



CITY OF ATLANTA

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OFFICE OF CONTRACT COMPLIANCE

Martin H. Clarke

Director

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Keisha Lance Bottoms
Mayor

04/20/2020

RE: IFB-C 1200477 – Upper Proctor Creek Capacity Relief Phase B

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance (OCC) information is an integral part of every eligible City of Atlanta bid. All Bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific goals for minority and female business enterprise participation for this project and the EBO program reminders listed on page 6.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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CITY OF ATLANTA

EQUAL BUSINESS OPPORTUNITY (EBO)

POLICY STATEMENT

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has developed an Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Goals for minority and female business enterprises are set for this project on page 6.

Implementation of EBO Policy

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for diverse businesses, including M/FBEs, to compete for business as subcontractors and/or Suppliers. A Bidder is eligible to be further considered for award of a City contract upon a finding by OCC that the Bidder has engaged in, and provided with its bid submission documentation of efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the M/FBE goals within the relevant NAICS Codes, for this Project.

For subcontracting, the Subcontractor Project Plan must include **all** subcontractors (majority and minority owned) to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta M/FBE certification number and supplier id number as applicable.

For suppliers, the Subcontractor Project Plan must include **all** subcontractors (majority and minority owned), the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta M/FBE certification number and supplier id number as applicable.

Determination of Non-discrimination During Bid Process

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit EBO1.
2. Outreach efforts documentation. Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified M/FBEs as subcontractors or suppliers on the contract. This information shall be set forth on Exhibit EBO2, which is included herein.
3. Subcontractor project plan. Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the office of contract compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, APABE, HABE, or FBE certification number of each business, and any other information requested by the office of contract compliance. In order for the office of contract compliance to officially consider a firm to be an M/FBE, the M/FBE firm must be certified by or have a certification application pending with the office of contract compliance prior to the bidder's submission of the bid. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to change the subcontractor project plan must be submitted prior to any change in the plan or termination of an M/FBE's contract.

OCC Review of Bidder Submissions

The Office of Contract Compliance shall determine whether a Bidder has satisfied the non-discrimination requirements of section 2-1448 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the Subcontractor Project Plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the non-discriminatory practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified M/FBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified M/FBEs within the relevant NAICS Codes for such Eligible Project.

(a) Receipt of Complaint of Discrimination in the Bid Process

The office of contract compliance shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the city, the office of contract compliance may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the city's vendor relations subdivision, section 2-1465, et seq.

(b) Determination of Violation of EBO Process

Where the office of contract compliance investigates a complaint of discrimination that is related to the specific bid process, the details of that investigation, including findings, shall be recorded and maintained in the vendor relations database, pursuant to section 2-1471.

(c) Office of Contract Compliance Determination of Non-Compliance

When, based upon the totality of the circumstances, the office of contract compliance determines that a bidder fails to satisfy the requirements of section 2-1448(a) of a city bid solicitation, the director of the office of contract compliance shall present a written determination of non-compliance to the Chief Procurement Officer which states the determination and lists the reasons for the determination. A bid that does not comply with the requirements set forth in section 2-1448(a) shall be deemed non-responsive and rejected.

Equal Business Opportunity Program Bid/RFP Submittals

The Office of Contract Compliance will make any determination of non-responsiveness. The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by OCC in the solicitation document pursuant to section 2-1448 must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

Monitoring Of EBO Policy

Upon execution of a contract with the City of Atlanta, the successful bidder's M/FBE Project Participation Plan will become a part of the contract between the bidder and the City of Atlanta. The M/FBE Project Participation Plan, all executed subcontract agreements, operating agreements, other contract governing documents, along with all other pertinent records required by OCC as deemed necessary will be placed on file. Said documentation shall be in a format that is established by the Office of Contract Compliance and will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific M/FBE information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the Subcontractor Project Plan. The failure of the successful bidder to provide the specific EBO information by the specified date each month shall be sufficient cause for the City to withhold approval of the successful bidder's invoices for progress payments, increase the amount of the successful bidder's retainage, require joint check issuance, or evoke any other penalties as set forth in the City of Atlanta Code of Ordinances, Sections 2-1452 and 2-1456.

Implementation of EEO Policy

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2010 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

Monitoring of EEO Policy

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

Joint Venture Participation on City of Atlanta Projects

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including good faith outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On projects valued at five (5) million dollars or greater, the Office of Contract Compliance shall determine on a project-by-project basis whether non-discriminatory outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE joint venture member. **OCC has made the determination that non-discriminatory outreach efforts to enter into a joint venture are required for this solicitation.**

No bid on a City contract for an Eligible Project shall be accepted from a joint venture team unless each participant independently signs and submits a Covenant of non-discrimination (EBO-1)

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval to the attention of [Richard D. Case \(rcase@atlantaga.gov\)](mailto:rcase@atlantaga.gov) no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

Components of a Joint Venture Agreement

The Joint Venture agreement should include at a minimum:

- The name of the Joint Venture
- Contact information of designated primary JV contact person
- Identification of all firms participating in the JV
- The initial capital investment of each venture partner
- Terms and conditions under which future contributions may be necessary
- The proportional allocation of profits and losses to each venture partner
- Description of proportion of work controlled by and management of the joint venture team members
- The method of, and responsibility for, accounting
- Frequency of JV meetings and method for minutes taking and storage
- The methods by which disputes are resolved.
- Provide the specific citation/section of your JV that speaks to the Contract's non-discrimination and assurance requirements
- All other pertinent factors of the joint venture.
- All Joint Venture agreements must be signed.



City of Atlanta Office of Contract Compliance
Joint Venture Information Pre-Award Review-EBO

Proponent Instructions: All Proponents must use their executed proposed JV agreement to complete the questions below (Attach additional pages if needed):

1. Name of Joint Venture:

2. Name, address and phone number of joint venture contact person serving as managing partner:

3. Firms participating in joint venture (use additional pages if necessary):

Name of firm:

Address:

Office Phone Number:

Primary Contact name/phone number:

% ownership: _____%

M/FBE: No

Yes

Date of Certification:

NAICS code(s) for which certification was granted:

Name of firm:

Address:

Office Phone Number:

Contact name/phone number:

% ownership: _____%

M/FBE: No

Yes

Date of Certification:

NAICS code(s) for which certification was granted:

4. Was there an M/FBE initial capital contribution required? Amount? _____
5. Does the JV document describe the portion of the work or elements of the business controlled by the M/FBE JV team member(s)? No
Yes Referenced in What Section?
6. Does the JV document describe the portion of the work or elements of the business controlled by the non-M/FBE JV team member(s)? No
Yes Referenced in What Section?
7. Does the JV document describe the M/FBE team member's involvement in the overall management of the joint venture. (e.g., participation on a management committee or managing board, voting rights, etc.)?
No Yes Referenced in What Section?
8. Does the JV document list the M/FBE team member's share in the profits/risk in the joint venture: No Yes Referenced in What Section?
9. Does the JV document describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary): No Yes Referenced in What Section?
- a. Majority interest holder joint venture participant:
- b. Minority interest holder joint venture participant(s):

10. Does the JV document detail which firm will be responsible for accounting functions relative to the joint venture's business?
No Yes Referenced in What Section?

11. Does the JV document explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties? No Yes Referenced in What Section?

12. Did the JV document provide the name of the person who will be responsible for hiring employees for the joint venture. No Yes Referenced in What Section?

13. Did The JV Describe the frequency of JV meetings, method for minutes taking, and storage for audit provisions?
 No Yes Referenced in What Section?

14. Are any of the proposed joint venture employees currently employees of any of the joint venture partners? No Yes If yes, list the number and positions and indicate which firm currently employs the individual(s)?

15. Did the JV Detail the methods by which disputes are resolved?
 No Yes Referenced in What Section?

16. Is a copy of the proposed joint venture agreement, promissory note(s), and loan agreement(s) (if applicable), and any and all written agreements between the joint venture partners included in the proposal submission No Yes Referenced in What Section?

17. Does the JV document describe all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved? No Yes Referenced in What Section?
18. Does the JV document provide a specific citation/section that speaks to the non-discrimination and assurance requirements related to this solicitation? No Yes Referenced in What Section?

Additional Comments:

Equal Business Opportunity M/FBE GOALS for this Project

Project No.: IFB-C 1200477 – Upper Proctor Creek Capacity Relief Phase B

Part 1: All proponents must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement in accordance with the City of Atlanta's EBO/SBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies' involvement in the.: **Upper Proctor Creek Capacity Relief Phase B** project throughout the life of the contract. (See Page 6)

Part 2: All proponents must ensure that non-discriminatory practices are utilized during efforts to engage minority and female subcontractors and suppliers throughout the life of the contract. All outreach efforts must be documented and included with this bid submittal.

The dominant NAICS code and trade to be engaged for the above referenced phase is:

237310 Utility Interruption

The above referenced dominant NAICS code was used for the purposes of calculating the appropriate participation goal(s). However, any COA certified firm that is engaged by the successful Prime proponent who performs a commercially useful function in the execution of the project will be eligible for participation credit. The availability of certified M/FBE firms for the procurement categories in the various scopes associated with this project is:

26.34% MBE & 11.10% FBE

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Details of the O.C.C. review process for determination of non-discrimination are outlined on page 3 of this document.

Note: Each Joint Venture (JV) team(s) must include a signed/notarized copy of their JV agreement with their bid submission. Each JV team must consist of at least one City of Atlanta certified M/FBE partner.

OCC will count M/FBE participation in the form of a certified joint venture partner (self-performing a scope of work), and certified M/FBE subcontractor arrangements. The above referenced goal will be measured against **total contract value inclusive of any change orders and/or miscellaneous modifications** that may occur throughout the life of the project.

Equal Business Opportunity Program Reminders for This Solicitation

1. **Certification.** It is the prime contractor's responsibility to verify that MBEs and FBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, or have a certification application pending with the City of Atlanta's Office of Contract Compliance.
2. **Joint Venture Agreements.** The Joint Venture member businesses must have different race ownership, different gender ownership, or both. MFBE members of the Joint Venture must be certified as such by the Office of Contract Compliance. The Joint Venture team shall include in its submittal the MFBE certification number of each MFBE Joint Venture member. Sign the agreement before submitting the proposal.
3. **Subcontractor Contact Form.** It is **required** that bidders list and submit information on **all** subcontractors they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive. For your convenience, fillable versions of the Appendix A documents are available on the OCC webpage should you require additional pages.
4. **Reporting.** The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance in a manner as prescribed by the OCC contract monitor of record.
5. **SBO/EBO Ordinance.** The EBO Program is governed by the provisions of the SBO/EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1356 through 2 -1480. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
6. **Supplier Participation.** In order to receive full M/FBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.
7. **OCC Registry of Certified Firms.** To access OCC's real time registry of vendors (certified or non-certified), visit our PRISM Compliance Management portal at: <http://atlanta.prismcompliance.com/DirectRequest.ashx?t=100&j=jggizwSWWYnRk55uW%2Bijonkgm04tizEb>. You may search by "Industry" for a list of firms in that category or search for a specific company under "Company Name". You may also go to the website: www.atlantaga.gov/contractcompliance and scroll down to the section heading "Registry of Certified Firms" Click OCC's quarterly list to access the current directory of certified firms.
8. **Contract Assurance.** The Contractor shall not discriminate on the basis of race, color, national origin, sex, religion, or sexual orientation in the performance of this contract. The contractor shall carry out applicable requirements of City ordinance 2-1448 a (2) in the award and administration of any eligible City contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Atlanta deems appropriate. Anti-discrimination provisions based upon religion and sexual orientation are enforceable through the City of Atlanta regulations.

COVENANT OF NON-DISCRIMINATION

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of race, gender or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we have completed truthfully and fully the required forms EBO-2 and EBO-3. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

Signature of Attesting Party

Title of Attesting Party

On this ____ day of _____, 20____, before me appeared _____, the person who signed the above covenant in my presence.

Notary Public

Seal

FORM EBO-1

SUBCONTRACTOR CONTACT FORM

List *all subcontractors or suppliers* (Majority, EBO and Non-EBO Certified) that were contacted regarding this project.

Name of Sub-contractor/ Supplier/JV Partner	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Scope of Work Solicited for	Solicited for JV? (Yes or No)	Business Ownership (see code below)	M/FBE Certification No. and Expiration Date	Results of Contact

Name of Sub-contractor/ Supplier/JV Partner	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Scope of Work Solicited for	Solicited for JV? (Yes or No)	Business Ownership (see code below)	M/FBE Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE – Hispanic Business Enterprise, FBE – Female Business Enterprise, APABE – Asian (Pacific Islander) American Business Enterprise (SBE and DBE Certifications will not suffice for this procurement)

Company Name: _____ **Project Name:** _____ **FC#:** _____

Contact (Print): _____ **Date:** _____

EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN SUBCONTRACTOR/SUPPLIER UTILIZATION

List all Majority, EBO Certified, and Non-EBO Certified subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	Joint Venture Partner? (yes or no)	NAICS Code	Scope of Work to be Performed	Ethnicity of M/FBE Ownership (see code below)	M/FBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Dollar Value of Prime Proponent self-Performance: \$ _____ Total MBE% _____ Total FBE% _____ Total EBO% _____

Code: AABE - African American Business Enterprise, HABE – Hispanic American Business Enterprise, FBE – Female Business Enterprise, APABE – Asian (Pacific Islander) American Business Enterprise (SBE and DBE Certifications will not suffice for this procurement)

Proponent Company Name: _____ Project Name: _____ FC#: _____

Proponent's Contact Number: _____ Contact Name (Print) _____ Date: _____

(THIS PAGE SHALL BE SUBMITTED FOR EACH SUB FIRM)

LETTER OF INTENT

FC# _____

Proponent Name: _____
Address: _____
City: _____ State: _____ Zip: _____

Subcontracting Firm: Firm Name: _____
Address: _____
City: _____ State: _____ Zip: _____

Sub firm Contact Person: Name: _____ Phone: (____) _____

Firm is performing as: Non-certified Sub Certified Sub Joint Venture Team Member

If Certified, Certification # and Expiration Date: _____

Work item(s) to be performed by Sub	Description of Work Item	Dollar(s) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount
TOTAL Diversity% Credit Claimed for this Contractor			

The bidder/offeror is committed to utilizing the above-named Subcontractor firm for the work described above. The estimated participation is as follows:

Sub contract amount: \$ _____ Percent of total contract: _____%

AFFIRMATION:

The above-named Subcontractor firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
(Print name) (Title)

(signature) (date)

* In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void

(THIS PAGE SHALL BE SUBMITTED FOR EACH SUB FIRM)

LETTER OF INTENT

FC# _____

Proponent Name: _____
Address: _____
City: _____ State: _____ Zip: _____

Subcontracting Firm: Firm Name: _____
Address: _____
City: _____ State: _____ Zip: _____

Sub firm Contact Person: Name: _____ Phone: () _____

Firm is performing as: [] Non-certified Sub [] Certified Sub [] Joint Venture Team Member

If Certified, Certification # and Expiration Date: _____

Table with 4 columns: Work item(s) to be performed by Sub, Description of Work Item, Dollar(s) Value of Work and Scope of Work, Percentage (%) of Total Bid Amount. Includes a row for TOTAL Diversity% Credit Claimed for this Contractor.

The bidder/offeror is committed to utilizing the above-named Subcontractor firm for the work described above. The estimated participation is as follows:

Sub contract amount: \$ _____ Percent of total contract: _____%

AFFIRMATION:

The above-named Subcontractor firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____ (Print name) (Title)
_____ (signature) (date)

* In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void

**DIVERSITY FIRM TERMINATION/SUBSTITUTION
ACKNOWLEDGEMENT FORM**

As a participant in an eligible City of Atlanta (COA) diversity program contract, certain restrictions and procedures apply to the termination and substitution of a diversity certified entity by a prime concessionaire or prime contractor, as mandated by federal regulations and City ordinances. These requirements are established by 49 C.F.R. § 26.53(f), code sections 2-1356- 2-1380, and 2-1441- 2-1480 of the COA code of ordinances, as may be amended from time to time.

OCC will not allow a prime concessionaire or prime contractor to substitute or terminate a diversity program certified entity without OCC's prior written consent, which will be granted only upon a written finding of good cause. OCC requires completion of a form document to accompany the reason(s) for the request to terminate and/or substitute, which is available at:

<http://www.atlantaga.gov/modules/showdocument.aspx?documentid=491>

For ease of reference, the federal requirements are quoted below:

49 C.F.R. § 26.53(f)

- (1) (i) [OCC] must require that a prime contractor not terminate a DBE/[ACDBE] subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE/[ACDBE] firm) without [OCC's] prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE/[ACDBE] subcontractor with its own forces or those of an affiliate, a non-DBE/[ACDBE] firm, or with another DBE/[ACDBE] firm.
- (ii) [OCC] must include in each prime contract a provision stating:
 - (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and
 - (B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE/[ACDBE].
- (2) [OCC] may provide such written consent only if [OCC] agree[s], for reasons stated in [OCC's] concurrence document, that the prime contractor has good cause to terminate the DBE/[ACDBE] firm.
- (3) For purposes of this paragraph, good cause includes the following circumstances:
 - (i) The listed DBE/[ACDBE] subcontractor fails or refuses to execute a written contract;
 - (ii) The listed DBE/[ACDBE] subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE/[ACDBE] subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
 - (iii) The listed DBE/[ACDBE] subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
 - (iv) The listed DBE/[ACDBE] subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (v) The listed DBE/[ACDBE] subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (vi) [OCC] ha[s] determined that the listed DBE/[ACDBE] subcontractor is not a responsible contractor;
 - (vi) The listed DBE/[ACDBE] subcontractor voluntarily withdraws from the project and provides to [OCC] written notice of its withdrawal;
 - (vii) The listed DBE/[ACDBE] is ineligible to receive DBE/[ACDBE] credit for the type of work required;
 - (viii) A DBE/[ACDBE] owner dies or becomes disabled with the result that the listed DBE/[ACDBE] contractor is unable to complete its work on the contract;
 - (ix) Other documented good cause that [OCC] determine[s] compels the termination of the DBE/[ACDBE] subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE/[ACDBE] it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE/[ACDBE] contractor was engaged or so that the prime contractor can substitute another DBE/[ACDBE] or non-DBE/[ACDBE] contractor after contract award.
- (4) Before transmitting to [OCC] its request to terminate and/or substitute a DBE/[ACDBE] subcontractor, the prime contractor must give notice in writing to the DBE/[ACDBE] subcontractor, with a copy to [OCC], of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE/[ACDBE] five days to respond to the prime contractor's notice and advise [OCC] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [OCC] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [OCC] may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE/[ACDBE] firms put forward by offerors in negotiated procurements.

The undersigned acknowledges these requirements on behalf of the below-listed entity.

Prime: _____

Contract No.: _____

Signature: _____

Name: _____

Title: _____

Date: _____



AWSG Determination of Applicability

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Whereas every contract with the City of Atlanta creates a potential pool of new employment opportunities, the following program is applicable to **construction projects only** and is subject to review by the Atlanta WorkSource Georgia Agency (WorkSource Atlanta) team on a case by case basis for applicability. Once WorkSource Atlanta has made the determination that the First Source Jobs Program is applicable, the successful prime contractor (and all subcontractors associated with the awarded project) are expected to work with WorkSource Atlanta to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. **WorkSource Atlanta has determined that the first source Jobs program is applicable for this project.** For more specific information about the First Source Jobs Program contact:

**Katerina Taylor
First Source Jobs Program
WorkSource Atlanta Agency
818 Pollard Boulevard
Atlanta, GA 30315
(404) 546-3000**



First Source Jobs Program

Policy Statement

Every contract with the City of Atlanta creates employment opportunities for the City's residents.

Contractors who enter into a contract with the City of Atlanta for performance of work that requires construction or building trades skills in which the prime contract is \$500,000.00 or greater and the sub-contract(s) is \$250,000.00 or greater will make good faith efforts to fill 50% of all new entry-level construction positions with City of Atlanta residents who are listed on the WorkSource Atlanta's First Source Registry.

WorkSource Atlanta has determined that the First Source Jobs program is applicable for this project.

Process

WorkSource Atlanta evaluates each contract to determine whether the First Source Jobs Program is applicable.

Each prospective contractor must follow the steps below after a contract is deemed applicable:

- Sign and submit the "Letter of Assent" affirming that the contractor has read the First Source Job Training and Employment Placement Agreement and agrees to the terms therein with the completed bid package.
- Meet with WorkSource Atlanta representatives upon receiving a "Notice to Proceed" to discuss the entry level construction positions that need to be filled and the steps required for compliance with the First Source Jobs Program.
- Provide WorkSource Atlanta with the "Employer Projection of Positions Form" at least (10) days prior to hiring for any Construction positions which shall contain a list of all New Construction Positions for which the Construction General Contractor is hiring, as well as the job qualifications for those positions.
- Evaluate and interview all candidates referred by WorkSource Atlanta and provide WorkSource Atlanta with the "Post-Interview Evaluation Form" for each candidate within ten (10) days of the evaluation & interview.
- Provide WorkSource Atlanta the following items with the submittal of each payment application for the Construction Contract documenting the Construction General Contractor's as well as the Sub-contractor's efforts to comply with this Agreement:
 - A copy of all completed "Employer Projection of Positions Forms" which have been completed since the last requisition submitted;
 - A copy of all completed "Post-Interview Evaluation Forms" which have completed since the last requisition submitted; and
 - The completed "Requisition Progress Report" which has been completed since the last requisition submitted.

Benefits of the First Source Jobs Program

As the workforce system for the City of Atlanta, WorkSource Atlanta collaborates with businesses, economic development entities, educational institutions and community organizations to ensure that the City's workforce meets the needs of the business community. WorkSource Atlanta will identify pre-qualified candidates with industry recognized credentials or candidates with equivalent work experience to reduce time in recruiting candidates for entry level positions created as a result of this contract at no cost to the contractor.



AGREEMENT FOR

IFB-C 1200477 – Upper Proctor Creek Capacity Relief Phase B

**WORKSOURCE ATLANTA
FIRST SOURCE JOB TRAINING AND EMPLOYMENT PLACEMENT PROGRAM**

WHEREAS, Ordinance 10-O-0928, which created the City of Atlanta’s First Source Job Training and Employment Placement Program, was adopted by the Atlanta City Council on February 4, 2013 and approved by the Mayor of Atlanta on February 13, 2013; and,

WHEREAS, according to the most recent U.S. Census Bureau statistics, some twenty-five percent (25%) of the City of Atlanta’s residents live below the federal poverty level; and,

WHEREAS, the City of Atlanta, through implementation of the Program, desires to address the issues of poverty, unemployment, and underemployment by providing meaningful job and career opportunities to the city’s residents; and,

WHEREAS, the City of Atlanta enters into numerous public works and improvement contracts that are funded by public tax dollars; and,

WHEREAS, various building and construction workers are required to fulfill and perform the work required under said contracts; and,

WHEREAS, in order to facilitate the successful implementation of the Program, WorkSource Atlanta and the Construction GC desire to enter into this Agreement to set forth the respective responsibilities and obligations of each party for the duration of the Construction Contract as entered into between the City of Atlanta and the Construction GC.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, WorkSource Atlanta and the Construction GC hereby agree as follows:

Section 1. Definitions. The following italicized terms shall have the following meanings. All definitions include both the singular and plural forms.

Construction Contract shall mean a contract entered into or funded by the City for the performance of work that requires construction or building trades skills and has a face value greater than the Threshold Amount.

Construction General Contractor (“Construction GC”) shall mean any entity entering into a Construction Contract that exceeds the Threshold Amount.

Entry-level shall mean any non-managerial position that requires either no education above a high school diploma or certified equivalency, or less than two (2) years of training or specific preparation. This definition includes, but is not limited to apprentices.

First Source Register shall mean the register managed by WorkSource Atlanta providing the Construction GC and its Sub-contractors with Workforce Innovation and Opportunity Act (WIOA) eligible residents of the City of Atlanta from which to fill Entry-level construction positions.

New Construction Position shall mean any non-executive, non-professional engineering, non-office, or non-clerical job, or any job not filled by full-time employees on the Construction GC's payroll for at least three months prior to the Notice to Proceed for the Construction Contract.

Sub-contractor shall mean any contractor performing construction work either directly or indirectly for the Construction GC, pursuant to any Construction Contract and that meets the Threshold Amount.

Threshold Amount shall mean any Construction Contract in which the prime contract is \$500,000.00 or greater and the sub-contract(s) is \$250,000.00 or greater.

Workforce Innovation and Opportunity Act ("WIOA") shall refer to Public Law 113-128, passed by the U.S. Congress and signed into law by President Barack Obama in July 2014. The Act reauthorized the Workforce Investment Act of 1998. WIOA is a federal grant program designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers.

Section 2. General.

- A. Construction GC shall use, and shall cause the Construction GC's Sub-contractors to use, WorkSource Atlanta as its first source for the recruitment, referral, and placement of New Construction Positions through the First Source Register subject to the terms of this Agreement.
- B. WorkSource Atlanta will provide recruitment, referral, and placement services through the First Source Register to the Construction GC and its Sub-contractors.

Section 3. Responsibilities of WorkSource Atlanta.

WorkSource Atlanta shall:

- A. Provide recruitment and referral to the Construction GC and Sub-contractor(s), subject to the limitations set out in this Agreement.
- B. Screen applicants and provide Construction GC and Sub-contractor(s) with a list of applicants according to the terms of this Agreement.

Section 4. Responsibilities of the Construction GC.

The Construction GC shall, and shall cause its Sub-contractor(s) to:

- A. For all new entry-level Construction Positions, review and interview job applicants exclusively from the First Source Register prior to reviewing job applicants from any other source.

- B.** Make good faith efforts to fill fifty (50) percent of entry-level positions with City of Atlanta residents who are listed on the First Source Registry.
- C.** Provide WorkSource Atlanta with Employer Projection of Positions Form (“Exhibit A”), which shall contain a list of all New Construction Positions for which the Construction GC is hiring, as well as the job qualifications for those positions. This notification shall occur after the Construction Contract has been awarded and before the Notice to Proceed (“NTP”) is issued.
- D.** After issuance of the NTP, provide a final Employer Projection of Positions Form (“Exhibit A”) to WorkSource Atlanta.
- E.** Provide names and position titles of all Non-New Construction Positions (“Exhibit B”). Non-New Construction Positions include any executive, professional engineering, office, or clerical jobs, or any jobs filled by full-time salaried employees on the Construction GC’s payroll for at least three months prior to the notice to proceed. This list shall be deemed exempted positions.
- F.** Include provisions in all Construction Contracts entered into with Sub-contractors to represent and warrant adherence to the terms of this Agreement.
- G.** Provide letters of assent (“Exhibit C”) to the terms of this Agreement to WorkSource Atlanta prior to any Construction GC performing any work on the Project.
- H.** Evaluate and interview all candidates provided by WorkSource Atlanta from the First Source Register and provide WorkSource Atlanta with the Post-Interview Evaluation Form (“Exhibit D”), within ten (10) days of the evaluation and interview.
- I.** Provide WorkSource Atlanta with a completed Requisition Progress Report (“Exhibit E”) certifying compliance with this Agreement and detailing individuals who were hired, their address, start and end employment dates, and hours worked during that month.
- J.** Maintain daily sign-in sheet logs and payroll records for all of its employees and make said sign-in sheet logs and payroll records available to WorkSource Atlanta upon request. WorkSource Atlanta shall not use such records for any purpose other than monitoring of compliance with this Agreement.
- K.** Submit to WorkSource Atlanta with each payment application for the Construction Contract, the following items:
 - (i) A copy of all completed Employer Projection of Positions Forms (“Exhibit A”) which have been completed since the last requisition submitted;

- (ii) A copy of all completed Post-Interview Evaluation Forms (“Exhibit D”) which have been completed since the last requisition submitted; and
- (iii) The completed Requisition Progress Report (“Exhibit E”) which has been completed since the last requisition submitted.

Section 5. Nondiscrimination. No party to this Agreement shall discriminate against First Source Register referrals in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

Section 6. Events of Default. Subject to construction schedules and safety requirements, WorkSource Atlanta, the Office of Contract of Compliance (“OCC”), and awarding departments shall have the right to engage in random inspections of job sites and have access to the employees of the Construction Contractor or Sub-contractor(s) and the records required under Ordinance 10-O-0928 (City of Atlanta Code of Ordinances, ARTICLE XI).

If WorkSource Atlanta, OCC, or an awarding department determines the Construction GC and/or Sub-contractor(s) are not in compliance with this Agreement, any or all of the following actions may be taken:

- Withhold progress payments of up to 10% of the Contract Amount;
- Refusal of all future bids on City projects until such time as the Construction GC and/or Sub-contractor come into compliance with this Agreement; or
- Termination of the Agreement.

Section 7. Notices. All notices, consents, approvals and other communications which may be or are required to be given by WorkSource Atlanta or the Construction GC under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, or (b) certified mail, return receipt requested, or (c) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air or Airborne Express), (d) by email to the email address listed below (provided that a copy of such notice is also delivered within 24 hours to the party by one of the methods listed in this Section 6(a), (b) or (c)), or (e) by facsimile to the facsimile number listed below (provided that a copy of such notice is also delivered within 24 hours to the party by one of the other methods listed in this Section 6(a), (b) or (c)), with all postage and delivery charges paid by the sender and addressed to the other parties as applicable as set forth below. Said notice addresses are as follows:



If notice is to City:

WorkSource Atlanta
818 Pollard Blvd., SW
Atlanta, GA 30315
ATTN: Director of Performance Management
paolaleye@atlantaga.gov

If notice is to Construction GC:

Each party may change its address by written notice in accordance with this Section (effective five (5) days after the delivery of written notice thereof). Any communication addressed and mailed in accordance with this Section will be deemed to be given when received, unless rejected or returned by the recipient, in which case when mailed, any notice so sent by electronic or facsimile transmission will be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person will be deemed to be given when received for, or actually received, by the party identified above.

Section 7. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the parties hereto. No course of dealing on the part of any party to this Agreement, nor any failure or delay by any party to this Agreement with respect to exercising any right, power, or privilege hereunder will operate as a waiver thereof.

Section 8. Invalidity. In the event that any provision of this Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this Agreement.

Section 9. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. The Construction GC may not assign this Agreement or any of its rights hereunder or any interest herein without the prior written consent of WorkSource Atlanta, which consent may be withheld or conditioned in the sole discretion of WorkSource Atlanta; provided, however, that WorkSource Atlanta will not unreasonably withhold its consent to an assignment by the Construction GC of all or any of its rights under this Agreement.

Section 10. Exhibits; Titles of Articles and Sections. The exhibits attached to this Agreement are incorporated herein and will be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement will prevail. All titles or headings are only for the convenience of the parties and may not be construed to have any effect or meaning as to the Agreement between the parties hereto. Any reference herein to a Section or subsection will be considered a reference to such Section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit will be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

Section 11. Applicable Law. This Agreement is made under and will be construed in accordance with and governed by the laws of the State of Georgia.

No provision of this agreement shall be interpreted so as to require the Construction GC and/or Sub-contractor(s) to employ a worker not qualified for a position, or to employ or retain any particular employee, or to hire any worker as a result of such worker's membership in a labor union.

Section 12. Entire Agreement. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 13. Termination of Agreement. Without cause, WorkSource Atlanta may terminate this agreement at any time upon thirty (30) days' written notice to the Construction GC and WorkSource Atlanta.



CONSTRUCTION GC/SUB-CONTRACTOR LETTER OF ASSENT

I have read the First Source Job Training and Employment Placement Agreement and assent to the terms therein.

Construction GC or Sub-Contractor

Company Representative

Date