

SEP-14 Application: Locally-Based Hiring Preferences on the South Capitol Street Corridor Project Phase 1

September 8, 2015

Rev 2

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1. Introduction

The District Department of Transportation (DDOT) is submitting this work plan to the Federal Highway Administration (FHWA) for review and approval to include a Local Labor Hiring Preference (LLHP) contract provision on the South Capitol Street Corridor Project, Phase 1 (the Project) to evaluate whether the local labor hiring preferences unduly restrict competition. For the purpose of this application local labor is classified as any resident of the District of Columbia as defined in DC Code 47-1801.04 as “an individual domiciled in the District at any time during the taxable year, and every other individual who maintains a place of abode within the District for an aggregate of 183 days or more in the taxable year, whether or not the individual is domiciled in the District”. This application is made under the Notice: Contracting Initiative announced in the March 6, 2015 Federal Register, as well as the associated Pilot Program under Special Experimental Project No. 14 (SEP-14) Alternative Contracting.

Historically, FHWA prohibited its recipients of Federal-aid from using contract provisions, such as LLHP, that do not directly relate to the bidder’s performance of work. The District of Columbia has used LLHP contract provisions for many years on its city-funded contracts, and is requesting FHWA’s approval for the use of these provisions on this Federal-aid project under the experimental authorities under 23 U.S.C. 502 and SEP-14. The Project is being procured under a single design build contract.

2. Purpose

The purpose of this work plan is to outline how the impact, if any, that LLHP contract provisions have on the delivery of the Federal-aid project and to determine the extent to which the contract provision affected competition. The District promotes the principle that local residents should participate in, and benefit from, the capital investments in their neighborhoods such as: (1) access to job opportunities; (2) economic benefits to the adjacent communities where the project is located; and (3) helps build a middle-class tax base. DDOT believes that recruiting from the local labor pool will not unduly restrict competition for a Federal-aid project and will not significantly increase the total project cost for the project and that any increase in total project cost will be offset by the benefit to the local community in providing training opportunities and creating a workforce of skilled and qualified workers available to fill the employment needs for future transportation projects.

The current National unemployment rate is 5.5%, however, Washington, DC continues to have a higher than average rate at 7.5%. While the city average is only two points higher than the national average, several areas of the city struggle with unemployment rates of 11% to 15% - twice that of the city average. The majority of the project is located in Ward 8 in Washington, DC where the local unemployment rate is 14.8%. The use of LLHP will provide significant employment opportunities in Washington, DC.

2.1 Project Description

The scope of the South Capitol Street Corridor Phase 1 Project includes the following:

- Construction of a new Frederick Douglass Memorial Bridge and removal of the existing bridge.
- Construction of the bridge approach ovals and connections to adjacent streets.
- Reconstruction of South Capitol Street, SE and Suitland Parkway up to their intersection with Firth Sterling Avenue.
- Replacement of the Interstate 295 bridges over Howard Road, Suitland Parkway and Firth Sterling Avenue.
- Reconstruction of the Interstate 295/Suitland Parkway Interchange.

2.2 Project Schedule

The Project schedule is as follows:

| | |
|---------------------------|-------------------|
| Date of RFP Advertisement | March 4, 2016 |
| Contract Award | December 15, 2016 |
| Project Completion | December 31, 2020 |

2.3 Project Funding Phase 1

As set forth in the draft Initial Financial Plan (dated May 20, 2015) DDOT anticipates funding the South Capitol Street Corridor Project through a combination of Federal and local funds.

The breakdown of the total estimated Phase 1 Project Costs is as follows:

| Use | Total Cost |
|---|-----------------|
| Preliminary Design: | \$51.2m |
| Right of Way: | \$96.0m |
| Design Build Contract: | \$515.3m |
| Project / Construction Management: | \$52.1m |
| GARVEE Debt Service Reserve & Fees: | \$75.3m |
| Contingency, Management Reserve and Stipends: | \$62.3m |
| Project Funding Contingency: | \$49.9m |
| Total: | \$902.1m |

The breakdown of the total Project Funds is as follows:

| Source | Total Funds |
|--|-----------------|
| Total Federal Discretionary Funds: | \$113.7m |
| Total Federal Formula Program Funds: | \$140.9m |
| Total GARVEE Bond Proceeds: | \$249.6m |
| Total Local Funds: | \$354.9m |
| Total: | \$859.1m |
| Federal Formula Program Funds applied to Debt Service: | \$43.0m |
| Total: | \$902.1m |

Sources of the Federal Discretionary Funds described in the table above are:

- Section 1302 National Corridor Infrastructure Improvement Program (2005)
- Section 1702.1547 High Priority Project Funds (2005)
- Section 129 Consolidated Appropriations Act, P.L. 1100161 (2008)
- Public Lands Highway Discretionary Program (2010)

3. Description of Proposed Contracting Requirements

LLHP contract provisions have not previously been applied to FHWA funded projects due to its prohibition on Federal-aid highway projects. The scope of this SEP-14 pilot would be to assess the impact of utilizing LLHP contract provisions on full and open competition for Federal-aid projects. The pilot program will be used to compare and contrast the impact of LLHP contract provisions on competition for FHWA funded contracts against the long term benefit of creating a local workforce of skilled and qualified workers available to fill the employment needs for future transportation projects. Ultimately the goal is to evaluate whether utilization of LLHP contract provisions creates a competitive environment that result in the District receiving lower cost bids that are delivered with a reliable local labor force.

The SEP-14 pilot will consist of the following:

- DDOT will collect data during the bidding process and throughout the project to evaluate the impacts to the competitiveness of the contracting, including total project cost;
- Contract provisions will require a good faith effort to meet the goals established for LLHP, as described in Section 3.1;
- The impact on the local labor pool will be evaluated to determine whether there was an increase in the workforce of skilled and qualified workers available to fill the employment needs for future transportation projects; and
- Preliminary, Interim and Final Reports will be submitted to FHWA to record findings and lessons learned. See Section 6 for Details

3.1 Specific Contract Provisions

Since 1983, the District of Columbia has had a long standing robust local hiring program in place for locally funded projects. This local hiring program, hereinafter referred to as the “First Source Provisions”, encourage the employment of local and economically disadvantaged individuals on locally-funded projects, and the District considers that such initiatives provide ladders of opportunity to individuals who otherwise may be excluded from jobs in the construction industry. The First Source Provisions have been applied on a number of major capital projects within the District, including the Nationals Ballpark and the Marriott Marquis. Through the use of the First Source Provisions, the local labor pool of skilled craft workers has increased. With an estimated total project cost of in excess of \$900 million, the Project will be the largest transportation project undertaken by DDOT to date and will offer the unique opportunity to provide additional training and employment opportunities to create a local workforce of skilled and qualified workers available to fill the employment needs for future transportation projects which will likely result in lower project costs on transportation projects for years to come.

DDOT proposes to refer to the First Source Provisions as a guide to assist in informing the LLHP contract provisions set forth in the Request for Proposals (RFP) for the Project. Proposers will be required to submit a statement as part of their Technical Proposal confirming that they will exercise good faith efforts in their attempts to meet the LLHP contract provisions described herein. The LLHP contract provisions goal is similar to that of the First Source Provisions, in that for any contract more than Three Hundred Thousand dollars (\$300,000), the following shall apply:

- At least 51% of all new jobs created on the Project (new hires) are to be performed by residents of the District of Columbia; and

- For all training and apprenticeship positions identified, at least 51 % of the participants are residents of the District of Columbia.

For the purpose of this contract provision, “new hire” is defined as an individual who has never worked for the organization or has been separated by the organization for more than 90 consecutive days.

DDOT will monitor the contractor’s performance under the contract. DDOT believes that the LLHP contract goal provisions described does not conflict with the EEO requirements of 23 CFR - Appendix A to Subpart A of Part 230 – Special Provisions Specific Equal Employment Opportunity Responsibilities that will be included in the Request for Proposals (RFP). Additionally, DDOT will encourage the contractor to work with DDOT’s Office of Civil Rights to develop programs to use their best efforts to ensure that the U.S. Department of Labor’s goals for female and minority employment are met on the Project.

4. Measurement

DDOT will track and analyze data and the success of the contractor in achieving the established goals to evaluate quantitatively, the effects of using local hiring preferences on competitive bidding and improve utilization of the local labor pool.

The effectiveness of the LLHP contract provisions on the competitive bidding for this project will be measured quantitatively by analyzing the Project cost compared to market costs. The unit costs for major bid items in the winning bid, as compared to projects of similar scope and size will indicate the relative cost of the project and indicate the effects of the contracting requirements on competitive bidding. Comparative bid prices compared to projects of similar scope and size would indicate that the provisions had no negative impact on the competitiveness of the project. The level of competition and whether the provisions did result in leveling of the playing field in labor availability is measured by how the bid prices compare to the market and how close the bids prices are. Projects of similar scope and budget, such as the 11th Street design build project with a total project cost of \$365 million, will be used as a baseline, and will be identified in the Initial Report for both the number of bids and the competitiveness of the bids. Utilization of the local labor pool will include:

- The total number of jobs to be created by the project (on all tiers);
- Demographics and geographical information of total new hires, including veterans;
- The type of jobs or job categories;
- Length of employment;
- The total training hours;
- The total number of DC residents hired by job category; and
- Terminations.

DDOT has shortlisted four qualified design build teams to respond to the RFP. Measurement of the number of bidders will therefore not be an effective benchmark in evaluating the LLHP contract provisions. Should a bidder drop out prior to submitting a Technical and Price Proposal, DDOT considers that competition will be maintained with the remaining three bidders, and the measures of cost described above, remain effective.

4.1 Describe and Quantify How the Proposed Contract Requirement Will Protect the Effective and Efficiency Use of Federal Funding for the Project

DDOT believes that the utilization of LLHP contract provisions will protect the effectiveness and efficiency of Federal funding for the Project in the following manner:

- 1) The intent of this experiment is to assess the degree to which the effectiveness and efficiency of the Federal funding may have been improved by the value that has been created with a stronger and more capable local workforce that was provided on this project and future projects.
- 2) The utilization of the local labor pool will be quantitatively measured using the demographic and hiring data to demonstrate the benefits of the contract provisions on the increase in available skilled and qualified local workers.
- 3) The proposed contract language is consistent with 23 CFR Part 230 regarding equal employment opportunities on Federal-aid projects. The contractor will be required to document its good faith efforts to ensure that minorities, women and disadvantaged individuals are afforded a level playing field for eligible candidates to complete for employment opportunities on Federal aid projects. The equal employment opportunity clause will be included as a standard contract clause in the RFP.
- 4) The proposed contract language is consistent with 23 CFR Part 230 Appendix B to Subpart A Training Special Provisions to provide training opportunities to minorities, women and disadvantaged individuals for apprenticeship and training opportunities. This contract clause will be included as a standard contract clause in the RFP.
- 5) All bidders will be notified of their equal employment opportunity responsibilities under Executive Order 11246 through the inclusion of Form FHWA 1273 Required Contract Provisions Federal-Aid Construction Contracts, which must be physically incorporated in all design-build Federal-aid contracts, in all subcontracts and in lower tiered subcontracts, excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder will be responsible for compliance of all subcontractors, lower tier subcontractors or service providers.

4.2 Protecting the Integrity of the Competitive Bidding Process for the South Capitol Street Corridor

The proposed experimental contract technique would protect the integrity of the competitive bidding process in connection with the Project in the following manner:

- 1) The procurement process will comply with all Federal and local procurement regulations through engaging a transparent bidding process for design-build projects;
- 2) All bidders will be held to the same standard as a matter of response to the bid solicitation; and
- 3) All bidders will be required to submit an initial Employment Plan outlining a strategy to meet local hiring requirements as part of its response to the bid solicitation.

5. Litigation

The District of Columbia currently has a local hiring requirement under Mayor's Order 83-265, D.C. Law 5-93, and D.C. Law 14-24. The law was recently updated in the District of Columbia Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, which establishes local hiring requirements for all District-funded projects. The law is administered by the District Department of Employment Services (DOES), the local state employment agency. The First Source requirements

apply to any District project and typically require that 51% of all new hires be District residents for projects of contract value between \$300,000 and \$5 million. Additional requirements apply for contracts greater than \$5 million. The First Source requirements have been applied on a number of major capital projects, including the Nationals Ballpark, the Marriott Marquis. A legal challenge to the constitutionality of the First Source law was filed in July, 2014. The litigation is still pending. However, the District continues to impose the requirements of the First Source law on ongoing projects as well as new projects during the pendency of the litigation.

6. Reporting

Reports will be made on the progress and success of the implementation of the LLHP contract provisions on the Project as measured by the data and will include an assessment of the working relationship between the District, and all persons or entities supplying labor to the Project. DDOT will be responsible for collecting all relevant data and submitting reports.

An **Initial Report** will be submitted to the FHWA within 6 months after initial Notice to Proceed is given to the contractor. The Initial Report will include an assessment of the impacts the provisions had on the bidding process, and any observations or lessons learned from the procurement and award of the contract.

Interim Reports will be submitted to the FHWA approximately one year after the Initial Report, and every year thereafter until the date of substantial completion of the Project. The Interim Reports will assess the success to date of meeting the goals established for the LLHP, provide data collected to date, assess the effectiveness of training and outreach programs, and seek to identify any means of improving the effectiveness of the program.

A **Final Report** will be submitted to the FHWA within 6 months of the date of substantial completion of the Project. The Final Report will compile data collected to assess the effectiveness of the LLHP contract provisions and will provide lessons learned and recommendations for implementation on subsequent projects. The Report will include bid price data compared to other similar projects including concrete, asphalt, and other major bid items.



Memorandum

Subject: **ACTION:** Local Labor Hiring Preference under
Special Experimental Project No. 14 (SEP-14)

Date: September 28, 2015

From: 
Thomas D. Everett
Director, Office of Program Administration

In Reply Refer To:
HIPA-30

To: Christopher Lawson
Division Administrator

This memorandum is in response to the September 9 email sent by Joshua Cunningham of your office, which transmitted the District of Columbia Department of Transportation (DDOT) revised SEP-14 workplan/application (dated September 8, 2015) for utilization of a Local Labor Hiring Provision (LLHP) on the South Capitol Street Corridor Project, Phase 1. The email also transmitted a comment resolution matrix showing the resolution and disposition of each FHWA comment from the review of the July 14, 2015 version of the DDOT SEP-14 workplan.

DDOT would include the following contract provisions in its Request for Proposals:

- Proposers will be required to submit a statement as part of their Technical Proposal confirming that they will exercise good faith efforts in their attempts to meet the LLHP contract provisions;
- At least 51 percent of all new jobs created on the Project (new hires) are to be performed by residents of the District of Columbia; and
- For all training and apprenticeship positions identified, at least 51 percent of the participants are residents of the District of Columbia.

Note: For the purpose of these contract provisions, “new hire” is defined as an individual who has never worked for the organization or has been separated by the organization for more than 90 consecutive days.

The workplan is approved. If you have any questions, please contact the following:
Gerald Yakowenko at Gerald.Yakowenko@dot.gov or (202)366-1562, or John Huyer at John.Huyer@dot.gov or (651)291-6111