



ATTACHMENT III

COLUMBIA

SOUTH CAROLINA

Subcontracting Outreach Program

RFP – DESIGN/BUILD PROJECTS
CREATED - 10/27/11

“One Mission - One Message - One Columbia”

Department of Utilities and Engineering

Compliance Office

P. O. Box 147

1401 Main St., 6th floor

Columbia, South Carolina 29217
Phone (803) 545-3369 Fax (803) 545-4130
www.columbiasc.net/engineering
CITY ADMINISTRATIVE POLICIES AND PROCEDURES 19-3
City of Columbia, South Carolina

SUBCONTRACTING OUTREACH PROGRAM
RFP – DESIGN/BUILD PROJECT
Created 10-25-11

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SUBCONTRACTING OUTREACH PROGRAM SUMMARY

The Subcontracting Outreach Program applies to City-funded construction contracts of Two Hundred Thousand and No/100 (\$200,000.00) Dollars or more. When Federal or State funding sources impose additional requirements, those requirements as defined in the contract documents replace the requirements of this program.

The City of Columbia is committed to maximizing subcontracting opportunities for all qualified and available firms. Design-builder or design-build contractors should be fully informed of the Subcontracting Outreach Program as set forth in this document.

Subcontract - 20%:

To be eligible for award of this project, the design-builder or design-build contractor must subcontract a **minimum percentage** of its proposal to qualified available subcontractors, as indicated below. These required subcontractor participation levels must apply throughout the duration of the contract, including, where appropriate, any change order and contract modification. Where the change order or contract modification includes goods or services that were supplied by subcontractors under the terms of the original contract or could be supplied by subcontractors under the change order or contract modification, then the provisions of Subcontractor Outreach program apply. These subcontractor participation levels will be evaluated on an annual basis to ensure the appropriateness of those levels. **The design-builder or design-build contractor must list all subcontractors, regardless of amount.** Failure to list subcontractors and subcontracting amounts with the proposal sufficient to meet or exceed the mandatory subcontracting participation level will be grounds for contract termination.

Parks - 20%

Pipelines (water and sewer) - 20%

Pump Stations - 20%

Street Improvements - 20%

Traffic Signals/Street Lighting – 20%

Buildings - project by project - (not to exceed 49%)

Miscellaneous projects - 20%

Submit Outreach Documentation for Design/Build Project

To be eligible for award of this project, the design-builder or design-build contractor must submit documentation of its subcontractor outreach effort prior to the issuance of the building permits. Failure to submit required documentation with the proposal will be grounds for contract termination. For assistance or further information about the Subcontracting Outreach Program, contact the Department of Utilities and Engineering, Compliance Office.

For Design/Build projects; prior to the issuance of building permits, the design-builder or design-build contractor must provide all required documentation as outlined in Indicators #1 - #10 of this document. The documentation provided will be evaluated by the Department of Utilities and Engineering, Compliance Division Team. A minimum score of 80 points out of 100 points must be achieved by the design-builder or design-build contractor.

SUBCONTRACTING OUTREACH PROGRAM

A. General

This program is subject to policies and requirements established by the City Manager's Office. The City is committed to ensuring full and equitable participation by subcontracting businesses in provision of goods and services on a contractual basis. Design-builder or design-build contractors shall be fully informed of the Subcontracting Outreach Program as set forth in this document. Failure to comply with the City's Subcontracting Outreach Program will be grounds for contract termination.

Terms and conditions of this Subcontracting Outreach Program apply to City-funded construction projects of Two Hundred Thousand and No/100 (\$200,000.00) Dollars or more. At the City's sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation at the specified level. Any department seeking to waive the requirements of this program may do so by submitting documentation in writing to the Compliance Administrator prior to issuance of the proposal package. If the Compliance Administrator disagrees with the recommendation to waive the requirements of this program, the City Manager will make the final determination based on information provided to him by the director of the department seeking waiver and the Compliance Administrator. When State and/or Federal funding sources require affirmative action goals, those goals as defined in the contract documents replace requirements of this Subcontracting Outreach Program.

B. Subcontractor Outreach and Participation

This Subcontracting Outreach Program requires design-builder or design-build contractors to make subcontracting opportunities available to a broad base of qualified subcontractors and achieve a minimum of **20%** subcontractor participation. Broad base is defined as participation from Disadvantaged Business Enterprises (DBE), Disabled Veterans Business Enterprises (DVBE) and Other Business Enterprises (OBE) in all disciplines of the project.

C. Definitions

- 1. Design/Build (DB) Projects:** is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the **design-builder or design-build contractor**. In contrast to "design-bid-build" (or "design-tender"), design-build relies on a single point of responsibility contract and is used to minimize risks for the project owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project. "DB with its single point responsibility carries the clearest contractual remedies for the clients because the DB contractor will be responsible for all of the work on the project, regardless of the nature of the fault".^{[11](#)}
- 2. Disadvantaged Business Enterprise (DBE):** A business, which is, at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party or parties. In the case of a publicly owned business, at least

¹ Wikipedia; September 3, 2011

fifty-one percent (51%) of the stock must be owned by and the business operated by socially and economically disadvantaged individuals.

3. **Disabled Veteran Business Enterprise (DVBE):** A business, which is, at least fifty-one percent (51%) owned and operated by one or more veterans with a service-related disability and whose management and daily business operation is controlled by the qualifying party or parties.
4. **Other Business Enterprise (OBE):** A business which does not otherwise qualify as a Disadvantaged Business Enterprise or a Disabled Veteran Business Enterprise.
5. **Subcontractor Outreach Efforts:** Affirmative steps taken by a design-builder or design-build contractor prior to proposal opening to ensure maximum effort to recruit subcontractors, including Disadvantaged Business Enterprises (DBEs), Disabled Veteran Business Enterprises (DVBEs) and Other Business Enterprises (OBEs), as sources of supplies, construction and other services whenever possible. Required steps for documenting outreach efforts are outlined in Paragraph E of this document.
6. **Subcontract:** Agreement between a design-builder or design-build contractor and an individual, firm or corporation for performance of particular portion or portions of work for which the design-builder or design-build contractor has obligated itself.
7. **Subcontractor:** An individual, firm or corporation having a direct contract with the design-builder or design-build contractor for performance of portion or portions of work to be constructed under the contract, including furnishing of labor, materials or equipment.
8. **Vendor and/or Supplier:** A firm that owns operates or maintains a store, warehouse or other establishment in which materials or supplies required for performance of the contract are brought, kept in stock and regularly sold to the public in the usual course of business. As its principal business and in its own name, the firm must engage in purchase and sale of products in question. A vendor and/or supplier of bulk items such as steel, cement, stone and petroleum products need not keep such products in stock if it operates distribution equipment and/or a facility.
9. **Manufacturer:** An individual, firm or corporation operating or maintaining a factory or establishment that produces on the premises materials or supplies obtained by the design-builder or design-build contractor.
10. **Subcontractor Participation:** Disadvantaged Business Enterprises (DBEs), Disabled Veteran Business Enterprises (DVBEs) and Other Business Enterprises (OBEs) will be recognized as participants in a contract according to the following criteria:
 - (a) For credit to be allowed toward respective subcontractor participation levels as a DBE or DVBE firm, such entities must be certified by the City in accordance with the definitions under Paragraph C, Items 2 and 3, and

identified by the design-builder or design-build contractor as such in contract documents for data collection purposes.

- (b) A subcontractor must perform a commercially useful function for credit to be allowed toward subcontractor participation levels. A subcontractor must be responsible for execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work.
- (c) In computing level of subcontractor participation, recognition for materials and/or supplies is limited to sixty percent (60%) of amount to be paid to vendor for such materials/supplies unless vendor manufactures or substantially alters materials/supplies.

D. Mandatory Subcontractor Participation Percentage Effort

The City has incorporated a mandatory subcontractor participation effort to enhance competition and maximize subcontracting opportunities. Based on review of subcontractor usage on City projects, the mandatory effort is:

**MANDATORY
Subcontractor Participation Effort**

20%

Failure to meet the subcontractor participation effort of 20% will be grounds for contract termination. A design-builder or design-build contractor is precluded from using a subcontractor to meet its subcontractor participation effort if the design-builder or design-build contractor has a financial interest in, has ownership of or a controlling interest in, or is significantly involved in the operation of the subcontractor.

Based on availability data for the preceding three years, the Department of Utilities and Engineering, Compliance Office shall annually establish advisory subcontract participation levels on an industry basis (e.g., construction, goods, services, and professional services) for each of the following classifications of firms: Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), and Other Business Enterprise (OBE). These DBE, DVBE, and OBE advisory subcontract participation levels shall be advisory only and shall not constitute a basis for determination of non-compliance or disqualification.

E. Documentation of Subcontractor Outreach Efforts

All documentation must be submitted prior to building permit issuance. Failure to submit required documentation to the contracting agency within this time frame will be grounds for contract termination. The Compliance Office may request additional information to validate or clarify original documents submitted and such information must be submitted immediately upon request by hand delivery or overnight mail delivery. It is the policy of the City of Columbia to provide all subcontractors an equal opportunity to participate in performance of City contracts.

Design-builder or design-build contractors assist the City in implementing this policy by taking reasonable steps to ensure all qualified businesses, including Disadvantaged Business Enterprises

(DBEs), Disabled Veteran Business Enterprises (DVBEs), and Other Business Enterprises (OBEs), have equal opportunity to compete for and participate in City contracts.

Documentation of a design-builder or design-build contractor’s outreach efforts will be reviewed by the Department of Utilities and Engineering, Compliance Office according to the indicators listed below to verify that design-builder or design-build contractor made subcontracting opportunities available to a broad base of qualified subcontractors, negotiated in good faith with interested subcontractors, and did not reject any proposal for unlawful discriminatory reasons.

Failure to achieve a minimum of 80 out of 100 points will be grounds for contract termination. Indicator points are awarded on a pass/fail basis, i.e., either full or zero points can be achieved for compliance with each item as set forth below:

Indicator	Points
1. Achievement of advisory DBE/DVBE/OBE subcontractor participation levels	No Points
2. Pre-Proposal Meeting attendance	5 Points
3. Identification of sufficient subcontracting work	10 Points
4. Broad-based advertisement	10 Points
5. Written notice to subcontractors	10 Points
6. Follow-up to initial solicitations	10 Points
7. Provision of plans, specifications and requirements	10 Points
8. Request for assistance from recruitment/placement agencies	10 Points
9. Documentation of subcontractor negotiation	25 Points
10. Assistance with bonds, credit lines and insurance	10 Points
POSSIBLE TOTAL	100 Points

1. Achievement of advisory DBE/DVBE/OBE subcontractor participation levels	<u>No Points</u>
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Failure to meet advisory DBE/DVBE/OBE subcontractor participation levels is not a basis for

disqualification or determination of non-compliance with this policy.

2. Pre-Proposal Meeting attendance

5 Points

Design-builder or design-build contractor attended pre-proposal meeting scheduled by the City to inform the design-builder or design-build contractor of requirements for subject project.

Required documentation: a) Attendance at the pre-proposal meeting is mandatory.

10 Points

3. Identification of sufficient subcontracting work

Design-builder or design-build contractor's identification of specific work items in subject project to be performed by sub-bidders. Design-builder or design-build contractor subdivided total contract work requirements into smaller portions or quantities to permit maximum active participation.

Required documentation: Content of advertisements (Indicator 4) and written notices to subcontractors (Indicator 5) will demonstrate compliance with this objective.

4. Broad-based advertisement

10 Points

The design-builder or design-build contractor shall conduct an advertising campaign designed to reach all segments of the Columbia community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers or other media. Advertisements must be specific to the project, not generic, and may not be a plan holder advertisement provided by the publication. Advertisements shall be published on at least three (3) separate days in newspapers of general circulation; one of the newspapers selected shall be of daily circulation. Advertisements must be worded to ensure it does not exclude or limit the number of potential respondents and must include:

- City of Columbia's project name;
- Name of design-builder or design-build contractor;
- Areas of work available for subcontracting;
- Contact person's name and phone number;
- Information on availability of plans and specifications;
- Design-builder or design-build contractor's policy concerning assistance to subcontractors in obtaining bonds and credit lines and/or insurance

Required documentation: Submit copies of advertisements and proof of publication dates.

5. Written notice to subcontractors

10 Points

The design-builder or design-build contractor shall provide written notice of its interest in receiving sub-bids on subject contract from DBE, DVBE, and OBE business enterprises with an interest in performance of identified work items. Contents of letters must include:

City of Columbia's project name;
Name of design-builder or design-build contractor;
Areas of work available for subcontracting;
Contact person's name and phone number;
Information on availability of plans and specifications; and
Design-builder or design-build contractor's policy concerning assistance to subcontractors in obtaining bonds and credit lines and/or insurance.

Required documentation: Submit copy of each letter sent to subcontractors for each item of work to be performed. If only one master notification, submit letter with list of recipients. Faxed copies must include fax transmittal confirmation slip showing date and time of transmission. Mailed letters must include copies of metered envelopes or certified mail receipts.

6. Follow-up to initial solicitations 10 Points

Design-builder or design-build contractor followed up initial solicitations of written notice to subcontractors to determine interest in specific portions of project work, answered questions, recorded phone quotes, and recorded subcontractor's interest in bidding on any portion of subject project.

Required documentation: Submit copy of telephone logs including name of caller, name of company called, phone number, contact person, time, date, and result of conversation. Telephone logs must be submitted to demonstrate follow-up with all contractors to whom written notices were sent. It is recommended that the design-builder or design-build contractor provide a spreadsheet showing each sub-bidder contact required above.

7. Provisions of plans, specifications, and requirements 10 Points

Design-builder or design-build contractor provided interested sub-bidders with access to plans, specifications, and requirements for subject project.

Required documentation: Content of advertisements (Indicator 4) and written notices to subcontractors (Indicator 5) will demonstrate compliance with this Indicator.

8. Request for assistance from recruitment/placement agencies (i.e. state, federal and city databases and/or business centers having lists of clients such as: SBA HUB Zone; MBDA Business Center; SC DOT Disadvantaged Business Programs/Unified Certification Program; SC Governor's Office of Small Business & Minority Business Assistance Program; U.S. Dept of Veteran Affairs (Vetbiz.gov); Associated General Contractors (AGC); and The Dodge Project Center 10 Points

Disclaimer: These suggestions are not all inclusive, and should not be considered sole sources for recruitment/placement outreach.

The design-builder or design-build contractor shall request and retain assistance from different agencies that recruit and place subcontractors. Other organizations and trade associations that promote subcontractor participation may also be contacted.

Required documentation: Submit copy of each letter sent to outreach agencies requesting assistance in recruiting subcontractors. Faxed copies must include fax transmittal confirmation slip showing date and time of transmission. Mailed letters must include copies of metered envelopes or certified mail receipts. Content of letters must include City of Columbia's project name, name of design-builder or design-build contractor, and contact person's name and phone number.

9. Documentation of subcontractor negotiation

25 Points

Design-builder or design-build contractor negotiated in good faith with interested subcontractors and has rejected no proposal for other than legitimate business reasons.

Required documentation: Submit a) Provide written documentation of all subcontractor bids or quotes received, including the bid or quote amount, the date obtained and the name and the telephone number of the person providing the bid or quote amount; b) Summary sheet organized by work type listing subcontractor company names with bid amounts for each work type; and (c) a notarized statement from the owner or a principal of the design-builder or design-build contractor stating that the design-builder or design-build contractor does not hold a financial interest in, does not have ownership of or a controlling interest in or is not significantly involved in the operation of the subcontractor. Identify selected subcontractor for each work type. If design-builder or design-build contractor elects to use own forces to perform a work type, include bid to show own costs for the work.

10. Assistance with bonds, credit lines, and insurance

10 Points

Design-builder or design-build contractor made efforts to advise and assist interested subcontractors in obtaining bonds, credit lines, and insurance required for subject project.

Required documentation: Content of advertisements (Indicator 4) and written notices to subcontractors (Indicator 5) will determine compliance with this objective.

F. Contract Award

The City reserves the right to reject any and all proposals.

For Design/Build projects; prior to the issuance of building permits, the design-builder or design-build contractor must provide all required documentation as outlined in Indicators #1 - #10.

The documentation provided will be evaluated by the Department of Utilities and Engineering, Compliance Division Team. A minimum score of 80 points out of 100 points must be achieved

by the design-builder or design-build contractor.

Failure to achieve a minimum of 80 out of 100 points will render a proposal non-responsive and will result in its rejection. Indicator points are awarded on a pass/fail basis, i.e., either full or zero points can be achieved for compliance with each item as set forth below:

G. Subcontractor Substitution

The level of listed subcontractor participation shall be maintained for duration of the contract.

1. Design-builder or design-build contractor shall request prior approval from the City contracting agency for all substitutions of subcontractors.
2. Written request shall provide name of listed subcontractor, name of replacement subcontractor, reason for substitution, work type and dollar amount.
3. The selection process for a substitute subcontractor shall be evaluated for fairness and outreach efforts.
 - (a) Design-builder or design-build contractor shall submit all documentation of subcontractor outreach efforts to the Compliance Office for review. The Compliance Office will promptly notify the appropriate office by indicating whether the subcontractor outreach portion of the proposal is responsive or non-responsive.
 - (b) Evidence of fraud or unlawful discrimination in substitution of subcontractors will result in sanctions including assessment of penalty fines, termination of contract, or debarment.
4. Substitution of any subcontractor without the prior written approval of the City Manager via the Compliance Office shall be deemed to constitute a material breach of contract. The harm that shall accrue to the public is difficult to accurately estimate in advance. Consequently, the design-builder or design-build contractor and the City shall jointly agree that a reasonable forecast of such damages is not less than ten (10%) percent of the subcontract price, and that the parties intend that such sum shall constitute liquidated damages as the best estimate of the harm accruing to the City.

H. Falsification of Sub-Agreement

Falsification or misrepresentation of a sub-agreement as to company name, contract amount, and /or actual work performed by subcontractor will result in sanctions including assessment of penalty fines, termination of contract, or debarment. The successful design-builder or design-build contractor is required to use the subcontractors listed on their original Proposal Information sheet submitted at the time of the proposal unless permission is granted in writing by Compliance Office to substitute another subcontractor.

I. Submission of Monthly Subcontracting Report

The successful design-builder or design-build contractor shall submit monthly a Subcontracting Report to the Compliance Office. This report shall include the expenditures made to any subcontractors working on the project, a description of the work performed and a designation of which grouping applies (i.e. DBE, DVBE, or OBE). The report shall also indicate if the subcontractor was a supplier or subcontractor, the amount of the project earned for the reporting period as well as the amount earned year-to-date. This information should match the information contained on the request for payment reports.

J. Submission of Final Subcontracting Report

The City of Columbia will hold a ten (10%) percent retainage on all contracts subject to the Subcontractor Outreach Program. Upon completion of the contract, the design-builder or design-build contractor must submit the Final Subcontracting Report to the department within the City contracting for the work with a copy to the Department of Utilities and Engineering, Compliance Office within fifteen (15) calendar days after final inspection of contract work. Failure to comply will result in assessment of liquidated damages. The Department of Utilities and Engineering, Compliance Office will review the Final Subcontracting Report to verify that all aspects of the Subcontractor Outreach Program have been complied with. Upon affirmative review, the Department of Utilities and Engineering, Compliance Office will advise the City contracting department to release the retainage. If the review reveals that the design-builder or design-build contractor has not complied with the Subcontractor Outreach Program, all amounts held as retainage will become liquidated damages and will be automatically treated as such.

K. Making Good Faith Efforts to Comply with the Subcontractor Outreach Program

It is the responsibility of the design-builder or design-build contractor to meet the requirements of the Subcontractor Outreach Program as stated in the Instruction to Design-builder or Design-Build Contractors and in this document. The Instructions to Design-Builders or Design-Build Contractors is incorporated herein by reference and made a part of this Program. Failure to comply with the Subcontractor Outreach Program may result in one or more of the following sanctions:

- (1) Withholding of payments;
- (2) Declaring the contractor in default pursuant to Section 29.1 of the Standard Specifications and terminating the contract;
- (3) Disqualifying the design-builder or design-build contractor from presenting proposals on future projects; and/or
- (4) Requiring the contractor to obtain a subcontractor participation level on future contracts equal to the required participation level under the Subcontractor Outreach Program plus the difference between the subcontractor participation level required and that actually reached in the current project.



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