

Request For Proposal #215

Professional Telecommunications Outside
Plant Engineering Services

Eastern Shore of Virginia
Broadband Initiative
Northern Project Phase

Proposals Due on:
August 19, 2008
4:00pm, EST

Request for Proposals
#215

Professional Telecommunications Outside Plant Engineering and Design Services

Eastern Shore of Virginia Broadband Initiative
Northern Phase

July 24, 2008

Summary

The Eastern Shore of Virginia Broadband Authority (ESVBA) is a non-profit public company created under the Virginia Wireless Service Authorities Act, Chapter 54.1 §15.2-543.1.1 et seq. and by a resolution of the Counties of Northampton and Accomack. The ESVBA is composed of a five (5) member Board of Directors, consisting of representatives from Accomack and Northampton Counties. The project is being managed by a Project Manager with the assistance of a Technical Advisor, and Management Committees made of members of the Community at large.

The purpose of this project is to promote economic development opportunities for communities located on the Eastern Shore of Virginia. Historically, there has been a lack of redundant, alternative fiber optic access to rural communities on the Eastern Shore of Virginia. In order to attract new-economy technology companies to the region, alternative carriers need to have affordable access to provide competitive broadband services to the area.

The mission of the Eastern Shore of Virginia Broadband Authority (ESVBA) is to be responsible for providing the most affordable, cost-effective and technologically

up-to-date (presently and in the future) Broadband Internet service possible for all residents, businesses and institutions within the Eastern Shore of Virginia.

The overall goal for this portion of the Initiative is to install a fiber backbone from the Southern Gateway of the Chesapeake Bay Bridge Tunnel (CBBT) to Wallops Research Park in the North, as well as providing access to communities, hospitals, educational facilities, businesses and other connectivity points. The ESVBA will offer Broadband and/or dark fiber pairs to competitive carriers, existing carriers, industry, research groups, etc. who have a desire to connect to the backbone network, or provide competitive broadband services in the region.

There are three main projects within the Eastern Shore of Virginia Broadband Initiative to fully design and construct a robust network on the Eastern Shore of Virginia. Each of these projects may contain multiple phases. The projects include:

1. Northern Phase

The Northern phase of the Backbone project is being funded by the Department of Housing and Community Development (DHCD), and other sources of funding to be confirmed. ***This RFP is for the Engineering of the Northern Portion of the Eastern Shore of Virginia Broadband Initiative.***

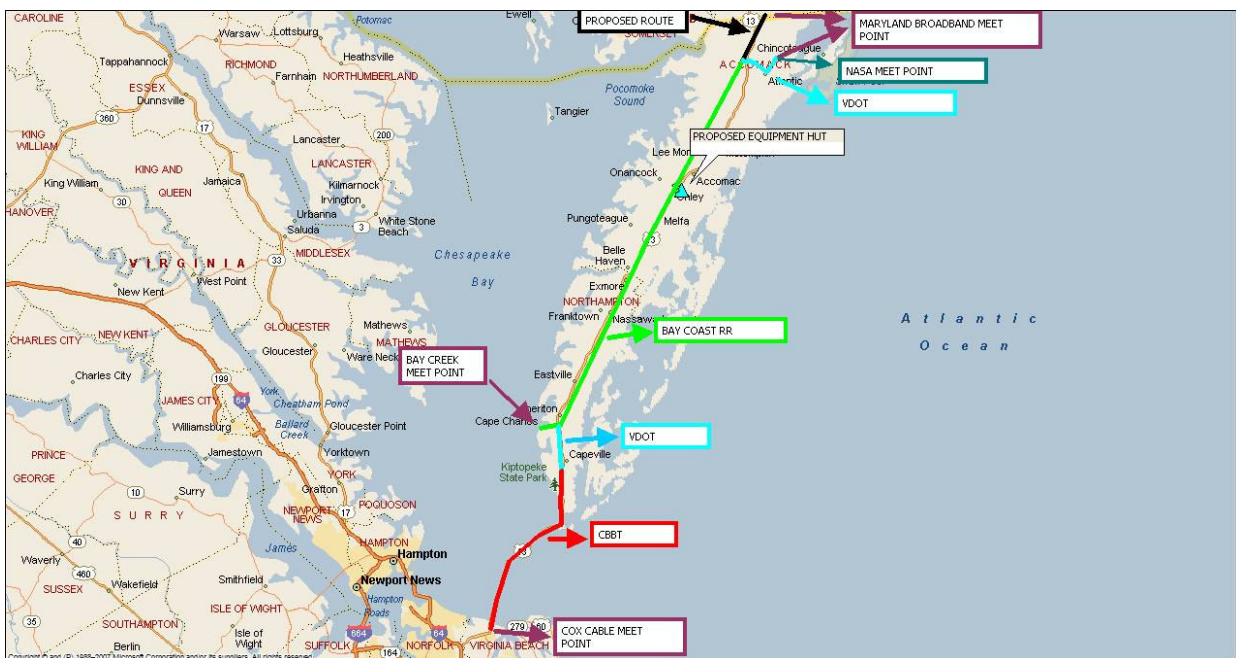
2. Southern Phase

The Southern phase of the project is being funded by NASA and installed by Mid Atlantic Broadband Cooperative. This phase will be the installation of the Fiber Backbone from the Southern gateway of the CBBT to Cape Charles.

3. Last Mile

The Last Mile project will be the design and construction of the access and distribution networks from the fiber backbone to the communities, businesses, and government entities that will be served by this network.

The following map shows the proposed routes of the Southern and Northern phases of the fiber optic backbone installation:



The complete fiber backbone route is approximately 85 miles long.

The route starts in Virginia Beach at the Cox Cable meet point. It travels North over the Chesapeake Bay Bridge and Tunnel to the end of their right of way at Route 13 and Kiptopeke State park entrance (outlined in red). It travels North on Route 13 for approximately 6 miles via a VDOT right of way to the intersection of Route 13 and the Bay Coast Railroad (outlined in blue). It travels the Bay Coast railroad into Cape Charles.

It also continues North on the Bay Coast Railroad approximately 50 Miles to Horsey Road (outlined in Green). Here it exits on Horsey road and travels East. At the intersection of Route 13 Horsey road becomes Nocks Landing road (county Route 702). The route continues east on Nocks Landing road to Atlantic Ave. It makes a left on Atlantic Ave and continues to the intersection of Route 175. This is on a VDOT right of way and is outlined in Blue. Here we will interconnect to NASA Wallops and Maryland Broadband Cooperative (Mdbc).

There is also a proposed continuation of the route on the Bay Coast railroad North to the Maryland Border to interconnect with Mdbc (outlined in black).

The main location for the installation of the fiber backbone will be the Eastern Railway Right of Way (ROW), currently operated by Bay Coast Railway. An agreement will be in place with the Railway to allow access and installation on this ROW.

While we have called for a solution where the fiber is buried in conduit, there may be areas where a direct buried fiber cable is more cost effective so it has not been ruled out at this point in the Design. ESVBA and its Board are aware of those factors, and working closely with the selected engineering firm, would assess the viability of direct bury installation if necessary. The preference of the ESVBA is to have the fiber backbone installed in conduit.

The following maps show proposed connectivity points and possible routing of the fiber cable. Again, these routes are not final, and we would rely on the expertise of the selected engineering firm to provide guidance as to the most cost effective and feasible routes to provide connectivity to our end points.

Proposal Process

All inquiries and Questions related to this RFP must be directed **IN WRITING** via E-Mail, Facimile, or Mail to:

Ms. Darlene C. Burton
Purchasing and Contracts Manager
Eastern Shore of Virginia Broadband Authority
c/o County of Accomack
PO Box 338
Accomac, Virginia 23310

Tel: (757) 787-5700
Email: dburton@co.accomack.va.us

The last date for questions will be 4:00pm Eastern Time on August 12, 2008.

Closing Date

One (1) original and six (6) copies of your proposal must be received by 4:00pm Eastern Time on Tuesday, August 19, 2008. Also include one (1) electronic copy of your proposal on CD or DVD. The proposals shall be sent or delivered to the following:

Eastern Shore of Virginia Broadband Authority
c/o County of Accomack
Darlene C. Burton, Purchasing and Contracts Manager
23296 Courthouse Avenue
Room 203
PO Box 338
Accomac, Virginia 23301

Late proposals will not be accepted, and will be returned to the offeror unopened.

Once proposals are submitted, the ESVBA and its Board of Directors will review the proposals, and select a short-list of firms to interview. During the interview stage non-binding cost estimates will be discussed. After the interview process (on the Eastern Shore, location to be determined), the ESVBA will select one (1) firm as a finalist, and begin negotiations with the firm to finalize a contract for professional engineering services. If the ESVBA cannot negotiate a contract successfully with the selected firm, the next highest-ranking firm will be contacted and negotiations will begin. The process will continue until a contract is finalized and mutually agreeable with ESVBA and the selected engineering firm.

The following timetable outlines the anticipated schedule for the RFP and Contract process. The timing and the sequence of events resulting from this RFP may vary.

Event	Anticipated Dates
RFP Advertised	July 23, 2008
RFP Issued	July 24, 2008
RFP Due Date	August 19, 2008
RFP Evaluation, short-list selected	August 22, 2008
Interviews with short-listed firms	September 3, 2008
Selection of firm	September 10, 2008
Contract finalized	September 24, 2008
Engineering Firm Begins Work	September 29, 2008

Proposal Format

To aid us in the evaluation of engineering service proposals, we require that your proposal follow this outline:

1. **Cover Letter**, Indicating your firm's interest in the project, and highlighting key points of your proposal.
2. **Firm Overview**, including company history, number of employees by discipline, company locations, location of office where this project will be managed, length of time your firm has provided similar services. Also indicate the systems you utilize to produce outside plant engineering designs (AutoCAD, Microstation, Mapcom M5, others). We require the selected engineering firm to be licensed to do business in the Commonwealth of Virginia.
3. **Proposed Project Team**: Include an organizational chart and resumes of key project team members, including their role in this project. Also identify who the primary manager for this project will be within your organization.
4. **Experience**: Indicate your experience with planning and design of fiber optic outside plant networks, including buried and aerial deployments. Show your experience with designing and managing implementation on long-haul, regional and metropolitan fiber optic networks. Also outline your experience with ROW and environmental permitting.
5. **Proposed Services & Project Approach**: Please define, in great detail, how your firm will manage this project, and will ensure a quality construction bid document is produced. Please describe your work plan to accomplish the five (5) major tasks. Also, identify any innovative design or project management techniques you have utilized on past projects that have helped reduce design times, or improved quality of your services.
6. **References**: Please provide a minimum of three (3) references where your firm and your proposed PROJECT TEAM, have provided outside plant

engineering services. Please include clients name, address, phone number, email address, and description of work and dates completed

7. **Time Schedule:** Indicate your proposed timetable, based upon the scope of work, and your experience with other telecommunications outside plant engineering projects. Include a timeline of key deliverables.

8. **Financial Statements:** Include information related to your financial stability, including certified financial statements, revenues over the past three (3) years, any pending lawsuits or legal actions against your company, and contact information for your financial institution. Include your coverage for general liability, workers comp, professional liability and errors & omissions insurances. ESVBA requires a minimum of \$1,000,000 in professional liability insurance.

9. **Other Current Projects:** Indicate your existing client work load, and what other projects your team is committed to, including project time frames. If you have any projects which may cause a conflict of interest, or could otherwise hinder your proposed timeframes, please describe those projects and how your firm manages multiple client priorities.

Evaluation Criteria

The ESVBA evaluation team will assess each submitted proposal, and rank the proposal according to the following points:

Experience of Project Team	35
References	25
Firm Experience with ROW/Permits	20
Innovative Design Techniques	10
Location of Project team	10

Total Possible Points: 100

All requested information in the Proposal Format section must be included in your response. ESVBA reserves the right to reject any and all proposals, and to enter into contract negotiations with the firm selected by ESVBA, its Board of Directors, Project Manager or Technical Advisor.

Engineering firms are solely responsible for their own expenses in preparing a Proposal, and for subsequent contract negotiations with ESVBA. If ESVBA elects to reject all proposals, ESVBA and its Board of Directors, Project Manager or Technical Advisor will not be liable to any firm for any claims, whether for costs or damages incurred by the respondent in preparing the proposal.

Scope of Work

This project calls for the planning, design, bid management and inspections of fiber optic outside plant facilities. ESVBA will not require the engineering firm to produce network design for electronics. The design of electronics, node location power requirements, cabinet specifications, etc. will be a separate project.

For the purposes of this RFP, the engineering firm will focus strictly on the design for outside plant fiber optic facilities, which will include splice locations, specifications for termination shelves, and construction requirements.

The ESVBA has identified five (5) key tasks that will be required of the selected engineering firm.

Task 1: Right-of-Way and Permit Applications

The engineering firm shall manage the permit process with the various entities and localities in the Phase 1 project area. Due to the timing involved, we request that the engineering firm, in conjunction with ESVBA, obtain the required permits, rather than waiting for the contractor to apply for permits. The list of possible permits/ROW issues include, but are not limited to the following:

- Permits from Counties of Accomack and Northampton along the proposed route. Permit requirements include site plan approvals, surveying/recording of applicable easements and permits to allow for construction (i.e. showing erosion and sediment plans)
- Preparation of a PCN (pre-construction notification) shall be the responsibility of the engineering firm, which shall be provided to the VMRC (Virginia Marine Resources Commission) for distribution to the relevant public agencies.
- Other permits as determined by the final design

The work activities in Task 1 are open to budgetary negotiation with the ESVBA. In many cases, it is difficult to estimate the level of effort required to complete Task 1, since the final designs route are unknown at the beginning of the project.

Task 2: Developing Bid Specifications for OSP Fiber Network

The engineering firm shall be required to develop drawings and specifications for the construction of the outside plant fiber optic facilities. These specifications must follow accepted outside plant engineering practice.

The engineering firm shall be responsible for conducting pre-design meetings with the technical project team and our partners to identify route selections, connectivity points, and any issues related to construction of the fiber optic facilities (aerial or buried). The ESVBA project manager shall coordinate and attend meetings with the selected engineering firm.

The engineering firm shall be responsible for staking the route and producing computerized maps (AutoCAD compatible in 11x17 format). The engineer shall be responsible for assessing entry points into each connection point, and shall coordinate with ESVBA Technical Advisor to locate the routing and termination point in each park.

The engineer shall produce budgetary estimates, design specifications and drawings at the 60% complete and 90% complete stage. At each completion stage, the engineering firm and ESVBA team members shall meet to discuss route selections, issues with design criteria, and other issues that may arise.

The engineering firm shall produce an electronic copy of the bid package (drawings and specifications in PDF format) as well as a hard copy. The engineer shall coordinate with ESVBA team members in advertising the project through construction clearinghouses and other contractor resources for soliciting construction bids on the fiber optic construction.

The engineering firm shall be responsible for preparing the terms and conditions, contractor requirements, scope of work, maps, and all items necessary to produce a comprehensive bid package. The engineering firm must also follow the guidelines for developing bid packages for construction services required by our funding partners.

Task 3: Review & Evaluate Bid Responses

The engineering firm shall be responsible for answering contractor questions during the bid process, holding a pre-bid meeting (on the Eastern Shore, location to be determined), and issuing any addenda or changes to the overall project

The engineering firm shall work with ESVBA team members to review submitted contractor bids, and assist in the evaluation, selection and negotiations with the selected contractor.

Task 4: Prepare Construction Contracts which serve as formal agreements for the Contractor

The engineering firm shall prepare construction contract documents, following accepted industry practice. The contracts must also include requirements from our funding partners, as required.

The engineering firm, ESVBA and the contractor shall hold a pre-construction meeting (on the Eastern Shore, location to be determined), to discuss general expectations, schedules, and other miscellaneous items. Prior to construction, the Contractor will be required to submit material sheets to the engineering firm for **approval.**

Task 5: Inspection services for OSP construction

The engineering firm shall provide full-time inspection services for construction efforts on Phase 1. The inspectors shall keep daily logs and field notes on the contractor's construction progress.

The engineering firm shall notify ESVBA of any major issues related to the construction of Phase 1. ESVBA shall work closely with the engineering firm, inspector, contractor, and other parties to resolve issues.

The engineering firm shall provide weekly written progress reports (via e-mail attachments) on construction activities and general issues related to construction of the fiber optic network. The ESVBA, engineering firm, and the contractor shall hold monthly construction meetings to review work progress, invoicing requirements, issues to resolve, etc. The monthly meetings will be held in Melfa, Virginia or similar location on the Eastern Shore of Virginia.

The ESVBA will reserve the right to conduct random inspections of contractors working in the field to insure the installation is being done according specifications and common installation practices.

Upon completion of construction, the engineering firm, ESVBA and the contractor will hold a construction close-out meeting on the Eastern Shore of Virginia. The purpose of this meeting will be to assess any discrepancies still outstanding as a result of construction, and will review final timelines and details with the engineering firm and ESVBA.

The engineering firm will be responsible for providing one (1) electronic copy of as-built drawings at the conclusion of Task 5, as well as three (3) hard copies of as-built maps (11x17) to the ESVBA.

General Terms and Conditions -- Professional Services Contracts

1. **Tax Exemption:** The Eastern Shore of Virginia Broadband Authority (ESVBA) is exempt from and will not pay Federal Excise Tax, Transportation Tax or the Commonwealth of Virginia Sales and Use Tax. The ESVBA is also exempt from the local 911 tax. A signed certificate to document the County's tax-exempt status is available upon request.
2. **License/Registration:** Entities (e.g. individual, partnership, or corporation) offering to provide architectural and/or engineering services shall be properly registered and licensed in Virginia as required by the Department of Professional and Occupational Regulation (DPOR), Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board, and, if incorporated, the State Corporation Commission. Other business entities must register with DPOR as required by §54.1-411., Code of Virginia, as amended.

The Architect or Engineer (i.e. the person) "in responsible charge" for each discipline shall be currently licensed in the Commonwealth of Virginia and shall affix his or her seal to those documents for which he or she is responsible.

3. **Business License:** All businesses who wish to engage in business with the ESVBA must possess valid Business Licenses or must document why they are exempt from licensure. Most businesses who have obtained business licenses from other county jurisdictions are exempt from Accomack County licensure requirements; however, rules differ for building contractors and tradesmen who may be required to possess multiple business licenses. Businesses should contact the Commissioner of the Revenue for specific guidance on this issue. This office may be reached at 757-787-5747.
4. **Professional Services:** The architectural, civil, structural, and mechanical and electrical portions of the project shall be planned and designed by or under the immediate supervision of a licensed Architect or Engineer who has expertise in the particular discipline involved. Where such licensed expertise is not available within the A/E of record or where the A/E chooses to subcontract a part of the Work, the A/E shall employ an associate or consulting Architectural or Engineering firm with the requisite expertise to provide the required services. The consultants, associates, or subcontractors proposed by the A/E during the selection process to be part of the A/E project team shall perform the Work as proposed. If circumstances require a change, the A/E shall advise the ESVBA or its designated agent of the proposed change, the reasons therefore, and the name and qualifications of the proposed replacements. The replacements must be acceptable to the ESVBA.

Associates, consultants, or subcontractors proposed to be part of the A/E's project team shall be contracted by the A/E at the beginning of the Work and shall be active participants in all phases of the Work related to their discipline from beginning to end. The A/E shall be responsible to the ESVBA for the Work of all associates, consultants and subcontractors, whether employees of the A/E or not, performed under the Contract.

5. **Taxpayer Identification Number:** The A/E shall furnish to the ESVBA at the time of contract award its Federal Employer Identification Number (FEIN) if a corporation or a partnership or its Social Security Number (SSN) if a sole proprietor.
6. **Relationship of Architect/Engineer to Owner:** Once the Contract for A/E services has been fully executed, the A/E shall be the professional advisor and consultant to the ESVBA for technical matters related to the project and shall be responsible directly to and only to the

ESVBA. The ESVBA shall communicate all approvals, rejections, change requirements, and other similar information to the A/E. The A/E shall advise the ESVBA of changes necessary to keep the project within the prescribed area and cost limits.

Generally, the ESVBA will observe the procedure of issuing orders to the Contractor through the A/E or, if the A/E's construction period duties have been so modified, through the ESVBA's designated project representative.

7. **Code and Regulatory Compliance:** The A/E is responsible for designing the project and administering the construction phase of the project in accordance with all regulatory requirements applicable to the project. Nothing contained herein shall be construed as relieving any A/E, professional design consultant, contractor, supplier, or any other participant from any professional or legal responsibility for performance.
8. **A/E Liability Insurance:** The A/E shall carry professional liability insurance covering negligent acts, errors, and omissions. The minimum amount of professional liability insurance required to be carried by the A/E shall be calculated as not less than an amount equal to 5% of the estimated cost of construction of all County-owned projects designed by the A/E which are currently under construction, but in no event shall the amount of professional liability insurance be less than \$100,000 per claim. As an alternative to the calculated amount indicated above, the A/E may work with the Owner/Agency to procure a "Project Insurance" package for that project which is satisfactory to the Owner/Agency; or, the A/E may provide a Certificate of Insurance indicating coverage in the amount of \$2,000,000 per claim and \$6,000,000 in the aggregate.

The A/E shall maintain this insurance coverage in force after completion of the services under the contract for a period of five years after final completion of construction, or the A/E may purchase a "completed operations" coverage for the project or projects.

Neither the ESVBA's review, approval or acceptance of, nor payment for any of the services required shall be construed to operate as a waiver by the ESVBA of any rights or any cause of action arising out of the Contract. The A/E shall be and remain liable to the ESVBA for all costs of any kind, which are incurred by the ESVBA as a result of negligent acts, errors, or omissions on the part of the A/E, including its subcontractors and consultants, in the performance of any of the services furnished.

9. **Design Errors and/or Omissions:** The A/E shall be responsible for all costs resulting from its errors, omissions, and other breaches of the applicable standards of care established under Virginia law.

The ESVBA shall actively pursue reimbursement of costs resulting from the A/E's errors, omissions, or breaches of the applicable standard of care.

10. **Records Retention:** The A/E shall retain record copies of its design calculations, drawings, bid / contract documents, addenda, field orders, clarifications and responses to Requests for Information, approved shop drawings and submittals, inspection / observation reports, fiscal records, and other documents relative to the contract for five (5) years after completion of the services under the contract or five years after completion of construction, whichever occurs earlier. Should the A/E cease its business prior to that time, the A/E will provide those project-related documents to the ESVBA for safekeeping.
11. **Other Insurance Required of the A/E:** Prior to the start of any work under the contract, the A/E shall provide to the ESVBA Certificates of Insurance forms and shall maintain such

insurance until the completion of all work under the contract. The minimum limits of liability shall be as follows:

- a. Workers' Compensation: Standard Virginia Workers Compensation Policy with statutory requirements and benefits.
- b. Employer's Liability: \$100,000
- c. Broad Form Comprehensive General Liability: \$1,000,000 Combined Single Limit coverage.

The ESVBA shall be named as an additional insured with respect to the services being provided. The coverage shall include:

- Premises / Operations Liability
- Products and Completed Operations Coverage
- Independent Contractors Liability
- Owners and Contractor's Protective Liability
- Personal Injury Liability (Libel, slander, defamation of character, etc.)

- d. Automobile Liability: \$500,000 Combined Limit for bodily injury and property damage per occurrence.

12. **Ownership of Documents and Materials:** Ownership of all materials and documentation, including the original drawings and the Plans and Specifications and copies of any calculations and analyses prepared pursuant to the Contract between the ESVBA and the A/E, shall belong exclusively to the ESVBA. These materials and documentation, whether completed or not, shall be the property of the ESVBA whether the work for which they are made is executed or not. The A/E shall not use these materials on any other work or release any information about these materials without the express written consent of the ESVBA.

Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act, provided the bidder, offeror, or contractor invokes the protections of §2.2-4342.F., *Code of Virginia*, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary. The ESVBA, as the owner of the documents prepared for its projects, has the right to use the project documents as a prototype to demonstrate scope, size, functional relationships, etc. to an A/E designing a similar project. The A/E for the original project design shall not be responsible or liable to the ESVBA for any such use of the documents.

13. **Subcontracts:** No portion of the A/E professional services shall be subcontracted without prior written consent of the ESVBA. Consultants proposed by the A/E during the selection and fee negotiation phases are assumed to be acceptable to the ESVBA unless the County notes otherwise during those phases. In the event that the A/E desires to subcontract some part of the Work required by the Contract to a consultant or subcontractor not previously approved, the A/E shall furnish the ESVBA names, qualifications and experience of the proposed consultants. The A/E shall, however, remain fully liable and responsible for all Work performed by his consultants and subcontractors and shall assure that their Work complies with all requirements of the A/E's Contract.
14. **Payments to the Architect/Engineer:** The following procedures are established in conformance with the Virginia Public Procurement Act (VPPA), §2.2-4300 THRU 2.2-4377, *Code of Virginia* as amended, and, in particular, §2.2-4347 et seq., which is referred to as the Prompt Payment Act.
 - a. The A/E shall submit an invoice to the ESVBA with the documentation required by the ESVBA. The invoice shall generally itemize or show a breakdown of the various phases

or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the A/E stating that the A/E has paid its consultants, subcontractors and suppliers their individual proportional share of all previous payments, including interest, received from the ESVBA. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for Work being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the work, person-hours expended, marked-up hourly rates for the classification, and the extended cost amount.

- b. Unless there is a dispute about the compensation due the A/E including, but not limited to claims by the ESVBA against the A/E, then within forty-five (45) days after receipt by the ESVBA of the A/E's invoice, which shall be considered the invoice receipt date, the ESVBA shall pay to the A/E the amount approved less any retainage and less any prior payments or advances made to the A/E. The date on which payment is due shall be referred to as the Payment Date.
 - c. The ESVBA may agree to make progress or partial payments to the A/E during any phase of the Work based on the estimated value of the Work completed by the A/E on that phase. Any such progress payment shall be based on the ESVBA's opinion of the value of the Work completed as of the date of the invoice.
15. **Release of Information Pertaining to Project Design:** Release in any form by the A/E of information pertaining to the estimated construction cost of a project under design to anyone other than authorized ESVBA personnel is prohibited. The A/E shall not give out information concerning a project to anyone other than authorized ESVBA personnel without specific prior approval of the ESVBA to release such information. This includes, but is not limited to, project photographs, floor plans, and project cost information.
16. **Default:** In case of the A/E's failure to deliver the reports, documents, "Record Drawings," or services in accordance with the Contract terms and conditions, the ESVBA, after due written notice, may procure same from other sources, and the A/E shall be responsible for any resulting additional procurement and administrative costs. This remedy shall be in addition to any other remedies which the ESVBA may have.
17. **Termination of Contract by the Owner/Agency:**
 - a. **General:** The ESVBA may terminate the Contract for cause or for convenience after giving thirty (30) days written notice to the A/E. The written notice shall include a statement of reasons for the termination.
 - b. **Termination for Cause:** If the A/E should substantially breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the ESVBA may terminate the Contract for cause by giving written notice as set forth above or may give the A/E a stated period of time within which to remedy its breach of contract. If the A/E shall fail to remedy the breach within the time allotted by the ESVBA, the Contract may be terminated by the ESVBA at any time thereafter upon written notice, effective immediately upon receipt. The ESVBA's forbearance in not terminating the contract shall not constitute a waiver of the ESVBA's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the A/E shall be responsible for all damages incurred by the ESVBA as a result of the A/E's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement A/E to fulfill the obligations of the Contract. Any

termination by the ESVBA for default, if determined by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the ESVBA.

- c. **Termination for Convenience:** The ESVBA may terminate the Contract in whole or in part for convenience by delivering to the A/E a written notice of termination as set forth above, specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such notice, the A/E must stop Work, including but not limited to Work performed by subcontractors and consultants, at such time and to the extent specified in the notice.

If the contract is terminated for convenience, the A/E shall be entitled to those fees earned for Work performed in accordance with the Contract prior to the notice of termination. Thereafter, the A/E shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated. The A/E will be compensated for reasonable costs or expenses for delivery to the ESVBA of the products of the services for which the A/E has or will receive compensation.

- d. **Delivery of Materials:** Any termination shall not relieve the A/E of the obligation to deliver to the ESVBA all products of the services for which the A/E has been or will be compensated, including, but not limited to, the original drawings and specifications, copies of CADD diskettes or tapes, calculations, and analyses. Unless otherwise agreed to in writing, the A/E shall deliver the materials to the ESVBA within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a material or substantial breach of contract.

18. **Assignment of Contract:** The A/E shall not assign the Contract between the ESVBA and the A/E, in whole or in part, without the written consent of the ESVBA.
19. **Ethics in Public Contracting (§2.2-4367 et seq., Code of Virginia):** The A/E shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with this project. The A/E shall not confer on any public employee having official responsibility for this project 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.
20. **Non Discrimination:** The ESVBA does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4310 and 2.2-4343.1 *Code of Virginia* as amended, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
21. **Contractor Anti-Discrimination:** Contractors shall agree as follows pursuant to §2.2-4311, *Code of Virginia*, as amended:
- a. The contractor 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 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.

- b. 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.
- 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 provision.

The contractor will include the provisions of paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- 22. **Applicable Law and Courts:** The A/E contract 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, as provided under Virginia Law.
- 23. **Drug-Free Workplace:** During the performance of contracts, contractors shall agree to (i) provide a drug-free workplace for the contractor's employees; (ii) 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 contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf on the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, 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.
- 24. **Virginia Freedom of Information Act: All proceedings, records, contracts, and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, firm, or corporation in accordance with the Virginia Freedom on Information Act *except* as provided below:**
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, **except** in the event that the ESVBA decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, **except** in the event that the ESVBA decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract **except** as provided in paragraph "C" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to or upon submission of

- the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
- d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the ESBVA.

SIGNATURE PAGE
(to be completed and returned with your RFP response)

COMPANY NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: () _____ **FAX NUMBER:** () _____

PRINTED NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR ENTITY: _____

SIGNATURE: _____

By signing this form, offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in this RFP and the General Terms and Conditions for Professional Services Contracts herein.

******* TO BE COMPLETED ONLY IF AN ADDENDUM IS ISSUED*******

ADDENDUM #1 _____
Signature Certifying Receipt

ADDENDUM #2 _____
Signature Certifying Receipt

***SMALL AND MINORITY BUSINESS ENTERPRISES
(to be completed and returned with your RFP response)***

Relevant Federal and State laws, orders, and regulations require the Eastern Shore of Virginia Broadband Authority to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small and Minority Business Enterprises.

DEFINITIONS:

1. Small Business

For the purposes of this document, a small-business concern is one which, regardless of ownership or control:

- A. Does not exceed fifty (50) employees.
- B. Gross annual income does not exceed \$2 million.
- C. Is independently owned and operated, i.e. not a subsidiary of another firm.

2. Minority Business

A business entity which is operated and controlled by a minority.

- A. The terms "operated and controlled" shall mean that the managerial and official staff of this entity shall be comprised of minority persons, sufficient in ratio and gross earnings to demonstrate that the business transactions are, in fact, controlled by minority persons; and that the primary power, direct or indirect, to influence the management of this entity shall rest with minority persons or a corporation, partnership, or sole proprietorship in which minority persons collectively own, operate, control, and share in earnings of 51 percent or more of such an enterprise.
- B. A minority person shall mean Black; Hispanic; Asian or Pacific Islanders; American Indian and Alaskan Natives; and women, regardless of races or ethnicity.

PLEASE CHECK THE FOLLOWING INFORMATION RELEVANT TO YOUR

FIRM:

Small Business Firm? Yes No

Minority Business Firm? Yes No

The above information is requested for statistical purposes only. All firms tendering responses will receive equal consideration for award.

CONTACT FOR ADMINISTRATION

Name: _____

Office Address: _____

Office Phone _____

Number: _____

VENDOR ELIGIBILITY CERTIFICATION
(to be completed and returned with your RFP response)

This is to certify that this person/firm/corporation has neither been barred from bidding on contracts by any agency of the Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that has been barred from bidding on contracts by any agency of the Commonwealth of Virginia.

Name of Official

Title

Firm or Corporation