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

Description of Services: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type of Project:

* Transportation Alternative Program (TAP)
* Recreational Trail Program (RTP)
* Safe Routes to School (SRTS)
* Local Government Bridge Program

**Part I. Initiating A/E Procurement Requirements**

*Selection of contract type, procurement and payment methods to be used based on the estimated cost, and the award of the A/E consultant contract.*

* **Contract Type**:
* Project Specific - A contract between the local contracting agency and consultant for the performance of services and defined scope of work related to a specific project or projects (ex. preliminary design or final design or construction inspection/management). Procurement procedures will involve a single step process with issuance of a request for proposal (RFP) to all interested consultants.
* Multiphase - A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses (ex. preliminary design, final design, and construction inspection/management). Procurement procedures will involve a single step process with issuance of a request for proposal (RFP) to all interested consultants.
* On-call or indefinite delivery/indefinite quantity (IDIQ) *-* A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period and dollar amount. This method also requires MDOT SHA’s **approval** of the Local’s Consultant Task Selection Process in awarding of task orders is in compliance with **23 CFR 172.9 (a)(3)**. Procurement procedures will involve a multi-step process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and a RFP is then provided to three or more of the most highly qualified consultants.
* **Procurement Method**:
* A/E Services exceeding **$200,000** – Competitive Negotiation (Qualifications-based selection/QBS) – **23 CFR 172.7(1)**, requires open competition by advertising, evaluation, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price.
* A/E Services **$200,000** or Less – Small Purchases – **23 CFR 172.7(2)**, (i) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. (ii) A minimum of **three (3) consultants** are required to satisfy the adequate number of qualified sources reviewed. (iii) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles. (iv) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.
* **Payment Method**:
* Cost plus Fixed Fee – A cost-reimbursement contract that provides for payment to the consultant of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract.
* Cost per Unit of Work – A contract with a set rate to be charged on a project for each unit of work completed. This method of payment should be utilized when the work per unit can be determined in advance with reasonable accuracy, but the extent of the work is indefinite.
* Specific Rates of Compensation - A contract with a set rate to be charged on the project for each hour of work completed. The negotiated rate typically consists of an hourly rate, overhead, and a profit. Direct expenses would be in addition to the specific rate.
* Lump Sum - Shall only be used when the local contracting agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation. This method also requires **MDOT SHA’s** **approval** of the Local’s establishment of the extent, scope, complexity, character, and duration of the work.

**Local Public Agency**:

Signature: Date:

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

**MDOT SHA Consultant Services Division Reviewer**:

Signature: Date:

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

**Part II. Solicitation Requirements** - *Advertisement/Request for Qualifications (RFQ) and/or Request for Proposal (RFP)*

* FHWA Authorization document (Federal Highway Administration Federal-Aid Project Agreement)
* **[Only for Preliminary Design]** Evidence of coordination with SHA OPPE on NEPA Requirements is included in the submittal for Preliminary Design authorization:
* Approved Statewide Programmatic Categorical Exclusion (PCE) #1
* **[Only for Final Design]** Evidence of coordination with SHA OPPE on NEPA Requirements is included in the submittal, along with any other needed SHA Office compliance approvals for Final Design authorization:
* Approved PCE (number other than #1)
* Approved Categorical Exclusion (CE)
* Approved Finding of No Significant Impact (FONSI)

1. **Procurement Method**

* Procurement Type is specified in the Solicitation:
* A/E Services ***exceeding $200,000*** / Competitive Negotiation (QBS)
* A/E Services ***$200,000 or Less*** / Small Purchases

* Solicitation for ***A/E Services exceeding $200,000 / Competitive Negotiation (QBS)*** states that procurement methods and procedures follow **The Brooks Act,** which requires open competition by advertising, evaluation, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price.
* Solicitation provides assurance that qualified in-State and out-of-State consultants will be given a fair opportunity to be considered for award and encourages ***MDOT certified DBE*** firms to respond.
* Solicitation incudes a schedule for the procurement process and establishes submittal deadlines for response(s) not less than **14 calendar days** from the date of issuance of the Advertisement/RFP.
* Solicitation’s Scope of Services includes all work necessary to complete the project andincludes, at a minimum:
* Purpose and description of the project
* Services to be performed
* Deliverables to be provided
* Minimum qualifications for experience, expertise, education, licensure of staff
* Estimated schedule for performance of work
* Applicable Standards, Specifications and Policies
* Solicitation’s Scope of Services does **NOT** includeReal Estate Services, Information Technology (IT) Services (e.g.; development, maintenance, etc.) or Administrative Services.

1. **Contract Type**

* **[Only for Project Specific/Multiphase contract]** Solicitation includes the single step process with issuance of a request for proposal (RFP) to all interested consultants and requested to submit the following types of information in their technical proposals, as determined and depending on the nature and complexity of the project:
* Technical approach, including project understanding, innovative concepts or alternatives, quality control procedures, and methodology;
* Management approach, including organization and key staff assignments;
* Manpower estimates expressed as a percentage of specific categories of effort compared to the total, principals, project management, technical, drafting, administrative, etc.;
* Work plan and schedules;
* Comments on scope of services;
  + Detailed qualifications including work experience, professional licensure and specialized expertise of principals and key staff assigned to project. [Prime Participant(s) and subcontractor(s)];
* Sample reports for projects of similar scope demonstrating staff capabilities, workload capacity, and past performance. [Prime participant(s) and subcontractor(s)]; and
* Other technical matters, as specified.
* **[Only for Project Specific/Multiphase contract]** Solicitation includes a list of Evaluation Criteria and explains that responding firms will be rated and ranked based on their technical proposals according to the criteria arranged in order of importance and with their relative weight as appropriate.

*Example criteria may include:*

* *General competence;*
* *Past performance on LPA/State work or similar work;*
* *Compatibility of size of firm with size of proposed project;*
* *Capacity to accomplish the proposed work in required time;*
* *Financial responsibility; and*
* *Measures of protection for the State against errors and omissions.*
* **[Only for On-call or Indefinite Delivery/Indefinite Quantity (IDIQ) contract]** Solicitation includes a multi-step process with issuance of a request for statements/letters of interest/ qualifications (RFQ) where responding consultants are ranked based on qualifications and a RFP is then provided to three or more of the most highly qualified consultants.
* **[Only for On-call or Indefinite Delivery/Indefinite Quantity (IDIQ) contract]** Solicitation includes a list of Evaluation Criteria and explains that responding firms will be rated and ranked based on their statements/letters of interest/ qualifications according to the criteria arranged in order of importance and with their relative weight as appropriate.

*Example criteria may include:*

* *Technical Approach (project understanding, innovative concepts or alternatives,*
* *quality control procedures)*
* *Work Experience*
* *Specialized Expertise*
* *Professional Licensure*
* *Staff Capabilities*
* *Workload Capacity*
* *Past Performance*
* *Other*
* [**Only for On-call or Indefinite Delivery/Indefinite Quantity (IDIQ) contract]** Solicitation includes that task-orders will be awarded based on the Local’s Consultant Task Selection Process’s Evaluation Criteria and explains that selected firms will be evaluated based on their technical proposal according to the criteria.
* Solicitation includes the requirements for any discussions that may be conducted with **three (3) or more** of the most highly qualified consultants following submission and evaluation of proposals.
* Solicitation requires that the submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking and selection phase.
* The solicitation shall provide evidence of consideration to DBE firms in accordance with 49 CFR 26.53 and provide a DBE percentage goal**.** Individual contract goals should be established via MDOT SHA Federal Aid Programming Section by the Procurement Review Group/Construction and the MDOT SHA Office of Equal Opportunity. Additional information on compliance and goal setting may be found at <https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rgn=div5#se49.1.26_141>
* The following Title VI language should be included in the solicitation:

INSERT LPA Name, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C §§ 200d to 200d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this Project advertisement, MDOT certified SBE/Disadvantaged Business Enterprises (DBE) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, age, sex, English proficiency, income level or disability in consideration for an award (23 CFR § 200, 49 CFR § 21 and 26). Consultants interested in submitting an Expression of Interest must comply with the "SPECIAL PROVISIONS, AFFIRMATIVE ACTION REQUIREMENTS, UTILIZATION OF DISADVANTAGED BUSINESSES, THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987, ISTEA OF 1991 AND MAP 21 OF 2012 (See Attachment 6 of MDOT SHA Request for Proposal located at www.roads.marylamd.gov). INSERT LPA Name hereby notifies all bidders/offerors that in regard to any contract entered into pursuant to this advertisement, whenever the term “disadvantaged” and “minority” is used, it is understood to include women. The terms “disadvantaged” and “minority” include certified female owned businesses, which will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award. It is the goal of INSERT LPA Name that disadvantaged business enterprises participate in all federal-aid contacts. Each contract will be evaluated for the placement of a goal for DBE participation on a contract-by-contract basis. MDOT certified DBE firms are encouraged to respond to this solicitation.

* Pursuant to 49 CFR 26.29 a provision must be placed in every USDOT-assisted contract requiring prime contractors to promptly pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment that MDOT makes to the prime contractor. To the extent that it is not inconsistent with federal law, all prime contractors shall also comply with all Maryland laws and regulations regarding the prompt payment to subcontractors. ***The LPA certifies that prompt payment provisions will be included in subsequent contract documents prior to Notice to Proceed.***

1. **Payment Method**

* Solicitation stipulates Method of Payment ***(please choose one)***:
* Cost plus fixed fee
* Cost per unit of work
* Specific rates of compensation
* Lump sum
* Solicitation includes insurance requirements (types and coverage levels) and stipulates measures for protection against Consultant errors and omissions. The solicitation must establish what and how much insurance is expected at a minimum, and what documentation is expected as verification.
* The LPA certifies that an ***independent cost estimate*** will be developed and used as a basis for determining fairness by the time price negotiations with selected Consultant(s) takes place. The cost estimate should provide, as a minimum, a breakdown of:
* Work or labor hours
* Types or classifications of labor required
* Other direct costs
* Fixed fee
* LPA acknowledges that prior to the conclusion of price negotiations, the LPA must certify to theSHA Federal Aid Programming Section that the selected Consultant’s cost/man-hourscompare favorably to the LPA’s independent cost estimate and appear reasonable, that any proposed profit/fixed fee is reasonable,and that all costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principals at 48 CFR 31 (Federal Acquisition Regulations). ***The certification should be provided to MDOT SHA Office of Finance - Federal Aid Programming Section prior to the conclusion of price negotiations with selected firms.***
* The LPA certifies that fixed fees shall be in keeping with 23 CFR 172.11 (b)(3).

Notably, fixed fees more than 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

* The LPA certifies that it shall ensure that no language is included in any of the procurement documents referencing amaximum or cap on indirect cost rates. Indirect cost rates shall be established in accordance with 23 CFR 172.11 (b)(1) and evidence of audits performed must include:
* Sign off from Local Jurisdiction referring to their internal audit
* Indirect cost (OH) rates must be audited/approved annually – must include

an approved audit letter from SHA’s Office of Audits

 The LPA certifies that in accordance with 49 CFR §26.13, each contract between the LPA and the 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 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 LPA deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.”

* The LPA agrees that if a Supplemental Agreement is warranted, the Scope of Work must be within the original Advertised Scope,from which the qualifications-based selection was made.
* The Local Public Agency agrees to include the following Contract Requirements in their subsequent contract documents for this procurement:

**Contract Requirements**

* SHA Policy for Consultant Conflict of Interest(available at www.roads.maryland.gov).
* Bid/Proposal Affidavit executed by the Prime (available at www.roads.maryland.gov).
* Contract Affidavit executed by the Prime (available at www.roads.maryland.gov)
* All contracts and subcontracts exceeding $100,000 shall contain a provision for lobbying certification and disclosure, as specified at 49 CFR 20.
* If a Supplemental Agreement is warranted, the Scope of Work must be within the original Advertised Scope,from which the qualifications-based selection was made.
* **Certification for Federal-Aid Contracts** executed by the Prime.
  + Contract clauses for **Sanctions and Penalties** for violation or breach of contract and provision for **termination for cause and for convenience** including how it will be affected and the basis for settlement.
* **Truth-In-Negotiations Certification** is executed and notarized by the Prime **and** each proposed subconsultant.

All questions and/or requests should be directed to:

MDOT SHA Office of Finance

Federal Aid Programming Section

707 North Calvert Street

Baltimore MD 21201

Mail-Stop C-509

(410) 545-5774

**OPCM Recommendations**:

Project Name:

* In compliance with FHWA Regulations – OPCM recommends approval
* OPCM recommends approval contingent upon the LPA addressing the attached Findings/Comments
* Not in compliance with FHWA Regulations. Prior to approval, OPCM must receive revisions addressing the attached Findings/Comments. This checklist must be returned with the revised submittal

**MDOT SHA Consultant Services Division Reviewer**:

Signature: Date:

Project Name:

**Revisions/Corrections**:

Date Received:

Findings/Comments

* In compliance with FHWA Regulations

**MDOT SHA Consultant Services Division Reviewer**:

Signature: Date: