

December 2017

NEW JERSEY DEPARTMENT OF TRANSPORTATION

MEMORANDUM

TO: Volha Arakhouskaya (NJ Transit), RE and,
Hall Building Corp.

FROM: Anthony Ricciardi
Contract Compliance Unit
Division of Civil Rights & Affirmative Action

PHONE: (609) 963-2050

DATE: 02/05/19

SUBJECT: Preconstruction Meeting Information – Local Aid Project
NJ Transit NJ Rail Station Elevator Upgrade Project, City of New Brunswick, County
of Middlesex, Federal Project No. DEM-DOOS (006) Construction, Agreement No.
2017-DT-BLA-306, NJDOT Job No. 6614323

CONTRACTOR: Hall Building Corp.

EEO (Equal Employment Opportunity)

The following information as well as all other EEO documentation as outlined in the RE's checklist must be submitted to the Sponsor's RE prior to beginning work on the project:

- Copy of the company's EEO/AA approval letter issued by NJDOT's Division of Civil Rights (Prime & Subcontractor)
- Copy of the company's D/ESBE Affirmative Action Plan approval letter issued by NJDOT's Division of Civil Rights (Prime only)
- Name & contact information for company EEO Officer (Prime & Subcontractor)
- Name and contact information for company D/ESBE Liaison Officer (Prime only)
- Record of Initial EEO Meeting (Prime & Subcontractors)
- Equal Employment Opportunity Legend i.e.: Either letterhead, envelope, ad, check, etc. (Prime & Subcontractors)
- Letters from Prime & subcontractors to Unions & Referral Agencies for man-power needs (Prime & Subcontractors)
- Response letters from Unions & Referral Agencies (Prime & Subcontractors)

As the prime contractor, you must ensure that all subcontractors with contracts of \$10,000 or more provide this information to the Sponsor's RE **prior** to them beginning work on the project. Contractors will **NOT** be allowed to begin work until all EEO requirements have been met, **NO** exceptions

Required Posters

The Sponsor's RE as well as Hall Building Corp. should ensure the following information is posted both in the project field office as well as on site at the project:

- All required posters and postings being provided at the preconstruction meeting
- NJDOT Sexual Harassment Policy (Sexual Harassment on NJDOT Construction Projects)
- Contractor's EEO Policy Statement

- Contractor's Sexual Harassment Policy

Workforce/Employment Goals

The workforce/employment goals for the project are:

15% Minority - Middlesex County; 6.9% Female

If the project is located in more than one county, the minority work goal will be determined by the county which serves as the primary source of hiring or, if workers are obtained equally from one or more counties, the single minority goal shall be the average of the individual goal for the affected counties

Should these goals not be obtained monthly, the prime contractor and subcontractors must provide the Sponsor's RE with good faith documentation of efforts made to attain these goals, and this should accompany that monthly reporting. Please advise your subcontractors of the work hour goals & the need to submit good faith documentation should they not attain the work hour goals.

Monthly Logs & EEO Inspection Report

Hall Building Corp. and all subcontractors must submit their Minority and Female Logs, EEO Inspection Report and Walk-In Application Log on a monthly basis to the Sponsor's RE by the fifth day after the end of each month. The EEO Inspection Report must include the date of the inspection, who performed the inspection, names of employees interviewed, and any findings. If there are minorities and females on the crew, interviews must be conducted with them. Once a firm starts work, these logs must be submitted each month until the firm's work is 100% complete. If they are not working on-site for a particular month, the logs should be submitted but can say "No work this month."

Work Hour & Workforce Reporting

Reporting to NJDOT:

Federal Executive Order 11246 requires workforce reporting to be completed each month by both prime and subcontractors. Prime contractors and their subcontractors are required to enter their work hour and workforce information electronically on the **CC257R** via the NJ Portal. The prime contractor and each subcontractor/firm working on the project must submit a report for its total project workforce. These reports are to be submitted by the 10th day of each month during the term of the contract, and include the total work hours for each employee classification in each trade in the covered area for the monthly reporting period. All employment and wage data must be accurate and consistent with the certified payroll records.

In addition to completing the on-line reporting, the prime contractor and each subcontractor working on the project must submit the following to the Sponsor's RE:

- A copy of the screen shot of the CC-257R
- E-mail notification/confirmation of submission of CC-257R must be submitted to the Sponsor's RE.
- Good faith documentation for any reporting period for which the minority and/or female goals are not met.

The prime contractor is responsible for ensuring all subcontractors comply with these reporting requirements. Failure to submit Monthly Employment Utilization Reports may cause pay estimates to be withheld by the Sponsor.

The job code number for this project is **6614323** and **must** be used when submitting the monthly **CC-257R**. Please make note of this number & inform subcontractors of this number and their need to report their workforce information.

Instructions for registering to report workforce information via the NJ Portal can be found at: <http://www.nj.gov/transportation/business/civilrights/pdf/CC257R.pdf>

The New Web Application will provide access to current and past reports that can be printed and submitted to the Public Agency awarding the contract as required.

DBE Subcontracting

The DBE goal for this project is 10%. Your current commitment is 10.15%.

Monthly Reporting of DBE Utilization

Please ensure that the **CR-267 - Monthly Report of Utilization of DBE**, is turned in monthly to the Sponsor's RE, with a copy to NJDOT's Local Aid District Office and NJDOT Civil Rights, by the fifth day after the end of the month. Should you not attain the DBE goal set for that reporting period, you must provide documented evidence of good faith efforts along with the submittal. Failure by Hall Building Corp. to provide this information may result in pay estimates being withheld and may impact your prequalification rating.

Please send the CR-267s directly to the Sponsor's RE, who should review and sign the form, then forward a copy to the NJDOT Local Aid District Office for review. The District Office should then forward a copy to NJDOT Civil Rights. The NJDOT Civil Rights contact(s) for this project is/are:

Anthony.Ricciardi@dot.nj.gov and **Cheryl.Taliaferro@dot.nj.gov**

Revisions to DBE Program

If there are any revisions including termination, substitution or replacement of approved DBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers or truckers, changes in work items, or changes in \$ value of subcontracts, to your current approved DBE program, Hall Building Corp. must immediately submit a **revised CR-266**, along with detailed written explanation(s) of each change and why it is being made, and documented evidence of good faith effort(s), to the Sponsor's RE with a copy to NJDOT's Local Aid District Office for review and approval by NJDOT Civil Rights.

Along with each revised CR-266, written explanation of changes, and documented evidence of good faith efforts, contractors must also submit: 1) a completed Confirmation of DBE Firm (Form CR-273) to demonstrate direct written confirmation from each **new** DBE firm participating on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and if applicable; 2) a completed DBE Regular Dealer/Supplier Verification (Form CR-272) for all **new** DBE Regular Dealers/Suppliers listed on the revised CR-266; and if applicable, 3) a completed DBE Trucking Verification (Form CR-274) for all **new** DBE truckers listed on the revised CR-266. All CR-273s, CR-272s and CR-274s must be completed in entirety and signed by each respective DBE/ESBE or SBE firm. Contractors are not permitted to complete any portion of these forms.

Prior to termination, substitution or replacement of the DBE firm, Hall Building Corp. must notify the DBE firm, in writing of its intent to terminate and/or substitute a DBE firm, and the reason for the request. A copy of this correspondence must be sent to the RE, the NJDOT Local Aid District Office, and NJDOT Civil Rights. The DBE firm must be provided five (5) days to respond to the notice, and advise the contractor, the Sponsor's RE, NJDOT Local Aid District Office and NJDOT Civil Rights of reasons why, if any, it objects to the proposed termination of its subcontract, and why the Sponsor and NJDOT should not approve the Contractor's action.

No changes, including termination, substitution and replacement of DBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers or truckers, changes in work items, or changes in \$ value of subcontracts can be made without prior written approval in the form of an approved DBE Approval Memorandum for the revision(s) from NJDOT Division of Civil Rights and Affirmative Action.

Contractors are not entitled to payment for work performed by their own workforce or supply of materials that a DBE/ESBE/SBE was approved to perform or supply, unless written consent is provided by NJDOT Civil Rights & Affirmative Action.

Final DBE Report

Upon completion of the work to be performed by ALL the approved DBE firms, and after final and complete payment has been made to said approved DBE firms, Hall Building Corp. must submit the CR-268 (Final DBE Report) to the Sponsor's RE with a copy to NJDOT Local Aid District Office and NJDOT Civil Rights. DBE Credit will not be given for DBE firms not approved by NJDOT Civil Rights.

Additional Forms Requiring to Be Submitted by the Contractor

There are additional forms that you are required to submit. The forms are: Monthly Trucking Verification Form (CR-271) for all truckers used on the project, and the DL-72 Contractor Certification of Payment to Subcontractors and Suppliers. These forms must all be completed, signed and maintained on file at the RE's field office. All forms are available at the NJDOT Civil Rights webpage at:

<http://www.state.nj.us/transportation/business/civilrights/forms.shtm>

On-the-Job Training Information

There is no Training Requirement for this project.

Labor/Wage Rate Information

Federal Aid Projects

The practice of leasing employees is not permissible on Federal-Aid projects. "Leasing employees" is the practice whereby a contractor or subcontractor contracts with an employment agency to provide workers for a project and, although the contractor or subcontractor directs and supervises the workers on the project, the employment agency pays the workers and maintains the certified payroll reports. The act of hiring employees through an employment agency is, in itself, permissible; however, when doing so, the contractor or subcontractor must pay the workers and maintain the required certified payroll reports. If there are questions related to this matter, contact the nearest office of the United States Department of Labor's Division of Wage and Hour.

This is a Federal-Aid construction project and the payment of all on-site Laborers and Mechanics is governed by the pertinent provisions of the Davis-Bacon and Related Acts (DBRA) as amended.

As amended, DBRA State that, " ... the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications., regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanic... "

Payrolls on Federal Aid projects

Weekly Certified Payrolls on form **CR-347** for the prime and all subcontractors on the project are to be completed, including new entries for 'ethnicity' and 'gender' with only the last four digits of the employee's SS# provided.

- Under column 5 of form CR-347, fill in the complete classification of the work the employee is performing and make sure that it is identical to [NJDOT's Wage Decision listing of various classifications](#) applicable for the project.
- Report only the worker's hours for the appropriate project on the weekly payroll; do not include any worker's hours from other company projects.
- Any payroll form is suitable (internal, software-derived, etc.), but **MUST CONTAIN ALL INFORMATION REQUESTED ON THE CR-347.**

- If there was no work on a particular month, payroll submissions are not required.

Statement of Compliance on Federal Aid projects

- On federal aid projects, a **Statement of Compliance** on form **CR-347-2** is to be submitted with each Weekly Certified Payroll, with the appropriate Fringe Benefit method selected, 4(a) or 4(b). If there are employees being paid with different fringe benefits, separate payrolls must be filled out for each payment type.
- If fringe benefits are paid in cash, the cash amount should be documented on the certified payrolls (format: for rate of pay, document the rate, and then the fringe cash after a forward slash, e. g: "40.98/28.33")
- Deadline for submittal of above documents to the Sponsor's RE is ten (10) days after payment.
- Hall Building Corp. is responsible for the timely submittal of their subcontractors' certified payrolls.

For your information and use, is the preconstruction package for this project. This package includes:

Federal Pre-con package

- Title VI Notice to Sub-recipients
- Annual EEO & DBE Affirmative Action Plan Requirement
- Guidelines for Contractor's EEO Affirmative Action Plan
- Federal Aid Project - Leasing of Employee Information/Exemption to NJ Prevailing Wage Law - Truckers/Out of State Bridge Painting Contractors - Room & Board in Lieu of Hourly Benefits
- Federal Labor Regulation Information
- RE Checklist - DC 130 form, (updated 3/13/17)
- Required posters (updated version) which must be displayed both at the RE's field office, as well as at the prime contractor's field office/trailer or on-site location where workers have daily access to the information.
 - US Dept. of Transportation's "NOTICE of False Statements" – FHWA-1022
 - US/EEOC "Equal Employment Opportunity IS THE LAW" – US/EEOC-P/E-1
 - EEO is the Law Poster Supplement
 - US Dept. of Labor- "Employee Rights on Government Contracts" – WHD-1313
 - US Dept. of Labor's "Employee Rights under the Davis-Bacon Act" – WH-1321
 - US Dept. of Labor's OSHA "Job Safety and Health IT's THE LAW" - OSHA-3165
 - US Dept. of Labor's "Employee Rights under Family and Medical Leave Act" - WHD Pub 1420
 - US Dept. of Labor's "Employee Polygraph Protection Act" – WH1462
 - NJ Dept. of Law & Public Safety-"New Jersey Law Prohibits Discrimination in Employment"
 - US Dept. of Labor's - "Your Rights Under USERRA: the Uniformed Services Employment and Re-employment Rights Act"
 - US Dept. of Labor's "Pay Transparency Nondiscrimination Provision"
 - Sexual Harassment on NJDOT Construction Projects (NJDOT Policy & Procedure 208)

Additional Information for the RE

A Commercially Useful Function (CUF) Checklist (CR-275) must be completed for each DBE firm working on NJDOT Construction projects. The Department is enforcing the utilization of form CR-275, Commercially Useful Function (CUF) Checklist, to verify that every DBE firm performs a commercially useful function on the project that they are providing services for. This is vital to satisfying the DBE goal attainment. An on-site observation CUF review must be performed on every DBE on this project, and completed within 10 days of the firm starting work on the project, with a copy forwarded to NJDOT's Local Aid District Office, and NJDOT Civil Rights.

*CUF verifies that every DBE firm providing services on the project are actually performing the work they were hired for and that work is counting towards attaining the DBE goal set for the project.

Commercially Useful Function is obtained when a DBE firm is responsible for execution of a distinct element of the work of a contract and is carrying out its responsibility by actually performing, managing and supervising the work involved. To determine whether a DBE, ESBE or SBE subcontractor is performing a CUF, five (5) distinct operations must be considered: management, workforce, equipment, materials, and performance.

USDOT DBE regulations identify the following key factors that should be analyzed when determining whether a CUF is being performed:

1. Evaluation of the amount of work subcontracted, whether it is consistent with normal industry practices;
2. Whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal;
3. When the DBE, ESBE or SBE furnishes materials, the DBE, ESBE or SBE must be responsible for negotiating the price, for determining the quality and quantity of the material, ordering the material, and paying for it. As a contractor, a DBE, ESBE or SBE firm would typically be hired to both furnish the material and install it with its own labor force;
4. Whether the DBE, ESBE or SBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE, ESBE or SBE participation. In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE, ESBE or SBE contract goal?

Documentation is important, and as the RE, you should be requesting, and keep on file the following types of documents, many of which can be used to help evaluate or support the evaluation of whether a firm is performing a CUF:

- Executed contracts
- Subcontracts
- Written contract
- Leases
- Equipment leases/rental agreements
- Equipment titles of ownership
- Purchase Orders
- Invoices
- Shipping Tickets
- Delivery Tickets
- Material/Supply Agreements
- Invoices of materials/supplies
- Hauling Tickets
- Bill of lading
- Daily inspection reports & project diaries
- Certified payrolls & payroll records
- Copies of cancelled checks

RE's Labor/Wage Rate Responsibilities

- Form **DC-126 Wage Rate Interviews** – one employee for each work classification should be interviewed per contractor over the course of the project. Introduce yourself, and explaining you are the project RE or staff, and work for NJDOT, and the reason for the interview.
 - For Part 2, show the complete classification the employee is actually performing, identical to **NJDOL's Wage Decision listing of classifications** applicable to the project.
 - For Part 3, under USDOL Wage Rate column, fill in "N/A" as New Jersey's prevailing rates are higher than USDOL rates.
 - Every section of the form must be completely filled out and signed by interviewing individuals.
- Form **DC-127 – Monthly Certification of Payrolls** is due 15 days after the end of the month and may be packaged with any completed DC-126s. **DO NOT INCLUDE PAYROLLS.**

- Form **DC-128 – Quarterly Summary of Payrolls** is due 30 days after the end of the quarter, with **ONE COPY** of all reviewed and accepted payrolls attached. Any tardy payrolls should be documented on the DC-129 – Late Payroll Log form.

Certified Payroll Review Tips

- Do not accept or certify contractors' certified payroll unless your office has reviewed them for completeness and accuracy.
- Make sure that under column (5) of CR-347 or column (2) of *Payroll Certification for Public Works Projects*, the work classification shown is the complete classification of the work the employee is performing on the project and identical to NJDOL Wage Decision listing of various classifications applicable to the project.