

ATTACHMENT 3.2.12

VIRGINIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION FOR LOCAL HIRING PROGRAM FOR DESIGN-BUILD PROJECTS

September 2, 2015

Local Hiring Program Requirements

(a) General

- (i) The Commonwealth of Virginia is committed to reducing barriers to employment to ensure a diverse workforce in the construction industry. Therefore, the purpose of the Local Hiring Program is to support and grow the Commonwealth's commitment by means of a robust hiring and retention program for local workers and veterans and a robust On-the-Job Training (OJT) Program.
- (ii) The Design-Builder and any subcontractors shall comply with this Special Provision.
- (iii) The parties recognize the importance of recruiting, hiring, and technical and workplace training of local workers and veterans in the development of the Project and execution of the Contract. As such, the Design-Builder shall utilize workforce on-the-job training, apprenticeship and recruitment programs to actively recruit local workers and veterans.
- (iv) The Design-Builder shall comply with all applicable state and federal law, regulations, guidelines, and policies in the administration of this Special Provision and the award and administration of subcontracts pursuant to the Contract. Failure by the Design-Builder to carry out the requirement in this Special Provision will subject the Design-Builder to the enforcement mechanisms as set forth herein, but shall not result in a right of the Department to terminate the Contract.
- (v) All time frames referenced in this Special Provision are expressed in business days (Days) unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.
- (vi) In accordance with the Local Hiring Program requirements, the Design-Builder, and subcontractors shall commit to complying fully with this Special Provision. The Design-Builder agrees to assume these contractual at the Design-Builder's expense.
- (vii) For the purposes of this Special Provision, Offeror is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of Qualification or Proposal for the work contemplated there under; Design-Builder is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Design-Build Work; and subcontractor is defined as any supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the Contract. New hires shall be as defined in Section (b) (v) herein below.

(b) Design-Build Work.

- (i) During performance of the Design-Build Work, the Department has established a minimum requirement of 75% for local worker and/or veteran new hire participation. New hire participation represents employees paid specifically for work performed on the project and may be randomly verified through the checking of payrolls. Hiring by subcontractors will count toward meeting the percentage goal. Veteran shall mean any person that meets the definition of "veteran" in either 38 USC §101 or 5 USC §2108. Local worker shall mean that the person resides in the following jurisdictions: Counties of Stafford, Spotsylvania, Fauquier, Prince William and King George as well as the City of Fredericksburg.

The Department and the Design-Builder agree to manage this goal as follows:

- (A) the Design-Builder shall submit for the Department's review and approval and initial Hiring Development Plan, and an updated Hiring Development Plan as further described herein. The initial and updated Hiring Development Plan shall be submitted within 30 Days after Contract award and on January 30 of each year prior to achieving Substantial Completion of the Project. The Hiring Development Plan shall define the Design-Builder's approach to meeting the workforce minimum requirements set forth in this Section (b) (i);
- (B) the Design-Builder shall designate resources, including a liaison officer designated and made known to the Department who is assigned the responsibility of administering and promoting an active and inclusive Hiring Development Plan to ensure all programs related to the Hiring Development Plan are compliant with this Special Provision. The designation and identity of this officer needs to be submitted as part of the Initial and Updated Hiring Development Plan;
- (C) the Design-Builder shall ensure that local workers and veterans have been given full and fair opportunity to participate in the hiring process for vacant positions;
- (D) the Design-Builder shall make Good Faith Efforts to obtain local workers and veterans' participation in the execution and performance of the Contract at or above the established local worker & veteran hiring goal set forth in this Section (b) (i);
- (E) the Design-Builder shall provide to the Department each calendar quarter, after approval of the Initial Hiring Development Plan, documentation of all local worker and veteran workforces; and
- (F) each calendar quarter, the Design-Builder will provide Good Faith Efforts documentation using Form C-66, VDOT Local Worker and Veteran Employment Report or equivalent tracking measures and other supplemental information as appropriate. Current workforce and local and veteran new hires shall be tracked by the number of employees and not how many hours such employee is paid. Form C-66 or Design-Builder's equivalent report in a format otherwise acceptable to the Department, shall be used to capture the Design-Builder's workforce at contract execution and local workers and veterans hired and terminated during the course of the project.

- (ii) During the performance of the Design-Build Work, the parties will work cooperatively to accomplish the local worker and veteran recruitment, hiring and OJT objectives, as established in the approved Hiring Development Plan and its subsequent updates. The Department will assist the Design-Builder in meeting the Design-Build Work workforce minimum requirements set forth in Section (b) (i) by offering assistance in the following activities:
 - (A) the parties will jointly conduct outreach meetings for local workers and veterans; and
 - (B) the parties will jointly identify agencies or firms that actively employ or recruit local workers and veterans.
- (iii) The Design-Builder acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Design-Builder's responsibility to achieve the Design-Build Work workforce minimum requirements set forth in Section (b) (i) or demonstrate Good Faith Efforts. The Design-Builder is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed during the performance of the Design-Build Work. The Design-Builder shall meet the workforce minimum requirements set forth in Section (b) (i) or demonstrate that Good Faith Efforts have been made.
- (iv) When there is a workforce minimum requirement for the Design-Build Work, the Design-Builder shall make Good Faith Efforts to meet the workforce minimum requirement through obtaining enough local and veteran worker workforce participation or documenting the Good Faith Efforts it made to do so. The Department shall not disregard showings of Good Faith Efforts, and it gives the Design-Builder the right to have the Department reconsider a decision that their Good Faith Efforts were insufficient. The Department must seriously consider the Design-Builder's documentation of Good Faith Efforts. The Department will issue Good Faith Efforts Guidelines providing examples, procedures and reporting requirements for the Design-Builder's consideration.
- (v) During the performance of the Design-Build Work the following procedures shall apply to the Hiring Development Plan for compliance purposes:
 - (A) **Hiring:** The Design-Builder shall use standard hiring practices, including interviews, to consider all qualified applicants in the defined local geographic area to meet the established local and veteran hiring goal. The Design-Builder shall make Good Faith Efforts to fill all available positions with local and veteran applicants. Local Workforce Development Centers and the Virginia Employment Commission may be used for applicant referrals. The Design-Builder is encouraged to partner with local Workforce Development Centers for local applicants;
 - (B) **New Hire:** Employees who work on the Project to whom the employer anticipates paying earnings include full-time, part-time, and temporary statuses that are employed for a specific project. New hires shall include employees reporting to work for the first time or re-hires (employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment); and

- (C) **Good Faith Efforts Described:** The Department will determine if the Design-Builder has demonstrated adequate Good Faith Efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the local and veteran hiring goal. Efforts to obtain local and veteran hiring goals are not Good Faith Efforts if they could not reasonably be expected to produce a level of local worker's participation sufficient to meet the local and veteran hiring goal set forth in this Special Provision.

Good Faith Efforts may be determined by soliciting for vacant positions through reasonable and available means in the local area, such as but not limited to, advertising, written notices to local Workforce Development Centers and the Virginia Employment Commission.

A list of actions the Contractor may take to meet the local worker and veteran's hiring goal can be found in the Good Faith Efforts Guidelines.

(c) Local Worker and Veteran Workforce Participation Reporting and Assessment

- (i) The Design-Builder and each subcontractor shall report to the Department quarterly, within 15 Days after each calendar quarter ends, on the Design-Builder's efforts to (A) satisfy the local and veteran worker workforce minimum requirements set forth in Section (b)(i) or (B) demonstrate Good Faith Efforts to accomplish the local and veteran worker workforce minimum requirements set forth in Section (b)(i).
- (ii) The Department will assess, confirm and communicate to the Design-Builder within 30 Days after receiving each quarterly report whether the Design-Builder has (A) satisfied the local worker and veteran workforce minimum requirements, (B) demonstrated Good Faith Efforts, or (C) failed to satisfy the requirements of clause (A) and (B) of this Section (c)(ii), and the reasons why the Department has determined Good Faith Efforts has not been satisfied.
- (iii) The Design-Builder shall report compliance on Form C-66, VDOT Local Worker and Veteran Employment Report, in accordance with the instructions attached to the form or an equivalent report in a format otherwise acceptable to the Department.

(d) Failure to Demonstrate Local Worker and Veteran Recruitment and Hiring Good Faith Efforts Related to Design-Build Work

- (i) If the Department notifies the Design-Builder pursuant to Section (d) that the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(i) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for a quarterly period, the Design-Builder will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (A) and (B) of Section (c)(ii) with respect to such local worker and veteran participation workforce minimum requirements.
- (ii) If the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(ii) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for two consecutive quarters based on the determinations by the Department pursuant to Section (c), the Design-Builder will prepare and submit, at the Design-Builder's sole cost and expense, a Participation

Performance Improvement Plan for the Department's review and approval. The Participation Performance Improvement Plan will describe the specific actions and measures that the Design-Builder will undertake to improve its performance with respect to satisfying the requirements of clause (A) and (B) of Section (c)(ii) with respect to the participation workforce minimum requirements for the Design-Build Work. The Design-Builder will submit the Participation Performance Improvement Plan within 15 days after receiving notice from the Department pursuant to Section (d) that the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(ii). The Design-Builder will reimburse the Department for its Allocable Costs in reviewing, approving and monitoring the Design-Builder's compliance with the Participation Performance Improvement Plan until the Design-Builder satisfies the requirements of either clause (A) or (B) of Section (c)(ii) with respect to the local worker and veteran participation workforce minimum requirements set forth in Section (b) (i) for the Design-Build Work.

(e) Project Completion Related to the Design Build Work

The Design-Builder may submit documentation to the Department to substantiate that failure was beyond the Design-Builder's control and that all feasible means had been used to achieve the local and veteran hiring goal. The Department, upon verification of such documentation shall determine whether the Design-Builder has met the requirements of this Special Provision.

(f) Existing Local and Veteran Workforce

Existing local and veteran workforce participation in the execution and performance of the Contract will count toward the Design-Builder's total local workers and veteran's workforce. This information will be captured on the VDOT Local Worker and Veteran Employment Report (Form C-66). Local workers residing in the jurisdictions as set out in Section (b) (i) will be included in the Design-Builder's workforce. Only veterans, as defined in Section (b) (i), who reside in the Commonwealth of Virginia will be included in this computation.