

## New Jersey Department of Transportation

### Division of Civil Rights & Affirmative Action - Contract Compliance – Project EEO Meeting

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

March 15, 2019

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#### EEO (Equal Employment Opportunity)

The following information must be submitted to the RE prior to beginning work on the project:

##### Prime Contractor must submit:

- Copy of the company's EEO/AA & D/ESBE approval letter issued by NJDOT's Division of Civil Rights (Prime only)
- Company EEO Officer Notice, including name & contact information
- D/ESBE Liaison Officer notice, including name & contact info
- Record of Initial EEO Meeting (This must include date of meeting, list of attendees, and specific items discussed.)
- "Equal Employment Opportunity" Legend i.e.: Either letterhead, envelope, ad, check, etc.)
- Letters from Prime & subcontractors to Unions & Referral Agencies for man-power needs. (These must be signed, dated & reference the particular project.)
- Response letters from Unions & Referral Agencies. (These must be signed, dated & reference the particular project.)

##### Subcontractors with contracts of \$10,000 or more must submit:

- Copy of the company's EEO/AA Affirmative Action Plan approval letter issued by NJDOT's Division of Civil Rights
- Record of Initial EEO Meeting (This must include date of meeting, list of attendees, and specific items discussed.)
- "Equal Employment Opportunity" Legend i.e.: Either letterhead, envelope, ad, check, etc.
- Letters from Prime & subcontractors to Unions & Referral Agencies for man-power needs. (These must be signed, dated & reference the particular project.)
- Response letters from Unions & Referral Agencies. (These must be signed, dated & reference the particular project.)

Firms will **NOT** be allowed to begin work until all EEO requirements have been met, **NO** exceptions

#### Required Posters

The following required posters/postings must be displayed both at the RE's field office, as well as at Hall Building Corp. 's on-site location where workers and the public have daily access to the information:

- US Dept. of Transportation's "NOTICE of False Statements" – FHWA-1022 (English & Spanish)
- US Dept. of Labor- "Employee Rights on Government Contracts" – WHD-1313 (English & Spanish)
- US/EEOC "Equal Employment Opportunity IS THE LAW" – US/EEOC-P/E-1 (English & Spanish)
- EEO is the Law Poster Supplement (English & Spanish)
- US Dept. of Labor's "Employee Rights under the Davis-Bacon Act" – WH-1321 (English & Spanish)
- US Dept. of Labor's OSHA "Job Safety and Health IT's THE LAW" - OSHA-3165 (English & Spanish)
- US Dept. of Labor's "Employee Rights under Family and Medical Leave Act" - WHD Pub 1420 (English & Spanish)

- US Dept. of Labor’s “Employee Polygraph Protection Act” – WH1462 (English & Spanish)
- NJ Dept. of Law & Public Safety-“New Jersey Law Prohibits Discrimination in Employment” (English & Spanish)
- NJ Dept. of Labor’s “Conscientious Employee Protection Act “Whistleblower Act” – AD-270 (English & Spanish)
- 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)

**Work Hour/Employment Goals**

The work hour goals for the project are: 15% Minority – Middlesex County...6.9% Female

*Please be advised that 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 Hall Building Corp. & subcontractors not attain these goals monthly, the RE must be provided with good faith documentation of efforts made to attain the goals. Keep in mind that when submitting monthly reporting, if goals are not being met, good faith documentation must accompany that reporting.

**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 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.”

If there are any complaints of discrimination or harassment on the project, the Contractor must immediately inform the RE, and the RE must inform Civil Rights.

**Work Hour & Workforce Reporting**

**1. 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 submits a report for its total project workforce and is responsible for ensuring that its subcontractors submit their respective reports. 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.

In addition to completing the on-line reporting, the prime contractor and each subcontractor/firm working on the project must submit the following to the 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 RE.

- Good faith documentation for any reporting period for which the minority and/or female goals are not met.

Hall Building Corp. is responsible for ensuring subcontractors comply with these reporting requirements. Failure to submit Monthly Employment Utilization Reports may impact Hall Building Corp.'s prequalification rating with the Department and cause pay estimates to be withheld.

The job code number for this project is **6614323** and must be used in the Job Number field of the CC-257R form when submitting the monthly CC-257R.

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>

### DBE Subcontracting

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

DBE firms initially listed on the CR-266 as part of the contractor's commitment to meet the Contract Goal are:

| Firm Name                   | Type of Work   | Proposed Subcontract Amount   |
|-----------------------------|----------------|-------------------------------|
| Meco Electric CO., Inc      | Electrical     | \$235,000.00 Equates to 7.89% |
| Pravco Co., Inc             | Roofing        | \$41,750.00 Equates to 1.40%  |
| The Vann Organization, Inc. | CPM Scheduling | \$17,000.00 Equates to 0.57%  |
| Munoz Engineering, PC       | Survey/Layout  | \$8,579.00 Equates to 0.29%   |
|                             |                |                               |
|                             |                |                               |
|                             |                | Total =10.15%                 |

Ensure that work a **DBE** firm is committed or approved to perform, is performed by that firm. Work that a DBE was committed or approved to perform, that is performed by the Contractor or others, without prior written approval from Civil Rights, will not count toward the Contract goal.

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

### Monthly Reporting of DBE Utilization

Please ensure that the **CR-267 - Monthly Report of Utilization of DBE**, is turned in monthly to the RE, with a copy to 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.

The RE should submit copies of the CR-267s and any Revised CR-266 packages for Civil Rights to: Anthony Ricciardi at: Anthony.Ricciardi@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 follow the termination, substitution, replacement process, then 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 RE with a copy to Civil Rights for review and approval. **All partial work items for each DBE or SBE firms must clearly be identified on the CR-266.**

Along with each revised CR-266 and documented evidence of good faith efforts, contractors must also submit: 1) a completed Confirmation of Firm (Form CR-273) to demonstrate direct written confirmation from each **new** DBE firm participating on the Contract, or firms with new items being added, 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 for firms with new items being added; and if applicable, 3) a completed DBE Trucking Verification (Form CR-274) for all **new** truckers listed on the revised CR-266, or truckers with new items being added. **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.**

### **Termination, Substitution or Replacement of DBE**

**Prior to any changes in the** of DBE's work, including **termination, substitution and replacement** of the DBE firm, Hall Building Corp. must notify the DBE firm, in writing, of its intent to terminate and/or substitute the DBE firm's work, the reason for the request, and that they have 5 days to respond to the notice. A copy of this correspondence must be sent to the RE who must send a copy to Civil Rights. The DBE firm must be provided five (5) days to respond to the notice, and advise the Division of Civil Rights and Affirmative Action and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract, and why the Department 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 a DBE Participation Approval Memorandum for the revision(s) from the Division of Civil Rights & Affirmative Action. **Contractors are not entitled to payment for work performed by their own workforce or supply of materials that a DBE was approved to perform or supply, unless prior 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 RE with a copy to the Division of Civil Rights. DBE credit will not be given for DBE firms not approved by the Division of Civil Rights and Affirmative Action. Civil Rights will evaluate the Final CR-268 and good faith effort documentation, then determine if Hall Building Corp. met the Contract DBE goal. When it is determined that the Contractor failed to meet the Contract goal without demonstrating an adequate good faith effort (GFE), the Department will make a payment reduction from the total amount of payments made to the Contractor as outlined in Subpart 105.02.05 of the Standard Specifications/Supplemental Specifications. Credit will not be given for firms not previously approved by the Division of Civil Rights and Affirmative Action. Credit will not be given for firms determined not to have performed a Commercially Useful Function on the Contract.

### **Commercially Useful Function**

In order for a prime contractor to receive credit toward the DBE Contract goal for work that a DBE firm performs, the DBE must perform a Commercially Useful Function (CUF). The Department is verifying that

every DBE firm performs a commercially useful function on the project that they are providing services for. REs will be performing on-site observation CUF reviews on every DBE on the project, and they will complete them within 10 days of the firm starting work on the project.

\*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 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 subcontractor is performing a CUF, five (5) distinct operations must be considered: management, workforce, equipment, materials, and performance.

### **Prompt Payment**

Per 49 CFR Part 26 and/or the NJ Prompt Payment Statue, Hall Building Corp. is to pay all subcontractors, including retainage, no later than 10 days from receipt of each payment NJDOT makes to them, after the subcontractor satisfactorily completes their work. When NJDOT makes an incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily complete.

Prompt payment complaints for this project can be reported directly to NJDOT - Civil Rights – Contract Compliance Unit. Subcontractors may report complaints via email or telephone to: Anthony Ricciardi at: Anthony.Ricciardi@dot.nj.gov or (609) 9963-2050.

### **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 Info**

#### **Federal Aid Projects**

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... "

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.

#### **Payrolls on Federal Aid projects:**

The prime contractor and all subcontractors must complete **Weekly Certified Payrolls** on form **CR-347**. Any payroll form is suitable (internal, software-derived, etc.), but **MUST CONTAIN ALL INFORMATION REQUESTED ON THE CR-347.**

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

#### **Statement of Compliance on Federal Aid Projects**

- Submit a **Statement of Compliance** on form **CR-347-2** 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 RE is ten (10) days after payment.
- Hall Building Corp. is responsible for the timely submittal of its subcontractors' certified payrolls.

#### **Diane B. Allen Equal Pay Act**

The Diane B. Allen Equal Pay Act, N.J.S.A. 34:11-56.14.b. provides in part that as of July 1, 2018, any employer entering into a contract with the State of New Jersey or an instrumentality of the State for "qualifying services" or "public works" must provide to the Department of Labor and Workforce Development – upon commencement of the contract – wage and demographic data for all employees who are employed in connection with the contract (for public works) and for all employees (for qualifying services). This requirement DOES NOT apply to employers who are contracting with local governments (for example: municipalities and counties).

The Contractor shall provide to the Commissioner of the New Jersey Department of Labor and Workforce Development, through certified payroll records required pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the Contract. The report must contain the gender, race, ethnicity, job category, compensation, and number of hours worked by each employee.

Reports should be made via a printable PDF available on the Department of Labor and Workforce Development's web site at: [https://nj.gov/labor/forms\\_pdfs/equalpayact/MW-562withoutfein.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf) , or uploaded in a spreadsheet. Completed reports should be emailed to: [equalpayact@dol.nj.gov](mailto:equalpayact@dol.nj.gov)

Complaints of unlawful discrimination under the Equal Pay Act should be directed to the DCR, as should any questions regarding the filing of such a complaint.

#### **Additional Information for the RE**

Ensure that work a **DBE** firm is committed or approved to perform is performed by that firm. Work that a DBE was committed or approved to perform, that is performed by the Contractor or others, without prior written approval from Civil Rights, will not count toward the Contract goal. **Contractors are not entitled to**

**payment for work performed or supply of materials by their own workforce that a DBE was approved to perform or supply, unless written consent is provided by NJDOT Civil Rights & Affirmative Action.**

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 RE. Forward a copy to NJDOT's Division of Civil Rights. Civil Rights will evaluate the Final CR-268 and good faith effort documentation, then determine if Hall Building Corp. met the Contract DBE goal.

When Civil Rights determines that the Contractor failed to meet the Contract goal without demonstrating an adequate good faith effort (GFE), the RE is to make a payment reduction from the total amount of payments made to the Contractor as outlined in Subpart 105.02.05 of the Standard Specifications/Supplemental Specifications. Credit will not be given for firms not previously approved by NJDOT's Division of Civil Rights and Affirmative Action. Credit will not be given for firms determined not to have performed a Commercially Useful Function on the Contract.

In order for a prime contractor to receive credit toward the DBE Contract goal for work that a DBE firm performs, the DBE must perform a Commercially Useful Function (CUF). 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.

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.

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 furnishes materials, the DBE 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 firm would typically be hired to both furnish the material and install it with its own labor force;
4. Whether the DBE'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 participation. In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE 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
- Purchase Orders
- Delivery Tickets
- Hauling Tickets
- Certified payrolls/payroll records
- Equipment leases/rental agreements
- Invoices
- Material/Supply Agreements
- Bill of lading
- Copies of cancelled checks
- Equipment titles of ownership
- Shipping Tickets
- Invoices of materials/supplies
- Daily inspection reports/project diaries

### **Prompt Payment**

Report all prompt payment complaints or payment inquiries for this project directly to NJDOT - Civil Rights – Contract Compliance Unit. If you are contacted by subcontractors with payment inquiries, inform them that they should contact Civil Rights via email or telephone, and to contact: Anthony Ricciardi at: Anthony.Ricciardi@dot.nj.gov or (609) 9963-2050.

### **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.