

ATTACHMENT 3.6**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**

RFP NO. C00107715DB91
 PROJECT NO.: 0095-111-278, P101, C201, C501

ACKNOWLEDGEMENT OF RFP, REVISION AND/OR ADDENDA

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

By signing this Attachment 3.6, the Offeror acknowledges receipt of the RFP and/or following revisions and/or addenda to the RFP for the above designated project which were issued under cover letter(s) of the date(s) shown hereon:

1. Cover letter of RFP – September 27, 2016
(Date)
2. Cover letter of RFP Addendum #1 – October 14, 2016
(Date)
3. Cover letter of RFP Addendum #2 – November 10, 2016
(Date)
4. Cover letter of RFP Addendum #3 – December 02, 2016
(Date)
5. Cover letter of RFP Addendum #4 – December 05, 2016
(Date)
6. Cover letter of RFP Addendum #5 – December 14, 2016
(Date)

 SIGNATURE

 DATE

 PRINTED NAME

 TITLE

Exhibit 1 to Part 3 Project-Specific Terms

(Date of Standard Exhibit 1 to Part 3: May 2014)

Part 3 (2013 Lump Sum Agreement Between Department and Design-Builder), Part 4 (2013 General Conditions of Contract Between Department and Design Design-Builder), and Part 5 (2013 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts Between Department and Design-Builder) of the RFP are incorporated into this contract by reference. A copy of these documents can be found here: <http://www.virginiadot.org/business/design-build.asp>

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

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

The Agreement Date is [_____].

The Parties to the Agreement are:

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

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

DESIGN-BUILDER:

[INSERT DESIGN-BUILDER INFORMATION]

Project No.: **0095-111-278**
Project: **I-95 Safety Improvements at Route 3
City of Fredericksburg, Virginia**

PART 3
2013 LUMP SUM DESIGN-BUILD AGREEMENT BETWEEN
DEPARTMENT AND DESIGN-BUILDER

2.1.4 The Department’s Request for Proposals (RFP) is dated September 27, 2016.

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

[LIST PROPOSAL MODIFICATIONS BY NUMBER AND DATE]

5.2.1 The **Final Completion Date** is _____

5.2.2 The **Early Completion** is in accordance with Attachment to Part 3 Article 5.

5.3 **Adjustments** shall be in accordance with Attachment to Part 3 Article 5.

5.5.1 Liquidated damages for failing to attain Final Acceptance by the Final Completion Date are **three thousand one hundred** dollars (\$**3,100**) per day.

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

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

[LIST ASPHALT and/or FUEL, if any, eligible price adjustments for the Project]

9.1.1 The Department’s Senior Representative is:

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

9.1.2 The Department’s Representative is:

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

9.2.1 The Design-Builder’s Senior Representative is:

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

9.2.2 The Design-Builder’s Representative is:

[Name]

[Title]

[Address]

[Telephone Number]

11.1.2 The **Baseline Schedule** shall be submitted within **ninety (90)** days of Design-Builder’s receipt of the Department’s Notice to Proceed.

**PART 3
LUMP SUM AGREEMENT**

7.1.5 If Design-Builder fails to make payment to the Subcontractor within the time frame and provisions specified in Section 7.1.3 and 7.1.4 above, the Subcontractor shall notify the Department and the Design-Builder’s bonding company in writing. The Design-Builder’s bonding company shall be responsible for insuring payment to the Subcontractor.

7.1.6 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees to provide the Department, within five (5) days of the Agreement Date, its federal employer identification number.

**PART 4
2013 GENERAL CONDITIONS OF CONTRACT BETWEEN
DEPARTMENT AND DESIGN-BUILDER**

2.2.1 The duration of the **Scope Validation Period** is **ninety (90)** days.

2.2.3 Submission Requirements for Scope Issues. If Design-Builder intends to seek relief for a Scope Issue, it shall promptly, but in no event later than the expiration of the Scope Validation Period, provide Department in writing with a notice (“General Notice”) of the existence of such Scope Issue, which General Notice shall generally explain the basis for such Scope Issue. Within twenty-one (21) days of the General Notice of a Scope Issue, Design-Builder shall provide Department with documentation that specifically explains its support for the Scope Issue (“Supporting Documentation”), which Supporting Documentation shall include, among other things: (a) the assumptions that Design-Builder made during the preparation of its proposal that form the basis for its allegation, along with documentation verifying that it made such assumptions in developing its proposal; (b) an explanation of the defect, error or inconsistency in the RFP Documents that Design-Builder could not have reasonably identified prior to the Agreement Date; and (c) the specific impact that the alleged Scope Issue has had on Design-Builder’s price and time to perform the Work. For the avoidance of doubt: (1) Design-Builder shall not be entitled to raise in its Supporting Documentation any Scope Issues that were not previously addressed in a General Notice; and (2) Design-Builder shall have no right to seek any relief for any Scope Issues that have not been specifically identified in a General Notice provided to Department during the Scope Validation Period. The General Notice of Scope Issues and any Supporting Documentation shall be submitted in writing to Department’s Alternate

Project Delivery Office Point of Contact listed in Part 1, Section 2.4 of the RFP Documents and to Department's Representative included in Exhibit 1 to Part 3, Section 9.1.2 simultaneously.

6.2.1.2 QA/QC shall be an integral part of each activity. As part of each Application for Payment that includes completed activities, Design-Builder's designated quality assurance manager shall: (a) verify that the design included in each activity has been completed in accordance with the Contract Documents; (b) certify that the construction included in each activity has been completed in accordance with the Contract Documents; and (c) certify that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective activity have been resolved. The Quality Assurance Manager's certification for monthly Application of Payment for construction activities shall include the following statement: *As the Quality Assurance Manager, I certify, to the best of my knowledge, information and belief based upon and to the extent of (i) current on-site observations and field testing required to be performed and (ii) material certifications and test reports, that each Work Package shown herein as complete has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to a respective Work Package have been resolved except for the attached list of open issues.*

The Design-Builder shall submit with the Application for Payment, evidence of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, etc., that the relevant QA or QC reviewer relied on to make its determination the work is complete and conforms to the requirements of the Contract Documents.

PART 5
2013 DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS GENERAL PROVISIONS FOR DESIGN-BUILD CONTRACTS BETWEEN DEPARTMENT AND DESIGN-BUILDER

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

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

The following shall supersede Part 5, Section 103.06 of the 2013 Division I Amendments to the Standard Specifications General Provision for Design-Build Contracts between Department and Design-Builder

103.06—Documents Required as a Condition to Award

The portion of the executed Contract submitted by the Successful Offeror shall include the following documents, unless the filing of any of them at a later date is specifically permitted by the RFP or Contract Documents, provided, however notwithstanding anything to the contrary in the Contract Documents, that the submission of an executed Agreement and Contract Bonds shall always be a precondition to Award

- (a) **Contract:** The Agreement executed by the Successful Offeror.
- (b) **Contract Bonds:** Contract Bonds shall conform to the requirements of Section 103.05.
- (c) **Affidavits and Documents:** Affidavits and documents set forth in the RFP and executed by the Successful Offeror.
- (d) **Progress Schedule:** (Not Used)
- (e) **Insurance Coverages and Certificates of Insurance:** The Design-Builder shall procure and maintain the insurance coverages required below, in accordance with Paragraph (f) below. Design-Builder shall file certificates of insurance with the Department evidencing the coverages and limits within 15 days after notification of Award of the Contract.
 - .1. Workers' Compensation and Employer's Liability Insurance, with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident or disease, each employee. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the Work.
 - .2. Commercial General Liability Insurance, including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of at least \$1 million per occurrence and \$2 million aggregate, applicable on a per project basis.
 - .3. Automobile Liability Insurance, with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on-site or off.
 - .4. Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of: (a) \$5 million per occurrence and in the annual aggregate for Projects with a Contract Price less than \$15 million; and (b) \$20 million per occurrence and in the annual aggregate for Projects with a Contract Price greater than \$15 million.

.5 Architects/Engineers Professional Liability Insurance, covering Design-Builder's lead design engineer for acts, errors or omissions arising in connection with the Work for not less than: (a) \$2 million any one claim and in the aggregate for Projects with a Contract Price less than \$50 million; and (b) \$5 million any one claim and in the aggregate for Projects with a Contract Price greater than \$50 million. Such insurance shall be maintained throughout the duration of any warranty period and for at least three years after the expiration of any warranty period.

.6 Contractor's Pollution Liability Insurance, to indemnify for bodily injury or property damage or amounts which Design-Builder or its agents, Subcontractors, or employees are legally obligated to pay for clean-up/remediation arising out of the work undertaken pursuant to the Contract Documents. Such insurance shall have minimum limits of \$5 million any one claim and in the aggregate and shall remain in full force and effect for five years following Final Completion.

.7 Builder's Risk Insurance, to provide coverage for physical loss, destruction or physical damage to the work. Such insurance shall cover Design-Builder, the Department, and all Subcontractors and shall be maintained at a limit of at least 100% of the Contract Price. Such insurance shall include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: right to partial occupancy, earthquake, earth movement, flood, transit, temporary and permanent works, expediting expenses, debris removal, offsite storage, soft costs and commissioning and start-up.

(f) **Insurance Requirements:** Design-Builder shall ensure that all insurances required in Paragraph (e) above contain the following provisions:

.1 With the exception of workers' compensation and architect/engineers' professional liability insurance, the Department shall be named as an additional insured on all policies. Each such policy shall also include the appropriate severability of interest and cross-liability clauses to allow one insured to bring claim against another insured party.

.2 All insurance coverages shall be considered primary and non-contributory with regard to other insurances that might be available to Design-Builder or the Department.

.3 All insurers shall waive rights of subrogation against the Department for any claims covered by insurance required herein.

.4 Any inadvertent errors or omissions by Design-Builder in procuring the insurance required herein shall in no way prejudice the rights of the Department to collect under such policies.

.5 Any deductibles shall be the sole responsibility of Design-Builder.

.6 The insurance shall remain in full force and in effect and will remain in effect for the duration required by the Contract Documents.

.7 No insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Department.

.8 With the exception of workers' compensation and automobile liability insurance, the insurance policies shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(g) Additional Insurance Requirements:

.1 Design-Builder shall require all Subcontractors to carry the same insurance, and in the same amounts, required by Paragraphs (e)(1), (e)(2) and (e)(3) above.

.2 Design-Builder shall file certificates of insurance with the Department evidencing the coverages and limits described above within the times required by Paragraph (e) above. The certificates shall be executed by approved insurance companies authorized to do business in Virginia with a minimum "Best Rating" of "B +" or greater, and shall cover the Contract.

.3 The insurance coverage limits shall not be construed to relieve Design-Builder or Subcontractor(s) of liability in excess of such coverage, nor shall it preclude the Department from taking such actions as are available to it under any other provision of the Contract Documents or otherwise in law.

109.05 – Contract Price Adjustments

(f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on the basis described in this Section 109.05. At the end of each day, the Design-Builder's Representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor, and Materials used in such work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the work is performed by approved Design Consultant(s), Subcontractor(s), and/or Sub-Subcontractor(s) the Design-Builder will be paid ten (10) percent of the subcontract net costs to cover the Design-Builder's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the labor, Materials, and Equipment from the other costs.

DEPARTMENT:

DESIGN-BUILDER:

Virginia Department of Transportation
(Name of Department)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

Chief Engineer
(Title)

(Title)

Date: _____

Date: _____

**END OF EXHIBIT 1 to PART 3
PROJECT-SPECIFIC TERMS**

EXHIBIT 102.05(g.4) USDOT 1050.2 APPENDIX A

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT 102.05(g.5) USDOT 1050.2A APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).