to be undertaken by the Design-Builder under the Design-Build contract for this Project will include, but is not limited to:

- Survey
- Developing and completing the design
- Acquiring the necessary environmental permits
- Acquiring rights of way
- Coordinating and performing, or causing to be performed, required utility relocations, additions, and adjustments

- Roadway construction
- Milling and overlaying and/or building up of existing pavement
- Guardrail/barrier
- Signs, sign structures, and foundations
- Overhead signs structures and other traffic control measures
- System integration, testing, maintenance until final acceptance, and documentation
- Traffic maintenance and management during all phases of construction
- Pavement markers and markings
- Storm drainage
- Quality Assurance and Quality Control for design and construction
- Stakeholder coordination and public outreach
- Overall Project management and coordination with other active construction projects in the vicinity.

Descriptions and technical requirements of the anticipated work are set forth in Part 2, Section 2.

### **1.3 Anticipated Design Services**

Design services shall address all items necessary for construction and operation of the completed facility. Design services are anticipated to include, but are not limited to, those services necessary to produce roadway construction plans relative to the technical disciplines listed in Part 2, Section 1.2 above. Other data collection and technical studies may include, but are not necessarily limited to: geotechnical investigation, borings and analysis, materials analysis, and/or additional environmental studies. Offerors should note that all work performed on this Project shall be completed using English Units.

### **1.4 Anticipated Environmental Services**

The Design-Builder shall carry out environmental commitments during design and construction, as applicable, as identified in the Categorical Exclusion (CE), on which coordination is currently ongoing. The NEPA process is anticipated to be complete prior the scheduled date for project award. VDOT has completed preliminary document re-evaluations for Right of Way (RW) Authorization (EQ-201) dated January 28, 2019; Plans, Specifications and Estimates (PS&E) Authorization (EQ-200) dated January 28, 2019, and a preliminary Environmental Certification/Commitments Checklist (EQ-103) dated January 28, 2019, which are included in the RFP Information Package. All commitment compliance shall be supported by the appropriate documentation, to be provided by the Design-Builder to the VDOT Project Manager. Further details are provided in Part 2, Section 2.4.

The Design Builder shall acquire all water quality permits for the Project in the Design-Builder's name (i.e. the Design-Builder will be the "Permittee") and shall provide for any necessary stream and/or wetland compensation required by permits to accomplish the work.

The Design-Builder shall be responsible for any subsequent coordination to obtain updated information, requirements, and clearances from environmental regulatory agencies that

provide threatened and endangered species oversight. The Northern Long-Eared bat may be affected by the Project and will require additional coordination with federal and state agencies to resolve these issues. A copy of VDOT's preliminary Fish, Plant, and Wildlife Resources Form dated January 28, 2019 is included in the RFP Information Package. Further details are provided in Part 2, Section 2.4.5.

The Design-Builder shall manage solid waste, hazardous waste, and hazardous materials in accordance with all applicable federal, state, and local environmental regulations and shall implement good housekeeping, waste minimization and pollution prevention practices. Additional information regarding hazardous materials is provided in Part 2, Section 2.4.6.

This Project is located in an area that is currently in Attainment with the National Ambient Air Quality Standards (NAAQS). The following Virginia Department of Environmental Quality (VDEQ) air pollution regulations must be adhered to during the construction of this Project: 9 VAC 5-50-60 et seq., Fugitive Dust precautions. Further details regarding air quality requirements are provided in Part 2, Section 2.4.7.

The Design-Builder is responsible for evaluating the need to conduct a Noise Study for any changes from the RFP Conceptual Plans due to their unique design, in accordance with the VDOT Highway Traffic Noise Impact Analysis Guidance manual. See Part 2, Section 2.4.8 for additional details on Noise mitigation requirements.

The Design-Builder shall be responsible for compliance with pre-construction and construction-related environmental commitments and will be responsible for compliance with pre-construction, construction-related permit conditions, as well as post-construction monitoring if required by regulatory agencies. The Design-Builder will assume all obligations and costs incurred by complying with the terms and conditions of the permits and environmental certifications. Any fines associated with environmental permit or regulatory violations will be the responsibility of the Design-Builder.

Any changes in scope or project footprint from that contained in the Contract Documents proposed by the Design-Builder, which are acceptable to VDOT, may require additional environmental technical studies and analysis to be performed by the Design-Builder at their cost. These technical studies and analyses are to be conducted in accordance with the professional standards and guidelines of each NEPA-related discipline, as well as the criteria described in Part 2, Section 2.4. VDOT shall be responsible for the coordination of any NEPA document re-evaluations with FHWA. The Design-Builder shall then carry out any additional environmental commitments that result from such coordination at its sole expense and at no additional cost and/or time delays to the Project.

## **1.5 Anticipated Right of Way and Utilities**

The Offeror's conceptual design included in its Proposal shall be wholly contained within the existing right of way limits as shown on the RFP Conceptual Plans, with the exception of the temporary construction easement indicated on Parcel 001. Utility easements have not yet been

identified or shown on the RFP Conceptual Plans. Deviations from the proposed right of way limits shown on the RFP Conceptual Plans are not permitted.

The Design-Builder's final design shall also be contained within the existing right of way limits as shown on the RFP Conceptual Plans, with the exception of the temporary construction easement indicated on Parcel 001 and where minor adjustments are required during the final design process, and only after approval by VDOT. If the Design-Builder proposes significant change to the right of way limits shown on the RFP Conceptual Plans, then this shall be considered a deviation of the Contract Documents and shall be addressed as described in Part 2, Section 2.0.

The Design-Builder's services shall include all work necessary for right-of-way acquisitions and to perform utility coordination, relocations, and/or adjustments as required by the Project. All right-of-way acquisition costs (compensation paid to landowners for right-of-way or permanent easement) will be paid by VDOT, and shall not be included in the Offeror's Price Proposal. All costs for utility relocations, excluding betterments, shall be included in the Offeror's Price Proposal. Utility betterments shall not be included in the Offeror's Price Proposal but shall be reimbursed to the Design-Builder through agreement with the requesting utility owner.

## **1.6 Anticipated Construction Services**

The Design-Builder is responsible for managing all aspects of constructing the Project such that the potential impacts and risks for all stakeholders are limited while meeting the contract requirements. The construction services to be undertaken by the Design-Builder for this Project are anticipated to include, but are not limited to: earthwork, roadway, the demolition and removal of portions of the existing pavements, milling and overlaying or building up of existing pavement, drainage, utility relocations/adjustments and coordination, transportation management plan, traffic control devices, erosion and sediment control, and compliance with all environmental requirements, commitments and permit conditions, as described in Part 2, Section 2.0 of this RFP. The Design-Builder shall provide construction engineering inspection and management, quality assurance and quality control. Additionally, the Design-Builder is responsible for all plant quality assurance inspection and testing, excluding items listed under Part 2, Section 2.14.2.

## **1.7 Coordination with Active Construction Projects**

The Design-Builder shall be responsible for coordinating with contractors of other active construction projects in the vicinity of the US Route 15/29 Improvements at Vint Hill Project in accordance with Section 3.6 of Part 4. In addition, the Design-Builder shall organize and conduct joint meetings (to which VDOT shall be invited) with other Contractors on a monthly basis at a minimum, or as requested by VDOT. The ultimate purpose of these meetings is to facilitate achievement of the US Route 15/29 construction program milestones. It is expected that progress milestones will be jointly developed and mutually agreed to by the Design-Builder and Contractors for the projects listed below.



### **Warrenton Park And Ride Lot Expansion At 29/605**

Location: Approximately 5.0 miles south of the Project  
Project No.: P029-030-813,P101, R201, C501 (UPC # 109549)  
Status: Design-Bid-Build anticipated advertisement date of March 12, 2019  
VDOT Contact: David Cabbage (540) 727-7129  
[david.cabbage@vdot.virginia.gov](mailto:david.cabbage@vdot.virginia.gov)

### **Warrenton Southern Interchange**

Location: Approximately 8.9 miles south of the Project  
Project No.: 0029-030-121, P101, R201, C501, B616 (UPC # 77384)  
Status: Design- Build; under construction, anticipated completion November 2020  
VDOT Contact: Greg Cooley (434) 906-7979  
[gregory.cooley@vdot.virginia.gov](mailto:gregory.cooley@vdot.virginia.gov)

In all cases, the existing projects and their respective contractors shall have priority in scheduling activities and Offerors should take this into consideration in its Price Proposal.

## **1.8 Scope Validation**

The scope validation process as described in Part 4, Section 2 will not apply for this Project.

## **2.0 PROJECT TECHNICAL INFORMATION & REQUIREMENTS**

The Offeror's proposed conceptual design shall meet all requirements of the RFP. Any proposed deviations from the requirements of the RFP Documents by the Offerors shall be in accordance with Part 1, Sections 2.7 and 2.8.

The Design-Builder shall bring the necessary resources and expertise to efficiently and effectively execute this project with the ultimate goal to meet the interim milestone and final completion dates and realize the maximum incentive for the interim milestone date for the Project outlined in Attachment to Part 3 Article 5.

The Design-Builder's final design shall meet or exceed all requirements included in the Contract Documents. If the Design-Builder proposes any deviation that results in a modification to the Contract Documents then the Design-Builder shall follow the Value Engineering Proposals (VEP) process as described in Section 104.02 of Division I Amendments to the Standard Specifications (Part 5) (even though the proposed deviations may not qualify as a VEP), unless otherwise directed by VDOT. Ultimately, any modification to the Contract Documents requires VDOT approval.

## **2.1 References and Information**

The design and construction work for the Project shall be performed in accordance with the applicable federal and state laws and VDOT Standards, Specifications and Reference Documents to include, but not limited to the documents listed herein. The Design-Builder must verify and use the latest version of the documents listed herein as of the date of the RFP or latest Addenda. The Design-Builder must meet or exceed the minimum roadway design standards and criteria as noted in Attachment 2.2 of the RFP for the Base Scope of Work.

### **2.1.1 Standards and Reference Documents**

If during the course of the design, the Design-Builder determines that a specific Standard, Specification or Reference Document is required but is not listed herein, it is the responsibility of the Design-Builder to identify the pertinent Standard, Specification, or Reference Document and submit to VDOT for review and approval prior to inclusion in the Contract Documents.

The 2016 VDOT Road and Bridge Specifications, and its associated Special Provision Copied Notes, contain pricing language under sections entitled “Measurement and Payment” that is not applicable in the Design-Build context of this RFP. Thus, in accordance with the hierarchy of documents, the Design-Builder will refer to Part 3, Articles 6 and 7, Part 4, Article 6, and applicable portions of the Division I Amendments (Part 5) to the Standard Specifications for more information regarding the pricing and payment to the Design-Builder. Similarly, other references below which contain pricing methodologies for the “Contractor” shall likewise not be used. The requirements as described in the text of Part 2 herein take precedence over the referenced documents listed below, unless otherwise indicated.

The standards and references for the Project are listed below in the following order: (a) Standards and Specifications; (b) Reference Manuals; (c) Special Provisions List including Special Provisions, Special Provision Copied Notes and Supplemental Specifications. Items (a) and (b) are published references that are available publicly, for which copies are not provided to the Offerors in the RFP Information Package, but these items are to be used as manuals for design and construction. Items listed in (c) are included in the RFP Information Package.

#### (a) Standards and Specifications

- VDOT Instructional and Informational Memoranda (I&IM), All Divisions, (Latest Revision)
- VDOT 2005 Road Design Manual, Vol I, (Revised July 2018)
- VDOT 2012 CADD Manual (latest revisions)
- VDOT 2016 Road and Bridge Standards, Volume I and Volume II (Latest Revision)
- VDOT 2009 Survey Manual, Revised July 2016
- VDOT 1999 Project Participation Manual (Revised July 2014)
- VDOT 2016 Road and Bridge Specifications (including the latest Supplement)
- VDOT 2002 Drainage Manual (Revised July 2017)
- VDOT 2014 Traffic Engineering Design Manual
- VDOT Traffic Operations Analysis Guidebook Version 1.1, dated November 2015
- VDOT Asbestos Inspection Procedures, May 14, 2004

- VDOT Asbestos Project Monitoring and Clearance Air Monitoring Procedures, May 14, 2004
- VDOT State Noise Abatement Policy, July 13, 2011
- VDOT Noise Report Development and Guidance Document Version 5
- VDOT Construction Manual (2005, Revised 2008)
- VDOT Post Construction Manual (December 2016)
- 2011 Virginia Work Area Protection Manual, revised April 1, 2015 and October 2015 (Revision 1a)
- AASHTO 2011 Roadside Design Guide, 4th Edition, (Latest Revision)
- AASHTO 2011 A Policy on Geometric Design of Highways and Streets, 6th Edition (Latest Revision)
- VDOT *Highway Traffic Noise Impact Analysis Guidance Manual*, updated July 14, 2014
- AASHTO Manual for Assessing Safety Hardware, current edition
- National Cooperative Highway Research Project Report 350, 1993
- DEQ Stream Channel Erosion Control - Technical Bulletin No. 1

(b) Reference Manuals

- VDOT *State Noise Abatement Policy*, July 13, 2011
- VDOT Highway Traffic Noise Impact Analysis Guidance Manual, Version 7, July 14, 2015
- gINT Manual
- 2009 Manual on Uniform Traffic Control Devices and all subsequent revisions
- 2011 Virginia Supplement to the 2009 Manual on Uniform Traffic Control Devices and all subsequent revisions
- VDOT Traffic Engineering Design Manual, current edition
- VDOT Road Design Manual, current edition
- All VDOT Traffic Engineering Division Memoranda
- All VDOT Instruction and Informational Memoranda
- 2011 Virginia Standard Highway Signs, Revision March 2015
- FHWA Standard Highways Signs and Markings, current edition
- FHWA's Highway Traffic Noise Analysis and Abatement Guidance, December 2011
- VDOT Guardrail Installation Training Manual, Published August 2017, (Revised Aug. 2018)
- VDOT Manual of Instructions for the Materials Division
- VDOT Utility Manual of Instructions (October 2016, including August 2017 revisions)
- VDOT Right of Way Manual of Instructions (FHWA Update 2016, Revised October 2017)
- VDOT Noise Report Development Guidance Document, Version 4, August 27, 2014
- Procedures For Inventory and Inspection of Traffic Control Device Structures, current edition
- National Electric Code
- Statewide Lane Closure Coordination Process
- DCR/DEQ Virginia Erosion and Sediment Control Handbook, Third Edition, 1992
- The Virginia Stormwater Management Handbook, Second Edition, draft (DEQ 2013)
- DEQ Virginia Runoff Reduction Spreadsheet – Version 3.0

- DEQ Virginia Stormwater BMP Clearinghouse (<http://vwrrc.vt.edu/swc/>) (including 2011 Design Specifications for Practices (note exclusions in Part 2, Section 2.7.4))
- VDOT BMP Design Manual of Practice, April 2013
- VDOT Drainage Manual, Revised May 2017 (including current errata sheet)
- VDOT Instructional & Information Memorandums (“I&IM”), All Divisions
- FHWA publications HDS-6, HEC-14, HEC-15, HEC-18, HEC-20, HEC-22, and HEC-23
- NFPA 70 National Electrical Code, 2014 Edition

(c) Special Provisions List, Special Provision Copied Notes and Supplemental Specifications

Federal

- cn102-050100-00 Compliance with the Cargo Act

General

- cn100-000026-01 GENERAL PROJECT REQUIREMENTS, SUPPLEMENTAL SPECIFICATIONS
- G05\_SS52200 Partnering rev 20120601
- Special Provision for Design Build Tracking Numbers, August 21, 2018
- SP107-110100-00 Controlled Blasting April 11, 2017
- Special Provision for Document Control System, September 28, 2017

Roadway Construction

- cn302-030100-00 Special Provision Copied Note for Precast Drainage Structures
- cn315-000100-00 Placing and Finishing
- SP302-000100-00 Restoring Existing Pavement July 12, 2016
- SP302-000140-01 Pipe Rehabilitation November 7, 2016
- SQ302-000100-00 Pipe Replacement July 12, 2016

Incidental Construction

- cn505-000100-00 Impact Attenuator
- cn512-000120-00 Maintaining Traffic
- cn518-020100-00 Number of Trainees
- cq512-000120-00 Uniformed Flaggers
- cq512-030100-00 Maintaining Traffic
- Special Provision for Work Zone Traffic Control Management Design-Build Projects, revised November, 2009
- Special Provision for Personnel Requirements for Work Zone Traffic Control June 11, 2009
- SS505-002016-02 Guardrail and W-Beam Median Barriers
- Supplemental Section 512-Maintaining Traffic Design-Build Projects

Environmental

- SP516-000100-00 Removal or Connection of Asbestos Cement Pipe July 12, 2016
- SP516-000110-00 Asbestos Removal for Road Construction Demolition Projects April 14, 2006

Landscape

- Guidance for Context Sensitive Solutions-Design-February 25, 2004
- Memo for Guidance for Planting in the CZ and Landscaping for VDOT Projects

Traffic Engineering

- SP700-000180-01 Modifications to AASHTO's Sign Structure Specification
- SS704-002016-02 Pavement Markings and Markers

The above list of Special Provisions is not intended to be an all-inclusive list. The Design-Builder is responsible for achieving the Work in accordance with all current VDOT standards as of the date of the RFP issuance, including any revisions and/or addenda thereof. If a construction element is not adequately addressed within VDOT Standard Specifications or the Special Provisions listed for the purpose of the Design-Builders design, it is the responsibility of the Design-Builder to develop an alternative specification that is acceptable to VDOT for that element of work.

In the event of a discrepancy between VDOT and non-VDOT Standards and References listed herein, the VDOT Road and Bridge Specifications, design standards, and manuals shall take precedence, with the following exception. If AASHTO or the MUTCD require that a higher or better standard be applied, then AASHTO and/or the MUTCD shall take precedence. In accordance with Part 2, Section 2.1.3 below, all deviations from AASHTO minimum specified design values shall be documented, justified, and approved by VDOT and FHWA.

Special Provisions included in this contract document or other Special Provisions approved by VDOT shall govern over the VDOT specifications, design standards and manuals. Special Provision Copied Notes approved by VDOT and requirements specified within the text of this RFP shall govern over both the Special Provisions and VDOT specifications, design standards and manuals.

**2.1.2 RFP Information Package**

An RFP Information Package is available for interested Offerors on CD for \$50. Interested Offerors should complete the RFP Information Package Order Form included as Attachment 2.6 of Part 1. The RFP Information Package includes the following:

*General:*

- Special Provisions and Special Provision Copied Notes, listed in Part 2, Section 2.1.1(c)above
- Culpeper District Allowable Work Hours - July 2015 Final

- RFP Conceptual Roadway Plans (PDF), dated February 4, 2019
- Guidance for Context Sensitive Solutions/Design, dated February 25, 2004

*Environmental:*

- FHWA Concurrence with NEPA (CE), dated December 7, 2018
- DEQ scoping response letter to VDOT, dated June 27, 2018
- Fauquier County Parks & Recreation Dept. scoping response letter to VDOT, dated December 19, 2018
- Fauquier County scoping response letter to VDOT, no date
- John Marshall Soil and Water Conservation District scoping response letter to VDOT, dated January 2, 2019
- Virginia Department of Health scoping response letter to VDOT, dated December 27, 2019
- Virginia Outdoors Foundation scoping response letter to VDOT, dated December 19, 2019
- VDOT Scoping Letter
- Preliminary PS&E Re-Evaluation (EQ200) & (EQ201) dated January 28, 2019
- Preliminary Environmental Certification/Commitments Checklist (EQ103) dated January 28, 2019
- VDOT letter to Consulting Parties, dated January 11, 2019
- Preliminary Permit Determination dated January 22, 2019
- Agency Coordination-IPAC, dated January 24, 2019
- Preliminary Air Quality Report January 25, 2019
- Cultural Resources Summary Report, dated January 25, 2019
- Noise Form dated January 9, 2019
- No Adverse Effect Concurrence letter from VDHR, dated February 1, 2019

*Geotechnical:*

- DRAFT Geotechnical Engineering Report, dated February 1, 2019
- gINT© Project Databases (subsurface data for proposed pavement installations, and subsurface data associated with proposed structures)

*Hydraulics:*

- Water Quality Compliance Waiver

Requirements described in the Technical Information and Requirements (Part 2 of the RFP) shall supersede the information contained in the RFP Information Package, including the information depicted in the RFP Conceptual Plans. In the event that there is a discrepancy between the RFP Conceptual Plans (or other information contained in the RFP Information Package) and the Technical Information and Requirements (Part 2 of the RFP) herein, the Technical Information and Requirements (Part 2) shall take precedence.

Record roadway plans for this Project, which are not deemed a component of the RFP, can be provided to Offerors upon request. These plans are solely for the information of the

Offeror, which each Offeror may use at their own risk and as they deem appropriate. The Department does not represent or warrant that the information contained in the plans is suitable for designing the Project. Offerors interested in obtaining the previously developed record plans should contact the Design-Build POC specified in Part 1, Section 2.4.

### **2.1.3 Design Exceptions and Design Waivers**

Substandard features reflected in the preliminary design include stopping sight distance (as indicated in the Base Scope of work with the RFP Conceptual Plans which provide a minimum stopping sight distance for a vertical curve design speed of 50mph), vertical grade (which adheres to a design speed of 50mph for rural arterials with rolling terrain), shoulder width, and existing and proposed embankment slopes which have a slope stability factor of safety that is less than 1.3. If during further development of the design the Design-Builder identifies additional substandard features, the Design-Builder is required to either eliminate them through design improvements or apply for the appropriate design exceptions and/or waivers. The costs for preparation of design waivers or exceptions and any information needed to support these documents is the responsibility of the Design-Builder. Any schedule delays as a result of the approval process are the responsibility of the Design-Builder.

## **2.2 Mainline and Other Roadway Improvements**

The roadway inventory information and major design criteria are summarized in Attachment 2.2. The information contained in the Attachment shall serve as a basis for the Design-Builder to determine the appropriate criteria to apply to the design of the roadway. Offerors are on notice that the entirety of the information contained in the Design Criteria Table and Part 2, Section 2.2 of this document including but not limited to the design criteria, and other notes and data, contain the minimum roadway geometric design requirements that the Design-Builder shall meet in its performance of the Work. By submitting its Proposal, Offeror certifies that the Project Concept presented in its proposal is fully compliant with such minimum requirements. Unless otherwise approved by VDOT, no changes to or deviation from the listed criteria shall be allowed. Any schedule delays as a result of changes or deviations are the responsibility of the Design-Builder.

In addition to the US 15/29 improvements depicted on the RFP Conceptual Plans (contained in the RFP Information Package), the Design-Builder is also responsible for making necessary improvements to existing median crossovers, existing turn-lanes, and existing driveway connections.

All roadway typical sections shall be designed to incorporate any necessary widening required for the installation of the MGS Standard guardrail as discussed in Part 2, Section 2.9.3. MGS Standard guardrail is depicted in the RFP Conceptual Plans and utilized 9' posts when required widths for 6' posts are not met.

### **Functional Classification**

US Route 15/29 is a corridor of statewide significance and part of the National Highway System and is functionally classified as an Other Principal Arterial. The VDOT geometric design standard that will be utilized for US Route 15/29 will be GS-1 in rolling terrain with a minimum design speed of 60 mph for the design of horizontal curves and a minimum design speed of 50 mph for the design of vertical curves.

The Base scope of work will include improving the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 50 mph. Two scope alternatives are included in the Project. Scope Alternative 1 will include improving the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 55 mph and Scope Alternative 2 will include improving the vertical alignment of the northbound lanes of US Route 15/29 within the project limits to provide stopping sight distance for a minimum Design Speed of 60 mph. A shift in the horizontal alignment of the northbound lanes of US Route 15/29 within the project limits towards the existing median is allowed, provided the minimum width of the median is 32 feet. However, a shift of the northbound lanes of US Route 15/29 within the project limits to the outside will not be allowed.

All existing turn lanes, median crossovers and entrances on US 15/29 within the project limits shall remain in the Design-Builder's final design.

### **2.3 This section intentionally left blank**

## **2.4 Environmental**

### **2.4.1 Environmental Document**

In accordance with the requirements of the National Environmental Policy Act ("NEPA") and in cooperation with Federal Highway Administration (FHWA), a NEPA document concurrence was approved to utilize a Categorical Exclusion on December 12, 2018. The coordination of the Categorical Exclusion is currently ongoing. The NEPA process is anticipated to be complete prior the scheduled date for project award. A working draft of the NEPA document and associated environmental documents including scoping responses are included in the RFP Information Package. VDOT has also completed preliminary document re-evaluations for Right of Way (RW) Authorization (EQ-201) dated January 28, 2019; Plans, Specifications and Estimates (PS&E) Authorization (EQ-200) dated January 28, 2019, and a preliminary Environmental Certification/Commitments Checklist (EQ-103) dated January 28, 2019, which are included in the RFP Information Package.

Once the Design-Builder has completed the design, VDOT shall update and finalize the re-evaluation for RW Authorization (EQ-201) prior to RW authorization; and update and finalize the re-evaluation for PS&E Authorization (EQ-200), and update and finalize the Environmental Certification/Commitments Checklist (EQ-103) prior to the VDOT Project Manager releasing the Project for construction. The VDOT Project Manager shall verify that the EQ-200, EQ-201



and EQ-103 forms have been updated and finalized prior to obtaining approval signatures for each title sheet submittal required for Right of Way and Construction.

The Design-Builder shall carry out environmental commitments during design, right of way acquisition, and construction, as applicable, as identified in the CE, the final document re-evaluations for RW and the PS&E Re-evaluation, and the final Environmental Certification forms. All commitment compliance shall be supported by appropriate documentation, to be provided by the Design-Builder to the VDOT Project Manager.

Any changes in the scope or footprint of the established basic Project concept, proposed by the Design-Builder and acceptable to VDOT, may require additional environmental technical studies and analysis to be performed by the Design-Builder at their cost. The Design-Builder will be responsible for notifying VDOT of plan revisions, scope changes, and providing any necessary studies and other necessary information to support VDOT's completion and re-evaluation of the NEPA document. VDOT will be responsible for the coordination of any NEPA document re-evaluations with FHWA. The Design-Builder shall then carry out any additional environmental commitments that result from such coordination at its sole expense and no additional cost and/or time delays to the Project.

VDOT expects that the results from any additional work needed to support the Design-Builder's final design will be conveyed to the Department as quality deliverables in accordance with professional standards and guidelines for each NEPA-related discipline, as well as the criteria described in Part 2, Section 2.2. Moreover, VDOT reserves the right to return any inadequate or substandard deliverables to the Design-Builder for revision prior to coordination.

The Design-Builder is solely responsible for any costs or schedule delays related to the permit acquisition, permit modifications, and NEPA document re-evaluations associated with Design-Builder's design changes, as well as the submission of inadequate or substandard deliverables. No time extensions will be granted. All costs associated with complying with these requirements shall be included in the Offeror's Price Proposal.

## **2.4.2 Cultural Resources**

On January 15, 2019, The VDOT submitted an effect letter to VDHR and Consulting Parties. In this letter the VDOT recommended that the project will have no adverse effect on historic resources. The architecture APE is the vicinity where alterations to feeling and setting may occur. The archaeology APE is the construction footprint and any associated easements. For the purpose of this project, the APE is limited to existing VDOT ROW. The VDOT received concurrence of its no adverse effect determination from VDHR on February 1, 2019. Copies of relevant VDOT/VA SHPO correspondence and mapping showing the location of the historic property are included in the RFP Information Package.

There is one historic property in the Project's APE:

<u>VDHR No. 030-5152</u>	<u>Resource Description – Buckland Mills Battlefield</u>
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The following commitments must be carried out by Design-Builder:

The Design-Builder should consider historic properties to be design constraints and avoid impacting them beyond what is shown on the RFP Conceptual Plans. In addition, the Design-Builder shall notify the VDOT Project Manager in advance of any other project-related activities, including but not limited to staging, borrow/disposal, and any temporary or permanent easements, proposed to be located on or within the view-shed of historic properties. These activities, any changes to the design, alignment, right of way limits, or easements shown on the RFP Conceptual Plans, or any additions to the Project such as stormwater management facilities, wetland mitigation sites, or noise barriers, may require review by VDOT and could require additional cultural resources studies and/or coordination with the VA SHPO. The Design-Builder is responsible for conducting all cultural resources studies necessitated by the proposed changes, in accordance with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation*, and the Virginia Department of Historic Resources' most current *Guidelines for Conducting Survey in Virginia*, while VDOT is responsible for coordinating both the studies and the proposed changes with the VA SHPO. The Design-Builder shall then carry out any additional cultural resources commitments that result from such coordination at its sole expense and at no additional cost to VDOT.

#### **2.4.3 Section 4(f) Resources**

There is no Use of 4(f) Resources on this Project

#### **2.4.4 Water Quality Permits and Compensatory Mitigation**

VDOT's preliminary Permit Determination January 22, 2019 is included in the RFP Information Package. No permits are required for the Project, with the stipulation that fill is placed only within the existing roadway fill prism. Any changes to the current concept which require fill, permanent or temporary, to be placed beyond the existing toe-of-slope at any of the existing culvert crossings, will require a permit and will render this permit determination invalid. The Offeror should note that VDOT's preliminary Permit Determination and wetland delineations (if applicable) are provided for informational purposes only. The Design Builder will be responsible for verifying permit requirements prior to construction. Regulatory agencies will make the final determination which state/federal water quality permits will be required during coordination with the Design-Builder.

#### **2.4.5 Threatened and Endangered Species**

VDOT has performed preliminary database reviews to determine the Project's potential effects on threatened and endangered (T&E) species, indicating that the Project may affect T&E species. The following state/federally listed T&E species were identified in the vicinity of the Project: Northern Long-Eared bat. This species may be affected by the Project and will require additional coordination with federal and state agencies to resolve these issues. A copy of VDOT's preliminary Fish, Plant, and Wildlife Resources Form dated January 28, 2019 is included in the RFP Information Package. The project is clear for advertisement of the RFP,

although additional agency coordination may be required according to the RFP (Part 2 Technical Requirements).

The Offeror shall be advised that new and updated T&E information is continually added to agency databases. The Design-Builder shall be responsible for any subsequent coordination to obtain updated information, requirements, and clearances from environmental regulatory agencies that provide threatened and endangered species oversight. The Design-Builder shall copy the VDOT District Environmental Manager on any submittals requesting concurrence from USFWS on effect determinations of federally-listed species. This additional T&E species coordination is also a standard component of the water quality permit acquisition process and may result in permit conditions for which the Design-Builder shall be responsible. The Design-Builder is responsible for ensuring that all T&E species are correctly identified and impacts assessed, noting that more or less resources may be present than initially identified. Avoidance and minimization shall be implemented to the greatest extent possible. The Design-Builder shall provide to the VDOT Project Manager copies of all documentation and correspondence with regulatory agencies.

#### **2.4.6 Hazardous Materials**

VDOT performed studies to determine the potential for hazardous materials and/or contamination within the Project area. Information pertaining to these studies is included in the RFP Information Package and constitutes Known Pre-existing Hazardous Materials as defined in Part 4, Article 4.

The Design-Builder shall manage solid waste, hazardous waste, and hazardous materials in accordance with all applicable federal, state, and local environmental regulations and shall implement good housekeeping, waste minimization and pollution prevention practices.

The Design-Builder shall be responsible for the development of a Spill Prevention, Control, and Countermeasure Plan as required by regulation and for submission of any required plan to the VDOT Project Manager prior to start of construction. In the event of spills or releases of petroleum products and other hazardous liquids or solid materials, the Design-Builder shall take immediate action to contain and eliminate the spill release, including the deployment of environmental protection measures to prevent the migration of the spill into the waters of the United States and of worker exposure protection measures. The Design-Builder shall notify the VDOT Project Manager immediately of all instances involving the spill, discharge, dumping or any other releases or discovery of hazardous materials into the environment and shall provide all required notifications and response actions.

The Offeror shall include in its Price Proposal all costs associated with complying with the above listed requirements except that asbestos abatement and abatement monitoring will be paid for, if and when necessary, under a Work Order in accordance with Article 9 of Part 4 (General Conditions of Contract).

The Design-Builder shall not acquire property until any required Phase I Environmental Site Assessment is complete and approved. This shall represent a hold point in the Design-Builder's CPM Schedule.

#### **2.4.7 Air Quality**

The Project has been assessed for potential air quality impacts and conformity with all applicable federal and state air quality regulations and requirements. The Air Quality Analysis Report, dated January 25, 2019, is provided in the RFP Information Package. The Report identifies federal and state regulatory requirements that must be adhered to during construction of the Project.

This Project is located in an area that is currently in Attainment with the National Ambient Air Quality Standards (NAAQS). The following Virginia Department of Environmental Quality (VDEQ) air pollution regulations must be adhered to during the construction of this Project: 9 VAC 5-50-60 et seq., Fugitive Dust precautions.

Construction activities related to Air Quality shall be performed in accordance with Part 5, Section 107.16(b) 2 requiring compliance with all applicable local, state, and federal air quality regulations.

#### **2.4.8 Noise Mitigation**

The Noise Scoping Decision for this Project was that this is a Type III project and that a Noise study is not required. A copy of the Noise Form dated January 9, 2019, is included in the RFP Information Package. However, Offerors are responsible for evaluating the need to conduct a Noise Study for any changes from the RFP Conceptual Plans due to their unique design, in accordance with the VDOT Highway Traffic Noise Impact Analysis Guidance manual. If a Noise Study is required, Offerors shall account for the Noise Study and any resulting Noise Walls in their Technical and Price Proposals.

#### **2.4.9 Environmental Compliance**

The Design-Builder is responsible for compliance with all applicable state and federal environmental laws, regulations, and permits. If, at any time, the Design-Builder is not in compliance with all applicable environmental laws, regulations, Executive Orders, commitments, etc., the VDOT Project Manager has the authority to suspend work, in whole or in part, until such time as the deficiencies or non-compliant items have been corrected. Should any non-compliant item(s) be identified during construction, immediate and continuous corrective action shall be taken by the Design-Builder to bring the item(s) back into compliance. The Design-Builder shall notify the VDOT Project Manager immediately of all non-compliant item(s) and shall provide to the VDOT Project Manager copies of all documentation and correspondence with regulatory agencies related to the non-compliant item(s) and their resolution, concurrent with each submission.

The Design-Builder shall be responsible for any schedule delays and associated costs as a result of any delays and/or shut downs associated with non-compliance. Any monetary fines associated with violations and/or any environmental restoration activities required to resolve violations shall be the responsibility of the Design-Builder.

The Design-Builder shall carry out environmental commitments during design and construction, as applicable, as identified in the **CE**, the final Document Re-evaluations for RW Authorization (EQ-201) and PS&E Authorization (EQ-200), and the final Environmental Certification/Commitments Checklist (EQ-103). All commitment compliance shall be supported by appropriate documentation, to be provided by the Design-Builder to the VDOT Project Manager.

The Design-Builder shall be responsible for compliance with pre-construction and construction-related environmental commitments and permit conditions. The Design-Builder shall assume all obligations and costs incurred by complying with the terms and conditions of the permits and certifications. Any fines associated with environmental permit or regulatory violations shall be the responsibility of the Design-Builder.

## 2.5 Survey

NOTE: The RFP Concept Plans were prepared with an older survey, which may not reflect current conditions. However, VDOT recently completed a new survey and utility designation for the design and construction of the Project in accordance with VDOT's Survey Manual. This new survey is included in the RFP Information Package.

The description of the survey limits is as follows: starting at the intersection of US 15/29 and Route 215 Vint Hill Road, running approximately 3000' South along US 15/29 and variable width coverage, then starting at the intersection of US 15/29 and Route 215 Vint Hill Road and running approximately 2500' North along US 15/29 with variable width coverage, then starting at the intersection of US 15/29 and Route 215 Vint Hill Road, running approximately 5000' East on Route 215 to the intersection of Route 600 Broad Run Church Road. The field survey was conducted using aerial LiDAR and photogrammetry, conventional and mobile LiDAR methods and data was collected within the tolerances defined in the VDOT Virginia Map Accuracy Standards. Field survey and utility data have been obtained, including, but not limited to the following:

- Notification of property owners\*
- Vertical control (Based on NAVD88 Geoid 2012A)\*\*
- Horizontal control (Based on NAD83-2011)\*\*
- Mobile LiDAR Control Points set @ approx. 800' intervals
- Mobile LiDar\*\*
- Field data verified and updated
- Planimetrics
- Property data and R/W

- Utilities (Level B sub-surface utility investigation in the median from inside edge of pavement to inside edge of pavement and areas designated as potential BMP's.)
- Digital Terrain Model

\*The Virginia Code 33.2-1011 requires that Notice of Intent letter “shall be sent to the owner by mail, at the address recorded in the tax records, **not less than 15 days prior** to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the date of mailing.” “The notice shall include the anticipated date such entry is proposed to be made and the purpose of such entry.” Advance notification of property owners is required for all data collection efforts related to the development of highway plans. Copies of the letters and address labels shall be provided to the VDOT Project Manager for forwarding to the District Survey Manager as soon as they become available for VDOT approval.

\*\*Approach: VDOT conducted a static GNSS network survey related to local National Geodetic Survey (NGS) First Order control monuments to update the horizontal and vertical values on existing VDOT Project Monuments. Differential leveling was conducted between the VDOT Project Monuments through the traversed ground control points. Mobile LiDAR was employed to acquire the pavement surface elevations. Mobile LiDAR ground control points (MCP) were set at approximately 800' intervals along the project corridor. The MCP's were observed utilizing a localized RTK solution with 4 observations on each point. The mobile LiDAR data was adjusted to these points and mapping was produced. Blind check shots were surveyed on well-defined paved surfaces throughout the project and tested against the final mapping. The RMSE of the blind check points was 0.09' and falls within the map class and accuracy listed below. The maximum variance of the blind check shots was ±±0.21 foot.

The field survey and utility data provided in the RFP Information Package contains the general depiction of existing conditions and may be used for purposes of completing final design of the Project. The horizontal accuracy of the survey is at the Class 1 Level at 1:300 scale. The vertical accuracy is Class 3 with 1-foot contours. Accuracy standards apply to well-defined stable locations. The accuracies are from the VDOT Survey manual. The Design-Builder shall be responsible for obtaining any additional survey data, including all right-of-entry and land use permits, locating and/or designating underground utilities, digital terrain model (DTM), utility test holes and obtaining other related data necessary for the design, right of way acquisition, limited access revisions, and construction of the Project. Additionally, the Design-Builder will be responsible for any update (property owner changes, subdivisions, etc.) that may occur; updates need to be reflected on the plans in order to acquire right of way and complete the final design. Any survey changes shall be verified and certified and submitted in final documentation.

The Design-Builder will be responsible to reset or relocate any survey control damaged, destroyed or located within the footprint of the final design construction limits. The control will be established by a land surveyor registered, licensed in the Commonwealth of Virginia with LD-200 information and supporting computations submitted to the VDOT Project Manager.

Prior to Project completion, the Design-Builder shall provide and set final VDOT RM-2 right of way monuments within the Project Limits. The Design-Builder shall depict the monuments on the Right of Way Plans in accordance with VDOT's Survey Manual.

## **2.6 Geotechnical Work**

Schnabel Engineering has completed a design-level geotechnical subsurface investigation for the RFP Conceptual Plans for this Project. The results of the investigation are presented in the DRAFT Geotechnical Engineering Report (GER) dated February 1, 2019, which is included in the RFP Information Package. The Final GER will be provided to Offerors by February 15, 2019.

The DRAFT GER included in this RFP is being provided for Offeror's information in accordance with Section 102.04 of Division I Amendments (Part 5). The Design-Builder is not required to complete further geotechnical investigation if its design concept is not significantly different from the RFP Conceptual Plans. However, the Design-Builder is required to confirm that its design will not decrease the slope stability factors provided in the GER for the existing embankment slopes. Any additional geotechnical engineering investigation performed shall be in accordance with Chapter 3 of the VDOT Materials Division's Manual of Instructions (MOI). The current AASHTO LRFD Bridge Design Specifications, 6<sup>th</sup> Edition 2012 and Section 700.05© of the 2016 VDOT Road and Bridge Specifications shall be met where applicable.

The Design-Builder may collect additional data for geotechnical evaluation of pavements, embankments, soil cuts, soil and rock cuts, culverts, minor structures including drainage pipes, and any other earth-supported or earth-retaining structures or elements of highway design and construction required for this Project. The Design-Builder will be responsible for obtaining all necessary permits and utility clearances as required by VDOT, the Commonwealth of Virginia, or any other jurisdictional body or owner prior to accessing public or private property for the purpose of conducting geotechnical field work and shall provide the necessary traffic control in accordance with the Work Area Protection Manual. The Design-Builder shall complete laboratory tests in accordance with pertinent ASTM or AASHTO standards and analyze the data to provide design and construction requirements. Soils, rock, aggregate, asphalt, concrete and other materials tests shall be performed by a laboratory accredited through the AASHTO Accreditation Program (AMRL and CCRL) for each test it conducts for the Project, unless otherwise approved by VDOT.

The Design-Builder shall provide VDOT with all records of subsurface explorations and describe the soils encountered and their depth limits in accordance with the requirements outlined in Chapter 3 of the VDOT Materials Division MOI. The Design-Builder shall provide to VDOT electronic copies of all subsurface explorations in accordance with the boring log template available on the website included in Chapter 3 of the VDOT Materials Division MOI. The electronic files shall be provided by a certified professional geologist or a suitably qualified registered, licensed professional engineer in the Commonwealth of Virginia, in gINT© software. The gINT© file for the borings contained in DRAFT Geotechnical Engineering Report, dated February 1, 2019, are provided in the RFP Information Package.

The Design-Builder shall submit to the VDOT for its review any geotechnical design and construction memoranda and/or reports that summarize pertinent subsurface investigations, tests, and geotechnical engineering evaluations and recommendations utilized in support of their design/construction documents. This submittal shall be made at least ten (10) days in advance of the submittal of any final design/construction documents that are dependent upon the geotechnical evaluations and recommendations. Technical specifications for construction methods that are not adequately addressed in the Standard Specifications shall be provided by the Design-Builder as part of the final design/construction documentation. Prior to submittal of any final design/construction documentation, the Design-Builder shall review the final design/construction documents to assure that it appropriately incorporated the geotechnical components and shall submit evidence of this review to accompany the final design/construction documentation. The Design-Builder shall reference the drawings that incorporate the pertinent results. The Design-Builder's Quality Assurance and Quality Control (QA/QC) Plan shall document how each specific geotechnical recommendation or requirement will be addressed in the final design/construction documentation. The results of the geotechnical investigation and laboratory results shall support design and construction efforts to meet the requirements outlined in this Section.

Any utility excavations or excavations for storm drains within pavement areas shall be backfilled with compacted structural fill in accordance with applicable sections of the 2016 VDOT Road and Bridge Specifications and applicable Special Provisions.

### **2.6.1 Minimum Pavement Sections**

Minimum pavement sections shall be utilized for construction of the Project. The anticipated locations for new pavement, mill and overlay, demolish and replace are provided on the RFP Conceptual Plans included in the RFP Information Package. The Design-Builder shall be responsible for the construction of the pavements for this Project in accordance with the Contract Documents.

The Design-Builder shall prepare and incorporate into the plans, typical sections, profiles and cross-sections the pavement sections in accordance with the applicable manuals noted in Part 2, Section 2.1. This includes drainage and subdrainage requirements to ensure positive drainage both within the pavement structure and on the pavement surface. Underdrains are identified in the DRAFT Geotechnical Engineering Report, but are not shown in the RFP Conceptual Plans. The minimum pavement sections are as follows:

#### **New Pavement and Pavement Widening (Mainline and Shoulder)**

**Surface** – 2.0 inches Asphalt Concrete, Type SM-12.5E

**Intermediate** – 2.0 inches Asphalt Concrete, Type IM-19.0D

**Base** – 8.0 inches Asphalt Concrete, Type BM-25.0D

**Subbase** – minimum of 8.0 inches Aggregate Base Material, Type I, Size No. 21B. The aggregate subbase should be connected to UD-4 or day-light to the face of slope.



### **Mill and Overlay (Mainline)**

For existing mainline pavement structure that is to remain in-place and be subjected to mainline traffic, the asphalt concrete depth shall not be reduced.

For salvage/mill and replace areas, the existing pavement shall be milled two (2) inches and replaced with the following:

**Surface** – 2.0 inches Asphalt Concrete, Type SM-12.5E

**NOTE:** For any areas where the existing pavement will include new AC build-up greater than a 2-inch thickness, use IM or BM mix designations as noted above in layer thicknesses in accordance with Chapter 6 of the MOI. Where AC overlay/build-up with new asphalt concrete will be 4.0 inches or greater, milling of the existing AC is not required.

Minimum pavement sections require that proper grading be maintained to direct surface water away from paved areas and to provide for efficient runoff from surrounding areas.

### **2.6.2 Temporary Pavement**

The Design-Builder shall be responsible for any temporary pavement design including shoulder strengthening to accommodate MOT. Temporary pavements shall be designed in accordance with the AASHTO Guide for the Design of Pavement Structures (1993 edition) and the VDOT Materials Division's Manual of Instructions. All temporary pavement designs shall be submitted to VDOT for review. All temporary pavement shall be completely removed once it is no longer in service. All temporary pavement designs for the Project shall have a minimum six (6) inches of asphalt concrete and shall meet the following minimum design criteria:

- Design Life – 2 months minimum or for the proposed length of MOT phase (whichever is greater)
- Reliability – eighty-five percent (85%) minimum
- Initial Serviceability – 4.2 minimum
- Terminal Serviceability – 2.8 minimum
- Standard Deviation – 0.49 minimum
- CBR value for subgrade soils determined through laboratory tests

Temporary pavement sections require that proper grading be maintained to direct surface water away from paved areas and to provide for efficient runoff from surrounding areas.

### **2.6.3 Geotechnical Requirements**

Unless otherwise indicated in the DRAFT Geotechnical Engineering Report or noted herein, embankments and cut slopes shall be designed in accordance with Section 305 of the VDOT Materials Division's MOI. The maximum slope ratio to be used for cut slopes shall not be steeper than 1H:1V and the maximum slope ratio to be used for roadway embankment fill slopes shall not be steeper than 1.5H:1V. The Design-Builder is responsible for verifying the stability of all slopes, including those retained by structures.

All retaining walls shall be designed in accordance with applicable VDOT and AASHTO requirements included in the RFP Information Package. If the Design-Builder elects to use mechanically stabilized earth (MSE) walls, the fill material used in the reinforced zone shall be a crushed aggregate with properties in accordance with VDOT's Special Provisions for approved proprietary MSE walls. The Design-Builder shall provide both global and external stability analysis utilizing a computer program acceptable to VDOT and submit the results of the analysis, including boring logs, laboratory data, and any other applicable data, to VDOT geotechnical engineers for review. The wall supplier shall provide to the Design-Builder, for submittal to VDOT, an internal stability analysis that validates the design of the wall. Retaining walls shall be designed to control settlements within tolerances identified by VDOT Guidelines for Preparation of Alternate Retaining Wall Plans.

Material and Construction requirements shall follow the VDOT Manual of the Structure and Bridge Division – Part 11 “Geotechnical Manual for Structures” and applicable special provisions listed in Part 2, Section 2.1.1(c). Where undercutting and material replacement is required to reduce settlement or improve bearing capacity/global stability, areas requiring repair shall be clearly identified on the plans with notes provided to aid plan review, construction, and inspection.

The Design-Builder's design shall not result in slope stability safety factors less than those stated in the DRAFT Geotechnical Engineering Report, using the material parameters and groundwater table location specified in the GER. Construction shall not impact the existing embankment fill slopes in any manner. Vibratory compaction equipment shall not be used within 10 feet laterally of the top of the existing embankment fill slopes.

#### **2.6.4 Unsuitable Materials**

Unsuitable material as defined in the DRAFT Geotechnical Engineering Report. The recommendations for unsuitable materials apply to any material considered for use in the following locations:

- Within three (3) feet below the embankment foundation or pavement subgrade level
- Within two (2) feet below the bedding material of minor structures
- Laterally within two (2) feet of the outside edge of the pavement shoulders
- Laterally within two (2) feet of the limits of bedding material of minor structures

The following materials should be considered unsuitable:

- Rock or IGM present within one (1) foot of pavement section subgrades
- Organic materials classifying as OH or OL in accordance with the Unified Soil Classification System (USCS)
- High plasticity materials classifying as CH or MH in accordance with the Unified Soil Classification System (USCS)
- Contain more than 5 percent by weight organic matter
- Exhibit a swell value greater than 5 percent as determined from the California Bearing Ratio (CBR) test using VTM-8
- Exhibit strength, consolidation, durability of rock or any other characteristics that are deemed unsuitable by VDOT
- Are denoted in the Contract Documents as unsuitable
- All materials within the uppermost three (3) feet of a pavement subgrade shall have a minimum resilient modulus value of 12,280 psi Saturated, very dry and/or loose or very soft soils that exhibit excessive pumping or rutting under the weight of construction equipment. If these near-surface materials can be moisture conditioned (mechanically or chemically) to an acceptable moisture content that allows adequate compaction to meet project specifications, and classification testing indicates they are not otherwise unsuitable, they may be compacted in-place to the specified compaction

The anticipated locations and methods of treatment for unsuitable materials identified in the DRAFT Geotechnical Engineering Report shall be shown on the design plans and cross sections. Saturated or very dry and/or loose or very soft coarse- and fine-grained soils that exhibit excessive pumping, weaving or rutting under the weight of construction equipment are also considered unsuitable unless they can be moisture conditioned through either mechanical or chemical means to an acceptable moisture content that allows adequate compaction to meet project specifications, and classification testing indicates they are not otherwise unsuitable. Topsoil, peat, coal and carbonaceous shale shall also be considered unsuitable material. All unsuitable material shall be disposed of and/or treated as discussed in Section 106.04 of the 2016 VDOT Road and Bridge Specifications at no additional cost to VDOT. Topsoil or other organic soils are also considered unsuitable for use in embankment fill other than as a cover for slopes for the purpose of establishing vegetative cover. When used as cover for slopes, the thickness of topsoil shall not exceed twelve (12) inches.

All materials within the uppermost three (3) feet of a pavement subgrade shall have a minimum resilient modulus value of 12,280 psi. The Design-Builder's quality control and quality assurance plan shall include performance testing to verify this minimum value during construction.

## **2.6.5 Control of Rock Blasting**

### **2.6.5.1 Blasting Control**

It is anticipated the rock excavation will be needed to construct this Project. If the Design-Builder elects to use explosives to remove the rock, the Design-Builder shall include as part of the design team a blasting consultant, approved by VDOT, with a minimum of 5-years of experience developing blasting plans and providing oversight of blasting operations on highway projects in rock having comparable geologic lithology. A resume to include qualifications and relevant experience of the person responsible for review of blasting plans and oversight of blasting operations shall be submitted to the Department for approval before review and approval of the blasting plans. The consultant shall review the blasting plans used by the blasting contractor to verify it includes the results of blasting on a test section. The consultant shall make regular visits to the site as excavation progresses to verify that the plan need not be modified. The Design-Builder may utilize an in-house blasting expert to perform the role of the blasting consultant providing they meet the same minimum requirements as the blasting consultant noted above, have been approved by VDOT and are not directly involved in the development of the blasting plans.

### **2.6.5.2 Test Blast**

The Design-Builder's blasting consultant shall design a test blast that replicates the intended "weight per delay" and number of charges typical for a production blast. Seismic monitoring shall be provided for the test blast that includes monitoring points in proximity to the blast and at distances removed from the blast. Seismic records from the test blast shall be used to determine the regression of velocity and acceleration at various distances from the test blast. These data shall be used to control the weight per delay as the blasting program progresses. Provide results from test blast program to VDOT prior to production blasting.

### **2.6.5.3 Vibration Control**

Control vibrations to less than 0.5 ips (inches per second) at the nearest structure. In addition to private/adjacent properties, this includes structures under construction and structures owned by VDOT. The contractor will be responsible for repairing any and all damage to adjacent facilities and structures for construction-induced damage.

## **2.6.6 Pipe Installation Methods**

Culverts or utility pipes shall be installed by conventional methods in accordance with recommendations provided in the DRAFT Geotechnical Engineering Report and Section 302.03 of the 2016 VDOT Road and Bridge Specifications.

## **2.7 Hydraulics**

The Design-Builder shall provide and/or perform all investigations, evaluations, analysis, coordination, documentation, and design required to meet all hydrologic and hydraulic, drainage, stormwater management, erosion and sedimentation control, stormwater pollution prevention, and Virginia Storm Water Management Program permitting requirements of the standards and reference documents listed in Part 2, Section 2.1.

### **2.7.2 Drainage**

The drainage work shall include the design and construction of culverts, open channels, storm sewer systems, underdrains, and erosion and sediment control measures in compliance with the standards and reference documents listed in Part 2, Section 2.1 and the VDOT Erosion and Sediment Control and Stormwater Management Programs. All pipe culverts and storm sewer pipe for the Project shall be determined in accordance with VDOT's Drainage Manual and the 2016 VDOT Road and Bridge Standards and all joints shall be determined in accordance with IIM-LD-254. The Design-Builder shall provide VDOT two (2) electronic copies on compact disc (CD) of a final drainage report incorporating all drainage calculations including pre and post development discharges, capacities, and supporting data such as drainage areas (with maps), ground cover calculations, etc. in accordance with the documentation requirements as outlined in VDOT's Drainage Manual.

Replacement of the three (3) existing culverts underneath US 15/29 at approximate Sta. 112+60, approximate Sta. 125+30, and approximate Sta. 136+90 is not part of this project. For the purposes of developing its Price Proposal, the Offeror shall assume that all other existing roadway culverts within the Project limits, as defined in Part 2, Section 1.1 and which are a functional element of the proposed drainage design, are structurally deficient and are to be plugged and abandoned in accordance with VDOT Standard PP-1, removed, or replaced with adequate structures designed and constructed in support of the Design-Builder's final drainage design. Offerors should note that VDOT has not assessed the structural condition of the existing culverts within the Project limits. If after award the Design-Builder investigates the structural condition of the affected existing culverts, and as a result proposes use (or repair) of some or all, then it shall be done only with VDOT's approval. The Design-Builder shall credit VDOT, the differential in cost for utilizing the existing or rehabilitated culverts in lieu of removing and replacing the culverts.

The Design-Builder shall assess the structural condition and serviceability of the structure by performing a visual/video inspection of the existing culverts utilizing the assessment criteria for Post Installation Inspections presented in VDOT Road and Bridge Specification 302.03(d). The Design-Builder shall provide VDOT with an inspection report documenting the assessment following the methodology as prescribed in the Road and Bridge Specification 302.03(d). The Design-Builder shall provide VDOT with an inspection report documenting their assessment following the methodology as prescribed in the supplemental specification. The report shall include a certification from the Design-Builder's structural engineer attesting to the structural adequacy of the structures and specific recommendations relative to improvements to the structural condition and serviceability of the structures. The Design-Builder shall provide the report to VDOT for review and approval prior to proceeding to final design. With VDOT's

approval, pipe culverts deemed repairable shall be rehabilitated in accordance with VDOT's guidelines including, but not limited to those methods outlined in Chapter 8, Section 8.3.6.7 of VDOT's Drainage Manual and Special Provisions SQ302-000140-01 Pipe Rehabilitation and SQ302-000100-00 Pipe Replacement.

Pipes to be rehabilitated using methods that reduce the pipe cross sectional flow area by 10% or more will not be allowed without the written approval of the VDOT District Hydraulic Engineer. Circular pipes 24-inches or less in diameter, and elliptical pipes 30-inches by 19-inches or smaller, are not eligible for a rehabilitation method that reduces the cross sectional flow area unless approved in writing by the VDOT District Hydraulic Engineer.

Underdrain outfall locations are not shown in the RFP Conceptual Plans and it shall be the responsibility of the Design-Builder to develop the underdrain design including adequate outfall locations. The Design-Builder may, at its discretion, utilize access structures (i.e. manholes, cleanouts, etc.) in lieu of VDOT Standard EW-12's in order to outfall an underdrain according to the guidelines set forth in the 2016 VDOT Road and Bridge Standards and VDOT's Drainage Manual while maintaining the ability for the underdrain to be accessed in the future for maintenance purposes.

### **2.7.3 Stormwater Pollution Prevention Plan (SWPPP)**

A SWPPP, including, but not limited to, an Erosion and Sediment Control (ESC) Plan and Narrative, a Pollution Prevention (P2) Plan, and a post construction Stormwater Management (SWM) Plan shall be prepared and implemented by the Design-Builder in compliance with applicable requirements of the standards and reference documents listed in Part 2, Section 2.1 including the Virginia Erosion and Sediment Control Law and Regulations and the Virginia Stormwater Management Act (VSMA) and the Virginia Stormwater Management Program (VSMP) Regulation.

It shall be the responsibility of the Design-Builder to have a qualified person within their team structure, other than the ESC and post construction SWM Plan designer, who is authorized and/or certified by the Virginia Department of Environmental Quality (VDEQ) to perform plan reviews, independently review and certify that the ESC Plans and Narrative and post construction SWM Plan for the Project are in accordance with VDOT's Approved ESC and SWM Standards and Specifications. Before implementing any ESC or post construction SWM measures not included in VDOT's approved ESC and SWM Standards and Specifications, a variance or exception respectively must be requested through the VDOT District Hydraulic Engineer in accordance with VDOT's Drainage Manual, IIM-LD-195, and IIM-LD-251.

The Design-Builder shall complete and submit the ESC and SWM Plan Certification form (LD-445C) to the VDOT Project Manager. The Design-Builder shall provide VDOT two (2) electronic copies each on CD of the final ESC Plan and Narrative, P2 Plan and post construction SWM Plan incorporating all calculations, analysis, documentation and evaluations required. The ESC Narrative shall specifically include calculations (with supporting data) documenting that the design meets the water quantity requirements for downstream channel flood protection utilizing the Part IIB technical requirements in the ESC Law and Regulations,

and the VSMA and VSMP Regulation, as appropriate, for each location where stormwater is discharged from the Project site.

The Project requires coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for discharge of stormwater from Construction Activities (VPDES Construction Permit). The Design-Builder is responsible for providing to VDOT the necessary information for VDOT to secure permit coverage for the Project. The permit fee will be paid by VDOT and it shall not be included in the Offeror's Price Proposal. The Design-Builder shall complete the applicable sections of the VPDES Construction Permit Registration form (LD-445), the VPDES Construction Permit Contact Information (LD-445A) along with the completed ESC and SWM Plan Certification form (LD-445C) and submit them to the VDOT Project Manager. The VDOT Project Manager will review the submitted information and, if complete and acceptable, process a request for coverage under the VPDES Construction Permit in accordance with VDOT's guidelines as outlined in IIM-LD-242. If any information submitted by the Design-Builder is found to be incomplete and/or unacceptable, the assembly will be returned to the Design-Builder for corrective action and resubmission.

For a project that is to be constructed in its entirety (not in phases), the application for permit coverage shall include the total proposed Land Disturbance Area and the total Land Development Area, including any off-site facilities in the VDOT right of way, for the overall project. The Design-Builder shall submit a SWPPP (including a complete ESC Plan, SWM Plan, and P2 Plan) for the entire project, for review and approval with the initial application for permit coverage.

Where a project will be constructed in phases, the application for permit coverage shall include the total proposed Land Disturbance Area and the total Land Development Area, including any off-site facilities in the VDOT right of way, for the entire project. The Design-Builder shall submit a SWPPP (including a ESC Plan, a SWM Plan, and P2 Plan) subsequently for each phase that includes the scope and extent of land disturbing proposed for that phase. The SWPPP for the initial phase shall be submitted with the application for permit coverage. It is expected that the individual phase submittals will be self-sustaining and not incur a deficit in post construction SWM design requirements requiring mitigation on successive phases. Subsequent work phase submittals shall include the required modifications to the Land Disturbance Area based upon the proposed scope and extent of land disturbing activities for that phase. However, these modifications, in total, shall not exceed the submitted total Land Development Area for the entire project.

The Design-Builder shall not proceed with work to be covered by the permit until permit coverage is secured and the VDOT Project Manager releases the work in writing. Any request for an exception from the technical criteria of the VSMP regulation shall be coordinated and approved prior to receiving permit coverage. It is noted that permit coverage, and subsequent release of work, can take up to ninety (90) days from the time that the Design-Builder submits a request for coverage that includes all required information. This represents a hold point in the Design-Builder's CPM Schedule. The Design-Builder shall provide a completed SWPPP Certification form (LD-455E) before commencement of any land disturbing activity and shall complete and include the SWPPP General Information Sheets in the plan assembly in accordance

with VDOT's Drainage Manual. The SWPPP Certification form (LD-455E) and SWPPP General Information Sheets shall be updated with each work segment submittal as necessary.

The Design-Builder shall be responsible for compliance with construction-related permit conditions and shall assume all obligations and costs incurred by complying with the terms and conditions of the permit. Any fines associated with permit or regulatory violations shall be the responsibility of the Design-Builder. Upon completion of the entire regulated land disturbing activity (including final stabilization of all disturbed areas), the Design-Builder shall provide updated/revised Permanent Best Management Practice (BMP) information in Section VI of the SWPPP General Information Sheets for each post construction BMP placed into service on the Project, complete the VPDES Construction Permit Termination Notice form (LD-445D) and submit both documents (without signature) to the VDOT Project Manager for processing. The Design-Builder shall also have on-site during any land disturbing operations an individual or individuals holding a VDEQ Inspector Certification, a VDEQ Responsible Land Disturber (RLD) Certification and a VDOT Erosion and Sediment Control Contractor Certification (ESCCC) to ensure compliance with all VDEQ and VDOT erosion and sediment control plan implementation requirements. It shall be the responsibility of the Design-Builder's certified ESCCC representative and the Design-Builder's VDEQ certified ESC Inspector to monitor Project compliance with the approved SWPPP and the construction general permit. The Design-Builder's VDEQ certified ESC Inspector must represent the Quality Assurance firm for the Project. The inspections carried out by the Design-Builder's certified ESCCC representative and the Design-Builder's VDEQ certified ESC Inspector shall be in accordance with the *Minimum Requirements for Quality Assurance and Quality Control on Design-Build Projects and Public-Private Transportation Act Projects* manual and Part 5 Section 107.16(e) as amended in Exhibit 1 to Part 3. The inspections shall be documented and certified by both the Design-Builder's ESCCC representative and the Design-Builder's VDEQ certified ESC Inspector on the Construction Runoff Control Inspection Form (C-107 Part I).

#### **2.7.4 Post-Construction Stormwater Management Facilities**

The Department has submitted a Water Quantity Compliance Waiver (9VAC25-870-66) to the Virginia Department of Environmental Quality for this project and VDOT anticipates receiving approval of the waiver prior to the Technical Proposal submission date.

In preparation of the Water Quantity Compliance Waiver, VDOT completed a preliminary stormwater management analysis for the Project, concluding that the post construction phosphorus reduction requirement for the Project is 1.31 lbs/year. VDOT will purchase nutrient credits to meet 100% of the Project phosphorus removal requirements as described in IIM-LD-251. The Water Quantity Compliance Waiver documenting the preliminary stormwater management analysis is included in the RFP Information Package. The Design-Builder, as part of their final design, shall validate the preliminary stormwater management analysis and confirm that their final design will not result in an increase in post construction runoff, which may nullify the SWM waiver and require post construction SWM facilities as part of its SWM Plan for the Project. Any changes in the scope or footprint of the



established basic project concept, proposed by the Offeror and acceptable to VDOT may require additional analysis to be performed by the Design-Builder at their cost.

If the Design-Builder determines that additional phosphorus reduction is required relative to their unique design, the Design-Builder will provide for and include the required compensatory mitigation in the post construction SWM Plan. The Offeror shall account for all costs associated with the post construction Stormwater Management Plan, as well as compensatory mitigation, in its Price Proposal.

### **2.7.5 Other Drainage Requirements**

All drainage facilities (existing and newly constructed) located within the Project limits that are disturbed or extended as a part of the Project and are functional elements of the final design shall be rendered in a serviceable condition, free from debris and physical obstructions. Accumulated debris resulting from Project construction activities shall be removed by the Design-Builder, as such maintaining the original line and grade, hydraulic capacity or construction of the facility prior to the final acceptance of the Project.

An assessment of the serviceable condition (cleanness) of the existing drainage structures located within the Project limits should be conducted prior to the commencement of any land disturbing activities by the Design-Builder and provided to the VDOT Project Manager. The Design-Builder shall not be responsible for cleaning out existing debris accumulations in drainage facilities. Preexisting debris will be addressed by VDOT.

## **2.8 Landscaping**

The roadside development sheet may include tall fescue for erosion and sediment control and for permanent seeding.

## **2.9 Traffic Control Devices**

All existing traffic control devices within the project limits (including flashers, poles, arms, controllers and related equipment) that are no longer relevant and/ or are not required with the Design-Builder's proposed design shall be removed unless otherwise approved to remain by the Department. Foundations for structures that are to be removed shall be removed unless otherwise approved by the Department.

The existing CCTV camera, the existing traffic signal and all related equipment located at the intersection of US 15/29 and Vint Hill Road shall be maintained. Signal detection cameras and timings for the traffic signal at the intersection of Vint Hill Road may require adjustment during the construction period and after construction. The existing signal at US 15/29 and Vint Hill Road will require phasing and/or timing modifications to remove detection from the northbound leg during the road closure period. The Design-Builder shall notify the Culpeper District Traffic Engineer and Northwest Regional Operations at least four (4) weeks prior to the

closure for coordination and planning of these adjustments, which will be made by the Department.

The Project shall include all Traffic Control Devices (TCD), including temporary and permanent installation of the following: signage, guardrail, pavement markings/markers, and delineation. All TCD designed and installed under the Project shall be in accordance with standards and references in Part 2, Section 2.1. The Signing and Pavement Marking Plans, Transportation Management Plan (TMP), including Temporary Traffic Control/ Public Information and Traffic Operations Plans are required from the Design-Builder for final approval by VDOT and shall be included as a planned work package. The Design-Builder shall comply with the Special Provision for Personnel Requirements for Work Zone Traffic Control and the Special Provision for Work Zone Traffic Control Management, Design-Build Projects.

All existing TCD impacted by the Project shall be modified, upgraded, or replaced by the Design-Builder to meet current VDOT standards unless otherwise approved by the Department.

### **2.9.1 Signs**

The Design-Builder shall be responsible for modifications to existing signs and sign structures, and furnishing and installing all required new temporary and permanent signs and structures. The final lines of sight and sight distances must be considered in the placement of all Project signage.

An existing sign inventory shall be completed prior to site demolition in accordance with the VDOT Traffic Engineering Design Manual. This existing information shall be submitted at the same time as the first plan submittal for proposed signing.

All signs and sign structures to be removed during the construction of the Project shall be disposed of by the Design-Builder unless otherwise approved by the Department.

#### **2.9.1.1 Limits of Project Signing**

All signs and sign structures that are not required within the project limits (including signs that are no longer relevant and/ or are not required due to the proposed design) shall be removed unless otherwise approved to remain by the Department.

The Design-Builder shall replace all existing ground mounted and overhead mounted signage and install new signing within the Project limits unless otherwise approved by the Department. Any signing on adjacent roadways beyond the Project limits that require relocation, replacement, or modification due to the proposed design shall be the responsibility of the Design-Builder.

Temporary detour signing will be required outside the project limits for the planned detour during the closure of the US 15/29 northbound lanes. Additional information on the detour is included in Part 2, Section 2.10.1.

### **2.9.1.2 Signing Plan Requirements**

The signing plans shall be prepared at a one (1) inch = fifty (50) feet scale when plotted full size at thirty-five (35) inches by twenty-three (23) inches. The signing plans shall show the proposed sign message, MUTCD or Virginia Supplement sign designation (if applicable), size and location of all signs. The structure type used for mounting sign shall be noted on the signing plans. These signing plans shall show the location and messages of all existing signs. All existing sign removals and relocations shall be shown on the signing plans. The signing plans also shall include the location and type of delineation devices (including pavement markings, pavement messages/arrows, raised and recessed pavement markers, post- and barrier-mounted delineators).

### **2.9.1.3 Design of Sign Panels and Locations**

Proposed and replaced sign panels shall be in accordance with the 2016 VDOT Road and Bridge Specifications and other references in Part 2, Section 2.1. The Design-Builder shall coordinate all sign locations with all proposed and existing signing, landscaping, fencing, signals, utility, drainage, and all other roadside features to assure proper clearances and adequate sight distances. Sign sizes shall adhere to the latest edition of the FHWA Standard Highways Signs Book, the current edition of the MUTCD, the 2011 Virginia Supplement to the 2009 MUTCD, and all applicable Traffic Engineering Division Numbered memoranda. All Advance Guide Signs and Supplemental Guide Signs shall be ground mounted. No guide signs shall be mounted on bridges.

The Design-Builder shall use Standard VDOT sign structures for new and relocated VDOT owned signs. Ground-mounted VDOT sign structures shall use Standard SSP-VIA or SSP-VA structures, unless otherwise approved by VDOT. For all non-standard signs, the Design-Builder shall use GUIDSIGN software to design the sign panels. The Design-Builder shall utilize the current edition of the MUTCD, 2011 Virginia Supplement to the 2009 MUTCD, the FHWA's Standard Highway Signs including Pavement Markings and Standard Alphabets to design all non-standard signs that do not have a MUTCD or VDOT standard sign designation. The Clearview font shall not be used.

The Design-Builder shall coordinate the permanent location of sign structures and all proposed, relocated, or modified with Integrated Directional Signing Program (IDSP) signs such as Supplemental Guide Signs (SGS), Specific Travel Services (Logo) Signs, General Motorist Services Signs (GMSS), Tourist Oriented Directional Signs (TODS), and all other signs approved and maintained as part of the IDSP. All impacts to IDSP signs shall be reviewed and approved by the IDSP Manager before relocation, fabrication, and installation. Whenever possible all proposed, relocated, or modified IDSP signs shall not be installed in sign assemblies with other non-IDSP signs. IDSP signs shall be installed on 2 ½" square tube posts and concrete foundations in accordance with Standards STP-1, Standards SSP-VA structures and foundations, or Standards SSP-VIA structures and foundation as appropriate and as approved by the IDSP Manager. Any signs that would require more than two (2) square tube posts would need prior

approval by VDOT. The Design-Builder is responsible for costs associated with removal and replacement of IDSP signs.

### **2.9.2 Signals**

The existing signal at US 15/29 and Vint Hill Road will require phasing and/or timing modifications to remove detection from the northbound leg during the road closure period. The Design-Builder shall notify the Culpeper District Traffic Engineer and Northwest Regional Operations at least four (4) weeks prior to the closure for coordination and planning of these adjustments, which will be made by the Department.

### **2.9.3 Guardrail/Barrier**

The Design-Builder shall ensure that the clear zone within the Project limits is free from hazards and fixed objects. In the event that removal or relocation of hazard and fixed objects from the clear zone is not feasible, the Design-Builder shall design and install an approved guardrail barrier system and end treatments, where appropriate, for protection in accordance with the AASHTO Manual for Assessing Safety Hardware (MASH), First Edition. The same clear zone requirement applies to existing conditions affected by this Project where guardrail upgrade will be required. Existing sub-standard guardrail within the Project limits must be upgraded by the Design-Builder to meet current standards per Appendix I of the VDOT Road Design Manual. This may require the upgrade of guardrail to the nearest logical termination point beyond the current Project limits.

All guardrail on this project shall be MASH compliant, Midwest Guardrail Systems (MGS) standard, guardrail as noted in the February 2017 revision to the 2016 VDOT Road and Bridge Standards, Section 500, Pages 506.01 through 506.11 and 507.01 through 507.04 and the March revision to the 2017 VDOT Road Design Manual Appendix J.

Forty-eight hours (48) hours prior to installation of guardrail the Design-Builder shall request VDOT field verification of the proposed layout. Accompanied by the Design-Builder, VDOT representative will inspect the locations and advise on any necessary adjustments. Additionally, the Design-Builder shall provide a copy of the manufacturer's recommendations for installation of all guardrail terminals to the VDOT Project Manager before the installation of any guardrail end treatment of terminating device.

### **2.9.4 Pavement Markings/Markers**

The Design-Builder shall include all required pavement markings, markers, and delineators. Type B, Class 1 thermoplastic material will be required for all pavement markings, except for removable pavement marking tape, which shall be Type D- Class III. Pavement markings, markers, and delineators shall conform to the requirements of the MUTCD, the 2011 Virginia Supplement to the 2009 MUTCD, and applicable special provisions (included in the RFP Information Package). All pavement marking plans shall be in accordance with VDOT Traffic Engineering Design Manual, dated 2011. All removable pavement marking tape shall be Type D – Class III wet-reflective temporary tape.

All new lane markings, edge lines, and center lines shall be supplemented with snow-plowable raised pavement markers. All permanent snow-plowable raised pavement markers shall be installed in accordance with VDOT Standard PM-8 and/or PM-9. Damaged existing snow-plowable raised pavement markers within the Project limits shall be replaced in accordance with VDOT Standard PM-8 and/or PM-9.

## **2.10 Transportation Management Plan**

The Design-Builder shall prepare a Transportation Management Plan (TMP) in accordance with I&IM-241/TE-351 for all proposed work associated with the Project. The TMP shall document how traffic shall be managed during the construction of the Project. This Project is classified as a Type C, Category V in terms of the TMP. The TMP shall include a list of possible alternative routes and detours, formalized chosen alternate routes for each audience (school buses, trucks, Emergency Medical Services (EMS), etc), identified infrastructure resources available to assist with Project information (i.e. Portable Changeable Message Signs (PCMSs), Portable Close Circuit Television (PCCTV) Cameras, VDOT 511, etc), and potential Project traffic impacts during construction with methods to mitigate those impacts.

The Design-Builder shall coordinate all work in accordance with the TMP. The phases in the Design-Builder's sequence of construction shall be followed unless the Design-Builder submits and secures VDOT approval for a sequence which will both expedite construction while lessening the effect of such construction upon the traveling public. The TMP shall incorporate and address the elements provided in Part 2, Section 2.10. The TMP will set forth the program for traffic management and related activities to ensure safety and mobility for the travelling public throughout the US 15/29 Corridor for the duration of the construction Period. The Maintenance of Traffic Plan will be consistent with, and included as part of, the TMP for the construction Period. In connection with the TMP, the Design-Builder will develop and implement the Maintenance of Traffic Plan, be responsible for the public outreach for the TMP and be responsible for traffic and operational analysis for lane closures, roadway reconfigurations and detours. Lane and road closure restriction information can be found in Part 2, Section 2.10.3 Lane and Road Closure Restrictions. Any additional lane closures and detour routes shall comply with the Work Area Protection Manual with any deviations requiring the approval of the Department.

### **2.10.1 Maintenance of Traffic**

The Design-Builder's TMP shall include a Maintenance of Traffic (MOT) Plan detailing all phases of work, proposed lane closures, maintenance of traffic through the work area, hauling routes, and all construction accesses for approval by VDOT's Project Manager. This plan shall also address safe and efficient operation of adjacent public transportation facilities and State Highways. The plan shall also include coordination with local agencies and other contractors performing work in the vicinity of US 15/29. This plan shall reflect the noted Scope of Work and all applicable VDOT Standards and Specifications regarding time of work. All users must be addressed and accommodated in the TMP, including pedestrians, bicyclists, transit vehicles, and

other motorists. Access must be maintained to all businesses, residential communities, and private entrances at all times. The Design-Builder shall be responsible for maintaining positive drainage during all MOT phases to prevent ponding on the roadway in conflict with the traveling public. The phases in the Design-Builder's suggested sequence of construction that accompany an approved work package shall be followed unless the Design-Builder submits and secures VDOT approval for a sequence which will both expedite construction while lessening the effect of such construction upon the traveling public.

The Design-Builder shall include all necessary provide

If additional traffic counts are required, it will be the responsibility of the Design-Builder to collect such data. The Design-Builder shall note that any proposed detour utilizing local neighborhood streets that are maintained by either Fauquier County or Prince William County will require the coordination with the applicable locality, as appropriate and are subject to the terms and conditions of VDOT's approval.

All temporary traffic signal plans shall be submitted to VDOT for review and approval prior to construction phase, detour or traffic shift. Construction signs and pavement markings (temporary) shall be installed, maintained, adjusted, and removed by the Design-Builder throughout the duration of the Project.

All entrances, intersections or pedestrian access points/routes that will be affected by the work zone or by the traffic control devices will be maintained or an acceptable alternate must be provided by the Design-Builder.

The Design-Builder shall be responsible for all typical repairs and maintenance such as guardrails, grass cutting, and pothole repair in accordance with Part 5, Section 105.14 beginning 3 months after NTP or when construction activities begin, whichever is soonest, and ending on final completion of the Project.

If Traffic Barrier Service Concrete (TBSC) is warranted based on the criteria for determining the application of barrier per the 2011 Work Area Protection manual and a completed Engineering and Traffic Investigation-Work Zone Channelization/Barrier Analysis, the guidelines provided in the Roadway Design Manual and IIM-LD-93 shall be utilized.

Reductions in the posted speed limit within the work zones will be allowed by the Design-Builder in accordance with the procedures called for in TE-350.1 using the Work Zone Speed Analysis form. A Work Zone Speed Analysis prepared by a Professional Engineer licensed and registered in the Commonwealth of Virginia shall be completed and provided to the VDOT Project Manager for forwarding and final approval

### **2.10.2 Incident Management Plan**

Any field work performed which impacts travel lanes or shoulders, including but not limited to construction, geotechnical investigations, and survey, shall have an incident management plan developed and approved by VDOT prior to the start of field work.

As part of the TMP, the Design-Builder shall submit an Incident Management Plan (IMP) for review and approval by VDOT. The intent of the IMP is to be prepared for incidents along the construction corridor. The Design-Builder shall coordinate with appropriate VDOT, EMS, and stakeholders during the development of the plan and hold a stakeholder meeting to brief them on the IMP. The IMP shall address at a minimum the following with respect to incident management:

- 24/7 point of contact for emergency notification of incident by TOC;
- Emergency detour routes and sign layout plans in addition to TMP signage;
- Agency and stakeholder Responsibilities Matrix/Checklist;
- Pre-staged detour equipment and material needs (i.e.; barrels, portable message boards, signage, etc.) as defined in the sign layout plans that shall be provided by the Design-Builder;
- Coordination with VDOT Staunton TOC;
- Signage of emergency detour routes;
- Coordination with 1st responders and stakeholders;
- Law Enforcement, Fire, and Rescue access to the road network during incidents;
- Pre-planned Messages for various types of incidents for the portable DMS; and
- Contact list for appropriate stakeholder response personnel.

As part of the IMP, the Design-Builder shall furnish all labor, equipment, supervision and qualified personnel to perform wrecker service to remove disabled vehicles within the Project limits. The wrecker shall be on site 24 hours a day whenever a long-term stationary work zone is in place, and shall drop the disabled vehicles at the Design-Builder's designated storage location within the Project limits. A medium duty wrecker shall be equipped with overhead emergency lights, rear floodlights, wheel lift and all other standard safety items required for wreckers. Under no circumstances shall a vehicle involved in a crash be removed or disturbed by the wrecker until the Virginia State Police or other law enforcement agency gives approval.

The Design-Builder shall coordinate with VDOT and localities to determine allowable alternate routes and detours. The Design-Builder shall be responsible for all detour signage and traffic control measures required. As necessary, this work shall extend beyond the defined Project limits. Proposed changes to signal timing for any signals on detour routes shall be coordinated with the respective signal owner.

Upon notification from the TOC of an incident requiring a detour, the Design-Builder shall establish the detour within one (1) hour from 5 AM-9 PM daily. The Design-Builder shall establish the detour within two (2) hours during all other times not referenced.

The Design-Builder shall coordinate with the NWRO TOC. The NWRO TOC will coordinate with the appropriate State and Local authorities. The TOC email address is: Stauntrafficmanagementcenter@vdot.virginia.gov and the Shift Supervisor phone number 540-332-7789.

### **2.10.3 Lane and Road Closure Restrictions**

For this Project, a 26 day closure period shall be allowed for the northbound lanes of US 15/29 from noon on July 8<sup>th</sup>, 2019 through 12:00AM on August 3<sup>rd</sup>, 2019. During this closure period, the Design-Builder is permitted to close all northbound movements of US 15/29 from Riley Road to Vint Hill Road in order to conduct 24 hour construction operations. However, access to and egress from all properties on the east side of US 15/29 between Riley Road and the intersection of Vint Hill Road shall be continuously provided and maintained through the closure period.

The detour shall direct northbound traffic around the project area by diverting NB US 15/29 traffic near Warrenton onto the US 17 Bypass, north for approximately 14.4 miles to Interstate 66, then east for approximately 11.5 miles to US 15 and for approximately 14.1 miles to US 29.

The Design-Builder shall be responsible for all detour signage and traffic control measures required. As necessary, this work shall extend beyond the defined Project limits. Proposed changes to signal timing for any signals on detour routes shall be coordinated with the Culpeper District Traffic Engineer and the Northwest Regional Operations (NWRO).

VDOT acknowledges that temporary lane closures may occasionally be required; however, temporary lane closures are only allowed at the sole discretion of VDOT when necessary to ensure the safety of the traveling public and no practical alternative exists. Offeror's Technical and Price Proposals shall be developed to meet the required lane, shoulder, or road closure restrictions specified in this section. Any deviations from these allowable lane closures may render an Offeror's Proposal non-responsive.

Lane, shoulder, or road closures shall be detailed in the Design-Builder's Transportation Management Plan. Anticipated and proposed temporary lane and/or shoulder closures shall be reviewed and approved by VDOT. The Design-Builder shall restore all lanes of traffic per the times specified in the Culpeper District Allowable Work Hours. Restoration of traffic shall mean the completion of all construction work, the removal of all traffic control devices, signs, workers, materials, and equipment from the roadway.

The Culpeper District Allowable Work Hours shall be applicable to both stationary and mobile lane closures, as well as shoulder closures. VDOT will consider changes to the allowable lane closure hours only if the Design-Builder can demonstrate why the proposed work cannot be completed within the contract allowable lane closure hours. All requests shall include an assessment of the work zone traffic impacts using a sketch planning traffic analysis tool and/or an operational level traffic analysis software program as appropriate for approval by VDOT at least thirty (30) days prior to the operation impacting the lanes.



Detour plans will be required for any proposed temporary total road closures exceeding twenty (20) minutes, and are subject to VDOT review and approval as part of the Design-Builder's TMP. In addition to addressing the traffic analysis requirements in IIM-LD-241, the Design-Builder shall demonstrate in its detour plan(s) efforts to minimize impacts to the community (including noise, access, additional travel time, etc.), and address geometry, safety (including accident analysis along the detour route), capacity, and existing roadway conditions.

Total closures of US 15/29 for such work as installation and removal of overhead sign structures, rock blasting operations or with substantiation of need by the contractor will require coordination with appropriate stakeholders and public notice.

The Design-Builder shall submit all lane and/or shoulder closure requests to the VDOT TOC, into the Lane Closure Advisory Management System (LCAMS), and to the VDOT Project Manager for coordination purposes (for determination of conflicts with other projects, for instance) at least seven (7) days in advance of the proposed lane and/or shoulder closure and no later than close of business Wednesday the week prior to closure, stating the location, purpose, date, time, and duration of the closure. The Design-Builder shall confirm at least twenty-four (24) hours before any scheduled lane and/or shoulder closure and shall include a written reiteration of the proposed tasks and a listing of materials, labor, and equipment to be utilized, in order for TOC to post the information on the VDOT website and VA511 system.

The Design-Builder is responsible for providing advance notification via variable message and required static signing for lane and/or shoulder and complete road closures in accordance with the 2011 Virginia Work Area Protection Manual. Once a closing is in place, work shall commence immediately and shall progress on a continuous basis to completion or to a designated time.

If the Design-Builder is unable to remove the lane and/or shoulder closure by the stipulated time the Design-Builder will not be allowed further lane closures until the reasons for the failure are evaluated and the Design-Builder can provide assurance that the causes have been corrected. A formal submission as to the reasons for the failure to restore traffic lanes within the contract lane closure restrictions and the proposed corrective measures is to be provided to the VDOT Project Manager within two (2) days of the occurrence. VDOT will respond to the adequacy of the submission within two (2) working days of receipt. No consideration for extension of time and no additional compensation will be granted for these days.

VDOT reserves the right to monitor traffic conditions impacted by the work and to make additional restrictions as may be necessary or as emergency situations dictate. Additional restrictions for other holidays or special local events may be necessary, however, in these situations VDOT will endeavor to inform the Design-Builder at the earliest and in no case less than forty-eight (48) hours prior to the event.

#### **2.10.4 Damage Recovery**

Damage recovery/user costs will be assessed against the Design-Builder if all lanes are not open to traffic by the time required in the approved request for temporary lane closure. Costs will be assessed as follows and continue until all lanes are opened as determined by the VDOT Project Manager. This assessment will be in the following amounts:

- First 15 minutes and under: *\$To be determined*
- Each additional 15 minute period or portion thereafter: *\$To be determined*
- Such damage recovery/user costs shall not exceed *\$To be determined* over a twenty-four (24) hour period

If the Design-Builder is assessed these damage recovery/user fees for failure to restore traffic lanes, the Design-Builder will not be allowed further lane closures until the reason for the failure are evaluated and the Design-Builder can provide assurance that the causes have been corrected. A formal submission as to the reasons for the failure to restore traffic lanes within the contract lane closure restrictions and the proposed corrective measures is to be provided to the VDOT Project Manager within two (2) days of the occurrence. No modification of the Contract Price or Contract time(s) will be granted or considered for these days.

VDOT may, at its sole discretion, waive damage recovery/user fees for failure to open traffic if such cause is not related to or caused by the Design-Builder's operations. The Design-Builder shall catalog user cost assessments on a daily basis and submit a tabulation along with certification from the QAM that such tabulation is correct to the VDOT Project Manager for concurrence. VDOT will make a deduction in the assessed amount from Progress Payment funds otherwise due to the Design-Builder. After Final Completion, the VDOT Project Manager will initiate an adjustment to the Contract Price in accordance with Article 9 of Part 4 to consider all damage recovery/user cost assessments.

### **2.10.5 Use of Virginia State Police**

The Design-Builder shall be responsible for coordinating through VDOT for Virginia State Police (VSP) service during Temporary Traffic Control operations involving lane closures and/or rolling lane closures, and any other operation as covered in Appendix C of the Virginia Work Area Protection Manual. VDOT shall be responsible for all costs incurred by VSP specific to the Project.

All lane and rolling lane closures shall be identified in the TMP and in accordance with Traffic Engineering Memorandum TE-352.

### **2.10.6 Portable Changeable Message Signs**

Portable Changeable Message Signs (PCMS's) shall be used in advance of the work zone when closing or shifting lanes within the Project limits and shall be used to provide guidance to the travelling public at least six (6) weeks in advance of and during the planned road closure. The Design-Builder shall provide at least three (3) PCMS's along US 15/29 northbound and two (2) PCMS's along US 15/29 southbound, which are to be placed in advance of the Project.

Additional PCMS's will be required for the detour and the Design-Builder shall coordinate with VDOT for the provision of those PCMS signs. For purposes of preparing Price Proposals, Offerors shall anticipate the need for 10 PCMS's for the detour. PCMS's shall have the capability to be remotely controlled from the NWRO Transportation Operations Center (TOC) to facilitate emergency access during an incident only. PCMS's shall also be used to provide en-route travel information about planned construction, delays or other sudden changes in travel conditions throughout the Project's duration. The PCMS shall be placed in a semi-permanent location, protected from traffic but highly visible to the public. The Design-Builder shall coordinate the implementation of PCMS's with VDOT. The use of PCMS's shall not replace any traffic control device otherwise required per the MUTCD or the Virginia Work Area Protection Manual.

## **2.11 Public Involvement / Public Relations**

The Design-Builder shall be responsible for providing a point of contact and a local or toll free phone number for VDOT to use when gathering information to respond to a citizen or media inquiry regarding this Project during the Project development and through Project delivery to Project completion. The Design-Builder shall also be responsible for coordinating the preparation and release of any public information with VDOT's Culpeper District Office of Communications.- All information to be released to the public shall be approved by VDOT prior to release.

During the design and construction phases, the Design-Builder shall:

- Hold informal meetings with affected stakeholders as necessary and as directed by VDOT. A list of affected stakeholders (including, but not limited to, community associations, churches, business owners, police, fire & rescue, school bus transportation, transit operators) shall be developed by the Design-Builder and submitted to VDOT for acceptance prior to holding any meetings. All stakeholders shall be informed of meetings.

Concurrent with the first plan submittal and at intervals deemed necessary by the VDOT, provide to VDOT's Project Manager written information about the Project suitable for posting by VDOT on its Website, including any significant changes that affect the public. Such information will include a Project overview, plan of work, overall Project schedule and progress, potential impacts to traffic on all roadways within the project limits (i.e., temporary lane closures, shoulder closures, ramp reconstruction, milling operations, etc.), up-to-date Project photos, and contact information.

During the Construction Phase, the Design-Builder shall:

- Coordinate with Fauquier County, Prince William County and the VDOT NOVA District, provide regular updates and appropriate notifications to Fauquier County and other stakeholders and ensure compliance with all applicable County ordinances.
- Provide to the VDOT Project Manager information for Traffic Alerts whenever there are new impacts to motorists. All information for Traffic Alerts must be submitted at

least one (1) week in advance of the traffic impact. If the impact is major (changes or additional lane closures that are anticipated to cause traffic delays that exceed existing conditions), VDOT must be notified one month in advance.

- Provide to VDOT's Project Manager an emergency contact list of Project personnel and response plan to respond to any onsite emergency, including any work zone incidents in accordance with IIM-LD-241.
- Maintain a log or database of questions, complaints, and/or comments received from stakeholders and the public either via public outreach efforts or direct contact, along with dates received, responses generated, and how the issues or concerns are addressed. If appropriate, this list of questions and responses will be posted on VDOT's website.

A Willingness to hold a public hearing was posted for this Project on January 23, 2019. Any public meetings held shall be conducted in accordance with the VDOT Public Involvement Manual, revised November 2016.

## 2.12 Right of Way

The procedures and requirements related to Right of Way for this Project shall be in accordance with the Right of Way Manual of Instructions, 3rd Edition, FHWA Update January 1, 2016, Chapter 10 (Special Projects Section), including Attachment 2 to Chapter 10 (Right of Way Contract Provisions for Design Build Contracts).

## 2.13 Utilities

All efforts and costs necessary for all utility designations, utility locates (test holes), conflict evaluations, cost responsibility determination, utility relocation designs, utility relocations and adjustments, utility reimbursements, replacement land rights acquisition and utility coordination shall be included in the Offeror's Price Proposal; provided, however, that the compensation paid to landowners for replacement land rights will be paid by VDOT as a part of the right of way acquisition costs and shall **NOT** be included in the Offeror's Price Proposal. Costs for any utility betterment(s) shall not be included in the Offeror's Price Proposal but shall be reimbursed to the Design-Builder through agreement with the requesting utility owner.

Prior to the receipt of the new survey, VDOT became aware of 2 potential utility conflicts located at approximate Sta.

Utility information provided on the survey identifies all known utilities, at the time of plan development, that are located within the Project limits. Aerial utilities are identified on the Survey files by the structure to which they are attached. However, it is the Offeror's responsibility to verify, to their satisfaction, the owner, type, size, height and number of cables attached to the structure when preparing their Price Proposal. All underground utility data was

obtained and is depicted in accordance with CI/ASCE 38-02 SUE Quality Level B designation on the Survey files. However, it is the Offeror's responsibility to verify, to their satisfaction, the owner, type, size, number of cable/conduits, pipes, services, and horizontal and vertical (depth) location of underground utilities to include service connections and laterals with the utility owners when preparing their Price Proposal.

The Design-Builder shall be responsible for all utility designations, utility locates (test holes), conflict evaluations, cost responsibility determinations, utility relocation designs, utility relocations and adjustments, utility reimbursement, replacement land rights acquisition, utility coordination, and coordination of utility betterments required for the Project. The Design-Builder shall be responsible for all necessary utility relocations, adjustments, and betterments to occur in accordance with the accepted Baseline Schedule.

The Design-Builder shall be responsible for coordination of the Project construction with all utility owners that may be affected. The Design-Builder shall be responsible for coordinating the work of the Design-Builder, its subcontractors, and the various utilities. The Design-Builder shall initiate early coordination with all utility owners with facilities located within the Project limits. The resolution of any conflicts between utilities and the construction of the Project shall be the responsibility of the Design-Builder. No additional compensation or time will be granted for any delays, inconveniences, or damage sustained by the Design-Builder or its subcontractors due to interference from utility owners or the operation of relocating utilities or betterments.

The Design-Builder shall make all reasonable efforts to design the Project to avoid conflicts with utilities, and minimize impacts where conflicts cannot be avoided.

The Design-Builder shall identify and acquire any replacement utility easements or required right of way needs of all utilities necessary for relocation due to conflicts with the Project.

Utility owners and their respective contact information that are known to the Department are provided below for reference only. It is the Design-Builder's responsibility to verify whether other utility owners exist within the Project limits and coordinate with them.

**Dominion Energy ~ Distribution**

1719 Hydraulic Road  
Charlottesville, Virginia 22906  
Mr. Nathaniel Horstick ~ Electric T&D Projects Manager  
Mobile: (571) 992-5339  
Email: [nathaniel.d.horstick@dominionenergy.com](mailto:nathaniel.d.horstick@dominionenergy.com)

**Northern Virginia Electric Cooperative (NOVEC)**

5399 Wellington Branch Drive  
Gainesville, Virginia 20155  
Mr. Kevin Whyte ~ Manager, Distribution Engineering  
Office: (703) 754-6773  
Email: [kwhyte@novec.com](mailto:kwhyte@novec.com)

**Verizon Virginia, LLC**

901 Prince Edward Street  
Fredericksburg, Virginia 22401  
Mr. Dave Russell ~ Supervisor, Network Engineering & Operations  
Office: (540) 368-8176  
Email: [david.a.russell@verizon.com](mailto:david.a.russell@verizon.com)

**Verizon Business (MCI)**

12379 Sunrise Valley Drive, Suite A  
Reston, Virginia 20191  
Adam Rice ~ Lead Specialist Engineer  
Mobile: (571) 220-8978  
Email: [adam.rice@verizon.com](mailto:adam.rice@verizon.com)

**Comcast Cable**

5304 Kings Court  
Frederick, Maryland 21703  
Amy Goad ~ Construction Supervisor  
Office: (301) 625-3407  
Mobile: (202) 815-9919  
Email: [amy\\_goad@comcast.com](mailto:amy_goad@comcast.com)

The Design-Builder shall provide all utility owners with roadway design plans as soon as the plans have reached a level of completeness adequate to allow them to fully understand the Project impacts. The utility owners will use the Design-Builder's design plan for preparing relocation plans and estimates. If a party other than the utility owner prepares relocation plans, there shall be a concurrence box on the plans where the utility owner signs and accepts the relocation plans as shown.

The Design-Builder shall coordinate and conduct a preliminary utility review meeting with all affected utility owner to assess and explain the impact of the Project. VDOT's Project Manager and VDOT's Regional Utilities Manager/Design Build Projects Utility Coordinator (or designee) shall be included in this meeting.

The Design-Builder shall verify the prior rights of each utility owner's facilities if claimed by a utility owner. If there is a dispute over prior rights with a utility, the Design-Builder shall be responsible for resolving the dispute. The Design-Builder shall prepare and submit to VDOT a Preliminary Utility Status Report within one hundred and twenty (120) days from the Date of Notice to Proceed that includes a listing of all utilities located within the Project limits and a conflict evaluation and cost responsibility determination for each utility. This report shall include copies of existing easements, As-Built plans or other supporting documentation that substantiates any compensable rights of the utility owner.

The Design-Builder shall obtain the following from each utility owner that has a utility located within the Project limits: relocation plans including letter of "no cost" where the utility owner does not have a compensable right; utility agreements including cost estimate and

relocation plans where the utility owner has a compensable right; or letters of "no conflict" where the utility owner's facilities will not be impacted by the Project.

The Design-Builder shall review all relocation plans to ensure that relocations comply with the current editions of the VDOT Utilities Manual of Instruction, the Utility Relocation Policies and Procedures and the VDOT Land Use Permit Manual. The Design-Builder shall also ensure that there are no conflicts with the proposed roadway improvements and ensure that there are no conflicts between each of the utility owner's relocation plans. The Design-Builder shall prepare and submit to VDOT all relocation plans. The Design-Builder is expected to assemble the information included in the relocation plans in a final and complete form and in such a manner that VDOT may approve the submittals with minimal review. The Design-Builder shall meet with VDOT's Regional Utilities Manager/Design Build Projects Utility Coordinator (or designee) within forty-five (45) days from the date of Notice to Proceed to gain a full understanding of what is required with each submittal. The Design-Builder shall receive written approvals from VDOT prior to authorizing utilities to commence relocation construction. The utility owners shall not begin their relocation work until authorized by the Design-Builder. Each relocation plan submitted must be accompanied by a certification from the Design-Builder stating that the proposed relocation will not conflict with the proposed roadway improvement and will not conflict with another utility owner's relocation plan.

The Design-Builder shall be responsible for ensuring that each utility owner that is subject to the requirements of Section 313 of Title 23 United States Code, MAP-21 S.1518 Buy America as described in Part 5, Exhibit 102.05(g.1) provides written certification to the Design-Builder that they are in compliance with this requirement. If the Design-Builder or its subcontractors are installing the utility relocations then the Design-Builder shall provide the certification pre-installation, along with any other Contractor installed items for the Project; if the utility owner/company is installing the utility relocation then the certification shall be provided post-installation. Compliance documentation must be furnished for the Design-Builder to be reimbursed for the Work. For any utility betterments where Project funds are being applied, the Work must meet the Buy America requirements.

At the time the Design-Builder notifies VDOT that the Design-Builder deems the Project to have reached Final Completion, the Design-Builder shall certify to VDOT that all utilities have been identified and conflicts have been resolved and that those utility owners with compensable rights or other claims related to relocation or coordination with the Project have had their facilities relocated and their claims and compensable rights satisfied or will be satisfied by the Design-Builder.

The Design-Builder shall ensure the utility owners submit As-Built drawings upon completion of their relocation and/or adjustments. VDOT will issue an As-Built permit to the utility owners after receipt of the permit application and the As-Built drawings. The Design-Builder shall accurately show the final location of all utilities on the As-Built drawings for the Project in accordance with Part 2, Section 2.17.9 of the RFP.

## **2.14 Quality Assurance / Quality Control (QA/QC)**

The Design-Builder shall submit its Quality Assurance/Quality Control (QA/QC) for both design and construction to VDOT at the kick-off meeting held after the Date of Commencement as set forth in RFP Part 4, Section 2.1.2. Along with the QA/QC Plan submittal, the Design Manager and Quality Assurance Manager (QAM) shall provide a presentation of the QA/QC Plan for both design and construction utilizing Project related scenarios. Project scenarios shall include, but not be limited to:

- A walkthrough of the QC and QA process for one design phase submittal, including the names of the individuals that will be performing the design and those providing the reviews. Discuss how the QC and QA process will be documented to confirm that it was completed per the QA/QC Plan and steps that will be taken to ensure that the QC and QA reviews are independent;
- Preparatory Inspection Meeting requirements, including incorporation of at least one each, Witness and Hold Point, as set forth in Sections 5.7 and 5.16 through 5.19 of the Department's guidance document for Minimum Requirements for Quality Assurance and Quality Control on Design Build and Public-Private Transportation Act Projects, July 2018 (July 2018 QA/QC Guide). Clearly identify coordination efforts with VDOT that are necessary to receive timely approvals associated with the Witness Point and Hold Point;
- At least one (1) material which VDOT retains responsibility for testing as identified in Table 5-21 of the July 2018 QA/QC Guide;
- Situation requiring the issuance of a Nonconformance Report and subsequent review of the report, including completion of corrective measures and the issuance of a Notice of Correction of nonconforming Work with proper log entries and proper interface with auditing and recovery requirements as set forth in Sections 5.13 through 5.15 of the July 2018 QA/QC Guide for nonconforming Work resulting from:
  - defective equipment
  - construction activities/materials which fail to conform as specified;
- Inspection documentation capturing requirements as set forth in Section 5.22 and 5.23 of the July 2018 QA/QC Guide; as well as inspection of geotechnical elements that are to be performed and certified by the Design-Builder's licensed geotechnical engineer as set forth in Section 5.20 of the July 2018 QA/QC Guide;
- Preparation of an application for payment. Discuss the process for identifying an initiated Work Package and a completed Work Package on the application for payment, including the work element and associated documentation that is required and verified by the Quality Assurance Manager. Discuss DBE and EEO documentation that may be required prior to submitting payment applications for approval;



- Measures that will be implemented to ensure compliance with Buy America requirements on the Project.
- Detail two (2) sample entries in Materials Notebook showing completion of Form C-25, including subsequent submission and review by the VDOT Project Manager as set forth in Section 5.23 of the July 2018 QA/QC Guide and Chapter VII of VDOT's Manual of Instruction for the Materials Division. Refer to Section 803.73, Form TL-142S, of the Manual of Instructions for the Materials Division for an example of a completed Materials Notebook.
- Review the Document Management System that will be utilized to track and organize project documentation. Discuss the access that various project team members will have to the system. List the documentation that will be available prior to the submission of each application of payment.

### **2.14.1 Design Management**

The Design-Builder is responsible for design quality in accordance with VDOT's Minimum Requirements for Quality Assurance and Quality Control on Design Build and Public-Private Transportation Act Projects, July 2018 (July 2018 QA/QC Guide). The Design-Builder's Design Manager shall be responsible for establishing and overseeing a QA/QC program for all pertinent disciplines involved in the design of the Project, including review of design, working plans, shop drawings, specifications, and constructability of the Project. This individual shall report directly to the Design-Builder's Project Manager, and is responsible for all of the design, inclusive of QA and QC activities. Members of the Design QA and QC team are responsible for review of all design elements to ensure the development of the plans and specifications are in accordance with the requirements of the Contract Documents. Design QA should be performed by one or more member(s) of the lead design team that are independent of the Design QC. The QAM shall verify that all design related Work Packages submitted for payment have been certified by the Design Manager as being in conformance with the Contract Documents and the Design QA/QC Plan.

Chapter 4 of the July 2018 QA/QC Guide provides minimum requirements that shall be met for development of the Design QA/QC Plan.

### **2.14.2 Construction Management**

The Design-Builder shall develop, execute, and maintain a Construction QA/QC Plan for the full duration of the Contract in accordance with VDOT's July 2018 QA/QC Guide. The Design-Builder shall have the overall responsibility for both the QA and QC activities and shall be responsible for all QA activities and QA sampling and testing for all materials used and work performed on the Project. These QA functions shall be performed by an independent firm that has no involvement in the construction and QC program/activities. There shall be a clear separation between QA and construction, including separation between QA inspection and testing operations and construction QC inspection and testing operations, including testing

laboratories. Two (2) independent, AMRL certified testing laboratories will be required, one for QA testing and one for QC testing.

The Quality Assurance Manager (QAM) shall have the authority to enforce the Contract requirements when deficient materials or unsatisfactory finished products fail to conform to Contract requirements. The QAM, in accordance with his/her assignment, shall be responsible to observe the construction in progress and to ensure the QA and QC testing and inspection is being performed in accordance with the Contract requirements. The Design-Builder shall establish and maintain a Quality Assurance Auditing and Nonconformance Recovery Plan (AR Plan) as part of the Construction QA/QC Plan for uniform reporting, controlling, correction and disposition and resolution of nonconforming Work (including disputed nonconforming items) issues that may arise on the Project. Nonconforming Work is any Work performed by the Design-Builder that is not in compliance with contract requirements and may include, but is not limited to, design, R/W, utility relocation, equipment, materials, construction means and methods, quality control, quality assurance, and project management. The Design-Builder's AR Plan shall establish a process for review and disposition of nonconforming Work in accordance with Section 5.13 of the 2018 QA/QC Guide.

Nonconforming Work that is correctable by established means and methods and complies with the contract requirements upon correction shall be considered a Deficiency and documented in a Deficiency Log. Nonconforming Work that is not correctable, such as safety or environmental permit violations, shall be considered a Nonconformance, issued a Nonconformance Report and documented in a Nonconformance Log. Deficiencies that do not have a corrective action plan agreed upon by the Department at the time of the subsequent application for payment shall be considered a Nonconformance, issued a Nonconformance Report, and documented in the Nonconformance Log. Procedures for reporting, documenting and correcting nonconforming Work are outlined in Sections 5.14 and 5.15 of the July 2018 QA/QC Guide.

VDOT will provide QA inspection and/or testing of the items listed below:

- Prestressed Concrete Structural Elements (beams, girders (AASHTO and Bulb-T sections), and piles)
- Metal Traffic Signal and Light Poles and Arms
- Structural Steel Elements (beams and girders)
- Laminated Bridge Bearing Pads
- Precast Concrete Structures
- Pipe (concrete, steel, aluminum, and high density polyethylene) for culverts, storm drains, and underdrains
- Asphalt Concrete QA Program
- Hydraulic Cement Concrete Plant and Truck Inspections
- Hydraulic Cement Concrete Mix Designs
- Aggregate CMA QA Program
- CCPRM, CIR and FDR Mix Designs

The Design-Builder will be responsible for providing QA and QC testing of all off-site materials that are not identified above, including materials obtained from off-site soil borrow pits.

The Design-Builder is required to submit documentation of the source of materials, including the source of each material to be incorporated into the Project and the acceptance method that will be used for the material. A VDOT Form C-25 may be used to meet this requirement; however, the Design-Builder is required to submit a VDOT Form C-25, for all materials that VDOT retains responsibility for testing. The source of materials, C-25 is for informational purposes only and will not be approved or rejected by VDOT since it is the Design-Builder's responsibility to obtain materials that meet the contractual requirements.

The Design-Builder's QAM shall report directly to the Design-Builder's Project Manager and be independent of the Design-Builder's physical construction operations. Prior to the start of each work activity, the QAM (in conjunction with the CM) shall identify the QA and QC Inspector(s) and Testing Technician(s) by name and provide a detailed matrix for each type of inspection and testing required illustrating each technician's qualifications/certifications and respective inspections and tests that are to be performed. The QAM shall also identify the Department's testing and inspection requirements that are to be performed for each work activity.

In accordance with Chapter VII of VDOT's Manual of Instruction for Materials Division, the Materials Notebook (Form TL-142DB/LAP) shall be populated during the course of the project based on the actual quantities used during construction. The QAM shall be responsible for the QA inspection and testing of all materials used and work performed on the Project to include observing the Contractor's QC activities, maintaining the Materials Notebook (including adherence to the Special Provision for Design-Build Tracking (DBT) numbers included in the RFP Information Package), documentation of all materials, sources of materials and method of verification used to demonstrate compliance with the Contract requirements. This includes all materials where QA testing is to be performed by VDOT. The QAM shall be vested with the authority and responsibility to stop any work not being performed according to the Contract requirements. The construction QA and QC inspection personnel shall perform all of the construction inspection and sampling and testing work in accordance with the approved Construction QA/QC Plan and Contract requirements. This includes the documentation of construction activities and acceptance of manufactured materials.

The Design-Builder's Quality Assurance firm shall have a presence on-site during any and all construction operations to ensure all construction work and QC activities are being performed in accordance with the Contract requirements. The QAM shall assign a minimum of one (1) Lead QA Inspector to the Project prior to the start of construction. The lead QA Inspector, who must be on the site full-time for the duration of all construction of the Project, shall be responsible for verifying that all construction activities performed by the Design-Builder were done so in accordance with the Contract requirements and were observed by the quality assurance firm. This includes observation of all QC activities to ensure inspection and testing, and the observation of any approved corrective action for any non-conformities of the Work. The Lead QA Inspector shall be supported by other QA inspectors under his/her direction to ensure at any time all construction operations and QC activities are being observed. The Lead QA

Inspector shall report directly to the QAM. The Lead QA Inspector shall be certified as a VDEQ ESC Inspector and shall be responsible for certifying the Project's compliance with the SWPPP and the VPDES Construction Permit on the Construction Runoff Control Inspection Form (C-107 Part 1) as prescribed in Part 2, Section 2.7.3.

All sampling and testing shall be performed by a laboratory that is accredited in the applicable AASHTO procedures by the AASHTO Accreditation Program (AAP). For test methods not accredited by AAP, the laboratory must comply with AASHTO R18 (most current Edition) or ASTM C1077 (for concrete test methods) and must be approved by the Department at its sole discretion. Two independent testing laboratories will be required, one for QA testing and one for QC testing. The entity(ies) performing QA operations, inspections, sampling, and laboratory testing and the entity(ies) performing QC operations, inspections, sampling, and laboratory testing shall be unique and independent from one another.

All construction QA and QC personnel shall hold current VDOT materials certifications for the types of materials testing that they are assigned to perform in accordance with Section 3.6 of the July 2018 QA/QC Guide, and for the safety and use of nuclear testing equipment as required by the Road and Bridge Specifications. The QA programs shall be performed under the direction of the QAM. The QC programs shall be performed under the direction of the Construction Manager. Substitution of Construction Manager and the QAM shall require VDOT approval. In addition, VDOT shall have the right to order the removal of any construction QA and QC personnel, including the QAM and the Construction Manager for poor performance at the sole discretion of the VDOT Project Manager.

## **2.15 Project Documentation**

The Design-Builder shall maintain all project documentation electronically in an online location that is accessible to all personnel associated with the Project (to include contractor personnel, QC personnel, QA personnel, design personnel, right of way personnel, and VDOT personnel) at all times for the entire duration of the Project. The Document Control System for this Project shall be CADAC. Refer to the Special Provision for Document Control System. Project personnel may have different read and write privileges as deemed appropriate by the VDOT Project Manager. The online document management filing structure for the Project shall follow the structure identified in the Design-Build Project-File Index (Attachment 2.15). The purpose of the online document management system is for maintaining project documents; it does not replace any submission requirements, including but not limited to providing hard copies of plans, calculations, and reports, and uploading applicable documentation into VDOT's ProjectWise System.

Prior to submitting each monthly Application for Payment, the Design-Builder is responsible for uploading all pertinent project documentation associated with the work performed that month onto the online document management system for this Project. This includes all applicable QC and QA daily work reports, QC and QA test reports, and DBE/EEO Documentation. Work packages will not be considered complete until all required QC and QA reports and materials documentation has been provided.

Prior to submitting the Final Application for Payment, the Design-Builder is responsible for uploading all project documentation identified in Attachment 2.15 onto the online document management system. Final Payment will not be processed until all applicable documentation has been provided.

## **2.16 Field Office**

No field office will be required for VDOT personnel on this project. VDOT personnel will be located in the Warrenton Residency, located at 457 East Shirley Avenue, Warrenton, Virginia 20186.

## **2.17 Plan Preparation**

### **2.17.1 GEOPAK and MicroStation**

When the Design-Builder is given the Date of Commencement, they will be furnished with the following software and files which run in Windows7P or Windows10 only: GEOPAK/OpenRoads (current version used by VDOT), MicroStation (current version used by VDOT) and VDOT Standard Resources Files, and all the design files used to develop the RFP Conceptual Roadway and Bridge Plans including aerial images, if available, and survey files.

### **2.17.2 Software License Requirements**

VDOT shall furnish a License Access Key for all the software products VDOT makes available to the Design-Builder. The License Access Key will be supplied upon request by the Design-Builder, based on the data provided on a completed Software License Form, LD-893, and subsequently reviewed and approved by the VDOT Project Manager.

The License Access Key is provided for use on the Project detailed on the request only for the duration specified for that Project. Any adjustment made to the Project schedule will be taken into consideration in adjusting the time the License Access Key is available. Justification for the number of license(s) requested **MUST** include the estimated number of total computer hours for the task of design, detailing, relating Project management and other computer based engineering functions requiring the software requested.

The appropriate use of the License Access Key provided to the Design-Builder will become the responsibility of the Design-Builder regardless of who on the team uses the License Access Key. The Design-Builder will be responsible for keeping track of the License Access Key provided to them or a team member and, upon completion of the Project, the prompt notification to the VDOT CADD Support Section of Project Completion and removal of the software from any system used solely for the Project for which it was obtained.

### **2.17.3 Drafting Standards**

All plans shall be prepared in U.S. customary units and in accordance with the most recent version of the VDOT's Road Design Manual, Vol. I, VDOT's CADD Manual and VDOT's I&IMs and the VDOT Manual of the Structure and Bridge Division - Part 2.

#### **2.17.4 Electronic Files**

The Design-Builder shall submit all plans in accordance with VDOT's policies and procedures (Right of Way and/or Construction submittals, Released for Construction, and As-Builts) in electronic format using the provided CADD software. Files shall be submitted in both Microstation DGN and Adobe PDF formats, by way of VDOT's ProjectWise System and in coordination with VDOT's CADD Support group. The Design-Builder will complete form LD-899, the ProjectWise System Access Request form, form IT-36E, the VDOT Information Security Agreement form and form LD-900, the ProjectWise Access to Project Request Form. VDOT will furnish electronic files of all applicable standard detail sheets upon request by Design-Builder. The files will use standard VDOT cell libraries, level structures, line types, text fonts, and naming conventions as described in the most recent version of the VDOT CADD Manual and the VDOT Manual of the Structure and Bridge Division - Part 2. Files furnished to Design-Builder in electronic format shall be returned to VDOT and removed from Design-Builder and its designer's computer equipment upon completion of this Project.

#### **2.17.5 Plan Submittals**

In addition to electronic files as described in Part 2, Section 2.17.4 above, the Design-Builder shall prepare and distribute hard copy paper plans in the quantities as specified below, for each of the following deliverables (at a minimum, as other submittals and/or work packages may be necessary or desired):

- Right of Way Plans
- Released for Construction Plans
- Right of Way and/or Construction Revisions
- Record Plans (As-Built)
- Approved Shop Drawings
- Design Calculations

The Right of Way and/or Construction plans may be submitted for approval in logical subsections or consisting of work packages such as: 1) clearing and grubbing along with erosion and siltation control, 2) grading and drainage, 3) final roadway, and 4) traffic control. A submittal schedule and planned breakdown of work packages shall be submitted to VDOT for review and approval as part of the planned Project Baseline schedule.

Right of Way and/or Construction Plans shall be accompanied by 1) a VDOT LD-436 checklist filled out as appropriate for the specific submittal, and 2) a written notice signed by the Design-Build Design Manager that includes the following:

- The logical subsections or work packages for which review and approval is being requested
- Confirmation that the submittal has been checked and reviewed in accordance with the Design-Builder's approved QA/QC plan.
- Confirmation that the submittal either meets all requirements of the Contract Documents and Reference Documents or that any deviations from the Contract Documents and Reference Documents have been identified and previously approved by VDOT.

The Design-Builder shall submit all Right of Way and/or Construction plans to VDOT and FHWA simultaneously, for review and approval. VDOT shall receive two (2) full-size sets and ten (10) half-size sets of each submission, with the exception of the Released for Construction Plans (see Part 2, Section 2.17.8 below). FHWA shall receive two (2) half-size sets of each submission. The plan submissions shall be delivered to the following addresses:

Virginia Department of Transportation  
Attention - Harold L. Jones, Jr., P.E.  
VDOT Charlottesville Residency  
701 VDOT Way  
Charlottesville, VA 22911

Federal Highway Administration  
Attention – Vanna Patterson Lewis, P.E.  
Virginia Division, FHWA, US DOT  
400 N. 8<sup>th</sup> Street, Suite 750  
Richmond, VA 23219-4825

VDOT and FHWA shall have the right to review all Right of Way and Construction Plans and provide comments regarding compliance with the requirements of the Contract Documents and Reference Documents. The Design-Builder shall be responsible for satisfying all such comments. Formal responses to VDOT and FHWA comments shall be provided in subsequent submittals.

VDOT and FHWA have the right to disapprove any design approach that is not in compliance with the requirements of the Contract Documents and Referenced Documents.

VDOT's written approval of any deviations from requirements of the Contract Documents and Reference Documents shall be attached to the plans submitted for review.

#### **2.17.6 Right of Way Plans**

Right of Way Plans and any associated Design Calculations shall be submitted to VDOT and FHWA simultaneously for review. The time frame for plan review and approval shall be in

accordance with the requirements of the Contract Documents. All VDOT and FHWA comments must be adequately addressed before the Right of Way Plans will be approved. Notice to Commence Right of Way Acquisition will be granted in accordance with Part 2, Section 2.12 above. The Design-Builder shall be responsible for the design details and ensuring that the design and right of way acquisition work are properly coordinated.

### **2.17.7 Construction Plans**

Construction Plans, and any associated Design Calculations, shall be submitted to VDOT and FHWA simultaneously for review. The time frame for plan review and approval shall be in accordance the requirements of the Contract Documents. All VDOT and FHWA comments must be addressed to the satisfaction of the commentator before Construction Plans are recommended for approval to VDOT's Chief Engineer. This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction Plans for certain portions or elements of the Project (or work packages). The Design-Builder shall meet commitments for review and approval by other entities/agencies as specified in other portions of the RFP and its attachments. The Design-Builder shall be responsible for the design details and ensuring that the design and construction work are properly coordinated.

### **2.17.8 Released for Construction Plans**

*Released for Construction Plans* are those that are issued for construction after approval by VDOT's Chief Engineer. Notice to Commence Construction will only be issued by the VDOT Project Manager upon approval of the Construction Plans (or Work Packages) by the Chief Engineer.

The Released for Construction Plans shall be distributed simultaneously to VDOT and FHWA. VDOT shall receive one (1) full-size set and five (5) half-size sets of Released for Construction Plans, along with all electronic files. FHWA shall receive two (2) half-size hard copy sets, along with all electronic files, of the Released for Construction Plans. The plans shall be delivered to the following addresses:

Virginia Department of Transportation  
Attention - Harold L. Jones, Jr., P.E.  
VDOT Charlottesville Residency  
701 VDOT Way  
Charlottesville, VA 22911

Federal Highway Administration  
Attention – Vanna Patterson Lewis, P.E.  
Virginia Division, FHWA, US DOT  
400 N. 8<sup>th</sup> Street, Suite 750  
Richmond, VA 23219-4825

### **2.17.9 Record (As-Built) Plans**



The final plan milestone is Record (As-Built) Plans. As-Built Plans shall be prepared, signed and sealed by a registered, licensed Professional Engineer in the Commonwealth of Virginia, and submitted to VDOT with the final application for payment. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements.

## **2.18 Virginia Occupational Safety and Health Standards**

The Project shall comply with Virginia Occupational Safety and Health Standards in accordance with Section 107.17 of the Division I Amendments to the Standard Specifications.

At a minimum, all Design-Builder personnel shall comply with the following, unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations:

- Hard hats shall be worn while participating in or observing all types of field work when outside of a building or outside of the cab of a vehicle, and exposed to, participating in or supervising construction.
- Respiratory protective equipment shall be worn whenever an individual is exposed to any item listed in the OSHA Standards as needing such protection unless it is shown the employee is protected by engineering controls.
- Adequate eye protection shall be worn in the proximity of grinding, breaking of rock and/or concrete, while using brush chippers, striking metal against metal or when working in situations where the eyesight may be in jeopardy.
- Approved high visibility Safety apparel shall be worn by all exposed to vehicular traffic and construction equipment.
- Standards and guidelines of the current Virginia Work Area Protection Manual shall be used when setting, reviewing, maintaining, and removing traffic controls.
- Flaggers shall be certified in accordance with the Virginia Flagger Certification Program.
- No person shall be permitted to position themselves under any raised load or between hinge points of equipment without first taking steps to support the load by the placing of a safety bar or blocking.
- Explosives shall be purchased, transported, stored, used and disposed of by a Virginia State Certified Blaster in possession of a current criminal history record check and a commercial driver's license with hazardous materials endorsement and a valid medical examiner's certificate. All Federal, State and local regulations pertaining to explosives shall be strictly followed.

- All electrical tools shall be adequately grounded or double insulated. Ground Fault Circuit Interrupter (GFCI) protection must be installed in accordance with the National Electrical Code (NEC) and current Virginia Occupational Safety and Health agency (VOSH). If extension cords are used, they shall be free of defects and designed for their environment and intended use.
- No person shall enter a confined space without training, permits and authorization.
- Fall protection is required whenever an employee is exposed to a fall six (6) feet or greater.

### **3.0 ATTACHMENTS**

The following attachments are specifically made a part of, and incorporated by reference into, these Technical Information & Requirements:

ATTACHMENT 2.2 -- ROADWAY INVENTORY AND MAJOR DESIGN CRITERIA

ATTACHMENT 2.15 -- DESIGN-BUILD PROJECT FILE INDEX

All additional information is included in the RFP Information Package – referred to in Part 1, Section 2.5 of this RFP.

**END OF PART 2 - TECHNICAL INFORMATION & REQUIREMENTS**

Attachment 2.2 Design Criteria Table

UPC 114713 US 29 Vint Hill	Design Criteria Table	Design Criteria Table
	Route 29 NB (60 MPH) - VDOT Standard	Route 29 NB (60 MPH Horizontal / 50 MPH Vertical) - Base Scope
Existing ADT (2019)	49000 (VDOT)	49000 (VDOT)
Design ADT (20XX)		
Truck Percentage	4%	4%
Functional Classification	Rural Other Principal Arterial - GS-1	Rural Other Principal Arterial - GS-1
Terrain	Rolling	Rolling
Design Speed	60 MPH	60 MPH Horizontal / 50 MPH Vertical
Posted Speed	55 MPH	55 MPH
Shoulder/C&G	Shoulder	Shoulder
Design Vehicle	WB-67	WB-67
Number of Lanes	2	2
Minimum Lane Width	12'	12'
Turn Lane Width	12'	11'
Total Shoulder Width	10' (RT) / 8' (LT)	6' (RT) / 6' (LT)
Paved Shoulder Width	8' (RT) / 4' (LT)	4' (RT) / 2' (LT)
Minimum Curve Radius	1204'	1204'
Maximum Relative Gradient	0.45	0.45
Maximum Super Elevation	8% (TC-5.11R)	8% (TC-5.11R)
Minimum Vertical Grade	0.50%	0.50%
Maximum Vertical Grade	4%	5%
Minimum Stopping Sight Distance	570'	425'
Crest Vertical Curve K Value	151	84
Sag Vertical Curve K Value	136	96
Minimum Vertical Clearance	N/A	N/A
Slope Design Standard	CS-4, CS-4E	CS-4, CS-4E
Clear Zone	N/A	N/A
Minimum Ditch Front Slope	6:1	4:1
Minimum Ditch Front Slope Width	10'	6'

UPC 114713 US 29 Vint Hill	Design Criteria Table	Design Criteria Table
	Entrance 1 (Battlefield Baptist Church)	Entrance 2/3
Functional Classification	Commercial Entrance	Private Entrance
Terrain	Mountainous	Mountainous
Shoulder/C&G	Shoulder	Shoulder
Design Vehicle	P	P
Minimum Width	22'	12'
Graded Shoulder Width	N/A	2'
Maximum Vertical Grade	10% (Existing)	16%
Crest Vertical Curve K Value	3	1.5
Sag Vertical Curve K Value	2	1.3
Minimum Ditch Front Slope	N/A	3:1
Minimum Ditch Front Slope Width	N/A	3'

## Attachment 2.15

### Design Build Project - File Index

1. **Contract Documents**
  - 1.1 Contract
  - 1.2 NTP Letter
  - 1.3 Start/Completion Date (C-5)
  - 1.4 Subcontractor Data – Sublets (C-31)
  - 1.5 Change Orders\*
  - 1.6 Stop Work Orders\*
  - 1.7 Contract Change Directives\*
2. **Correspondence Files**
  - 2.1 Correspondence Log
  - 2.2 Contact Info/Email Distribution List
  - 2.3 Miscellaneous
3. **Project Meeting Records**
  - 3.1 Kickoff Meeting
  - 3.2 Design Progress Meetings
  - 3.3 Construction Progress Meetings
  - 3.4 Pardon Our Dust
  - 3.5 Stakeholder/Public Meetings\*
4. **Scope Validation**
  - 4.1 Issue Tracking Log
  - 4.2 Scope Validation Documentation
5. **Financial**
  - 5.1 Monthly Pay Applications (including Adjustments & Stored Materials)
  - 5.2 Financial Audits
  - 5.3 Semi-Final Estimate
6. **Schedules**
  - 6.1 Preliminary Schedule
  - 6.2 Baseline Schedule/Narrative
  - 6.3 Schedule Update (including Progress Earnings Schedule (C-13c), Schedule Narrative, and Monthly Progress Report)
7. **Design Documents/Submittals\*\***
  - 7.1 Submittal Log
  - 7.2 Plans Submittals\*\*\* (including roadway, bridges, traffic signals, lighting, sound barriers, ITS, etc.)
  - 7.3 Drainage Computations
  - 7.4 Geotechnical Report
  - 7.5 Traffic Analyses (forecasts, operations, TMP, etc.)\*\*\*
  - 7.6 Released for Construction Plans (including revisions)
  - 7.7 Shop Drawings
  - 7.8 Design Waivers/Exceptions\*
8. **Environmental/Permits**
  - 8.1 VPDES
  - 8.2 SWPPP
  - 8.3 Copies of Certifications (DCR & DEQ)
  - 8.4 C-107s
- 8.5 Disposal, Borrow Pit, Or Haul Road Agreement/Approval\*
- 8.6 Others (Noise Variance, Etc.)\*
9. **Right Of Way**
  - 9.1 ROW Acquisition Plan
  - 9.2 Parcel Documentation (including Property Owner Notification Letters, Appraisals)\*\*\*
  - 9.3 Authorization to Commence Acquisition
  - 9.4 Recorded Documents/ Condemnations
  - 9.5 RW-24 Reports
10. **Utilities**
  - 10.1 Utility Status Report
  - 10.2 Utility Relocation Plans\*
11. **Construction (General)**
  - 11.1 Construction Authorization
  - 11.2 Daily Work Reports (DWRS)
    - 11.2.1 QC
    - 11.2.2 QA
  - 11.3 RFI Log
  - 11.4 Photographs
  - 11.5 Non-Conformance Log and Notices\*
  - 11.6 Contractor’s NOI/Claims\*
12. **Safety**
  - 12.1 Emergency Contact List
  - 12.2 Safety Officer & WZC Letter
  - 12.3 Work Zone Safety Reports
  - 12.4 Accident/Incident Reports & Claims\*
13. **Quality Assurance / Quality Control (QA/QC)**
  - 13.1 QA/QC Plan
  - 13.2 Preparatory Inspection Meetings (including Witness and Hold Points)
  - 13.3 Licenses & Certifications (Testing)
  - 13.4 Contractor Performance Evaluations
  - 13.5 CQIP/QAT Reviews\*
14. **Materials Notebook**
  - 14.1 Source Of Material (C-25)
  - 14.2 Material Delivery Invoices (including Buy America Certification)
  - 14.3 Test Reports
    - 14.3.1 QC
    - 14.3.2 QA
  - 14.4 Concrete Tickets With TI-28a
  - 14.5 Stone Tickets (TI-102a)
  - 14.6 List of items approved by visual inspection\*
15. **DBE/ EEO Documentation**
16. **Close-Out & Acceptance**
  - 16.1 Punch-List
  - 16.2 As-Built Documentation\*\*\*
  - 16.3 Warranties, Guarantees & Insurance
  - 16.4 Final Acceptance Letter

\* Create these folders only as needed.

\*\* Include documentation associated with the plan submittals (All plans will be uploaded only to FALCON).

\*\*\* Create subfolders as needed.

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# Exhibit 1 to Part 3 Project-Specific Terms

(Date of Standard Exhibit 1 to Part 3: November 2016)

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**Part 3 (2016 Lump Sum Agreement Between Department and Design-Builder), Part 4 (2016 General Conditions of Contract Between Department and Design Design-Builder), and Part 5 (2016 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts Between Department and Design-Builder) of the RFP are incorporated into this contract by reference. A copy of these documents can be found here: <http://www.virginiadot.org/business/design-build.asp>**

**This Exhibit 1 to Part 3 contains project-specific terms that are hereby incorporated, as identified below, into Parts 3, 4 and 5.**

**Department and Design-Builder hereby agree any provisions in this Exhibit 1 that modify a specific clause of Parts 3, 4, or 5 shall supersede the clause contained in Parts 3, 4, or 5.**

The Agreement Date is [\_\_\_\_\_].

**The Parties to the Agreement are:**

**VIRGINIA DEPARTMENT OF TRANSPORTATION (“Department”),  
An agency of the Commonwealth of Virginia:**

Virginia Department of Transportation  
Attention: Chief Engineer  
1401 East Broad Street  
Richmond, VA 23219

**DESIGN-BUILDER:**

**[INSERT DESIGN-BUILDER INFORMATION]**

Project No.: **0029-030-843**  
Project: **US Route 15/29 Improvements at Vint Hill  
Fauquier County, Virginia**

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**PART 3**  
**2016 LUMP SUM DESIGN-BUILD AGREEMENT BETWEEN**  
**DEPARTMENT AND DESIGN-BUILDER**

**2.1.4** The Department's Request for Proposals (RFP) is dated February 4, 2019.

**2.1.7** The list of all final modifications to the Proposal is as follows:

**5.2.1** The **Final Completion Date (date Final Acceptance must be achieved)** is September 30, 2019 and shall be in accordance with Attachment to Part 3 Article 5.

**5.2.2** The **Interim Milestone Final Completion Date** is August 2, 2019 and shall be in accordance with Attachment to Part 3 Article 5.

**5.5.1** Liquidated damages for failing to attain Final Acceptance of all Work in accordance with the Contract Documents for the Project by the Final Completion Date are **one thousand three hundred fifty dollars (\$1,350)** per day. Note that these liquidated damages will be in addition to any Liquidated Damages in Section 5.5.2 if the Design-Builder fails to meet the requirements of Interim Milestone by the Contract Final Completion Date.

**5.5.2** Liquidated Damages for failing to meet the terms for Interim Milestone Final Completion, as defined in Attachment to Part 3, Article 5, by the Interim Milestone Final Completion Date are **seventeen thousand one hundred forty-two and 86/100 dollars (\$17,142.86)** per day.

**6.1** The **Contract Price** is [**written dollar value**] Dollars (\$[**numerical**]).

**6.3** **Adjustments to Asphalt, Fuel and Steel.** Department and Design-Builder agree to adjust prices for **THE ITEMS LISTED IN EXHIBIT 1**, in accordance with Department's pertinent special provisions, attached hereto as Exhibits 6.3(a) and/or Exhibit 6.3(c) and/ or Exhibit 6.3(d) (provided Design-Builder declares its intent) in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustments for **THE ITEMS LISTED IN EXHIBIT 1** will be based on the quantities identified in the Schedule of Items in Design-Builder's Proposal, which quantities shall be specifically summarized and provided in Design-Builder's Price Proposal. Actual quantities shall be monitored and documented by Design-Builder, and submitted to Department in the monthly report required by Section 11.1.8 below, on forms provided by Department.

The identification of eligible **Asphalt, Steel, and/or Fuel** price adjustments for this contract is as follows:

- **Price Adjustment for Asphalt**
- **Price Adjustment for Fuel** – has elected to [*use/not use*] this provision
- **Price Adjustment for Steel** – has elected to [*use/not use*] this provision

**8.10 No Consequential Damages.** Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8. The payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder's exclusive remedy for a termination hereunder.

**9.1.1** The Department's Senior Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.1.2** The Department's Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.2.1** The Design-Builder's Senior Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.2.2** The Design-Builder's Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.3** Department and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the parties recognize it is not possible to specify processes for all activities that may occur.

**11.1.2** The **Baseline Schedule** shall be submitted within thirty (30) days of Design-Builder's receipt of the Department's Notice to Proceed.

### **11.3 Exhibits**

**11.3.1** The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into this Agreement. (Exhibits to Part 3 are included in the RFP):

- EXHIBIT 1 -- PROJECT SPECIFIC TERMS
- EXHIBIT 6.3(a) -- ADJUSTMENT FOR ASPHALT
- EXHIBIT 6.3(c) -- ADJUSTMENT FOR FUEL
- EXHIBIT 6.3(d) -- ADJUSTMENT FOR STEEL
- EXHIBIT 11.1 -- SPECIAL PROVISION FOR DESIGN-BUILD SCHEDULES
- EXHIBIT 11.1.10 -- EXAMPLE CORRESPONDENCE TRACKING LOG

## **PART 4 2016 GENERAL CONDITIONS OF CONTRACT BETWEEN DEPARTMENT AND DESIGN-BUILDER**

**Section 1.2.1** has been revised as follows:

*State Highway* means any highway designated a Primary highway or Secondary highway pursuant to Title 33.2, Chapter 1, Code of Virginia

**2.2 NOT USED**

**3.2 NOT USED**

**4.2.2 NOT USED**

**4.3 NOT USED**

**6.6 Final Acceptance**

**6.6.3** Upon notification of Final Acceptance of the Work, Design-Builder will provide Department with a Final Application for Payment. Department shall make final payment by the time required in the Agreement. At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**.1** a general release executed by Design-Builder, in the form set forth in Exhibit 6.6.3.2, certifying, among other things, that: (a) upon receipt of final payment by Design-Builder, that Design-Builder waives all claims arising out of or related to the Project, except those claims previously made in writing to Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in the release; (b) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect



Department's interests; (c) all Subcontractors and Design Consultants have been, or will be, paid in proper course the monies due and payable for Work performed and/or furnished in connection with the Project; and (d) all applicable taxes, fees, and benefits relating directly or indirectly to the Work on the Project have been, or will be, paid in full in proper course.

.2 consent of Design-Builder's surety to final payment;

.3 all operating manuals, warranties and other deliverables required by the Contract Documents, including the project records required by Section 11.1.9 of the Agreement; and

.4 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

## **6.7 Release for No Excuses Incentive Payment for Early Project Final Acceptance**

**6.7.1** If Part 3 of the Contract Documents contains a Provision for a No Excuses Incentive Payment for Early Project Final Acceptance, then in lieu of the general release required by Section 6.6.3.2 above, Design-Builder shall furnish Department with the general release required by Attachment to Part 3 Article 5, whereby Design-Builder shall waive, upon receipt of final payment all claims, with no exceptions, arising out of or related to the Project.

**10.2.2** Design-Builder and Department will first attempt to resolve all disputes or disagreements at the field level through best efforts and good faith negotiations between Design-Builder's Representative and Department's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and Department's Representative, Design-Builder's Senior Representative and Department's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both parties, despite their best efforts, then Design-Builder's sole remedy shall be to pursue the processes set forth in VA. CODE §33.2-1101 through §33.2-1103.

## **PART 5**

### **2016 DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS GENERAL PROVISIONS FOR DESIGN-BUILD CONTRACTS BETWEEN DEPARTMENT AND DESIGN-BUILDER**

#### **102.04—Examination of Site of Work and Proposal**

##### **(b) Subsurface Data**

Subsurface data may be included in the RFP Documents or may be made available for review by the Offeror in the office of the District Materials Engineer or State Materials Engineer or

as stated elsewhere in the RFP Documents. Data not included in the RFP Documents are not part of the Contract, but are made available to the Offeror in good faith to notify the Offeror of information in possession of the Department. Consequently, the Department does not warrant the accuracy of any such data, and the Offeror is at sole risk for any conclusions drawn from such data, either expressly or by implication. Prior to submitting a Proposal, the Offeror shall make his own interpretation of the subsurface data that may be available with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. The Offeror is prohibited to access the Project for any activities other than to observe the conditions of the site in accordance with Part 1, Section 3.2 of the RFP and Section 9.0 of the RFQ. After the Date of Commencement, the Successful Offeror shall comply with Section 4.2.2 of the General Conditions.

### **102.05—Preparation of Proposal**

#### **(g) Additional Proposal Requirements**

Offeror shall also comply with the requirements as set forth in the following exhibits included with the RFP:

- .1 Exhibit 102.05 (g.1) *Special Provisions for Use of Domestic Material*
- .2 Exhibit 102.05(g.2) *FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts*
- .3 Exhibit 102.05(g.3) *Notice of Requirement For Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)*
- .4 Exhibit 102.05(g.4) *USDOT 1050.2*
- .5 Exhibit 102.05(g.5) *USDOT 1050.2A*

### **107.14—Equal Employment Opportunity**

**(i) Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.
2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the

Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.

4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.
5. The Design-Builder shall be in compliance with Commonwealth of Virginia Executive Order 61 Ensuring Equal Opportunity and Access for all Virginians in state contracting and public services. The Design-Builder shall maintain a non-discrimination policy, which prohibits discrimination by the Design-Builder on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. This policy shall be followed in all employment practices, subcontracting practices, and delivery of goods or services. The Design-Builder shall also include this requirement in all subcontracts valued over \$10,000.

## **107.16(b) Pollution**

### **2. Air**

The Design-Builder shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein. Precautions shall be taken at all times to prevent particulate matter from becoming airborne according to the State Air Pollution Control Board regulation 9 VAC 5 Chapter 50, Article 1, Standards of Performance for Visible Emissions and Fugitive Dust/Emissions.

Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Design-Builder shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board

### **2.a.(3) Air**

Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos or where the Design-Builder's methods for such actions will produce friable asbestos.

The Design-Builder shall submit demolition notification to the United States Environmental Protection Agency (USEPA) and the Virginia Department of Labor and Industry a minimum of ten (10) business days prior to starting work on the following bridge activities irrespective of asbestos containing material:

- a) Structure demolition
- b) Dismantling and removing existing structures
- c) Movement of an entire structure
- d) Replacement of any load-bearing component of a structure

The term structure used herein refers to all bridges and buildings owned and/or to be acquired by/for the Department.

Demolition notification shall be addressed to:

Virginia Department of Labor and Industry  
Main Street Centre  
600 E. Main Street, Suite 207  
Richmond, VA 23219

Land and Chemical Division  
EPA Region III  
Mail Code LC62  
1650 Arch St.  
Philadelphia, PA 19103-2029

### **107.16(e) Storm Water Pollution Prevention Plan and VPDES General Permit for the Discharge of Stormwater from Construction Activities**

#### **3. SWPPP Requirements for Support Facilities**

The Design-Builder shall develop and enforce a Spill Prevention Control and Countermeasure (SPCC) Plan conforming to 40 CFR 112 if the aggregated volume of Oil stored within the project limits at any one time is greater than 1320 gallons. Oil, in this context, shall be defined according to 40 CFR 112. The aggregated volume includes that of both stationary and portable storage facilities but does not include individual storage containers with less than a 55 gallon capacity. The Design-Builder shall include the

SPCC Plan as a part of his Pollution Prevention Plan for the project.

VDOT will secure VSMP Construction Permit coverage for support facilities located on VDOT rights of way or easements according to IIM-LD-242. The Design-Builder shall be responsible for securing separate VSMP Construction Permit coverage for support facilities that are not located on VDOT rights of way or easements.

Support facilities shall include, but not be limited to, off-site Borrow and Disposal Areas, construction and waste materials or Equipment storage areas, equipment and vehicle washing, maintenance, storage and fueling areas, storage areas for fertilizers, fuels, or chemicals, concrete wash out areas, sanitary waste facilities and any other areas that may generate a storm water or non-stormwater discharge directly related to the construction site.

Support Facilities located on VDOT rights of way or easements:

- a. For those support facilities located within the Project limits but not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan according to [IIM-LD-195](#), and a pollution prevention plan according to these Specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved, the Department will notify the Design-Builder in writing that the plans are accepted as a component of the Project's SWPPP and VPDES Construction Permit coverage (where applicable) and shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.
- b. For support facilities located outside the Project limits and not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan (where applicable) according to [IIM-LD-195](#), a pollution prevention plan according to these specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents and all necessary documents for obtaining VPDES Construction Permit coverage according to [IIM-LD-242](#). All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved by the Department, VDOT will secure VPDES Construction Permit coverage according to [IIM-LD-242](#). After VDOT secures VPDES

Construction Permit coverage for the support facility, the Department will notify the Design-Builder in writing. The support facility shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.

#### **4. Inspection Procedures**

##### **a. Inspection Requirements**

The Design-Builder shall be responsible for conducting site inspections in accordance with the requirements herein. Site inspections shall include erosion and sediment control, and pollution prevention practices and facilities; all areas of the site disturbed by construction activity; all on-site support facilities; and all off site support facilities within VDOT right of way or easement. The Design-Builder shall document such inspections by completion of Form C-107, Construction Runoff Control Inspection Form, according to the directions contained within the form. Inspections shall be conducted using one of the following schedules:

- Schedule 1 - At least once every 7 calendar days (equivalent to the once every five business days schedule in the VPDES *General Permit for Discharge of Stormwater from Construction Activities*) and within 48 hours following any measureable storm event. If a measureable storm event occurs when there are more than 48 hours between business days, the Design-Builder shall perform his inspection no later than the next business day. The Design-Builder shall install a rain gauge at a central location on the project site for the purposes of determining the occurrence of a measureable storm event. Where the project is of such a length that one rain gauge may not provide an accurate representation of the occurrence of a measurable storm event over the entire project site, the Design-Builder shall install as many rain gauges as necessary to accurately reflect the amount of rainfall received over all portions of the project. The Design-Builder shall observe all rain gauges no less than once each business day at the time prescribed in the SWPPP General Information Sheet notes in the construction plans or other contract documents to determine if a measureable storm event has occurred. The procedures for determining the occurrence of a measurable storm event are identified in the SWPPP General Information Sheet notes in the construction plans or other contract documents.

- Schedule 2 - At least each Monday and Thursday (equivalent to the once every four business days schedule in the VPDES *General Permit for Discharge of Stormwater from Construction Activities*). Where Monday or Thursday is a non-business day, the inspection may be performed on the next business day afterward. In no case shall the inspections be performed less than once every four business days. A rain gauge will not be required when using Schedule 2.

The inspection schedule (1 or 2) is to be selected prior to the beginning of land

disturbance. Once an inspection schedule is selected, it shall be defined in the appropriate note in the SWPPP General Information Sheets contained in the construction plan set and shall be used for the duration of the project. A business day is defined as Monday through Friday excluding State holidays. A measurable storm event is defined as one producing 0.25 inches of rainfall or greater over a 24 hour time period.

For those areas of the site that have been temporarily stabilized or where land disturbing activities have been suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection schedule may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make stormwater discharges likely, the Design-Builder shall immediately resume the regular inspection schedule. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan.

b. Corrective Actions

If a site inspection identifies an existing control measure that is not being maintained properly or operating effectively; an existing control measure that needs to be modified; locations where an additional control measure is necessary; or any other deficiencies in the erosion and sediment control and pollution prevention plan, corrective action(s) shall be completed as soon as practical and prior to the next anticipated measurable storm event but no later than seven days after the date of the site inspection that identified the deficiency.

**109.11—Exhibits**

The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into these Division I Amendments to the Standard Specifications. (Exhibits to Part 5 are included in the RFP):

EXHIBIT 1 to PART 3	--	PROJECT SPECIFIC TERMS
EXHIBIT 102.05(g.1)	--	SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL
EXHIBIT 102.05(g.2)	--	FHWA-1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS
EXHIBIT 102.05(g.3)	--	NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
EXHIBIT 102.05(g.4)	--	USDOT 1050.2
EXHIBIT 102.05(g.5)	--	USDOT 1050.2A

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- EXHIBIT 107.13 -- PREDETERMINED MINIMUM WAGE RATES  
EXHIBIT 107.14 -- COMMONWEALTH OF VIRGINIA EXECUTIVE ORDER 61  
ENSURING EQUAL OPPORTUNITY AND ACCESS FOR  
ALL VIRGINIANS IN STATE CONTRACTING AND  
PUBLIC SERVICES  
EXHIBIT 107.15 -- SPECIAL PROVISION FOR SECTION 107.15

**DEPARTMENT:**

**DESIGN-BUILDER:**

Virginia Department of Transportation  
(Name of Department)

\_\_\_\_\_  
(Name of Design-Builder)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

Chief Engineer  
(Title)

\_\_\_\_\_  
(Title)

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

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

**END OF EXHIBIT 1 to PART 3  
PROJECT-SPECIFIC TERMS**



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**ATTACHMENT to Part 3 Article 5**  
**PROVISION FOR “NO EXCUSES” INCENTIVES**

1. Part 3, Section 5.2, “**Completion Dates,**” is deleted in its entirety and replaced with the following:

**5.2 Completion Dates**

**5.2.1 Final Completion Date.** Design-Builder shall achieve Final Acceptance of the Project by September 30, 2019, or an earlier date submitted in the Offeror’s Letter of Submittal, defined under Part 1, Section 2.3.2 (the “**Final Completion Date**”).

**5.2.2 Interim Milestone Final Completion Dates.** Design-Builder shall achieve Final Acceptance of the US Route 15/29 Improvements (“Interim Milestone Work”) by August 2, 2019 (“Interim Milestone Final Completion Date”), or an earlier date submitted in the Offeror’s Letter of Submittal, defined under Part 1, Section 2.3.2. The Interim Milestone Work is defined as all lanes of northbound US Route 15/29 open to traffic such that the travelling public has safe and unrestricted use of the Interim Milestone Work,\* includes the following items, accepted in accordance with the Contract Requirements:

- Asphalt Pavement for the full width of the travel lanes and shoulders through intermediate course,
- Temporary lane striping and direction arrows,
- All directional and regulatory signage installed in accordance with the Contract Documents,
- Drainage structures and systems installed and operational,
- All turning and through movements open,
- Removal of temporary signs not required for further operation,
- Utilities relocated to their final position with no service interruptions required to complete the project,
- All temporary barriers and traffic control for Interim Milestone Work on US Route 15/29 removed, unless necessary for access and egress for continued construction and approved by the Department, and
- Resolution of any non-compliance items for the Interim Milestone Work.

*[\* Unrestricted use is defined as all lanes and movements being available, without impediment, shifts, or construction-related delays, for use by vehicular traffic with the exception of allowable lane closure periods identified in Part 2, Section 2.10.3.]*

**5.2.3 Early Project Final Acceptance. NOT USED**

**5.2.4 Early Final Acceptance of Interim Milestone Work.** The Department will pay the Design-Builder the amount of one hundred twenty thousand dollars (\$120,000) (“No Excuses Incentive Payment for Early Final Acceptance of Interim Milestone Work”) if the Design-Builder achieves Final Acceptance of the Interim Milestone Work on or before July 26, 2019. If the

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Design-Builder achieves Final Acceptance of the Interim Milestone Work after July 26, 2019, but before the Interim Milestone Final Completion Date, the No Excuses Incentive Payment for Early Final Acceptance of Interim Milestone Work shall be reduced at a daily rate of seventeen thousand one hundred and forty two and 86/100 dollars (\$17,142.86) for each day Final Acceptance of the Interim Milestone Work is later in time than July 26, 2019. If the Design-Builder achieves Final Acceptance of the Interim Milestone Work on or later in time than the Interim Milestone Final Completion Date, Design-Builder shall have no right to any portion of the No Excuses Incentive Payment for Interim Milestone Work.

**5.2.5 Payment of a No Excuses Incentive Payment.** Any amounts due the Design-Builder for either of the No Excuses Incentive Payments set forth in Section 5.2.4 will be paid in addition to and separate from the Contract Price.

**5.2.6 No Right to Seek Adjustment to the Contract Times.** For purposes of establishing Design-Builder's ability to receive a No Excuses Incentive Payment, the Final Completion Date and the Interim Milestone Final Completion Date shall be the dates established as of the Agreement Date. For the avoidance of doubt, and notwithstanding anything to the contrary in the Contract Documents, such Dates shall not be subject to any adjustment for any reason, including but not limited to those events identified under Section 8.2.1 of the General Conditions of Contract that would entitle Design-Builder to an extension of the Contract Times. Design-Builder acknowledges and agrees that it assumes all risks and costs associated with attempting to achieve Final Acceptance prior to the Final Completion Date and the Interim Milestone Final Completion Date.

**5.2.7 Procedure to Receive No Excuses Incentive Payments.** In order to receive a No Excuses Incentive Payment, Design-Builder shall, in its notification to Department under Section 6.6.2 of the General Conditions of Contract regarding Final Completion of the Work or Interim Milestone, notify Department that it intends to request a No Excuses Incentive Payment. The amount of such No Excuses Incentive Payment shall be as set forth in Section 5.2.4 above. As a condition precedent to receiving such payment, Design-Builder shall furnish Department with an executed release, the applicable forms of which are attached to this Attachment. No modifications to the attached forms shall be allowed. Should the Design-Builder fail to comply with the preceding requirements, Design-Builder shall be deemed to have waived its rights, and shall have no entitlement, to receive the applicable No Excuses Incentive Payment.

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**GENERAL RELEASE  
(EARLY PROJECT FINAL ACCEPTANCE)**

**Design-Build Project for US Route 15/29 Improvements at Vint Hill  
Contract ID. No. C00114713DB105**

\_\_\_\_\_ (“Design-Builder”), Design-Builder for the above-referenced Project and Contract, hereby certifies that:

1. Upon receipt of final payment of the Work in the amount of \$\_\_\_\_\_, and in consideration of, among other things, receipt of a No Excuses Incentive Payment for Early Project Final Acceptance in the amount of \$\_\_\_\_\_, Design-Builder does hereby waive, release and relinquish all rights it may have to establish or assert any cause of action, suit, claims, or demands of whatsoever kind or nature, in law or equity, whether known or unknown, which Design-Builder or any Subcontractor, Sub-Subcontractor or Design Consultant ever had, now has or ever will have against the Commonwealth of Virginia, its political subdivisions, departments, agencies and instrumentalities, the Comptroller of Virginia, the Commissioner of Highways, or the Virginia Department of Transportation, by virtue of Work performed and/or furnished in connection with the Project;

2. There are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department’s interests; and

3. All Subcontractors and Design Consultants have been, or will be, paid in proper course the monies due and payable for Work performed and/or furnished in connection with the Project.

4. All applicable taxes, fees, and benefits relating directly or indirectly to Design-Builder’s Work on the Project have been, or will be, paid in full in proper course.

5. Capitalized terms used herein but not defined shall have the meaning set forth in the Contract Documents.

Design-Builder acknowledges under the above terms that this General Release has been fully and carefully reviewed and that all the terms and provisions contained herein are understood and agreeable.

I/we am/are authorized to execute this General Release on behalf of \_\_\_\_\_  
[**full company name**], this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Title: \_\_\_\_\_

State of \_\_\_\_\_  
City/County of \_\_\_\_\_, To Wit

I, the undersigned, a Notary Public in and for the City\County and State aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, bearing date of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ has this day acknowledged the same before me in my City\County and State aforesaid on behalf of [*full company name*].

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

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**RELEASE OF ALL CLAIMS FOR INTERIM MILESTONE WORK  
(EARLY FINAL ACCEPTANCE OF INTERIM MILESTONE WORK)**

**Design-Build Project for US Route 15/29 Improvements at Vint Hill  
Contract ID. No. C00114713DB105**

\_\_\_\_\_ (“Design-Builder”), Design-Builder for the above-referenced Project and Contract, hereby certifies that:

1. Upon receipt of the amount of \$\_\_\_\_\_, which represents the No Excuses Incentive Payment for Early Final Acceptance of Interim Milestone 1 Work, Design-Builder does hereby waive, release and relinquish all rights it may have to establish or assert any cause of action, suit, claims, or demands of whatsoever kind or nature, in law or equity, whether known or unknown, which Design-Builder or any Subcontractor, Sub-Subcontractor or Design Consultant ever had, now has or ever will have against the Commonwealth of Virginia, its political subdivisions, departments, agencies and instrumentalities, the Comptroller of Virginia, the Commissioner of Highways, or the Virginia Department of Transportation, by virtue of Work performed and/or furnished in connection with the Interim Milestone Work.

2. Capitalized terms used herein but not defined shall have the meaning set forth in the Contract Documents.

Design-Builder acknowledges under the above terms that this Release of All Claims has been fully and carefully reviewed and that all the terms and provisions contained herein are understood and agreeable.

I/we am/are authorized to execute this Release of All Claims on behalf of \_\_\_\_\_ [full company name], this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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

Title: \_\_\_\_\_

State of \_\_\_\_\_

City/County of \_\_\_\_\_, To Wit

I, the undersigned, a Notary Public in and for the City\County and State aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, bearing date of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_ has this day acknowledged the same before me in my City\County and State aforesaid on behalf of [full company name].

Given under my hand this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_

Notary Public

**EXHIBIT 6.6.3.2  
GENERAL RELEASE**

**Design-Build Project for US Route 15/29 Improvements at Vint Hill  
Contract ID. No. C00114713DB105**

\_\_\_\_\_ (“Design-Builder”), Design-Builder for the above-referenced Project and Contract, hereby certifies that:

1. Except as set forth in Paragraph 5 below, upon receipt of final payment in the amount of \$\_\_\_\_\_, Design-Builder does hereby waive, release and relinquish all rights it may have to establish or assert any cause of action, suit, claims, or demands of whatsoever kind or nature, in law or equity, whether known or unknown, which Design-Builder or any Subcontractor, Sub-Subcontractor or Design Consultant ever had, now has or ever will have against the Commonwealth of Virginia, its political subdivisions, departments, agencies and instrumentalities, the Comptroller of Virginia, the Commissioner of Highways, or the Virginia Department of Transportation, by virtue of Work performed and/or furnished in connection with the Project;

2. There are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department’s interests; and

3. All Subcontractors and Design Consultants have been, or will be, paid in proper course the monies due and payable for Work performed and/or furnished in connection with the Project.

4. All applicable taxes, fees, and benefits relating directly or indirectly to Design-Builder’s Work on the Project have been, or will be, paid in full in proper course.

5. The following represent claims previously made in writing to the Department and remain unsettled as of the time of final payment. Design-Builder reserves the right to pursue such claims against the Department, and are not waived, released or relinquished as a result of this Release:

Reserved Claims

[If none, so indicate]

Date of Claim Notice	General Description of Claim	Amount of Claim

6. Capitalized terms used herein but not defined shall have the meaning set forth in the Contract Documents.

Design-Builder acknowledges under the above terms that this General Release has been fully and carefully reviewed and that all the terms and provisions contained herein are understood and agreeable.

I/we am/are authorized to execute this General Release on behalf of \_\_\_\_\_  
[**full company name**], this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Title: \_\_\_\_\_

State of \_\_\_\_\_  
City/County of \_\_\_\_\_, To Wit

I, the undersigned, a Notary Public in and for the City\County and State aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, bearing date of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ has this day acknowledged the same before me in my City\County and State aforesaid on behalf of [**full company name**].

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Notary Public

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**EXHIBIT 6.3(a)**  
**ADJUSTMENT FOR ASPHALT**

**SPECIAL PROVISION FOR**  
**ASPHALT MATERIAL PRICE ADJUSTMENT for DESIGN-BUILD PROJECTS**

February 4, 2019

All asphalt material listed in the attached "Asphalt Material Items Eligible for Price Adjustment" will be adjusted in accordance with the provisions as set forth herein. Other items will not be adjusted, except as otherwise specified in the contract. Any item added through a Work Order which contains asphalt material will not be subject to Price Adjustment unless specifically designated in the Work Order to be subject to Price Adjustment.

Each month, the Department will publish an average state-wide PG 64S-22 f.o.b. price per ton and an average PG 64E-22 f.o.b. price per ton developed from the average terminal prices provided to the Department from suppliers of asphalt cement to contractors doing work in Virginia. The Department will collect terminal prices from approximately 12 terminals each month. These prices will be received once each month from suppliers on or about the last weekday of the month. The high and low prices will be eliminated and the remaining values averaged to establish the average statewide price for the following month. That monthly state-wide average price will be posted on the Construction Division website on or about the first weekday of the following month. In the event the average prices were to change 10 percent or more of the Base Index during the middle of the month, the Design Builder can submit a letter to the Department and the supplier that provides evidence of the difference in price. Upon receipt of the letter consideration will be given to extend additional adjustments as deemed necessary.

This monthly statewide average price will be the Base Index for all contracts on which Price Proposals are received during the calendar month of its posting and will be the Current Index for all asphalt placed during the calendar month of its posting. In the event an index changes radically from the apparent trend, as determined by the Engineer, the Department may establish an index which is determined to best reflect the trend.

The amount of adjustment applied will be based on the difference between the Price Proposal/Contract Base Index and the Current Index for the applicable calendar month during which the work is performed. Calculations must be done for each type of Asphalt Material put in place each month, whether the Current Index is higher or lower than the Base Index. The calculation for the adjustment shall be shown as follows:

$$A = Q \times \%AC \times IC$$

Where: A = Asphalt Adjustment Dollar Amount

Q = Quantity of Asphalt Material put in place during the month

%AC = % of Asphalt Cement in the Asphalt Material as specified in the Job Mix Formula

IC = Numeric Dollar Difference, either positive or negative, between the Base Index and Current Index

*Example Calculation for Negative Price Adjustment (Credit back to VDOT):*

7,500 Tons of SM-12.5A put in place during the month (Q), Job Mix is 6.1% Asphalt Cement for SM-12.5A (%AC), Base Index for the Contract is \$515/Ton, Current Index is \$500/Ton, Difference of - \$15.00/Ton (IC)

$$7,500 \text{ Tons SM-12.5A} \times 6.1\% \times -\$15.00/\text{Ton} = -\$6,862.50 \text{ Adjustment Amount}$$

*Example Calculation for Positive Price Adjustment (Paid to the Design-Builder):*

10,000 Tons of BM-25.0A put in place during the month (Q), Job Mix is 5.2% Asphalt Cement for BM-25.0A (%AC), Base Index for the Contract is \$515/Ton, Current Index is \$560/Ton, Difference of + \$45.00/Ton (IC)

$$10,000 \text{ Tons BM-25.0A} \times 5.2\% \times \$45.00/\text{Ton} = +\$23,400.00 \text{ Adjustment Amount}$$



Adjustment of any asphalt material other than PG 64S-22 and PG 64E-22 will be based on the indexes for PG 64S-22. The quantity of asphalt cement for asphalt concrete pavement to which adjustment will be applied will be the quantity based on the percent of asphalt cement shown on the appropriate approved job mix formula.

The quantity of asphalt emulsion for surface treatments to which adjustment will be applied will be the quantity based on 65 percent residual asphalt.

Price adjustment will be shown as a separate entry on the monthly application of payment for work packages completed; however, such adjustment will not be included in the total cost of the work for progress determination or for extension of contract time. Items the Design-Builder claims in its application of payment for asphalt adjustments must include supporting calculations certified by the Quality Assurance Manager (QAM). These calculations shall be completed relative to the calendar month under which the work was performed and shall be submitted for either positive or negative adjustment.

Any apparent attempt to unbalance bids in favor of items subject to price adjustment or failure to submit required cost and price data as noted hereinbefore may result in rejection of items for asphalt adjustment.

**VIRGINIA DEPARTMENT OF TRANSPORTATION  
 MASTER LISTING OF  
 ASPHALT MATERIAL ITEMS ELIGIBLE FOR PRICE ADJUSTMENT**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNITS</b>	<b>SPECIFICATION</b>
10062	Asphalt-Stab. Open-Graded Material	Ton	313
10416	Liquid Asphalt	Gal	311 312
10417	Tack Coat	Gal	310
10420	Blotted Seal Coat Ty. B	Sy	ATTD
10422	Blotted Seal Coat Ty. C	Sy	ATTD
10423	Blotted Seal Coat Ty. C-1	Sy	ATTD
10424	Blotted Seal Coat Ty. D	Sy	ATTD
10598	NS Asphalt Concrete	Ton	315
10603	Asphalt Concrete Ty. SM-19.0A	Ton	315
10604	Asphalt Concrete Ty. SM-19.0D	Ton	315
10605	Asphalt Concrete Ty. SM-19.0E (64E)	Ton	315
10606	Asphalt Concrete Ty. SM-9.5	Ton	315
10607	Asphalt Concrete Ty. SM-12.5A	Ton	315
10608	Asphalt Concrete Ty. SM-12.5D	Ton	315
10609	Asphalt Concrete Ty. SM-12.5E (64E-22)	Ton	315
10610	Asphalt Concrete Ty. IM-19.0A	Ton	315
10611	Asphalt Concrete Ty. IM-19.0D	Ton	315
10612	Asphalt Conc. Base Cr. Ty. BM-25.0	Ton	315
10614	Asphalt Concrete Ty. IM-19.0E (64E)	Ton	315
10613	Asphalt Concrete Ty. BM-37.5	Ton	315
10635	Asphalt Concrete Ty. SM-9.5A	Ton	315
10636	Asphalt Concrete Ty. SM-9.5D	Ton	315
10637	Asphalt Concrete Ty. SM-9.5E (64E-22)	Ton	315
10639	Asphalt Concrete Ty. SM-19.0	Ton	315
10642	Asphalt Concrete Ty. BM-25.0A	Ton	315
10643	Asphalt Concrete Ty. BM-25.0D	Ton	315
10650	Stone Matrix Asphalt SMA-9.5(64H-22)	Ton	317
10651	Stone Matrix Asphalt SMA-9.5(64E-22)	Ton	317
10652	Stone Matrix Asphalt SMA-12.5(64H-22)	Ton	317
10653	Stone Matrix Asphalt SMA-12.5(64E-22)	Ton	317
10654	Stone Matrix Asphalt SMA-19.0(64H-22)	Ton	317
10655	Stone Matrix Asphalt SMA-19.0(64E-22)	Ton	317
10701	Liquid Asphalt Coating	Sy	ATTD
12505	Asphalt Concrete Curb Backup Material	Ton	315
13240	Asphalt Concrete Sidewalk	Ton	504
16110	Emul. Asph. Slurry Seal Type A	Sy	ATTD
16120	Emul. Asph. Slurry Seal Type B	Sy	ATTD
16130	Emul. Asph. Slurry Seal Type C	Sy	ATTD
16144	Latex Mod. Emul. Treat. Type B	Ton	ATTD
16145	Latex Mod. Emul. Treat. Type C	Ton	ATTD

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16146	Latex Mod. Emul. Treat. Rutfilling	Ton	ATTD
16161	Modified Single Seal	Sy	ATTD
16162	Modified Double Seal	Sy	ATTD
16249	Nontracking Tack Coat	Gal.	ATTD
16250	Liquid Asphalt Matl. CMS-2 (Mod)	Gal	ATTD
16251	Liquid Asphalt Matl. CMS-2	Gal	ATTD
16252	Liquid Asphalt Matl. CRS-2	Gal	ATTD
16253	Liquid Asphalt Matl. CRS-2H	Gal.	ATTD.
16254	Liquid Asphalt Matl. RC-250	Gal	ATTD
16256	Liquid Asphalt Matl. RC-800	Gal	ATTD
16257	Ns Liquid Asphalt Matl.	Gal	ATTD
16260	Liquid Asphalt Matl. CRS-2L	Gal	ATTD
16325	NS Asphalt Concrete	Ton	N/A
16326	Asphalt Concrete Ty. SM-4.75A	Ton	315
16327	Asphalt Concrete Ty. SM-4.75D	Ton	315
16328	Asphalt Concrete Ty. SM-4.75E	Ton	315
16330	Asphalt Concrete Ty. SM-9.0A	Ton	315
16335	Asphalt Concrete Ty. SM-9.5A	Ton	315
16337	Asph. Conc. Ty. SM-9.5ASL (Spot Level)	Ton	315
16340	Asphalt Concrete Ty. SM-9.5D	Ton	315
16342	Asph. Conc. Ty. SM-9.5DSL (Spot Level)	Ton	315
16345	Asphalt Concrete Ty. SM-9.5E (64E-22)	Ton	315
16350	Asphalt Concrete Ty. SM-12.5A	Ton	315
16352	Asph. Con. Ty. SM-12.5ASL (Spot Level)	Ton	315
16355	Asphalt Concrete Ty. SM-12.5D	Ton	315
16357	Asph. Con. Ty. SM-12.5DSL (Spot Level)	Ton	315
16360	Asphalt Concrete Ty. SM-12.5E (64E-22)	Ton	315
16364	Asphalt Concrete Ty. SM-19.0E (64E)		
16365	Asphalt Concrete Ty. IM-19.0A	Ton	315
16370	Asphalt Concrete Ty. IM-19.0D	Ton	315
16371	Asphalt Concrete Ty. IM-19.0E (64E)		
16373	Asphalt Concrete Ty. IM-19.0A (T)	Ton	315
16374	Asphalt Concrete Ty. IM-19.0D (T)	Ton	315
16377	Asphalt Concrete Ty. BM-37.5	Ton	315
16379	Asphalt Concrete Ty. IM-19.0T	Ton	315
16390	Asphalt Concrete Ty. BM-25.0A	Ton	315
16392	Asphalt Concrete Ty. BM-25.0D	Ton	315
16395	Asphalt Concrete Ty. BM-25.0A (T)	Ton	315
16397	Asphalt Concrete Ty. BM-25.0D (T)	Ton	315
16400	Stone Matrix Asphalt SMA-9.5(64H-22)	Ton	ATTD
16401	Stone Matrix Asphalt SMA-9.5(64E-22)	Ton	ATTD
16402	Stone Matrix Asphalt SMA-12.5(64H-22)	Ton	ATTD
16403	Stone Matrix Asphalt SMA-12.5(64E-22)	Ton	ATTD
16404	Stone Matrix Asphalt SMA-19.0(64H-22)	Ton	ATTD
16405	Stone Matrix Asphalt SMA-19.0(64E-22)	Ton	ATTD
16490	Hot Mix Asphalt Treatment	Ton	ATTD
16500	Surf.Preparation & Restoration Type I	Ton	ATTD

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16502	Surf.Preparation & Restoration Type II	Ton	ATTD
16504	Surf.Preparation & Restoration Type III	Ton	ATTD
67201	NS Asphalt Concrete Overlay	Ton	315
67210	NS Asphalt Concrete	Ton	315
68240	NS Asphalt Concrete	Ton	315

**SPECIAL PROVISION COPIED NOTE FOR  
POLYMER MODIFIED (PG 76-22 and PG 70-28)  
ASPHALT CEMENT ADJUSTMENT  
DESIGN-BUILD PROJECTS**

August 9, 2013

When asphalt concrete mixtures require the use of Performance Graded asphalt cement PG 76-22 or PG 70-28, the Contractor shall show in the space provided on Form C-16A included in the Price Proposal submitted by the Contractor, the f.o.b. cost per ton for asphalt cement PG 76-22 or PG 70-28 upon which bid items containing PG 76-22 or PG 70-28 were developed.

During the life of the Contract, the Contractor shall document to the Department, by invoice signed by the supplier, his cost for PG 76-22 or PG 70-28 used. The Department will then adjust payments for asphalt concrete containing PG 76-22 or PG 70-28 by the difference in the actual f.o.b. price and the f.o.b. quote submitted with the Price Proposal. Adjustments will be made at the time for partial payments for asphalt concrete containing PG 76-22 or PG 70-28 in accordance with the requirements of Section 109.08 in the Division I Amendments (Part 5) of the design-build contract.

In the event the Design-Builder fails to show on Form C-16A of the Price Proposal the f.o.b. cost per ton for asphalt cement PG 76-22 or PG 70-28 upon which material items containing PG 76-22 or PG 70-28 were developed, or during the life of the contract fails to provide the appropriate invoices with the Current Index for asphalt cement PG 76-22 or PG 70-28 for the applicable calendar month during which the work was performed, the Department will base the price adjustment for asphalt concrete containing PG 76-22 or PG 70-28 asphalt cement on the indexes for PG 64-22 in accordance with the Special Provision For Asphalt Material Price Adjustment Design-Build Projects included in the Contract.

[cn109-000100-00](#)

**POLYMER MODIFIED (PG 64V-28) ASPHALT CEMENT ADJUSTMENT —**

When asphalt concrete mixtures require the use of Performance Graded asphalt cement PG 64V-28, the Contractor shall show in the space provided on Form C-16A of the electronic bid proposal submitted by the Contractor, the f.o.b. cost per ton for asphalt cement PG 64V-28 upon which bid items containing PG 64V-28 were developed.

During the life of the Contract, the Contractor shall document to the Department, by invoice signed by the supplier, his cost for PG 64V-28 used. The Department will then adjust payments for asphalt concrete containing PG 64V-28 by the difference in the actual f.o.b. price and the f.o.b. quote submitted with the bid. Adjustments will be made at the time for partial payments for asphalt concrete containing PG 64V-28 according to Section 109.08 of the Specifications.

In the event the Contractor fails to show on Form C-16A of the electronic bid proposal the f.o.b. cost per ton for asphalt cement PG 64V-28 upon which bid items containing PG 64V-28 were developed, or during the life of the contract fails to provide the appropriate invoices with the Current cost for asphalt cement PG 64V-28 for the applicable calendar month during which the work was performed, the Department will base the price adjustment for asphalt concrete containing PG 64V-28 asphalt cement on the indexes for PG 64S-22 according to the Special Provision For Asphalt Material Price Adjustment included in the Contract.

6-15-15; Reissued 7-12-16 (SPCN)

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**EXHIBIT 6.3 (c)  
ADJUSTMENT FOR FUEL**

**VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
OPTIONAL ADJUSTMENT FOR FUEL  
DESIGN-BUILD PROJECTS**

June 26, 2018

In the event the Design-Builder elects to seek adjustment for fuel items designated in the Price Proposal/Contract as Price Adjustment Items such items will be subject to price adjustment as set forth herein. Other items will not be adjusted, except as otherwise specified in the contract.

The Design-Builder shall submit their monthly application for payment associated with eligible work packages with an adjustment up or down as appropriate for cost changes in fuel used on specific items of work identified in this provision. The optional fuel item listing eligible for fuel adjustment is provided by the Department at this website: <http://www.virginiadot.org/business/const/resource.asp>. The listing on the web site also includes the corresponding fuel factor for each item. The fuel usage factor for each item is considered inclusive of all fuel usage.

In order to be eligible for fuel adjustment under this provision, the Design-Builder shall clearly identify in the Schedule of Values those pay items and the associated quantities it chooses to have fuel adjustment applied to in its work packages. Items the Design-Builder claims in its application of payment for fuel adjustments must be properly designated in order to be considered for adjustment. Items not properly designated or left out of the Design-Builder's Schedule of Values shall not be considered for adjustment.

The monthly index price to be used in the administration of this provision will be calculated by the Department from the Diesel fuel prices published by the U. S. Department of Energy, Energy Information Administration on highway diesel prices, for the Lower Atlantic region. The monthly index price will be the price for diesel fuel calculated by averaging each of the weekly posted prices for that particular month.

For the purposes of this provision, the base index price will be calculated using the data from the month preceding the receipt of bids. The base index price will be posted by the Department at the beginning of the month for all bids received during that month.

The current index price will be posted by the Department and will be calculated using the data from the month preceding the particular estimate being vouchered for payment.

The current monthly quantity for eligible items of work selected by the Design-Builder for fuel adjustment in its work packages will be multiplied by the appropriate fuel factor to determine the gallons of fuel to be cost adjusted. The amount of adjustment per gallon will be the net difference between the current index price and the base index price. Computation for adjustment will be made as follows:

$$S = (E - B) QF$$

Where; S = Monetary amount of the adjustment (plus or minus)

B = Base index price

E = Current index price

Q = Quantity of individual units of work

F = Appropriate fuel factor

Adjustments will not be made for work performed beyond the original contract time limit unless the original time limit has been changed by an executed Work Order.

If new pay items are added to this contract by Work Order and they are listed in the Department's master listing of eligible items, the Work Order must indicate which of these individual items will be fuel adjusted; otherwise, those items will not be fuel adjusted. If applicable, designating which new pay items will be added for fuel adjustment must be determined during development of the Work Order and clearly shown on the Work Order form. The Base Index price on any new eligible pay items added by Work Order will be the Base Index price posted for the month in which bids were received for that particular project. The Current Index price for any new eligible pay items added by Work Order will be the Index price posted for the month preceding the estimate on which the Work Order is paid.

When quantities differ between the last monthly application of payment prepared upon final acceptance and the final application of payment, adjustment will be made using the appropriate current index for the period in which that specific item of work was last performed.

In the event any of the base fuel prices in this contract increase more than 100 percent (i.e. fuel prices double), the Department will review each affected item of work and give the Design-Builder written notice if work is to stop on any affected item of work. The Department reserves the right to reduce, eliminate or renegotiate the price for remaining portions of affected items of work.

Any amounts resulting from fuel adjustment will not be included in the total cost of work for determination of progress or for extension of contract time.

I elect to use this provision

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

I elect not to use this provision

Signature: \_\_\_\_\_

Design-builder: \_\_\_\_\_

Vendor No.: \_\_\_\_\_



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**EXHIBIT 6.3(d)  
ADJUSTMENT FOR STEEL**

**VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
PRICE ADJUSTMENT FOR STEEL  
DESIGN-BUILD PROJECTS**

June 6, 2018

In the event the Design-Builder elects to seek adjustment for steel items designated in the Price Proposal/Contract as Price Adjustment Items such items will be subject to price adjustment as set forth herein. If new pay items which involve steel are established by Work Order, they will not be subject to Price Adjustment unless specifically designated in the Work Order to be subject to Price Adjustment.

The Design-Builder will submit their monthly application for payment associated with eligible work packages with an adjustment up or down as appropriate for cost changes in steel used on specific items of work identified in the Price Proposal/contract in accordance with this provision. Provided at the end of this provision is a master listing of standard bid items the Department has determined are eligible for steel price adjustment. Only items on this listing will be eligible for steel price adjustment. Generally, non-standard pay items will not be eligible for steel price adjustment unless such steel items are project-specific modifications of items normally eligible and the quantities present on the project constitute major items of the work. Inventoried materials from the listing of eligible items are specifically excluded for consideration. This provision also does not allow for price adjustment for embedded steel where the steel item is a component of the finished bid item and there is no separate or distinct payment for the steel item or for steel used for pre-tensioned or post-tensioned precast components where furnishing steel is included in the unit price of the finished bid item. This includes items such as (but not limited to) drop inlets, median barriers, sound barrier walls, bridge railing and parapets, are not eligible for consideration under this provision.

The requirements of this provision shall apply only to material cost changes that occur between the date of the opening of the Price Proposal and the date the material is shipped to the fabricator. To be eligible for this price adjustment, Design-Builder is required to fill out the accompanying Form for Price Adjustment for Eligible Steel Items on Design-Build Projects and submit the same with its Price Proposal for the Project. By signing the Form and submitting it with its Price Proposal Design-Builder declares its intention to participate in the price adjustment in its contract with the Department. For the purposes of this provision, the prices listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build projects are fixed for cost and adjustment calculations regardless of quantities incorporated into final design. Further, in order for steel items to be eligible for adjustment, once shipped to the fabricator, the items shall be specifically stored, labeled, or tagged, recognizable by color marking, and identifiable by project for inspection and audit verification immediately upon arrival at the fabricator.

Design-Builder shall upon request furnish documentation supporting the price per pound for eligible steel items as shown on the Form for Price Adjustment for Eligible Steel Items on Design-Build Projects furnished with its Price Proposal. Design-Builder must use the format as shown with this Form; no other format for presenting this information will be permitted. Design-Builder shall certify that all items of documentation are original and were used in the computation of the price per pound amount for the represented eligible pay items for the month the Price Proposal was opened. This documentation shall support the base line material price ("Base Price") of the steel item only. Base price per pound shall not include the following cost components: fabrication, shipping, storage, handling, and erection.

Failure to submit all documentation required or requested supporting the per pound prices on eligible steel items will result in Design-Builder being ineligible for a price adjustment of any or all steel items.

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Price adjustment of each qualifying item will only be considered if there is an increase or decrease in the cost of eligible steel materials in excess of 10 percent up to a maximum of 60 percent from the Base Price when compared with the latest published price index ("Price Index") in effect at the time material is shipped to the fabricator.

The Price Index the Department is using is based on The U.S. Department of Labor, Bureau of Labor Statistics, Producers Price Index (PPI) which measures the average price change over time of the specific steel eligible item from the perspective of the seller of goods. The Master List table provided at the end of this provision indicates the Producers Price Index (PPI) steel category index items and the corresponding I.D. numbers to which VDOT items will be compared. **Please note:** The Producers Price Index (PPI) is subject to revision 4 months after original publication, therefore, price adjustments and payments will not be made until the index numbers are finalized.

Items under consideration for price adjustment will be compared to the steel category index items and the corresponding I.D. numbers shown in the table attached to the end of this provision.

The price adjustment will be determined by computing the percentage of change in index value beyond 10 percent above or below the index on the date of opening of Design-Builder's Price Proposal to the index value on the date the steel material is shipped to the fabricator (Please see included sample examples). Weights and date of shipment must be documented by a bill of lading provided to the Department. The final price adjustment dollar value will be determined by multiplying this percent increase or decrease in the index (after 10%) by the represented quantity of steel shipped, by the Base Price per pound subject to the limitations herein.

**Price increase/decrease will be computed as follows:**

$$A = B \times P \times Q$$

- Where;
- A = Steel price adjustment in lump sum dollars
  - B = Average weighted price of steel submitted in Design-Builder's Price Proposal for project in price per pound as listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build Project
  - P = Adjusted percentage change in PPI average from shipping date to date of opening of Price Proposal minus 10% (0.10) threshold
  - Q = Total quantity of steel in pounds shipped to fabricator for specific project

This price adjustment is capped at 60 percent. This means the maximum "P" value for increase or decrease that can be used in the above equation is 50% (60%-10% threshold).

Calculations for price adjustment shall be shown separate from the monthly progress payment for work packages and will not be included in the total cost of work for determination of progress or for extension of contract time.

Upon Department review and due process consideration for redress by Design-Builder, any apparent evidence to unbalance the price supplied by Design-Builder in favor of items subject to price adjustment will result in ineligibility for Department participation under this provision.

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**FORM FOR PRICE ADJUSTMENT FOR ELIGIBLE STEEL ITEMS ON DESIGN-BUILD PROJECTS**

Must be supplied with Price Proposal for Department Participation

(All prices to be supported by project-specific quotes)

**DATE FOR RECEIPT OF PRICE PROPOSAL** \_\_\_\_\_

**Note:** All prices (costs) are to include any surcharges on materials quoted. Vendors must include this surcharge with their cost. All prices (costs) are F.O.B. from the originating mill.

Item Number	Item Description	Quantity	Unit	Unit Price	Supplier	Date of Quote
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

We/I, the undersigned, understand that by supplying prices for the steel items listed above and signing this form we are declaring our desire to apply the Special Provision For Price Adjustment for Steel Design-Build Projects to this Price Proposal and contract. The terms and conditions for participation are as stated in the Special Provision For Price Adjustment for Steel Design-Build Projects.

\_\_\_\_\_  
Design-Builder

\_\_\_\_\_  
Date

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**Sample Calculation of a Price Adjustment (increase)**

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Project bid on April 28, 2004.

Project has 450,000 lb. of eligible structural steel.

Design Builder's \*f.o.b. supplier price for structural steel submitted in the Price Proposal is \$0.2816 per pound. \*free on board

Adjusted\*\* BLS Producers Price Index (PPI) most recently published average at time of opening of the Price Proposal is 139.6.

All eligible steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 161.1

Adjustment formula is as follows:

$$A = B \times P \times Q$$

Where;

- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in the Price Proposal for Design-Build project in \$ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of eligible steel shipped to fabricator in October 2004 for this project in pounds

$$B = \$0.2816$$

$$P = (161.1 - 139.6) / 139.6 - 0.10 = 0.054$$

$$Q = 450,000 \text{ lb.}$$

$$A = 0.2816 \times 0.054 \times 450,000$$

$$A = \$6,842.88 \text{ pay adjustment to Design-Builder}$$

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**Sample Calculation of a Price Adjustment (decrease)**

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Project bid on April 28, 2004.

Project has 450,000 lb. of eligible structural steel.

Design-Builder's \*f.o.b. supplier price for structural steel submitted in the Price Proposal is \$0.2816 per pound. \*free on board

Adjusted BLS Producers Price Index (PPI) most recently published average at time of opening of the Price Proposal is 156.6.

All eligible steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 136.3

Adjustment formula is as follows:

$$A = B \times P \times Q$$

Where;

- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in the Price Proposal for Design-Build project in \$ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of eligible steel shipped to fabricator in October 2004 for this project in pounds

$$B = \$0.2816$$

$$P = (156.6 - 136.3) / 156.6 - 0.10 = 0.030$$

$$Q = 450,000 \text{ lb.}$$

$$A = 0.2816 \times 0.030 \times 450,000$$

$$A = \$3,801.60 \text{ credit to Department}$$

**MASTER LISTING**

**STANDARD BID ITEMS ELIGIBLE FOR STEEL PRICE ADJUSTMENT**

June 8, 2018

**BLS Series I. D.**

<b>ITEM NUMBER</b>	<b>ITEM DESCRIPTION</b>	<b>UNITS</b>	<b>Number WPU used in \$ adjust.</b>
00519	SHEET PILE, STEEL	SF	avg. 1017 & 101
00540	REINF. STEEL	LB	101704
00560	STRUCTURAL STEEL JB-1	LB	avg. 1017 & 101
11030	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
13545	REINF. STEEL	LB	101704
14502	REINFORCING STEEL	LB	101704
45522	4" STEEL ENCASE. PIPE	LF	101706
45532	6" STEEL ENCASE. PIPE	LF	101706
45562	16" STEEL ENCASE. PIPE	LF	101706
45572	18" STEEL ENCASE. PIPE	LF	101706
45582	24" STEEL ENCASE. PIPE	LF	101706
45584	24" JACKED STEEL ENCASUREMENT PIPE	LF	101706
45592	30" STEEL ENCASE. PIPE	LF	101706
60452	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
61700	REINF. STEEL	LB	101704
61704	CORROSION RESISTANT REINF. STEEL	LB	101704
61750	STRUCT.STEEL HIGH STRG.PLT.GIRDERS	LB	avg. 1017 & 101
61811	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
61812	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
61813	STR.STEEL PLATE GIRDER ASTM A709 GRADEHPS50W	LB	avg. 1017 & 101
61814	STR.STEEL PLATE GIRDER ASTM A709 GRADEHPS70W	LB	avg. 1017 & 101
61820	STR.STEEL ROLLED BEAM ASTM A709 GRADE 36	LB	avg. 1017 & 101
61821	STR.STEEL ROLLED BEAM ASTM A709 GRADE50	LB	avg. 1017 & 101
61822	STR.STEEL ROLLED BEAM ASTM A709 GRADE50W	LB	avg. 1017 & 101
61990	STEEL GRID FLOOR	SF	avg. 1017 & 101
64110	STEEL PILES 10"	LF	avg. 1017 & 101
64112	STEEL PILES 12"	LF	avg. 1017 & 101
64114	STEEL PILES 14"	LF	avg. 1017 & 101
64768	DRIVING TEST FOR 12" STEEL PILE	LF	avg. 1017 & 101
64778	DRIVING TEST FOR 14" STEEL PILE	LF	avg. 1017 & 101
65200	REINF. STEEL	LB	101704
65204	CORROSION RESISTANT REINF. STEEL	LB	101704
68100	REINF. STEEL	LB	101704
68104	CORROSION RESISTANT REINF. STEEL	LB	101704
68107	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
68108	STR. STEEL PLATE GIRDER ASTM A709 GR50W	LB	avg. 1017 & 101
68109	STR. STEEL PLATE GIRDER ASTM A709 GR.HPS50W	LB	avg. 1017 & 101
68110	STR. STEEL PLATE GIRDER ASTM A709 GR.HPS70W	LB	avg. 1017 & 101
68112	STR.STEEL ROLLED BEAM ASTM A709 GR.36	LB	avg. 1017 & 101
68113	STR.STEEL ROLLED BEAM ASTM A709 GR.50	LB	avg. 1017 & 101
68114	STR.STEEL ROLLED BEAM ASTM A709 GR. 50W	LB	avg. 1017 & 101
68115	STRUCT. STEEL	LB	avg. 1017 & 101
68270	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
69060	SHEET PILES, STEEL	SF	avg. 1017 & 101

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69100	REINF. STEEL	LB	101704
69104	CORROSION RESISTANT REINF. STEEL	LB	101704
69110	STEEL PILES 10"	LF	avg. 1017 & 101
69112	STEEL PILE 12"	LF	avg. 1017 & 101
69113	DRIVING TEST FOR 12" STEEL PILE	LF	avg. 1017 & 101

\_\_\_I elect to use this provision

\_\_\_I elect not to use this provision

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

Signature: \_\_\_\_\_

Design-Builder: \_\_\_\_\_

Vendor No.: \_\_\_\_\_

VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
**Design-Build Project Schedule**

**April 15, 2014**

**Exhibit 11.1**

**1. General**

Design-Builder shall develop and maintain a project schedule, which shall be used by all involved parties to plan and execute all work required to complete the project. The project schedule will be used by the Department to monitor the project, assess progress, and evaluate the effects of time-related issues on the project. The project schedule shall be prepared, maintained, and submitted in accordance with this provision, unless otherwise directed in writing by the VDOT Project Manager.

**A. Scheduling Conference** – At the meeting held after the Date of Commencement, Design-Builder shall attend a Scheduling Conference with the VDOT Project Manager to discuss Design-Builder’s overall plan to accomplish the Work; the detail work plan for the initial one hundred and twenty (120) calendar days; and scheduling information, project specific requirements, and other key issues necessary for the preparation, maintenance and submittal of the project schedule.

**B. Project Scheduler** – For projects with awarded Contract Price of \$35 million or more, Design-Builder shall designate a Project Scheduler for the project and shall submit his/her qualifications for the VDOT Project Manager’s written approval prior to submission of the Preliminary or Baseline Schedule. The Project Scheduler must have at least three (3) years of verifiable experience in successfully preparing and maintaining schedules on large scale projects of similar type and complexity. Design-Builder shall provide current contacts for verification of the Project Scheduler’s qualifications and experience. The Project Scheduler shall be primarily responsible for the development and maintenance of the project schedule and shall be present in all scheduling meetings and discussions on major issues concerning the project schedule.

**2. Schedule Submission Requirements**

**A. Preliminary Schedule** – Unless otherwise stated in Exhibit 1, within fifteen (15) days of Design-Builder’s receipt of Department’s Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Preliminary Schedule. At its discretion, Design-Builder may submit in lieu of the Preliminary Schedule, a Baseline Schedule according to Section 11.1.4 of the Agreement and Section 2.B below. Until such time as a Baseline Schedule has been approved by Department, Design-Builder shall provide an update of the Preliminary Schedule every month. The Preliminary Schedule will be used



to monitor and assess progress of the Work until a Baseline Schedule is approved by the Department. The Preliminary Schedule submission shall consist of:

1. **Preliminary Schedule**: A Preliminary Schedule prepared and submitted in the form of a Baseline Schedule as defined herein, showing at a minimum:
  - i) The detailed activities depicting the sequence and dates for any work planned during the first one-hundred and twenty (120) calendar days, including as applicable project milestones, review by the Department, FHWA, and other regulatory agencies; as well as environmental, permits, scope validation period, design, right-of-way, utility, and construction activities.
  - ii) Summary level activities depicting the sequence and general timing for work planned after the first one-hundred and twenty (120) calendar days. At Design-Builder's discretion, detailed activities may be shown in lieu of summary level activities.
  - iii) Quantities and dollar value of work associated with each activity for which Design-Builder expects to receive payment.
  - iv) The project critical path (based on the longest path).
2. **Preliminary Schedule Narrative**: A Preliminary Schedule Narrative describing the Design-Builder's overall plan to accomplish the entire scope of Work and the detailed plan for work planned during the initial one-hundred and twenty (120) calendar days. The narrative shall describe the sequence of work, means and methods, productivity, and other significant scheduling assumptions on which the Preliminary Schedule is based. The narrative shall also describe the project critical path (longest path), work planned during each construction season, and any known or foreseeable issues that may impact the schedule.
3. **Preliminary Earned Value Schedule**: A Preliminary Earned Value Schedule showing Design-Builder's anticipated monthly earnings for the entire Project. The Preliminary Earned Value Schedule shall be prepared using Department's Form C-13CPM, which shall be based on monthly costs data generated from the Preliminary Schedule. The Preliminary Earned Value Schedule submission shall include:
  - i) An Activity Cost-loading Report (ACR), showing a breakdown of the quantities and costs for each activity. The ACR shall be grouped by pay items and sorted by activity ID showing:
    - a) For each activity the Activity ID, Activity Name, Price/Unit, Budgeted Unit (quantity), Budgeted Cost, Actual Cost, Remaining

Cost, and At Completion Cost.

- b) Pay item sub-totals of the budgeted units and costs for associated activities.
- c) The overall total budgeted cost for the Project.

ii) An Earned Value Schedule using the VDOT Form C-13CPM.

**B. Baseline Schedule** – Unless otherwise stated in Exhibit 1, within ninety (90) days of Design-Builder’s receipt of Department’s Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Baseline Schedule showing the Design-Builder’s initial detailed plan to accomplish the entire scope of the Project according to the Agreement. If the Department does not approve such submission, Design-Builder shall revise and resubmit a Baseline Schedule to Department within seven (7) calendar days of its receipt of Department’s comments on such submission. This process shall continue until such time as the Department approves a Baseline Schedule. Upon approval of the Baseline Schedule, it will be established as the Project “**Schedule of Record (SOR)**”. The SOR is the official and only schedule with which all parties will plan and execute all work required to complete the Project and against which progress of the Project and the Design-Builder’s performance will be assessed. The Baseline Schedule submission shall consist of:

1. **Baseline Schedule:** A Baseline Schedule depicting the detailed activities required to complete the entire scope of the Project, including as applicable, work to be performed by subcontractors, the Department, and other involved parties. The Baseline Schedule shall be prepared according to the following:
  - i) Design-Builder shall prepare and maintain the Baseline Schedule using scheduling software that is capable of meeting all requirements of this provision. Design-Builder’s scheduling software shall be wholly compatible with the Department’s scheduling software system and shall have the capability of creating a back-up copy of the working schedule in “XER” format. The Department’s scheduling software system is the latest version of Primavera’s Project Management software (currently P6 version 7.0). At the Design-Builder’s request, secured access via the internet may be granted to allow the Design-Builder to develop and maintain its schedule in the Department’s scheduling software system. Submission of data from another software system where data conversion techniques or software is used to import into Primavera’s scheduling software is not acceptable and will be cause for rejection of the submitted schedule.
  - ii) For each schedule submission, the Project ID shall be unique and shall be defined using the Contract ID as a prefix followed by the submission number (i.e. C00012345DB12\_B01, C00012345DB12\_U01, etc.).

- iii) The project “Must Finish By” date shall be defined with a specified date equal to the “Final Completion” date of the Contract.
  
- iv) The Baseline Schedule shall be developed using a hierarchical WBS, broken down by major phases of the Project, as applicable (i.e. project milestones, project management, design, public involvement, environmental, right-of-way, utility, and construction, etc.). Each major phase of the Project shall be broken down by phase, stage, or feature, as applicable. Each phase, stage, or feature shall then be further broken down into rational work packages, as applicable.
  
- v) Each work package shall be broken down into discrete and definable activities, with activity durations generally twenty (20) working days or less. Longer durations may be allowed as approved by the VDOT Project Manager for certain administrative or level of effort activities that are typically performed over longer periods of time. The Work shall be broken down in sufficient details to identify the phase, stage, feature, type of work, deliverable, and specific location in which the work occurs, including as applicable:
  - a) Project milestones;
  
  - b) Administrative activities such as key submittals, notifications, and review by the Department, FHWA, and other regulatory agencies. Activity durations for submissions and approvals or consents required by the Department shall be no less than the Department’s minimum review duration identified in Section 3.1 of the General Conditions of Contract;
  
  - c) Design activities showing all work required to complete each stage of design and deliverable;
  
  - d) Public involvement activities;
  
  - e) Scope Validation Period;
  
  - f) Environmental and permitting activities;
  
  - g) Right-of-way acquisition activities showing all lots/parcels;
  
  - h) Utility relocations and adjustments activities broken down by type and specific location;
  
  - i) Procurement, fabrication, delivery activities of materials;

- j) Construction start-up activities such as mobilization, staging area, surveying, clearing and grubbing, construction access, etc.;
  - k) Maintenance of Traffic activities;
  - l) Construction activities broken down by phase, stage, feature, type of work, and specific location, as applicable;
  - m) Other necessary miscellaneous activities that consume time such as installation and removal of temporary systems or structures such as causeways, shoring, etc.; as well as settlement period, load test, curing, demolition, testing and acceptance period, punch list, clean-up, demobilization, etc.
- vi) Each activity shall be named to identify the phase, stage, feature, type of work, and specific location in which the work occurs, as applicable.
  - vii) Activity calendars shall be assigned using project-level calendars. Use of global calendars is not allowed and shall be cause for rejecting the schedule.
  - viii) Activity codes shall be defined and assigned to the individual activities to allow for filtering, grouping, and sorting of activities by project phase, responsibility, area, phase, stage, feature, work type, Work Orders, DBE, and other major work category, as applicable. Activity codes shall be assigned using project-level activity codes. Use of global activity codes is not allowed and shall be cause for rejecting the schedule.
  - ix) Constraints shall be used sparingly and on a case by case basis, as necessary. Constraints such as “Mandatory Start” or “Mandatory Finish” that violate network logic are not allowed and shall be cause for rejecting the schedule. If the Contract includes a specified start-no-earlier-than milestone, then the Contract milestone activity shall be constrained with a “Start On or After” constraint, with a date equal to the date specified in the Contract. If the Contract includes a specified Interim Milestone or Substantial Completion Milestone, then the Contract interim completion milestone activity or substantial completion milestone activity shall be constrained with a “Finish On or Before” constraint, with a date equal to the date specified in the Agreement.
  - x) The Baseline Schedule shall be cost-loaded and shall be the basis for the monthly progress payments as well as for assessing progress. Each activity associated with a pay item for which Design-Builder expects to receive payment shall be cost-loaded, using the scheduling software “Material” resource type and according to the following:

- a) A material resource shall be defined for each pay item shown in the Schedule of Items submitted in the Proposal, or a subsequently revised Schedule of Items approved by the VDOT Project Manager. Pay item ID codes shall be congruent to the extent possible with the VDOT five-digit standard and non-standard pay item numbers (for example: 00100 – Mobilization).
- b) Each proposed pay item material resource shall indicate the Resource ID, Resource Name, Unit of Measure, and Price/Unit as shown in the Schedule of Items. The pay item material resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by the pay item number (i.e. C00012345DB12.00100).
- c) The “Auto Compute Actuals” and “Calculate costs from units” boxes for each pay item material resource shall be marked.
- d) A project-specific 20-80 resource curve shall be defined in the scheduling software using the Contract ID as a prefix and assigned to each assigned pay item resource to allocate costs to each associated activity over its duration based on the 20-80 earned value progress payment rules, according to Part 4, Article 6, and Section 6.2.
- e) The budgeted units and cost for each assigned pay item resource shall be defined to indicate the quantity and dollar value of work that the activity represents.
- f) The aggregate budgeted units and costs for all activities associated with a pay item shall equal the total quantity and value of the proposed pay item as shown in the Schedule of Items.
- g) The aggregate budgeted costs for all activities shall equal the current total Contract Price. Current total Contract Price will be considered to mean the current Contract amount including the original Contract Price and any approved adjustments for authorized changes to the Work. Anticipated payments or payments for adjustments such as asphalt, fuel, steel, retainage, incentives, disincentives, etc., shall not be included.
- xi) For projects with awarded Contract Price of \$35 million or more, the Baseline Schedule shall be resource-loaded to indicate the labor (manpower), material (re-usable materials), and equipment (machinery or equipment) required to accomplish each activity that represents a major operation. The Baseline Schedule shall be resource-loaded according to the following:

- a) Project-specific labor resources using “Labor” resource type as defined in the scheduling software shall be defined and assigned to indicate labor classification, trade, or crew that will perform the work. The labor Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.Pipe – Drainage Pipe Crew). Also, the Max Units/Time shall be defined for each labor resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.
  - b) Project-specific material resources using “Material” resource type as defined in the scheduling software shall be defined and assigned to indicate re-usable material that will be used to perform the work. The material Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.CF1 – Column Forms Set #1). Also, the Max Units/Time shall be defined for each material resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.
  - c) Project-specific equipment resources using “Non-Labor” resource type as defined in the scheduling software shall be defined and assigned to indicate equipment or machinery that will be used to perform the work. The non-labor Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.CRN – Crane). Also, the Max Units/Time shall be defined for each non-labor resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.
  - d) Assigned resource calendars shall be defined using the Contract ID as a prefix.
- xii) The project schedule software settings shall be defined according to the following Primavera P6 settings:
- a) Schedule dates shall be shown in the “Month-Day-Year” date format, with 2-digit numbers for the month, day, and year (e.g. 05-01-13).
  - b) Duration type for all activities shall be specified as “Fixed Duration & Units”.

- c) The “Drive activity dates by default” checkbox in the Project Details Resources tab shall be marked.
  - d) The “Link Budget and At Completion Cost for not started activities” checkbox in the Project Details Calculation tab shall be marked.
  - e) The “Reset Remaining Cost and Units to Original” in the Project Details Calculation tab shall be specified.
  - f) The “Subtract Actual from At Completion” under “When updating actual units or costs” in the Project Details Calculation tab shall be specified.
  - g) The “Recalculate Actual Units and Cost when duration % complete changes” checkbox in the Project Details Calculation tab shall be marked.
  - h) The “Update units when costs changes on resource assignments” checkbox in the Project Details Calculation tab shall be marked.
  - i) The “Link Actual and Actual This Period Units and Cost” checkbox in the Project Details Calculation tab shall be marked.
  - j) Specify “Retained Logic” in the Scheduling Options dialog box for scheduling progressed activities.
  - k) Specify “Longest Path” in the Scheduling Options dialog box for defining critical activities.
  - l) Specify “Finish Float = Late Finish – Early Finish” in the Scheduling Options dialog box as the schedule calculation option to compute total float.
- xiii) The project schedule shall be calculated using the precedence diagram network logic method (PDM) and the Critical Path Method (CPM). The use of resource-leveling to determine sequence, order, or timing of the activities is not allowed and shall be cause for rejecting the schedule.
2. **Baseline Schedule Narrative**: A Baseline Schedule narrative describing Design-Builder’s overall plan to accomplish the Work, as reflected on the Baseline Schedule including, as applicable:
- i) Project milestones including, as applicable Contract milestones and other key events such as start/finish dates for each major phase or stage of

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the project, major traffic switches, etc.

- ii) Work to be performed by the Department and other involved parties, including when the work must be performed.
  - iii) The proposed overall sequence of Work, including where the work will begin and how the work will progress.
  - iv) A description of the project critical path (based on the longest path).
  - v) Scheduling assumptions including, the proposed means and methods, anticipated daily production rates, and general procedures for accomplishing major operations that are expected to drive the schedule.
  - vi) A log identifying the schedule constraints used in the Baseline Schedule and reason for using each constraint.
  - vii) A description of the project calendar(s) used in the Baseline Schedule, identifying the Calendar ID, standard number of work days per week, number of shifts per day, and number of hours per day as well as the anticipated number of non-working days per month for each calendar with considerations, as applicable, for holidays, normal weather conditions; as well as for seasonal or other known or specified restrictions (i.e. traffic, local events, environmental, permits, utility, etc.).
  - viii) The Contractor's resource plan indicating the number of crews, crew make-up, and major equipment needed to accomplish the Work as planned. The resource plan shall also describe how Design-Builder plans on meeting the resource requirements.
  - ix) A log of the applicable DBE participation activities in the schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the Contract. The list shall indicate the proposed start/finish dates and durations of the DBE participation activities.
  - x) Any known or foreseeable issues that may impact the schedule. Also, describe how the issues will impact the schedule and any actions taken or needed to avoid or mitigate the impact.
3. **Baseline Earned Value Schedule**: A Baseline Earned Value Schedule showing Design-Builder's anticipated monthly earnings for the entire Project. The Baseline Earned Value Schedule submission shall include:
- i) An Activity Cost-loading Report (ACR) generated from the Baseline Schedule, showing a breakdown of quantities and costs for each activity. The ACR shall be grouped by pay item and sorted by activity ID showing:



- a) For each activity the Activity ID, Activity Name, Price/Unit, Budgeted Unit (quantity), Budgeted Cost, Actual Cost, Remaining Cost, and At Completion Cost.
  - b) Pay item sub-totals of the budgeted units and costs for associated activities.
  - c) The overall total budgeted cost for the Project.
- ii) An Earned Value Schedule using the VDOT Form C-13CPM, which shall be based on monthly costs data generated from the Baseline Schedule.
- C. Schedule Updates** – On or before the tenth (10<sup>th</sup>) day of each month and as part of the monthly reports required by Section 11.1.9 of Part 3 of the Agreement, Design-Builder shall submit to Department, for its review and approval, an update of the Baseline Schedule (“**Schedule Update**”). The Schedule Update shall reflect the current status of the Project and the plan to complete the remaining work as of the first (1<sup>st</sup>) day of the month (data date). If Department does not approve such submission, Design-Builder shall revise and resubmit a Schedule Update to Department within seven (7) calendar days of its receipt of Department’s comments on such submission. The Schedule Update submission shall consist of:
- 1. **Schedule Update**: A Schedule Update showing the as-built status of completed and ongoing activities; as well as the sequence and dates during which the remaining activities are scheduled to be completed as of the data date. The Schedule Update shall be based on the most recent approved Schedule and shall be prepared according to the following:
    - i) All activities that are completed prior to the current data date shall show actual start and finish dates. All on-going activities shall show actual start dates and remaining duration to indicate the amount of time required to complete the remaining work as of the current data date.
    - ii) Activity percent complete for on-going activities shall be based on amount of work completed as of the current data date relative to the total amount of work planned.
    - iii) Actual units and cost for each assigned work item resource shall be updated based on the 20-80 earned value progress rules (i.e. 20% at initiation and 100% at completion), in accordance with Part 4, Article 6, and Section 6.2.
    - iv) Activity logic shall be modified as necessary to correct out-of-sequence progress for on-going and remaining activities to reflect the Design- Builder’s

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current plan for completing the remaining work.

v) The project schedule shall be calculated using the current data date.

2. **Schedule Update Narrative**: A Schedule Update Narrative describing the current status of the project, any deviations from scheduled performance, and any changes in Design-Builder's work plan, and the current work plan for accomplishing the remaining work as of the data date. The Schedule Update Narrative shall include a description of:

- i) The current status of project milestones including a description of any deviations from the date(s) specified in the Contract. If a milestone activity is scheduled to occur later than the date specified in the Contract, provide an explanation stating why the milestone date is forecasted to occur late and any actions taken or proposed to correct the delay.
- ii) The current status of the Project in terms of progress earnings percent complete based on the actual total earnings to date relative to the current approved Contract value; as well as any progress deficiencies relative to planned progress as indicated on the SOR. If progress is falling behind, describe reasons for the deficiency and any actions taken or proposed to correct the progress deficiency.
- iii) The project critical path and any deviations from the SOR.
- iv) The work performed since the previous Schedule Update and any deviations from the work scheduled.
- v) Any major changes in the Contractor's work plan in terms of sequence of construction, shifts, means and methods, manpower, equipment, or materials.
- vi) Any changes made to the SOR since the previous submission. A Claim Digger report (or equivalent) may be used to identify the changes.
- vii) Number of days lost due to adverse weather or other factors during the current update period. Provide a list of the lost days, including a description and start/finish times of the weather event or factor; activities affected and how the activities were affected, and any impacts on the critical path or project milestones. Also, describe any actions taken or proposed to mitigate any resulting delays.
- viii) The status of pending issues such as access, permits, conflicts with other related or adjacent work, Work Orders, time extension requests, etc.
- ix) Any problems encountered or anticipated since the previous submission,

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including an explanation of any corrective actions taken or required to mitigate or avoid the effects.

- x) Work planned for the next update period and any actions needed to be taken by the Department or other involved parties.

2. **Schedule Update Earned Value**: A Schedule Update Earned Value showing the actual progress earnings to date and the projected earnings for each remaining month, as of the data date. The Schedule Update Earned Value submission shall include:

- i) An Activity Cost-loading Report (ACR) showing the updated cost data in the current Schedule Update as of the data date.
- ii) An updated Form C-13CPM showing the actual earnings to date and projected monthly earnings for the remaining periods as of the data date based on cost data generated from the current Schedule Update.

**D. Revised Baseline Schedule** – If Department believes that the Work is being performed significantly different from the SOR, or major modifications in logic, activity duration, manpower, or cost are necessary, or are required to incorporate approved changes in the Work, it will submit a written request to Design-Builder. Design-Builder shall respond in writing within seven (7) days, either agreeing with Department’s proposed revision, and henceforth providing a “**Revised Baseline Schedule**”, as required by the VDOT Project Manager, or providing justification why the requested revisions should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Department and Design-Builder shall agree to attempt to resolve the issues through the dispute resolution process of Article 10 in the General Conditions of Contract. If the Department and the Design-Builder cannot agree on the proposed revisions, the Design-Builder shall proceed under the previously approved Baseline Schedule. At no time shall Design-Builder continue to reflect items of non-concurrence from Department in the Schedule Updates. The Revised Baseline Schedule shall be prepared and submitted in the form of a Baseline Schedule, according to Section 2.B above, except it shall reflect the current status of the completed and on-going activities and actual earnings to date as of the current data date. Upon approval by the Department, the Revised Baseline Schedule shall replace any previously approved Baseline Schedule as the SOR for the remainder of the Project.

**E. Final As-built Schedule** – As part of its submission of Final Application for Payment, Design-Builder shall submit the final Schedule Update (**Final As-built Schedule**). The Final As-built Schedule shall show the actual start and finish dates for all activities in the schedule. Design-Builder shall certify in writing that the Final As-built Schedule accurately reflects the dates on which all activities contained in the schedule were actually performed. The Final As-built Schedule shall be submitted in the form of a Schedule Update according to Section 11.1.5 above.

### 3. Schedule Submittal Format and Reports

Unless otherwise approved in writing by the VDOT Project Manager, Design-Builder shall submit for each Preliminary Schedule, Baseline Schedule, Schedule Update, or Baseline Revision Schedule submission, the following submittal items and reports, in the formats specified below. Each electronic file submittal shall have a unique file name prefixed by the Contract ID to identify the Contract and type, number, item, and data date of the submission (e.g. C00012345DB01\_B01\_01-01-13.xer, C00012345DB01\_B01\_Narrative\_01-01-13.pdf, C00012345DB01\_B01\_FormC-13CPM\_01-01-13.xlsx, etc.). The submittals shall include.

1. A transmittal letter to the VDOT Project Manager, identifying the date of submittal and which Schedule is being submitted for review.
2. Two (2) sets of data compact disks (“CD”) containing a backup copy of the working schedule in the Primavera proprietary exchange format (“XER”) file format; as well as other required electronic file submittals as defined in Section 11.1.8.4 below. Each CD shall be labeled to indicate the Contract ID, type of submission, filename, and data date.
3. Two (2) sets of paper copies of the following schedule reports:
  - i) Schedule calculation log.
  - ii) A legible time-scaled bar-chart plot of the Schedule, organized by WBS, to show for each activity the Activity ID, Activity Name, Original Duration, Remaining Duration, Start and Finish dates, Activity Percent Complete, and Total Float. The bar-chart plot shall identify the project critical path (longest path).
4. Electronic file copies by email of the following:
  - i) A backup copy of the working schedule in “XER” file format.
  - ii) A copy of the time-scaled bar-chart plot of the project schedule in “PDF” file format.
  - iii) A tabular Predecessor and Successor Report (PSR) in “PDF” file format to show the predecessors and successors for each activity. The PSR shall be sorted by WBS and in ascending order by Activity ID and shall show for each activity:
    - a) Activity ID;
    - b) Activity Name;
    - c) Original Duration;
    - d) Remaining Duration;

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- e) Early Start;
  - f) Early Finish;
  - g) Late Start;
  - h) Late Finish;
  - i) Free Float;
  - j) Total Float;
  - k) Critical (“Yes” or “No”);
  - l) For each predecessor/successor activity, show the Activity ID, Activity Name, Relationship Type, Lag, Free Float, Total Float, Driving (“Yes” or “No”), and Critical (“Yes” or “No”).

iv) A copy of the schedule narrative in “PDF” file format.

v) A copy of the Activity Cost-loading Report (“ACR”) in “PDF” file format.

vi) A working file copy of the Earned Value Schedule (Form C-13CPM) in “xls” or “xlsx” file format.

vii) A copy of the Earned Value Schedule S-Curve in “PDF” file format.

#### 4. Monitoring the Work and Assessing Progress

The VDOT Project Manager will monitor the Work regularly and assess progress of the Work monthly relative to the SOR to identify deviations from Design-Builder’s scheduled performance and to determine if progress is satisfactory according to the following:

**A. Monthly Progress Meetings** – At the monthly progress meeting held in accordance with Part 4 General Conditions, Article 2, Section 2.1.8, Design-Builder shall furnish a detailed 4-week look-ahead schedule based on the current schedule update and shall discuss the current status of the project, on-going work, and work planned for the following four (4) weeks.

**B. Progress Evaluation** – Progress will be evaluated by the VDOT Project Manager at the time of the monthly progress pay application on the basis of the Design-Builder’s latest approved Schedule Update. The Design-Builder’s actual progress will be considered unsatisfactory if any of the following conditions occur:

i) The actual total earnings percentage for work completed to date, based on the current Pay Application, falls behind the anticipated cumulative late earnings percentage indicated in the SOR by one (1) percent or more.

ii) The current projected completion date of a Contract milestone is more than fourteen (14) days after the milestone completion date specified in the Agreement, as applicable.

iii) The current calculated completion date of the project is more than thirty (30)

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days after the lattermost of the Final Completion date or its extension.

**C. Progress Deficiency and Schedule Slippage** – When a monthly progress evaluation shows that the actual progress of the Work is unsatisfactory, the VDOT Project Manager will issue a written notice of unsatisfactory performance to the Design- Builder. Within 14 days from the date of receipt of the VDOT Project Manager’s notice, Design-Builder shall respond by submitting a written statement describing any actions taken or proposed by the Design-Builder to correct the progress deficiency. If the Design-Builder’s response includes a proposed recovery plan, the current progress schedule update shall be modified accordingly to show the Design-Builder’s proposed recovery plan. Design-Builder may submit to the VDOT Project Manager a written explanation and supporting documentation to establish that such delinquency is attributable to conditions beyond its control. If the VDOT Project Manager approves the Design-Builder’s recovery plan, the modified progress schedule update showing the recovery plan will be treated as the current update and will not replace the SOR.

If the Design-Builder fails to respond within the time required, or the response is unacceptable, its prequalification status may be changed as provided in Section 102.01 of Part 5, and the Design-Builder may be temporarily disqualified from bidding on contracts with the Department as provided in Section 102.08 of Part 5, if progress remains unsatisfactory at the time of preparation of the next monthly progress estimate. The VDOT Project Manager may postpone taking these actions when a time extension is under consideration.

## **5. Schedule Impact Analysis (SIA)**

In the event of an excusable delay that extends the completion date of the project beyond the Final Completion date, for which Design-Builder is seeking an extension of the contract time limit, it shall submit a request for an adjustment to the Agreement within the time period specified in Article 8 of Part 4 – General Conditions, unless directed otherwise in writing by the VDOT Project Manager. For requests for prospective changes or delays Design-Builder shall prepare and submit a SIA based on the TIA method. For requests for other delays Design-Builder shall prepare and submit a SIA based on the Contemporaneous Impact Analysis method. The Design-Builder shall submit along with its request for an adjustment to the Contract a SIA statement and applicable SIA schedules in accordance with the following:

### **1. SIA Statement** – The SIA statement shall include the following.

- i) A description of the delay event, including time, date, and location of the event, if appropriate.
- ii) An explanation of why the delay constitutes a change to the Agreement, including references to applicable portions of the Contract.
- iii) A description of the activities or work items affected and any impact on the

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project critical path, milestones, or completion date of the project, as applicable.

- iv) A description and reasons for any shifts in the project critical path relative to the preceding schedule update for each schedule update contemporaneous with the delay event, as applicable.
- v) A description and reasons for any revisions made to the SIA schedules since the previous submission, including added or deleted activities, and changes in logic, activity durations, calendars, and constraints.
- vi) A SIA summary showing for each SIA schedule as described herein, the data date and calculated completion dates for all applicable milestones and the project completion date. The SIA summary shall also show any differences in the calculated finish dates for each successive SIA schedule relative to the previous SIA schedule. Any schedule slippages shall be categorized appropriately as excusable compensable, excusable non-compensable, or non-excusable.
- vii) Any actions taken or needed to avoid or mitigate the delay impacts.
- viii) Any additional information needed to justify the request or facilitate timely resolution of the issue.

**2. SIA Schedules** – The SIA submission shall include as applicable:

- i) The SOR in place prior to the date the delay event started, showing the project critical path, affected activities, and any applicable milestones.
- ii) The most recently accepted project schedule update in place prior to the date the delay event started, showing the affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the SOR.
- iii) A pre-delay schedule update showing the current status of the affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the most recently accepted project schedule update in place prior to the date the delay event started.
- iv) Any contemporaneous project schedule updates submitted during the delay event showing the current status of the delay event, affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the previous submission.
- v) A post-delay impacted schedule, showing the current status of the delay event, affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the previous submission.

## Correspondence Tracking Log for Project Records

VDOT Project: 0007-029-942 and 0007-029-225

Project: Route 7 Corridor Improvements

CONTRACT ID #: C00099478DB98

		CORR	Correspondence						
		EMAIL	Email						
		MEET	Meeting Minutes						
		MEMO	Memo (Internal)						
		MISC	Miscellaneous Files						
ID Number	Process	Description / Issue	Pay Package Reference	Date Received or Sent	From	To	Status (Open/Closed)	Record File Location Or Insert Hyperlink (ctrl + k)	
C0001111DB00-1	CORR	VDOT to Design-Builder - Notice of Intent Letter	n/a	5/9/2007	VDOT	Design-Builder	Closed		
C0001111DB00-2	CORR	Performance and Payment Bonds	n/a	5/11/2007	Design-Builder	AAA	Closed		
C0001111DB00-3	CORR	Certificate of Insurance	n/a	5/15/2007	Design-Builder	CCC	Closed		
C0001111DB00-4	CORR	SWPP Certification Permit	n/a	5/15/2007	Design-Builder	Design-Builder	Closed		
C0001111DB00-5	CORR	C112 - Binding Agreements	n/a	5/17/2007	Design-Builder	BBB	Closed		
C0001111DB00-6	CORR	VDOT Request for Design-Builder Preconstruction Meeting	n/a	6/9/2007	VDOT	Design-Builder	Closed		
C0001111DB00-7	CORR	Design-Builder to VDOT - Escrow Document Review Meeting	n/a	6/15/2007	Design-Builder	VDOT	Closed		
C0001111DB00-8	CORR	VDOT to Design-Builder - CTB Award	n/a	6/21/2007	VDOT	Design-Builder	Closed		
C0001111DB00-9	MISC	Design-Builder Questions Regarding Final Contract Document Timeline	n/a	6/22/2007	Design-Builder	VDOT	Closed		
C0001111DB00-10	CORR	Design-Builder to VDOT - Preconstruction Meeting	n/a	7/17/2007	Design-Builder	VDOT	Closed		
C0001111DB00-11	CORR	VDOT to Design-Builder - Final Contract Documents	n/a	7/18/2007	VDOT	Design-Builder	Closed		
C0001111DB00-12	MEET	Preconstruction Meeting Minutes	n/a	7/23/2007	Design-Builder	VDOT	Closed		
C0001111DB00-13	CORR	VDOT to Design-Builder - Notice to Proceed	n/a	8/2/2007	VDOT	Design-Builder	Closed		
C0001111DB00-14	CORR	Design-Builder to VDOT Permit Application Request	1	8/2/2007	Design-Builder	VDOT	Closed		
C0001111DB00-15	EMAIL	Geotechnical Investigations - Preliminary Data	2	8/8/2007	Design-Builder	Design-Builder	Closed		
C0001111DB00-16	CORR	Design-Builder to VDOT - Flood Plain Study Inquiry	3	8/9/2007	Design-Builder	VDOT	Closed		
C0001111DB00-17	CORR	Payment Requisition # 1 - First submission	1,2,3	8/10/2007	Design-Builder	VDOT	Closed		
C0001111DB00-18	CORR	Payment Requisition # 1 - Second submission	1,2,3	8/13/2007	Design-Builder	VDOT	Closed		
C0001111DB00-19	MEMO	VDOT Acknowledgement of Receipt of Preliminary Roadway Plans	4	8/14/2007	VDOT	Design-Builder	Closed		
C0001111DB00-20	MEMO	VDOT to Design-Builder - ROW Plan Submittal 1 Comments	5	8/22/2007	VDOT	Design-Builder	Closed		
C0001111DB00-21	CORR	VDOT ID Outstanding Issues to Design-Builder	5	8/24/2007	VDOT	Design-Builder	Closed		
C0001111DB00-22	CORR	VDOT to Design-Builder - Comments Regarding Preliminary Roadway Plans	4	9/5/2007	VDOT	Design-Builder	Closed		
C0001111DB00-23	CORR	Payment Requisition # 2	4,5	9/10/2007	Design-Builder	VDOT	Closed		
C0001111DB00-24	MEMO	NVRPA Comments - Bridge Details	6	9/16/2007	NVRPA	Design-Builder	Closed		
C0001111DB00-25	CORR	Design-Builder to VDOT - Outstanding Issues	n/a	9/18/2007	Design-Builder	VDOT	Closed		
C0001111DB00-26	CORR	FWD: FOIA Request Mrs. Smith	n/a	9/20/2007	VDOT	Design-Builder	Closed		
C0001111DB00-27	CORR	FOIA Response to Mrs. Smith	n/a	9/23/2007	Design-Builder	VDOT	Closed		
C0001111DB00-28	MEMO	Memo to File - Reporting Requirements	n/a	9/25/2007	DDD	File	Closed		
C0001111DB00-29	CORR	Conflict of Interest Request for Determination	n/a	9/27/2007	OAG	VDOT	Closed		
C0001111DB00-30	CORR	VDOT Acknowledgement of Receipt of Final Roadway Plans	7	10/4/2007	VDOT	Design-Builder	Closed		
C0001111DB00-31	CORR	Payment Requisition # 3	6,7	10/10/2007	Design-Builder	VDOT	Closed		
C0001111DB00-32	CORR	VDOT to Design-Builder - Comments Regarding Final Roadway Plans	7	10/17/2007	VDOT	Design-Builder	Closed		
C0001111DB00-33	MEET	Permit Coordination Meeting Minutes	8	10/26/2007	VDOT	Design-Builder	Closed		
C0001111DB00-34	CORR	Town of Leesburg Comment - Utility Relocation Plans	9	10/27/2007	Design-Builder	VDOT	Open		



### **Exhibit 3.5.1**

#### **Governmental Approvals List**

The following will be the responsibility of the Department to obtain:

1. National Environmental Policy Act approval, Categorical Exclusion (CE) – anticipated to be completed by VDOT prior to the scheduled date for project award.
2. Preliminary Environmental Certification/Commitments Checklist (January 28, 2019) – completed by VDOT.
3. Preliminary Document Re-evaluation for Right-of-Way Authorization (January 28, 2019) – completed by VDOT.
4. Preliminary Document Re-evaluation for PSE (Plans, Specifications, and Estimates) Authorization (January 28, 2019) – completed by VDOT.
5. Final Environmental Certification/Commitments Checklist to be completed by VDOT as applicable.
6. Final Document Re-evaluation for Right-of-Way Authorization – to be completed by VDOT as applicable.
7. Final Document Re-evaluation for PSE (Plans, Specifications, and Estimates) Authorization- to be completed by VDOT as applicable.

**Exhibit 102.05(g.1)**

**SP102-050100-00**

VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
**USE OF DOMESTIC MATERIAL**

**SECTION 102.05 PREPARATION OF BID** of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as “Buy America”, except as otherwise specified, all iron and steel (including miscellaneous items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America. This applies to any iron or steel item brought onto the project, regardless of the percentage of iron or steel that exists in the pay item or in the final form they take; however, electrical components (i.e., combination products such as signal controllers and similar products which are only sold as a unit) are not subject to Buy America provisions if the product as purchased by the Contractor is less than 50% steel and/or iron. “Produced in the United States of America” means all manufacturing processes occur in one of the 50 United States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. “Manufacturing processes” are defined as any process which alters or modifies the chemical content, physical size or shape, or final finish of iron or steel material (such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating). For the purposes of satisfying this requirement “coating” is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material to which the coating is applied. Non-iron and non-steel materials used in the coating process do not need to be produced in the United States as long as the application of the coating occurred in the United States. The manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

For the purposes of this provision, all steel or iron material meeting the criteria as produced in the United States of America will be considered as “Domestic Material.” All iron and steel items not meeting the criteria as produced in the United States of America will be considered “Non-Domestic Material.”

A minimal amount of “Non-Domestic” steel or iron material may be incorporated in the permanent work on a federal-aid contract provided that the cost of such materials or products does not exceed one-tenth of one percent of the Contract amount or \$2500, whichever is greater. The cost of the “Non-Domestic Material” is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered-to-site cost must include transportation, assembly, installation and testing.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor’s convenience.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America.

Any items containing foreign source steel or iron billet shall be considered “Non-Domestic Materials.” Additionally, iron or steel ingots or billets produced in the United States, but shipped outside the United States of America for any manufacturing process and returned for permanent use in a project shall be considered “Non-Domestic Materials.”

**Waivers:**

The process for receiving a waiver for Buy America provisions is identified in 23 CFR 635.410(c). The Contractor shall not anticipate that any Buy America provisions will be waived.

**Certification of Compliance:**

The Contractor is required to submit a Certificate of Compliance prior to incorporating any items containing iron or steel items into the project. This shall be accomplished by the Contractor submitting the following Certificate of Compliance to the Department when the items are delivered to the project site. The Certification of Compliance will certify whether the items are considered “Domestic Material” or “Non-Domestic Material” as referenced in this Special Provision. The certificate must be signed and dated by the Prime Contractor’s Superintendent and include a Buy America Submittal Number. The Buy America Submittal Number is simply the Contractor’s project specific sequential numbering system that will allow the Contractor and Department to track the total number of certificates provided and the individual items containing iron or steel associated with each certificate.

**Supporting Documentation:**

Supporting documentation to demonstrate compliance with Buy America provisions (such as mill test reports manufacturer/supplier certifications, etc.) shall be organized by Buy America Submittal Number and maintained by the Contractor from the date of delivery until three years after project acceptance. The Contractor may maintain this documentation electronically or in paper format.

The Department or FHWA may review the Contractor’s supporting documentation to verify compliance with the Buy America provisions at any time. Supporting documentation shall be provided within five business days of the request. The burden of proof to meet the Buy America provisions rests with the Contractor. If the supporting documentation does not undeniably demonstrate to FHWA or the Department that the “Domestic Materials” identified in the Certificate(s) of Compliance were produced in the United States of America, then the Department may deduct payment from moneys due the Contractor for the value of the iron and/or steel that did not meet the Buy America provisions.

# CONTRACTOR'S CERTIFICATE OF COMPLIANCE FOR STEEL & IRON ITEMS

For Compliance with "Buy America" 23 CFR 635.410  
Form issued March 2018

Contract ID No. \_\_\_\_\_

Page 1 of \_\_\_\_\_

VDOT Project No. \_\_\_\_\_

FHWA Project No. \_\_\_\_\_

Buy America Submittal  
Number \_\_\_\_\_

Project Location & Description \_\_\_\_\_

The \_\_\_\_\_  
(Name of Manufacturer/Supplier) (Street Address) (City, State) (Phone)

has furnished to \_\_\_\_\_  
(Name of Contractor) (Street Address) (City, State) (Phone)

the following items containing iron or steel for permanent use in the above referenced project:

Bid Item No.	Bid Item Description	Product Description (if only a portion of the Bid Item)	Quantity	Unit (LF, YD <sup>2</sup> , YD <sup>3</sup> , etc.)	Total Cost of Steel and/or Iron in this Item

**Submit this form to VDOT at the time of delivery of any items containing steel or iron to the project. Supporting documentation to demonstrate compliance with Buy America provisions (such as mill test reports manufacturer/supplier certifications, etc.) shall be organized by Submittal Number and maintained by the contractor from the date of delivery until three years after project acceptance. (Note that documentation such as off-site test reports, etc., when also required for other material quality purposes, is still required at time of delivery.)**

### *Contractor's Statement of Certification*

**Domestic Material.** I hereby certify that all steel and iron manufacturing processes (including melting, mixing, extruding, rolling, bending, casting, forging, etc., and the application of any coating, as applicable), occurred in the United States for the above listed materials and that those materials do meet all other requirements as set forth in the plans and specifications.

**Non-Domestic Material.** Although the above listed materials do meet all other requirements as set forth in the plans and specifications, all or part of the steel or iron manufacturing process may have occurred outside the United States, so the material is considered non-domestic. The cost of the steel and/or iron in this material, as delivered to the project, is \$ \_\_\_\_\_ and will be tracked to ensure the total non-domestic ferrous material does not exceed the maximum allowable.

By \_\_\_\_\_ Title \_\_\_\_\_  
(Name of Prime Contractor's Project Superintendent, Typed or Printed)

\_\_\_\_\_  
(Signature of Prime Contractor's Project Superintendent)

Date \_\_\_\_\_

**CONTRACTOR'S CERTIFICATE OF COMPLIANCE  
FOR STEEL & IRON ITEMS**  
For Compliance with "Buy America" 23 CFR 635.410  
Form issued March 2018

Item Page No. \_\_\_\_\_ of \_\_\_\_\_

Contract ID No. \_\_\_\_\_

VDOT Project No. \_\_\_\_\_

FHWA Project No. \_\_\_\_\_

Bid Item No.	Bid Item Description	Product Description (if only a portion of the Bid Item)	Quantity	Unit (LF, YD <sup>2</sup> , YD <sup>3</sup> , etc.)

\_\_\_\_\_  
(Initials of Prime Contractor's  
Project Superintendent)

**Exhibit 102.05(g.2)**

SF010DF-0712

May 1, 2012  
FHWA-1273 (Electronic Version)

The following Form **FHWA-1273** titled **REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS** shall apply to this contract:

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FHWA-1273 – Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth

under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.



- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

- 4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

- 5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this

paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
  - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
  - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
  - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
  - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
  - a. The records kept by the contractor shall document the following:
    - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
    - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
    - (3) The progress and efforts being made in locating, hiring, training,

qualifying, and upgrading minorities and women;

- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### **IV. Davis-Bacon and Related Act Provisions**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### **1. Minimum wages**

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor

and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (I) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (II) The classification is utilized in the area by the construction industry; and
  - (II) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the

amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily

and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (I) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (II) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the

full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

- (III) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
  - (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is



performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own

organization (23 CFR 635.116).

- a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
    - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
  3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
  4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
  5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related

subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective

first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (2) 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; violation 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;
  - (3) 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 (a)(2) of this certification; and
  - (4) 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.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.



- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--  
Lower Tier Participants:**

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 participating in covered transactions 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.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**Exhibit 102.05(g.3)**

**SF030AF-0708**

Reissued July 2008

VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE  
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

Females- 6.9%

Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days the award of any construction subcontract in excess of \$10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As, used in this provision:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
  3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
  4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
  5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
  6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
  7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
    - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are

aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### ATTACHMENT A

<u>Economic Area</u>	<u>Goal (Percent)</u>
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA .....	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA .....	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties .....	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;	
VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;	
VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;	
VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena	
Vista:	
VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	
VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro;	
WV Pendleton.	
022 Richmond, VA	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA .....	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell;	
VA Petersburg.	
6760 Richmond, VA .....	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA	
Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties .....	27.9
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline;	
VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA	
Greensville; VA Halifax; VA King and Queen; VA King William; VA	
Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA	
Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond	
VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA .....	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport	
News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC .....	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA	

	Suffolk; VA Virginia Beach.	
	Non-SMSA Counties .....	29.7
	NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:		
020 Washington, DC.		
	SMSA Counties:	
	8840 Washington, DC - MD - VA .....	28.0
	DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.	
	Non- SMSA Counties .....	25.2
	MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:		
052 Johnson City - Kingsport - Bristol, TN - VA		
	SMSA Counties:	
	3630 Johnson City - Kingsport -Bristol, TN-VA .....	2.6
	TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.	
	Non-SMSA Counties .....	3.2
	TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Maryland:		
019 Baltimore MD		
	Non-SMSA Counties .....	23.6
	MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.	



## EXHIBIT 102.05(g.4) USDOT 1050.2 APPENDIX A

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

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT 102.05(g.5) USDOT 1050.2A APPENDIX E

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

### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

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**Exhibit 107.13**

SF001AF-0708

Reissued July 2008

**PREDETERMINED MINIMUM WAGE RATES**

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SECRETARY  
WASHINGTON  
**DECISION OF THE SECRETARY**

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes for labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract and subcontractors on the work.


The contracting officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the contracting officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the contracting officer written evidence of the established apprentice-journeyman ratios and wage in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor



E. Irving Manger, Associate Administrator  
Division of Wage Determinations  
Wage and Labor Standards Administration

General Decision Number: VA190117 01/04/2019 VA117

Superseded General Decision Number: VA20180117

State: Virginia

Construction Type: Highway

County: Fauquier County in Virginia.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher)

for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

ELEC0080-011 06/01/2018

Rates

Fringes

ELECTRICIAN, Includes Traffic

Signalization.....\$ 27.94 12.56%+6.95

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PLAS0891-011 06/01/2017

Rates

Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 20.10 7.38

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SUVA2016-053 07/02/2018

Rates

Fringes

CARPENTER, Includes Form Work....\$ 20.97 0.00

FENCE ERECTOR.....\$ 15.28 0.00

IRONWORKER, REINFORCING.....\$ 34.18 0.00

IRONWORKER, STRUCTURAL.....\$ 34.18 0.00

LABORER: Asphalt, Includes

Raker, Shoveler, Spreader and

Distributor.....\$ 19.05 1.75

LABORER: Common or General.....	\$ 16.52	0.00
LABORER: Grade Checker.....	\$ 14.88	0.00
LABORER: Pipelayer.....	\$ 20.48	0.00
LABORER: Power Tool Operator....	\$ 15.69	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 23.93	0.00
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 19.00	3.49
OPERATOR: Broom/Sweeper.....	\$ 17.40	2.01
OPERATOR: Crane.....	\$ 29.46	0.00
OPERATOR: Drill.....	\$ 24.89	0.00
OPERATOR: Gradall.....	\$ 19.26	0.00
OPERATOR: Grader/Blade.....	\$ 23.21	0.00



OPERATOR: Hydroseeder.....	\$ 16.64	0.00
OPERATOR: Loader.....	\$ 18.92	0.00
OPERATOR: Mechanic.....	\$ 22.84	0.00
OPERATOR: Milling Machine.....	\$ 23.19	2.94
OPERATOR: PAVEMENT PLANER		
GROUNDSMEN.....	\$ 19.75	0.00
OPERATOR: PAVEMENT PLANER.....	\$ 21.14	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 20.33	2.81
OPERATOR: Piledriver.....	\$ 21.83	4.08
OPERATOR: Roller (Finishing)....	\$ 18.73	3.23
OPERATOR: Roller.....	\$ 18.92	0.00
OPERATOR: Screed.....	\$ 22.13	4.89
OPERATOR: Asphalt Spreader		

and Distributor.....\$ 20.58 2.31

OPERATOR: Bulldozer,

Including Utility.....\$ 20.64 0.00

PAVEMENT MARKING OPERATOR.....\$ 22.15 0.00

PAVEMENT MARKING TRUCK DRIVER.....\$ 18.78 0.00

TRAFFIC CONTROL: Flagger.....\$ 13.64 0.00

TRUCK DRIVER : HEAVY 7CY &

UNDER.....\$ 15.53 0.00

TRUCK DRIVER: Fuel and

Lubricant Service.....\$ 18.25 0.00

TRUCK DRIVER: HEAVY OVER 7

CY.....\$ 18.05 0.00

TRUCK DRIVER: Single & Multi

Axle.....\$ 18.61 0.00

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WELDERS - Receive rate prescribed for craft performing

operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion

date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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END OF GENERAL DECISION



*Commonwealth of Virginia*  
*Office of the Governor*

## *Executive Order*

**NUMBER SIXTY-ONE (2017)**

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

#### **Importance of the Initiative**

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

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

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

Additionally, federal procurement policy prohibits federal contractors from discrimination based on sexual orientation and gender identity. Federal contractors have thus already changed their internal policies and practices accordingly and are unlikely to reverse course, even if the federal requirement is adjusted. Many federal contractors also deliver services to the Commonwealth. Current procurement policy in Virginia is not sufficiently



aligned with these non-discrimination policies to promote economy and efficiency in state procurement. Having Virginia policy align with this federal non-discrimination policy will not only further my administration's goal of building a more diverse, open, and welcoming Virginia, but also will give uniformity to contractors that serve many government entities, resulting in economic benefits to Virginia taxpayers.

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

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

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

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

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

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

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

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

**No Third-Party Rights Created**

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

**Effective Date of the Executive Order**

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

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

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Terence R. McAuliffe, Governor

Attest:

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Kelly Thomasson, Secretary of the Commonwealth

VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
DBE REQUIREMENTS

**SECTION 107 – LEGAL RESPONSIBILITIES** of the Specifications is revised as follows:

**Section 107.15 – Use of Small, Women-Owned, and Minority-Owned Business** is renamed **Use of Disadvantaged Business Enterprises (DBEs)** and replaced with the following:

(a) **Disadvantaged Business Enterprise (DBE) Program Requirements**

Any Contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Contractor is defined as the Prime Contractor of the Contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the Contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Contractor, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

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

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

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

(b) **DBE Certification**

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Small

Business and Supplier Diversity (DSBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of [\\_Small Business and Supplier Diversity website: www.sbsd.virginia.gov.](http://www.sbsd.virginia.gov)

(c) **Bank Services**

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website:

[http://www.virginiadot.org/business/resources/Civil\\_Rights/VDOT\\_DBE\\_Program\\_Plan.pdf](http://www.virginiadot.org/business/resources/Civil_Rights/VDOT_DBE_Program_Plan.pdf)

(d) **DBE Program-Related Certifications Made by Bidders\Contractors**

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

1. That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.
2. Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the Contract.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the Contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the Contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, sex, sexual orientation, gender identity, or national origin in the performance of the Contract or in the award of any subcontract. Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.
4. As a bidder, good faith efforts were made to obtain DBE participation in the proposed contract at or above the goal for DBE participation established by VDOT. It has submitted as a part of its bid true, accurate, complete, and detailed documentation of the good faith efforts it performed to meet the Contract goal for DBE participation. The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all DBE firms that will participate in the Contract, the specific line item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE. The specific line item must reference the VDOT line number and item number contained in the proposal.
5. The bidder further certifies, by signing its bid, it has committed to use each DBE firm listed for the specific work item shown to meet the Contract goal for DBE participation. Award of the Contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the bid, the bidder certifies on work that it proposes to sublet; it has made good faith efforts to seek out and consider DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation

to substantiate its good faith efforts. Award of the Contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.

6. Once awarded the Contract, the Contractor shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.
7. Once awarded the contract, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.
8. Once awarded the Contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the Contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract regulations and/or requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the Contract in the event of such a contract breach.
9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original prime Contractor in accordance with the requirements of this specification.

**(e) Disqualification of Bidder**

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the Contract specifications, and VDOT Road and Bridge Specifications.

(f) **Bidding Procedures**

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

1. **Contract Goal, Good Faith Efforts Specified:** All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111, Minimum DBE Requirements, and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the bid documents.

Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 10:00 a.m. the next business day after the time stated in the bid proposal for the receipt of bids. Form C-48 must be received within ten (10) business days after the bid opening.

If, at the time of submitting its bid, the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it commits to attain as a part of its bid documents. The bidder shall then submit Form C-49, DBE Good Faith Efforts Documentation, within two (2) business days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112, Certification of Binding Agreement, within three (3) business days after the bids are received. DBEs bidding as prime contractors are not required to submit Form C-112 unless they are utilizing other DBEs as subcontractors.

If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit Form C-49, DBE Good Faith Efforts Documentation, which must be received by the Contract Engineer within two (2) business days after official notification of such failure to meet the aforementioned DBE requirements.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:

<http://vdotforms.vdot.virginia.gov/>

Instructions for submitting Form C-111 can be obtained from the VDOT website at:

[http://www.virginiadot.org/business/resources/const/Exp\\_DBE\\_Commitments.pdf](http://www.virginiadot.org/business/resources/const/Exp_DBE_Commitments.pdf)

2. **Bid Rejection:** The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

If the lowest bidder is rejected for failure to submit the required documentation in the specified time frames, the Department may award the work to the next lowest bidder, or re-advertise the proposed work at a later date or proceed otherwise as determined by the Commonwealth.

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

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

- a. Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to DBEs who have the capability to perform the work of the Contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.
- b. Selecting portions of the work to be performed by 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 Contractor might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner, which will assist the DBEs in responding to a solicitation;
- d. Negotiating for participation in good faith with interested DBEs;
  - (1) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted; a description of the information provided regarding the plans, specifications, and requirements of the Contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;
  - (2) A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not sufficient reason for a bidder's failure to meet the Contract goal for DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable, or greater than would normally be expected by industry standards;
- e. A bidder cannot reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The DBE's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for DBE participation;
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;

- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;
- h. Effectively using the services of appropriate personnel from VDOT and from DMBE; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

**(g) Documentation and Administrative Reconsideration of Good Faith Efforts**

**During Bidding:** As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE contract goal as proposed by VDOT within the time frame specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firms participation in the proposed contract work.

However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned, or face potential bid rejection.

If a bidder does not submit its completed and executed forms C-111, or C-112, when required by this Special Provision, the bidder's bid will be considered non-responsive and may be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) business days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators or their designees, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the Contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the Contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is still encouraged to seek additional DBE participation during the life of the Contract.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the Contract or any administrative sanctions as may be appropriate.



**During the Contract:** If a DBE, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If a Contractor relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a DBE to perform an equal dollar value of the remaining subcontracted work. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the performance of the Contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, and the Contractor has not taken the preceding actions, the Contractor and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as conformance with the schedule of DBE participation is achieved.

**Project Completion:** If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond their control, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the Contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Contractor from bidding on other VDOT work as described herein, the enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

(h) **DBE Participation for Contract Goal Credit**

1. Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.
2. The applicable percentage of the total dollar value of the Contract or Subcontract awarded to the DBE will be counted toward meeting the Contract goal for DBE participation in accordance with the **DBE Program-Related Certifications Made by Bidders\Contractors** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
3. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Contractor may count toward the DBE goal only that portion of the total dollar value of the Contract equal to the distinctly defined portion of the Contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the DBE's credit toward the DBE contract goal.

4. When a DBE subcontracts part of the work of the Contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a certified DBE. Work that a DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the Contract goal for DBE participation.
5. The Contractor may count expenditures to a DBE subcontractor toward the DBE contract goal only if the DBE performs a Commercially Useful Function (CUF) on that contract.
6. A Contractor may not count the participation of a DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a certified DBE manufacturer.
  - a. For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.
  - b. A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE both owns and operates distribution equipment for the products it sells and provides for the Contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.
  - c. If a DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, who shall be responsible for their distribution.
  - d. For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
  - e. A Contractor may count toward the DBE contract goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:
    - (1) The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-

aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.

(2) The entire amount of that portion of the construction contract that is performed by the DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE for contract work, including supplies purchased or equipment leased by the DBE, except supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

f. A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. A Contractor shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is not the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a Commercially Useful Function (CUF) on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors used to Determine if a DBE Trucking Firm is Performing a CUF.**

g. The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site.

(i) **Performing a Commercially Useful Function (CUF)**

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the Contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE alone shall be responsible and bear the risk for the material and supplies used on the Contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the Contract shall be commensurate with the work the DBE actually performs and the DBE credit claimed for the DBE's performance.

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

which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the prime Contractor or an affiliate of the Contractor under this contract.

VDOT will monitor the Contractor's DBE involvement during the performance of the Contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

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

**DBEs Must Perform The Contract Work With Their Own Workforces:** If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's 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 involve, VDOT will presume that the DBE is not performing a CUF and such participation will not be counted toward the Contract goal.

**VDOT Makes Final Determination On Whether a CUF Is Performed:** VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract. To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

(j) **Verification of DBE Participation and Imposed Damages**

Within fourteen days after contract execution, the Contractor shall submit to the Responsible Engineer, with a copy to the District Civil Rights Office (DCRO), a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112. The subcontract agreement shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the Contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the District Civil Rights Office (DCRO) within five (5) business days after the reporting period may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the DMBE's or MWAA's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Contractor as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter

from the Contractor. If DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

The Contractor shall submit to the Responsible Engineer its progress schedule with a copy to the DCRO, as required by Section 108.03 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the Contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any current DBEs not previously submitted who will perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the Contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

**(k) Documentation Required for Semi-final Payment**

On those projects nearing completion, the Contractor must submit Form C-63 marked "Semi-Final" within twenty (20) days after the submission of the last regular monthly progress estimate to the DCRO. The form must include each DBE used on the Contract work and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the accepted creditable work on the Contract. The form shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall acknowledge by the act of filing the form that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor and appropriate DBEs, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE(s).

**(l) Documentation Required for Final Payment**

On those projects that are complete, the Contractor shall submit a final Form C-63 marked "Final" to the DCRO, within thirty (30) days of the final estimate. The form must include each DBE used on the Contract and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the creditable work on the Contract. VDOT will use this form and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the Contract and the extent to which credit was allowed. The Contractor shall acknowledge by the act of signing and filing the form that the information is supplied to obtain payment regarding a federal participation contract.

**(m) Prompt Payment Requirements**

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

Upon VDOT's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Contractor has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that VDOT paid to the Contractor on the monthly progress estimate.

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

If the Contractor fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall contact the Responsible Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.

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

**(n) Miscellaneous DBE Program Requirements**

1. **Loss of DBE Eligibility:** When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:
  - a. When a Bidder/Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE participation credit for

work performed, and a subcontract has not been executed, the ineligible DBE firm does not count toward either the Contract goal or overall goal. The Contractor shall meet the Contract goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the Contract Engineer that it has made good faith efforts to do so.

- b. When a Bidder/Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the Contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.
  - c. When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the Contract before VDOT has issued the notice of its ineligibility shall count toward the Contract goal.
2. **Termination of DBE:** If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the Contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision.

The Contractor, as aforementioned in **DBE Program-Related Certifications Made by Bidders/Contractors**, shall notify VDOT in writing before terminating and/or replacing the DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill DBE contract obligations during the Contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the Contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE.

- a. All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:
  - (1) The date the Contractor determined the DBE to be unwilling, unable, or ineligible to perform.
  - (2) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request.
  - (3) A brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable, or ineligible to perform;
  - (4) A brief statement of the affected DBE's capacity and ability to perform the work as determined by the Contractor;
  - (5) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the DBE to perform;
  - (6) The current percentage of work completed on each bid item by the DBE;
  - (7) The total dollar amount currently paid per bid item for work performed by the DBE;

- (8) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and with which the Contractor has no dispute;
  - (9) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and over which the Contractor and/or the DBE have a dispute.
- b. Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the DCRO. The affected DBE firm may submit a response letter to the Department within two (2) business days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify that the affected, committed DBE firm is unable or unwilling to continue the Contract. The Department will immediately approve the Contractor's request for a substitution.

- c. Proposed Substitution of Another Certified DBE

Upon termination of a DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated DBE's contract will not be counted toward the Contract goal.

When a DBE substitution is necessary, the Contractor shall submit an amended Form C-111 with the name of another DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including the Contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special Provision.

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

**3. Factors Used to determine if a DBE Trucking Firm is performing a CUF:**

The following factors will be used to determine whether a DBE trucking company is performing a CUF:



- a. To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;
- b. The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the Contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;
- c. The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the Contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;
- d. The DBE may lease trucks from another certified DBE firm, including from an owner-operator who is certified as a DBE. The DBE firm that leases trucks from another DBE will receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides on the Contract;
- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the Contract*. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

*EXAMPLE*

DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z.

<u><b>Firm X</b></u>		<b>Value of Trans. Serv.</b>
		(For Illustrative Purposes Only)
Truck 1	Owned by DBE	\$100 per day
Truck 2	Owned by DBE	\$100 per day
<u><b>Firm Y</b></u>		
Truck 1	Leased from DBE	\$110 per day
Truck 2	Leased from DBE	\$110 per day
<u><b>Firm Z</b></u>		
Truck 1	Leased from Non DBE	\$125 per day
Truck 2	Leased from Non DBE	\$125 per day
Truck 3	Leased from Non DBE	\$125 per day
Truck 4	Leased from Non DBE	\$125 per day
Truck 5	Leased from Non DBE*	\$125 per day

Truck 6	Leased from Non DBE*	\$125 per day
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DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

**Credit = 8 Trucks**  
**Total Value of Transportation Services = \$820**

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the 8 trucks.

\* With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

- f. For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.
4. **Data Collection:** In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.
- Firm name
  - Firm address
  - Firm's status as a DBE or non-DBE
  - The age of the firm and
  - The annual gross receipts of the firm

The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. However, the above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted; to be received within ten (10) business days after the bid opening. Failure of bidders to submit this form in the time frame specified may be cause for disqualification of the bidder and rejection of their bid in accordance with the requirements of this Special Provision, the Contract specifications, and VDOT Road and Bridge specifications.

(o) **Suspect Evidence of Criminal Behavior**

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there

appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

### **Suspected DBE Fraud**

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

### **(p) Summary of Remedies for Non-Compliance with DBE Program Requirements**

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 107.15 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

#### **1. Disadvantaged Business Enterprise (DBE) Program Requirements**

The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

#### **2. DBE Program-Related Certifications Made by Bidders\Contractors**

Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each certified DBE firm participating in the Contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the Contract in the event of such a contract breach.

#### **3. Disqualification of Bidder**

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the Contract specifications, and VDOT Road and Bridge Specifications.

#### **4. Bidding Procedures**

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid. If the lowest bidder is rejected for failure to submit required documentation in the specified time frames, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111, C-112, C-48, and Form C-49, as aforementioned, or face potential bid rejection. If a bidder does not submit its completed and executed C-111, or C-112, when required by this Special Provision, the bidder's bid will be considered non-responsive and may be rejected. If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the Contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected. If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the Contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is encouraged to seek additional participation during the life of the Contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, the Contractor and any aforementioned affiliates may be enjoined from bidding for 60 days or until such time as conformance with the schedule of DBE participation is achieved. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the prosecution of the Contract.

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the Contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

## **5. Verification of DBE Participation and Imposed Damages**

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

**(q) Suspect Evidence of Criminal Behavior**

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

- Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.
- In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.