

REQUEST FOR PROPOSAL

RFP NUMBER: 23-17

ISSUE DATE: November 4, 2022

RFP SUBJECT: ON-CALL ENGINEERING SERVICES FOR
LOCAL/STATE/FEDERAL PROJECTS

QUESTIONS DUE: November 18, 2022, by 2:00 p.m. Eastern

PROPOSAL DUE DATE: December 7, 2022, by 2:00 p.m. Eastern

ALL INQUIRIES/QUESTIONS SHOULD BE EMAILED TO jerry.amacker@viennava.gov

In compliance with this Request for Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

NAME & ADDRESS OF FIRM:

EEI/FIN NO: _____

SIGNATURE: _____ TITLE: _____
(Date)

TELEPHONE NO: _____ EMAIL: _____

RFP 23-17 ON-CALL ENGINEERING SERVICES FOR LOCAL/STATE/FEDERAL PROJECTS

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SECTION 1. ADVERTISEMENT

Proposals shall be submitted electronically via the DemandStar website.

The Town uses eVA and DemandStar for notification and distribution of solicitation documents.

Current solicitations can be viewed and downloaded [here](#).

To log in or to register your company so that you *receive notifications* of the Town's solicitations, go to [DemandStar](#). On the registration form, enter the required information and be sure to select the Town of Vienna as your *Free Agency Registration*.

Solicitations also are advertised on the Commonwealth of Virginia's [eVA Procurement Portal](#), where they may be downloaded and viewed in their entirety.

This RFP may be downloaded from the Town's website at: www.viennava.gov

Please email me at jerry.amacker@viennava.com if you want to participate in the pre-proposal meeting.

After registering, you will receive a confirmation email containing information about joining the webinar.

While not mandatory, the purpose of this meeting is to allow potential offerors an opportunity to present questions and obtain clarification relative to this solicitation. Any changes resulting from this meeting will be issued in a written addendum to the solicitation.

The Town of Vienna reserves the right to reject any and all proposals or to accept the proposal(s) which, in its judgment, will be for its best interest.

NO PROPOSAL MAY BE WITHDRAWN FOR A PERIOD OF NINETY (90) DAYS SUBSEQUENT TO THE DATE OF THE PROPOSAL OPENING.

Any proposal may be withdrawn PRIOR to the scheduled time for proposal opening or authorized postponement thereof.

SECTION 2. PURPOSE

It is the intent of this solicitation to obtain proposals from qualified sources to establish a contract through competitive negotiations for the purchase of on-call consultant engineering services for local, state and federal projects in the Town of Vienna, VA. Projects may be funded with local, state and/or federal funds.

SECTION 3. GENERAL INFORMATION

Available Information

The following documents are available for review at the Town Hall, 127 Center Street S in Vienna:

- Town of Vienna DPW Standards and Specifications;
- Town of Vienna Water and Sewer Maps;
- VDOT Standards, Specifications, Design Manual, Construction Manual and other resources are available at <https://www.virginiadot.org/business/manuals-default.asp>

SECTION 4. SCOPE OF WORK

It is the intent of the Town to select multiple firms as designer of record to provide preliminary engineering services, field survey, traffic engineering, right-of-way plats and acquisition assistance, final design, project construction assistance as necessary and other duties related to capital improvement project studies and design engineering services. Projects may be partially federally funded or state/locally funded therefore all of their requirement must be met.

SECTION 5. SERVICES

Task Orders will be issued for specific capital projects.

Services may include but not be limited to:

- Engage, and/or assist Town staff to engage, in public outreach efforts including preparing and sending notifications and attending and presenting at public meetings.
- Investigation of existing rights-of-way, utilities, buildings and other constraints to construction.
- Review existing and projected vehicle, bicycle and pedestrian volumes; traffic controls and determine a preliminary roadway layout and cross section including improved streetscape.
- Investigate and recommend drainage improvements.
- Prepare 30% design plans, also called preliminary engineering plans.
- Explain and defend the recommended design criteria in a meeting with Town staff and a public hearing with the Town Council.
- Prepare road and streetscape temporary right-of-entry & sloping agreements, permanent right-of-way acquisition plats and deeds, if necessary, following Town standard formats
- As the Town's agent, acquire necessary temporary & permanent easements and fee-simple acquisitions for the project.
- Right-of-Way services - following VDOT/FHWA requirements
- Prepare 75% design plans showing the final horizontal locations of curbs, storm sewer, sidewalk, and other public facilities and review with Town staff.
- Perform traffic engineering studies, design signs and traffic signals.
- Coordinate plans with utility companies & review any relocation submittals from them.
- Prepare environmental documents to satisfy NEPA requirements.
- Coordinate right-of-way acquisition services so all property rights are secured before final design, and design conforms to available property.
- Prepare final construction plans, estimate of the work, proposed schedule, detour plans and contract package to be added to the Town of Vienna Purchasing Agent's bid package.

- Explain and defend the final design in a meeting with Town staff and a public hearing with the Town Council, if necessary.
- Provide all required documents for authorization to advertise from VDOT/FHWA (bid for construction)
- Participate in determining the lowest responsible and responsive construction contract bidder.
- Provide all required documents for authorization to award from VDOT/FHWA
- Check bidder's references and recommend an award.
- Construction services/management
- Participate in the Preconstruction Conference and problem solving meetings as construction progresses, as requested.
- Review and approve any contractor submittals.
- Review and make recommendations on contractor Change Orders.
- Provide construction management and inspection.
- Provide project management services.
- Provide/assist with preparing VDOT required documentation during design and construction.
- Provide general civil engineering/planning/inspection services.

SECTION 6. EVALUATION CRITERIA

Proposals shall be evaluated by the Town's evaluation committee using the following criteria:

1. Firm/team's experience in similar type of services.
(Expertise, experience and qualifications of team in providing services as related to the scope of services) **25%**
2. Personnel's experience in similar type of services
(Expertise, experience and qualifications of team in providing services as related to the scope of services) **40%**
3. Qualifications of Project Manager (Expertise, experience and qualifications in project management as related to the scope of services). **15%**
4. Organizational Capability (Ability to complete work in a timely manner, size of firm(s) relative to size of project, proposed project staff resources, proposed use of sub-consultants) **20%**

SECTION 7. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS

1. **RFP RESPONSE:** In order to be considered for selection, Offerors must submit a complete response to this RFP via the DemandStar website. Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) business days before the closing of the RFP. Offerors are solely responsible for checking the [DemandStar](#) website that they have the most current information regarding the RFP.

PROPOSAL PREPARATION: Proposals must be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in the Procurement Officer requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Town at its discretion. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on

completeness and clarity of context.

2. **ORAL PRESENTATION:** Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Evaluation Committee. This will provide an opportunity for the offeror to clarify or elaborate on the proposal, but will in no way change the original proposal. The Procurement Officer will schedule the date, time and location of these presentations. Oral presentations are an option and may not be conducted. Therefore, proposals should be complete.

B. SPECIFIC REQUIREMENTS

1. Proposals should be as thorough and detailed as possible so that the Evaluation Committee may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following as a complete proposal:
 - a. RFP cover page, signed and completed as required.
 - b. References
 - c. A written narrative statement to include in the order as listed:
 1. Capability of providing prompt service and support and the ability to meet scheduled deadlines. (Include projected response time and current/anticipated workload.)
 2. Employee turnover rate during the last five years.
 3. In-house capabilities to perform all services as outlined in this Request for Proposal.
 4. Methodology used in conducting business with a municipal client. May give examples of how work is performed on certain municipal projects from beginning to end. Emphasis is also placed on ability to work with elected officials and citizens and to give presentations.
 5. Names, qualifications, and experience of personnel to be assigned to the project. (Include staff resumes).
 6. Experience and number of years in providing the service.
 7. QA/QC Process

SECTION 8. VDOT REQUIREMENTS

1. It is the policy of the Virginia Department of Transportation and the Town of Vienna that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity (DSBSD) certified DBE firms is maintained on their web site (<http://www.dmbv.virginia.gov/>) under the **DBE Vendor Directory of Virginia Unified Certification Program**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent

supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. The DBE contract goal for federally funded projects with stated DBE goal is 12 %.

Note that the DBE goal is only for projects that are partially or fully funded utilizing Federal funds. Local and State funded projects/tasks may not have a DBE requirement/goal.

- If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your proposal and both must reference the project number(s) for the services: Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

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

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

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

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

2. Prior to the time of submittal of the proposal, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about entity formation can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the Town of Vienna. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

3. The Department will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
4. The method of payment for this contract will be cost plus fixed fee. This contract shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by a cognizant government agency or independent CPA firm. Subconsultant contracts may be lump sum if they are for \$2 Million or less, have a clearly defined scope of work, and will take 2 years or less to complete.
5. All firms submitting a proposal (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All architectural or engineering firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to the Department within 10 work days of being notified of their selection, whereby an official of an architectural or engineering firm shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available for architectural or engineering firm's use on VDOT website at <http://www.virginiadot.org/business/gmpms.asp>. Should any firm on the consultant team fail to submit the required audit data and certification within the 10 work days, negotiations may be terminated by the Town of Vienna and the next most qualified team invited to submit a proposal.
6. The Town of Vienna assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 workdays of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.

The Town of Vienna 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.

SECTION 9. AWARD OF CONTRACT & RENEWAL

The Town of Vienna, VA anticipates awarding multiple contracts to more than one, but not to exceed three qualified prime consultant firms as a result of this Request for Proposal. The contracts will be negotiated and awarded in accordance with the procedure set forth in the current Manual for Procurement & Management of Professional Services at the time of advertisement.

The Town of Vienna Evaluation Committee may engage in oral presentations with three (3) or more of the offerors deemed fully qualified, responsible and suitable by the Evaluation Committee. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff qualifications pertinent to the proposed project, as well as alternate concepts.

At the discussion stage, the public body may discuss non-binding estimates of hourly rates.

Proprietary information from competing offerors shall not be disclosed to the public or to the competitors.

At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the Evaluation Committee, shall select, in the order of preference, three (3) or more offerors whose professional qualifications and

proposed services are deemed more meritorious. Negotiations shall then be conducted, in conjunction with the VPPA and the Brooks Act, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Town of Vienna can be negotiated at a price considered fair and reasonable, the Town Council shall be advised and make the award to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Should the Evaluation Committee determine in writing that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. The Town of Vienna reserves the right to make multiple awards and it is the intent of the Town to select multiple firms.

CONTRACT RENEWAL:

The contract term shall be for a period of one (1) year from date of award. At the Owner's option, the contract may be extended for three (3) additional one (1) year periods, under the terms of the current contract, and at a reasonable time (approximately 60 days) prior to the expiration. The Fee Schedule may be adjusted at the request of the Firm, at the end of the initial contract period (and at the end of each extension period, if applicable), upon mutual agreement of both parties. The adjustment to the fee schedule shall not exceed the percentage increase for the previous twelve (12) months in the Consumer Price Index, Washington-Arlington-Alexandria, DC-VA-MD-WV, as adjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor:

https://www.bls.gov/eag/eag.dc_washington_md.htm#eag_dc_washington_md.f.4

SECTION 10. SPECIAL TERMS AND CONDITIONS

Precedence of Terms: In the event that there is a conflict between the General Terms and Conditions and any Special Terms and Conditions used in this section, the Special Terms and Conditions shall apply.

- A. Mandatory Use of Town Forms and Terms and Conditions: Failure to submit a proposal accompanied by the signed and dated Cover Sheet provided shall be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion of the solicitation may be cause for rejection of the proposal; however, the Town of Vienna reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not such a proposal should be considered as non-responsive.
- B. Ownership of Material: Ownership of all data, materials and documentation originated and prepared for the Town of Vienna pursuant to the RFP shall belong exclusively to the Town and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets and proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
- C. Default: In case of failure to deliver services in accordance with the contract terms and conditions, the Town of Vienna, after due oral or written notice, may procure them from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.
- D. Obligation of Offeror: By submitting a proposal, the offeror covenants and agrees that he has satisfied himself, from his own investigation of the conditions to be met, that he fully understands his obligation and that he will not make any claim for or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.

- E. Withdrawal/Modification of Proposals: Proposals may be withdrawn or modified by written notice received from offerors prior to the time fixed for proposal receipt.
- F. Receipt and Opening of Proposals: In the case of proposals received in response to a Request for Proposals, public openings are not required; however, if a public opening is held, only the names of the offerors are read aloud.
- G. Qualifications of Offerors: The Town of Vienna may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the work, and the offeror shall furnish to the Town of Vienna all such information and data for this purpose as may be requested. The Town of Vienna reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Town of Vienna further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Town that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
- H. Debarment Status: By submitting their proposals, all offerors certify that they are not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.
- I. Cancellation of Contract: The Town of Vienna reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty upon sixty (60) days written notice to the consultant. Any contract cancellation notice shall not relieve the consultant of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- J. Insurance: By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have following insurance coverages at the time the work commences.

Additionally, it will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract, the Town reserves the right to require the consultant to furnish certificates of insurance for the coverage required.

- K. Insurance Coverages and Limits Required:
1. Worker's Compensation - Statutory requirements and benefits.
 2. Employers Liability - \$100,000.00
 3. General Liability - \$500,000.00 combined single limit. The Town of Vienna is to be named as an additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
 4. Automobile Liability - \$500,000.00
 5. Professional Liability/Errors and Omissions Coverage - \$1,000,000. Proof of professional liability coverage must accompany the Consultant's written proposal.

Additionally, it will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract, the Town reserves the right to require the consultant to furnish certificates of insurance for the coverage required.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance. The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

The offeror's signature on this solicitation constitutes certification that, if awarded the contract, offeror shall obtain the required coverage as specific herein within ten (10) days of notification of award.

- L. Special Provisions: The firm(s) retained by the Town of Vienna for professional services shall accept responsibility for errors made as a result of surveying, drafting, engineering design and/or studies. Should it be shown that such error creates additional cost overruns for study, the Firm shall be willing to compensate the Town of Vienna accordingly.

It is imperative that the firm provide one main project representative for the duration of the contract to answer any questions that pertain to the design drawings, specifications, construction estimates, surveying cut sheets, and recommended modifications.

Design and/or study changes which are the fault of the firm will be corrected at no additional cost to the Town of Vienna.

The firm shall be responsible for updating the cost estimate of the project as design changes occur. Revised cost estimates shall be submitted to the Town designee at the time a design change is made.

- M. Rights of the Town of Vienna: The Town of Vienna further reserves the right to request information relative to experience, reference and/or financial status of a firm.

The Town of Vienna reserves the right to modify any standard AIA contract form. Failure to agree to this stipulation by any firm submitting a proposal may be grounds for elimination from further consideration/evaluation.

SECTION 11. GENERAL TERMS AND CONDITIONS

VENDOR: THE GENERAL TERMS AND CONDITIONS WHICH FOLLOW APPLY TO ALL PURCHASES AND BECOME A DEFINITE PART OF EACH FORMAL INVITATION FOR BID, REQUEST FOR PROPOSALS, PURCHASE ORDER AND/OR OTHER AWARD ISSUED BY THE TOWN OF VIENNA, VIRGINIA, UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION DOCUMENTS. BIDDERS/OFFERORS OR THEIR AUTHORIZED REPRESENTATIVES ARE EXPECTED TO FULLY INFORM THEMSELVES AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS BEFORE SUBMITTING BIDS/PROPOSALS; FAILURE TO DO SO WILL BE AT THE BIDDERS'/OFFERORS' OWN RISK AND HE CANNOT SECURE RELIEF ON THE PLEA OF ERROR.

SUBJECT TO STATE, COUNTY AND LOCAL LAWS AND ALL RULES, REGULATIONS AND LIMITATIONS IMPOSED BY LEGISLATION OF THE FEDERAL GOVERNMENT, BIDS/PROPOSALS ON ALL SOLICITATIONS ISSUED BY THE PURCHASING OFFICE WILL BIND BIDDERS/OFFERORS TO APPLICABLE CONDITIONS AND REQUIREMENTS HEREIN SET FORTH UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION.

1. CLARIFICATION OF TERMS: If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the person whose name appears on the face of solicitation NO LATER THAN SEVEN (7) WORKING DAYS BEFORE opening/closing date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent.

2. PREPARATION & SUBMISSION: In order to be considered for selection, the bidder/offeror must submit a complete response to the Invitation for Bid/Request for Proposals. The bid/proposal shall be signed by an authorized representative of the bidders'/offerors' firm and uploaded via the DemandStar website by the time and date specified on the cover page.

3 N/A

4. N/A

5. QUOTATIONS TO BE F.O.B. DESTINATION: Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.

6. PRICING ERRORS: In case of an error in price extension, the firm fixed unit price shall govern.

7. BID/PROPOSAL ACCEPTANCE PERIOD: Bids shall be binding upon the bidder for sixty (60) days following the bid opening date. Proposals shall be binding upon the offeror for ninety (90) days following the proposal due date. Any bid/proposal on which the bidder/offeror shortens the acceptance period may be rejected.

8. CORRECTION OR WITHDRAWAL OF BIDS AND CANCELLATION OF AWARDS UNDER COMPETITIVE SEALED BIDDING: Correction or withdrawal of inadvertently erroneous bids before or after award,

or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent. No bid may be withdrawn when the result would be to award the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%). If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid. If the Purchasing Agent, the Using Department, or a designee of such, denies the withdrawal of a bid, he shall notify the bidder in writing stating his decision.

9. TAX EXEMPTION: The Town of Vienna is exempt from State Sales Tax and Federal Excise Tax. The Town's Federal Tax ID Number is 54-6001654. DO NOT INCLUDE TAX IN BID. Tax Exemption Certificate furnished by the Town of Vienna on request.

10. USE OF BRAND NAME OR EQUAL: Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Town of Vienna, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalogs and technical details to enable the Town of Vienna to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder/offeror clearly indicates in its bid/proposal that the product offered is an "EQUAL" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

11. SAMPLES: Samples, if required, must be furnished free of expense to the Town of Vienna on or before date specified; if not destroyed in examination, they will be returned to bidder, if requested, at his expense. Each sample must be marked with the bidder's name and address, Town's request number and opening date. DO NOT ENCLOSE IN OR ATTACH BID TO SAMPLE.

12. DELIVERY: Bids must show number of days required to place material in using agency's receiving area under

normal conditions. Proposal must show the number of days required to provide the services/reports as specified.

Failure to state delivery time obligates bidder/offeror to complete delivery in fourteen (14) calendar days or as specified. A five (5) day difference in delivery promise may break a tie bid. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Consistent failure to meet delivery promise without valid reason may cause removal from bid list. Delivery shall be made during normal working hours, 8:00 am to 4:30 pm Monday through Friday, unless prior approval for another time period has been obtained from Consignee.

13. DEFAULT: In case of failure to deliver goods/services in accordance with the contractual terms and conditions, the Town of Vienna, Virginia, after due oral or written notice, may procure them from other sources and hold the defaulting Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.

14. CONDITION OF ITEMS: All items bid/proposed shall be new and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation/proposal request. Verbal agreements to the contrary will not be recognized.

15. SUBSTITUTIONS: No substitutions or cancellations permitted

without prior written approval by the Purchasing Agent.

16. **RIGHTS OF THE TOWN OF VIENNA:** The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsive and responsible bidder or most qualified and best suited offeror to best serve the interest of the Town.

17. **ANTI-TRUST:** By entering into a contract, the bidder/offeror conveys, sells, assigns, and transfers to the Town of Vienna all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Vienna under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.

18. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and hold harmless the Town of Vienna, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

19. **TIE BIDS:** If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.

20. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

21. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor, in whole or in part, without the prior written consent of the Town of Vienna, Virginia.

22. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Invitation For Bid/Request For Proposal, the signed bid/proposal submitted by the Contractor, the Town of Vienna's standard Purchase Order, the Mandatory/Special Specifications, Terms and Conditions, and the General Terms and Conditions, all of which shall be referred to collectively as the Contract Documents.

If the contractor has a standard contract form, this form shall be submitted with the bid/proposal submittal for the Town's review of its terms and conditions.

23. **LICENSE REQUIREMENT:** All firms doing business in the Town of Vienna are required to be organized or authorized to transact business in the Commonwealth of Virginia or include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Additionally all firms doing business in the Town of Vienna are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Finance Department, Business License Office, Telephone number (703) 255-6321. The BPOL License number must be indicated on the submitted bid form.

24. **AWARD:** The contract shall be awarded to the lowest responsive and responsible bidder or the most qualified and best suited offeror.

The Town Council will award all contracts in the amount of twenty thousand dollars (\$20,000.00) or more.

The Purchasing Agent will award all contracts less than twenty-thousand dollars (\$20,000.00).

The Purchasing Agent shall sign all contract documents, with the exception of "Construction" contracts, and issue a purchase order to the successful bidder/offeror.

25. METHOD OF PAYMENT: Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, all invoices and statements shall reference the purchase order number and be submitted to:

Town of Vienna
ATTN: ACCOUNTS PAYABLE
127 Center St., S.
Vienna, VA 22180.

The prices and payments shall be full compensation for the labor, tools, equipment, transportation and all other incidentals necessary to complete the specified terms and conditions.

26. ANTI-DISCRIMINATION: By submitting their bids/proposals all bidders/offerors certify to the Town of Vienna that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000.00 the provisions in A and B below apply:

a. During the performance of this contract, the contractor agrees as follows:

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

The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor, is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

27. ETHICS IN PUBLIC CONTRACTING: The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the Town of Vienna. A copy of these provisions may be obtained from the Purchasing Agent upon written request.

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

28. CRIMINAL SANCTIONS: The provisions referenced in Item 27 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2- 3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10

of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

29. APPLICABLE LAW AND COURTS: Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

30. LABELING OF HAZARDOUS SUBSTANCES: If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the bidder/offer does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263.

31. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid/proposal or delivered materials for each chemical and/or compound offered. Failure of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as non-responsive.

32. DEBARMENT STATUS: By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia or any Political Subdivision from submitting bids on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

33. COOPERATIVE PROCUREMENT: As authorized in Section 2.2- 4304 of the Code of Virginia this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor.

(c103i01-0814)

SECTION 103—AWARD AND EXECUTION OF CONTRACTS of the Specifications is amended as follows:

Section 103.09—Execution of Contract is amended to include the following:

According to Section 2.2-4308.2 of the *Code of Virginia*, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with the Department to provide work or provide services pursuant to such contract shall register and participate in the U.S. Department of Homeland Security's "E-Verify" system to verify information and work authorization of its newly hired employees performing work pursuant to such contract.

Contractors are not required to be enrolled with "E-Verify" at the time bids are submitted, however, prior to award, the lowest responsive and responsible bidder must be enrolled with "E-Verify". Contractors may use the following website to enroll in "E-Verify", <http://www.uscis.gov/e-verify>.

8-8-14 (SPCN)

Nondiscrimination Provision

Federally Funded Projects

Construction contractors and consultants agree to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and subrecipients to take action to carry out this policy. Title VII of the Civil Rights Act prohibits discrimination against any employee or applicant for employment on the basis of race, religion, color, sex or national origin for employers with 15 or more employees. The contractor/consultant further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibits discrimination on the basis of age and FHWA 1273 required contract provisions for federal-aid construction projects. 49 CFR Parts 21, 23, 26, and 27, and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The contractor/consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

FIRM DATA SHEET

Funding:____(S=State F=Federal)

Project No.:_____

Division:_____

EOI Due Date:_____

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

Firm's Name and Address	Firm's DBE/SWAM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE

N = DBE/SWAM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE/SWAM Status

YS = SWAM Firm Certified by DMBE.

Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise



Mandatory Federal-Aid Professional Services RFP Provisions

Must be included in their entirety
Replace <Local Government> with the name of your Locality.

1. It is the policy of the Virginia Department of Transportation and the **Town of Vienna** that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (<http://www.dmb.e.virginia.gov/>) under the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. ***[Include the following wording on federally funded projects with stated DBE goals: The DBE contract goal for this procurement is 12 %.]***
[Include the following wording on federally funded projects without a stated DBE goal: The Department believes that these services support — % DBE participation. support

FOR PROJECTS WITH DBE GOALS SET, PARAGRAPHS 2 THROUGH 5 APPLY:

2. **Include the following wording and two bullets on state or federally funded projects with a DBE or SWaM goal. In the following sentence and these two bullets, remove references to SWaM on federally funded projects and DBE on a state funded project.** If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your EOI and both must reference the project number(s) for the services:

Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.

- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

3. 49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.
4. VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.
5. Any DBE or SWaM firm must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are

encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will

be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

FOR PROJECTS WITH NO DBE GOAL PARAGRAPH 6 APPLIES

6. DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.
7. Prior to the time of submittal of the EOI, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about business registration can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the **Town of Vienna**. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.
8. The **Town of Vienna** assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 workdays of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
9. The Town of Vienna will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
10. All firms submitting EOI (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the **Town of Vienna** within ten workdays of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten workdays, negotiations may be terminated by the **Town of Vienna** and the next most qualified team invited to submit a proposal.
11. The Town of Vienna assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within ten workdays of notification of selection when requested by VDOT. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
12. The Town of Vienna 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.
13. All firms shall complete and include the following completed forms:
 - Certification Regarding Debarment – Primary Covered Transactions (Prime Consultant)
 - Certification Regarding Debarment - Lower Tier Covered Transactions (Sub-Consultant)

CERTIFICATION REGARDING DEBARMENT

PRIMARY COVERED TRANSACTIONS

(To be completed by a Prime Consultant)

Project: _____

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

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

Signature

Title

Date

Name of Firm

CERTIFICATION REGARDING DEBARMENT

LOWER TIER COVERED TRANSACTIONS

(To be completed by a Sub-consultant)

Project: _____

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are 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

Title

Date

Name of Firm

GOOD FAITH EFFORT

(Include with federal-aid project with DBE Goal)

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

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

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

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

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

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

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

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

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

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

All consultants will be required to submit the following information to the Department with the EOI:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the

- prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

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

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

- A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.
- D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations {for example union vs. non-union employee status} are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.



Mandatory Federal-Aid Professional Services MOA Provisions

Must be included in their entirety
Replace <Local Government> with the name of your Locality.

GENERAL TERMS AND CONDITIONS

1. COMPLIANCE WITH LAWS AND REGULATIONS: The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Agreement, or which in any way affect the conduct of the services provided by the Consultant. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the **Town of Vienna** and its employees and appointees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the Department in writing.

2. VIRGINIA PROHIBITED EMPLOYMENT DISCRIMINATION: The Consultant, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Section 2.2-4311 of the Code of Virginia (1950), as amended. During the performance of this Agreement, the Consultant agrees as follows:

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

The Consultant will include the provisions of the foregoing paragraphs "a", "b" and "c" in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor.

3. NON-DISCRIMINATION PROVISION: The Consultant agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The Consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950), as amended, the terms of which are incorporated herein by reference.

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the **Town of Vienna** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or

- b. cancellation, termination or suspension of this Agreement, in whole or in part.

4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as "the Consultant"), agrees as follows:

- a. Compliance with Regulations: The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: The Consultant, with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, religion, color, sex, national origin, age or handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services cover a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subconsultants: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement.
- d. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information. Consultants and subconsultants with 15 or more employees will submit an updated Title VI Evaluation Report (EEO-D2) annually as long as the consultant or subconsultant is performing in accordance with this Agreement.
- e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - 1) withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
 - 2) cancellation, termination or suspension of this Agreement, in whole or in part.
- f. Incorporation of Provisions: The Consultant will include the provisions of paragraphs "a" through "f" in every subcontract of \$10,000 or more, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontractor or procurement as the **Town of Vienna** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the **Town of Vienna** to enter into such litigation to protect the interests of the **Town of Vienna** and, in addition, the Consultant may request VDOT and the United States to enter into such litigation to protect the interests of the Commonwealth and United States.

5. CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Agreement, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to

perform their services at any location under its control, where segregated facilities are maintained. The Consultant further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

6. **DISADVANTAGED BUSINESS ENTERPRISES/SMALL, WOMAN AND MINORITY BUSINESS:** The Consultant, its agents, employees, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR Part 26, as amended, which is hereby made part of this Agreement by reference. The Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Subpart E of 49 CFR 26, Section 26.13 requires each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient 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 recipient deems appropriate.

If a DBE goal has been established for this project, further, the Consultant agrees to provide the **Town of Vienna** with the dollar amount contracted and name of each subcontractor which identifies itself as a DBE. Include the following wording on contract with DBE Goals: **The DBE goal for this Contract is 12 %.**

7. VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. Therefore, the prime consultant will be required to complete the DBE and SWaM Payment Compliance Report, C-63 form on a quarterly basis.

In the event of the Consultant's noncompliance with the DBE/SWaM participation for the services indicated in Expression of Interest in response to the RFP, Attachment D, Scope of Work and Fee Proposal of this Agreement, the **Town of Vienna** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- b. Cancellation, termination or suspension of this Agreement, in whole or in part.

8. **TDD/TTY EQUIPMENT FOR THE DEAF:** When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the Consultant agrees to ensure that all citizens have equally effective communication. The Consultant agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The Consultant will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

9. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

10. **OCCUPATIONAL SAFETY AND HEALTH STANDARDS:** The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and

Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement.

In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

11. CERTIFICATION REGARDING DEBARMENT: By the execution of this Agreement, the Consultant 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 (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.

12. CORRECTION OF ERRORS: The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Agreement, and shall also reimburse the **Town of Vienna** for any costs incurred. Acceptance of the plans or reports by the **Town of Vienna** shall not relieve the Consultant of the responsibility of subsequent correction of errors.

13. PAYMENT TO SUBCONTRACTORS: In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4342 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the **Town of Vienna**, or shall notify the **Town of Vienna** and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Consultant shall pay interest at the rate of one percent per month to the subcontractor, unless otherwise provided in this Agreement, on all amounts that remain unpaid after seven (7) days except for the amounts withheld according to this Agreement.

The **Town of Vienna** does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, prompt payment of the retainage shall be made to the subcontractors within the later of 60 days after the final billing is received by the Consultant from the subcontractor or the satisfactory acceptance of the services by the Department. The **Town of Vienna** will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify the Department and the subcontractor in writing as to the reasons for not making payment.

These same requirements shall be included in each subcontractor agreement and shall be applicable to each lower-tier subcontractor.

14. COMPLIANCE WITH LOBBYING RESTRICTIONS: By signing this Agreement, the Consultant certifies that:

- a. Since promulgation of the federal requirements implementing Section 319 of PL 101-121, no federal appropriated funds have been paid and none will be paid, by or on behalf of the Consultant, 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 a 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 Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. The Consultant shall require that the language of this certification be included in all subcontracts at all tiers, and that all subcontractors shall certify and disclose accordingly.

15. RECORDS: The Consultant and subcontractors shall retain all books, documents, papers, accounting records and other evidence supporting the costs incurred, for three (3) years after payment of the final estimate or final audit, whichever is later. Such evidence shall be made available at the Consultant's offices at all reasonable times and will be subject to audit and inspection by the **Town of Vienna**, VDOT or any authorized representatives of the Federal Government.

Evidence of costs incurred by a subcontractor shall be made available at its office at all reasonable times during the contract period between the Consultant and the subcontractor and for three years after written acceptance by the Consultant, for audit and inspection by the **Town of Vienna**, VDOT or any authorized representatives of the Federal Government. It shall be the Consultant's responsibility to notify the **Town of Vienna**, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Final payment for the subcontractor's phase of the services will be made after total costs are determined by the final audit of the subcontractor.

16. DRUG-FREE WORKPLACE: During the performance of this contract, the Consultant agrees to:

- a. Provide a drug-free workplace for the consultant's employees
- b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition
- c. State in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace
- d. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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