

SEP-14 Application: Locally-Based Hiring Preferences on the Interstate 295 (I-295) / Malcolm X Interchange Improvement Project

November 08, 2016

Note: Conditions of Approval from FHWA's January 17, 2017 Approval Memorandum **ACTION:** District of Columbia Local Labor Hiring Pilot Program (LLHPP) under Special Experimental Project No. 14 (SEP-14) are *italicized in this document*.

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Note: *DDOT must provide an affirmative certification in accordance with Section 192 of Title I, Division L of the Consolidated Appropriations Act, 2016 (the Department of Transportation Appropriations Act, 2016), “the FY 2016 Appropriations Act.” This can be done either by amending the SEP-14 workplan or by submitting a separate cover letter.*

1. Request

The Federal Highway Administration (FHWA) prohibits recipients of Federal-aid from using contract provisions that do not directly relate to the bidder's performance of work, including local labor hiring preference (LLHP) requirements. The District of Columbia (the District) believes that hiring from the local labor pool does not unduly limit competition or significantly increase the total project cost for the project; and promotes the principle that any limitations in competition or increases in cost are offset by the benefit to the local community: LLHP requirements in construction contracts help to 1) create a skilled and qualified workforce available to fill the employment needs for future transportation projects; 2) address unemployment in Washington DC¹; and 3) build a middle class tax base. To capture this benefit, the District, through the District Department of Transportation (DDOT) has used LLHP requirements for many years in its city-funded construction contracts, and is interested in using them in Federally-funded projects, as well.

Therefore, pursuant to the Special Experimental Project No. 14 (SEP-14) Alternative Contracting Initiative announced in the March 6, 2015 edition of the Federal Register and extended in the March 17, 2016 edition of the Federal Register, DDOT requests the FHWA's approval to include LLHP requirements in the construction bid documents of the I-295/Malcolm X Avenue Interchange Improvement Project, and provides the following information.

2. Project Description

The Department of Homeland Security (DHS) is consolidating its National Capital Region headquarters at the St. Elizabeth's West Campus. The General Services Administration (GSA) is responsible for implementation of the campus consolidation, which includes improvements to the I-295 / Malcolm X Avenue SE Interchange. The primary goal of the proposed project is to enhance access between Interstate 295 (I-295) and St. Elizabeth's West Campus. Under the existing configuration, the campus has limited access to I-295 via either an access road along the western campus boundary to Firth Sterling Avenue to the Suitland Parkway Interchange or circuitous route through the campus to Martin Luther King Avenue SE. The primary project goal is to extend the western access road to Malcolm X Avenue SE to gain direct access to I-295/Malcolm X Interchange. Traffic analysis projected major traffic congestion at the I-295 /Malcolm X Avenue Interchange with the combination of the St. Elizabeth's Campus and Joint Base Anacostia Bolling (JBAB) peak hour vehicular volumes. The proposed project enhancements to the I-295/Malcolm X Interchange are to provide the St. Elizabeth's Campus access and to mediate the vehicular volumes. The enhancements included an

¹ The majority of the project is located in Ward 8 in Washington, DC where the local unemployment rate is 14.8% -- almost 10% higher than the national average.

extended NB off-ramp that incorporated access from South Capitol Street SE and transitioned into both a direct connection to the Campus access road and Malcolm X Avenue SE; on-ramp improvements for movements from Malcolm X Avenue SE to I-295 NB; and off-ramp and on-ramp accesses from I-295 SB that avoided direct connection to Malcolm X Avenue SE.

3. Project Schedule

The Project schedule is as follows:

GSA submit Final (100%) completed Plan, Specifications and Estimate (PS&E) submittal, including all funding, Right-of-way transferred to DDOT, utility release letters, all permits to DDOT: [January 20, 2017](#)

Date of IFB Advertisement: [February 20, 2017](#)

Contract Award: [June 30, 2017](#)

Project Completion: [June 30, 2020](#)

4. Project Funding

All funding for the I-295/Malcolm X Avenue Interchange Improvement Project will be provided by the US General Services Administration (GSA).

The following breakdown of the total estimated Project Costs with the GSA's funding sources is as follows:

Use	Total Cost
Preliminary Design:	\$ 8.9m
Right of Way:	\$ 0.5m
Design Contract:	\$ 11.8m
Construction Contract (65%):	\$128.1m
Project / Construction Management:	\$ 17.0m
Project Funding Contingency (15%):	\$ 19.1m
Total:	\$185.4m

The breakdown of the total Project Funds is as follows:

Source	Total Funds
Total Federal Funds:	\$185.4m
Total:	\$185.4m

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

- ARRA Funds 2009 \$ 8.9m
- Congressional Appropriation 2015 \$144.0m
- Congressional Appropriation 2016 \$ 8.6m
- Congressional Appropriation 2016 (redirect) \$ 23.9m

5. 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 \$100 million, the Project will be one of the large transportation project that will be undertaken by DDOT and will offer 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 special provision for the Project. Bidders will be required to submit a statement as part of their Bid submittal package 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 bid documents. 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.

6. Evaluation.

DDOT will evaluate the effects of relevant contracting requirements on competitive bidding. In doing so, DDOT will provide comparisons of bids received for the projects utilizing the relevant contract requirements to other projects of similar size and scope and in the same geographic area not utilizing such requirements. If a reduction in the pool of bidders is evident, DDOT will explain the potential offsetting benefits resulting from the use of the requirement.

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 using the following criteria:

- *The number of bidders (including the location of the home office) - An explanation will be provided for the apparent increase or decrease in the average number of bidders. Specific competitive reasons (e.g. other bidding opportunities, apparent risk, etc.) will be provided for the increase / decrease in competition. Projects of similar scope will be used as a baseline, and will be identified in the Initial Report and the Final Report. The evaluation will discuss the impact on the number of bids received from local and non- local firms.*
- *A comparison of the impact of the LLHP requirement on the workforce will be made by comparing the percentage of total local labor hours on the pilot program with the percentage typically achieved on a similar Federal-aid project that did not use the LLHP provision. An explanation of any significant differences will be provided. Additionally; DDOT will collect the following information:*
 - *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.*

6.1 Effectiveness and Efficiency Use of Federal Funding for the Project

Describe and quantify how the proposed contracting requirement would lead to increases in the effectiveness and efficiency of Federal funding for the project.

DDOT will conduct an analysis of the effectiveness and efficiency of the LLHP requirement using the following information:

- *A comparison of unit bid prices - An evaluation of the unit prices for five bid items with the highest total value on the pilot project will be compared to unit prices for projects with a similar size and scope. These projects will be used as a baseline, and will be identified in the Initial Report and the Final Report.*
- *The prime contractor will be interviewed at the conclusion of the contract to obtain its opinion of the effectiveness and efficiency of the LLHP provision on its construction operations and to discuss any potential concerns or recommendations for the program. This will provide one measure of the relative efficiency of the contractor in meeting the contract requirements.*
- *Provide an evaluation of the net economic benefit of employing additional DC residents by analyzing the potential monetary benefits that might be related to the receipt of funds from other federally assisted programs (e.g. reductions in the DC unemployment rolls, payments for uninsured health insurance costs, etc.). The economic analysis will address the extent to which other Federal funds may be impacted by reducing unemployment in the DC workforce.*
- *Provide an evaluation of the potential increase in the pool of skilled labor available to all contractors.*

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 bid documents.
- 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 bid documents.
- 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 Federal-aid contracts bid documents (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 contractor will be responsible for compliance of all subcontractors, lower tier subcontractors or service providers.

6.2 Protecting the Integrity of the Competitive Bidding Process for the Project

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 project will be procured using a transparent bidding process that complies with all Federal and local procurement regulations;
- 2) All bidders will be held to the same standard as a matter of response to the bid solicitation; and
- 3) 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.

7. 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.

8. 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. *Collect all data and information as required by Paragraphs 1 and 2 of the January 17, 2017 FHWA Approval Memorandum **ACTION:** District of Columbia Local Labor Hiring Pilot Program (LLHPP) under Special Experimental Project No. 14 (SEP-14).*

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.