

CONSTRUCTION DIVERSITY AND INCLUSION POLICY FOR ALTERNATIVE PUBLIC IMPROVEMENT CONTRACTS

I. Purpose

Pursuant to the City of Portland (“City”) Social Equity Contracting Strategy, the Construction Diversity and Inclusion Policy for Alternative Public Improvement Contracts (“Policy”) promotes diversity, inclusion, and local workforce and business opportunities in the City’s construction contracting and procurement process. The City recognizes that historical disparities exist in the construction industry, which have prevented equitable construction contracting opportunities, including for racial and ethnic minorities and women.

It is the policy of the City that all businesses, including small, minority and women-owned businesses, be given the maximum practicable opportunity to compete for and be awarded construction contracts. The City’s goal is to expand economic opportunities by growing both the demand for and capacity of local contractors, including those owned by people of color and women. The Policy includes targeted outreach efforts aimed at increasing opportunities for a wide range of businesses, including businesses certified by the Oregon Certification Office for Business Inclusion and Diversity (“COBID”) and minority and women-owned businesses that are not currently certified by COBID or which have chosen an alternative agency for certification. No provision of this Policy is intended to provide for the granting of any unlawful preferences in City contracting, and the provisions of this Policy shall be implemented in accordance with the requirements of state and federal law.

II. Definitions

Alternative Agency Certification means historically underrepresented businesses certified federally or by another state or entity as disadvantaged, minority-owned, woman-owned, or emerging small business with substantially similar procedures to the State of Oregon’s Certification Office for Business Inclusion and Diversity.

Certified Business means businesses certified by COBID, including material Suppliers and manufacturers.

Commercially Useful Function (“CUF”) means, consistent with state and federal policy, 1) having responsibility for execution of the Work of the Contract or a distinct element of the Work and carrying out responsibilities through the actual performance, management, and supervision of the Work involved; 2) performing work that is normal for its business, services and function; 3) having responsibility, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself; and 4) not subcontracting a portion of the Work that is greater than that expected to be subcontracted by normal industry practices.

Contract means a written agreement setting forth the obligations between parties for the performance of Work or to supply materials for a Project, including the agreements between the Owner and the Contractor, between the Contractor and any Subcontractor or Supplier, and between Subcontractors at any tier.

Contract Compliance Specialist means a City employee acting on behalf of the Owner who has authority to determine whether the Contractors and/or Subcontractors are in compliance with this Policy.

Contract Documents means the written agreement between the Owner and the Contractor that defines the obligations of the Contractor and the Owner regarding the Work to be performed. The Contract Documents include, but are not limited to, the Request for Proposal, Proposal, Plans, the General Conditions of the Contract, Drawings, Technical Specifications, Addenda, Change Directives, Change Orders, and any other documents that may be referenced therein as part of the Contract.

Contractor means an entity or person that has entered into the Contract directly with the Owner for all the Work required for the Project.

Equity Contractor means either a 1) Certified Business or 2) a minority-owned and/or woman-owned business that is not currently certified by COBID, which has chosen an Alternative Agency Certification or is a Self-Identified Local Minority-owned Business or a Self-Identified Local Woman-owned Business; and the business performs a Commercially Useful Function.

Equity Efforts means the exercise and fulfillment of the obligations set forth in this Policy, free from any intention or effort to avoid such obligations, including taking all objective and verifiable steps outlined in the strategies of this Policy.

Equity in Contracting Partners means an individual, a community-based organization, or an independent advisory body that provides guidance and advice to the Owner, Contractors, and Subcontractors on increasing participation of Equity Contractors, and who review Equity Efforts to achieve the goals.

Hard Construction Costs means the cost to build improvements on a property, including all related construction labor and materials, and fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as profit, overhead, administration, taxes, or other professional services shall not be considered as part of the Hard Construction Costs.

Inclusive Contracting Manager means a City employee acting on behalf of the Owner who has authority to engage historically underutilized and underrepresented businesses and their support networks to foster business relationships, promote contracting opportunities, and support relationships between Contractors, Subcontractors, and Equity in Contracting Partners.

Major Subcontractor means, for purposes of this Policy, a Subcontractor with a subcontract greater than \$150,000.

Outreach Plan means a Contractor's Contract submittal for providing opportunities when procuring Subcontractors, materials, and equipment Suppliers to encourage the maximum participation of Equity Contractors.

Owner means the City of Portland.

Project means all phases of the Work to be performed under a Contract, synonymous with the term Work.

Self-Identified Local Minority-owned Business means a small for-profit business concern, which is not COBID certified, is registered with the Oregon Secretary of State and has an active City of Portland business tax registration, is an Oregon resident, and has identified with the City as 1) having minority ownership and control of 51 percent or more of the business; and 2) has proper licensing (e.g. Construction or Landscape Contractors Board, electrical, plumbing). For purposes of this Policy, Black or African American, Hispanic or Latinx, American Indian or Alaska Native, Asian Pacific American, and Asian Indian American are presumed to be minorities.

Self-Identified Local Woman-owned Business means a small for-profit business concern, which is not COBID certified, is registered with the Oregon Secretary of State and has an active City of Portland business tax registration, is an Oregon resident, and has identified with the City as 1) having female ownership and control of 51 percent or more of the business; and 2) has proper licensing (e.g. Construction or Landscape Contractors Board, electrical, plumbing).

Specialty Work means a scope of work for the Project that requires a Contractor or Subcontractor with unique, specialized skills and/or equipment to perform that scope of work.

Subcontractor means an entity that the Contractor or other Subcontractor enters into a subcontract with, at any tier, to perform a portion of the Work.

Supplier means the entity who owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business as a regular dealer.

Utilization Plan means the documentation memorializing a Contractor's commitments to the City regarding subcontracting, including information on what Equity Contractors that they commit to using on the Project and what disaggregated participation/utilization percentages that they commit to achieve on the Project.

Work means all design, services, material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to properly perform and

complete a Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory Project.

III. Scope of Policy

- 3.1 This Policy applies to all construction work performed at a Project site per the terms of an alternative public improvement Contract between the Owner and a Contractor that is not otherwise subject to federal funding requirements or certified local public agency federal aid requirements that conflict with this Policy.
- 3.2 The provisions of this Policy apply to all persons or entities who are performing Work or providing construction services or materials under a Contract covered by the provisions of this Policy, and Owner, Contractor and Subcontractors shall include notice of this Policy in all contracts and/or subcontracts at every tier level pertaining to the Project.
- 3.3 This Policy is subordinate to all applicable laws, rules, regulations, ordinances, or other governmental requirements pertaining to any Project or Contract.
- 3.4 Nothing contained herein shall be construed to prohibit or restrict the Owner's right to exercise full and exclusive authority for the management of its own operations and the Owner's other rights under a Contract
- 3.5 Nothing contained herein shall be construed to prohibit or restrict the Owner or its employees from performing work not covered by this Policy on the Project site.
- 3.6 In recognition of the cooperative effort needed to accomplish the goals contained in this Policy and to ensure that those goals are met, the Owner, Contractor, and Subcontractors on a Project will commit to making all necessary Equity Efforts as defined by this Policy.
- 3.7 Where a Project is covered by multiple prime Contracts or different phases of the Work, the Owner has discretion to apply this Policy to the Project as a whole rather than individually for each Contract.
- 3.8 Where a provision of this Policy is also covered by a provision of the Contract Documents between the Owner and Contractor and the provisions are in conflict, the provisions of the Contract Documents for the Project shall prevail.
- 3.9 This Policy is subject to amendment by the Chief Procurement Officer in order to reflect necessary changes towards remedying historical disparities and discrimination and towards ensuring that all Portlanders have equitable access to economic and contracting opportunities.

IV. Equity Efforts Assistance

- 4.1 Communication and partnering with Equity in Contracting Partners in achieving the goals of this Policy is imperative. Advice and guidance from Equity in Contracting Partners can assist Contractors and Subcontractors in meeting the Policy goals.
- 4.2 Contractors and Subcontractors agree to abide by and take all necessary and reasonable steps to achieve the goals of this Policy and to ensure compliance with all its requirements.
- 4.3 The Owner has or will establish an independent advisory body to review the diversity and inclusion performance of City construction contracts subject to the Policy, provide guidance and advice to Contractors and Subcontractors on achieving goals, and advise the City on the Contractor's and Subcontractors' Equity Efforts to achieve Policy goals.
- 4.4 During the course of construction, the Contractor will attend monthly meetings with the independent advisory body and will present data on the current utilization of women and minorities in subcontracting and a three-month forecast on future subcontracting opportunities for the Project. First-tier subcontractors will be required to attend as appropriate.
- 4.5 The Owner and/or Contractor may request to meet less frequently, but at least once every three months, provided it is warranted due to phasing or a slowdown of the Work. Upon such request, the Owner and Contractor will arrange a mutually agreed upon alternative time frame.
- 4.6 All work product provided, used, or produced for review by the independent advisory body are the exclusive property of the City of Portland.

V. Participation Goals

- 5.1 Goals: For all Work performed on a Project, the aspirational baseline participation goal for historically underrepresented and underutilized businesses is twenty-five percent (25%) of the Hard Construction Costs of the Project, with the following baseline disaggregated goals:
 - A. Sixteen percent (16%) minimum aspirational goal for Equity Contractors certified or that self-identify as minority-owned businesses; and
 - B. Eight percent (8%) minimum aspirational goal for Equity Contractors certified or that self-identify as women-owned businesses.
- 5.2 Eligibility: Aspirational goals can be met through Equity Contractors' participation in any part of the Work that is necessary to complete the Contract obligation. An Equity

Contractor may participate as a prime Contractor, Subcontractor, joint venture, material Supplier, material manufacturer, or professional service provider.

- 5.3 Crediting of Participation: Only Equity Contractors who have validated certifications or self-identified status shall count toward meeting the aspirational goals. Contractors or Subcontractors will provide the Contract Compliance Specialist with sufficient documentation to substantiate that the business is a Certified Business or a Self-Identified Local Minority-owned, Self-Identified Local Woman-owned, or an Alternative Agency Certification business.
- 5.4 Crediting of Self-Identified Local Minority-owned Business or Self-Identified Local Woman-owned Business Participation: Participation of Self-Identified Local Minority-owned or Self-Identified Local Woman-owned Businesses is limited to work packages estimated at or less than \$150,000.
- 5.5 Crediting of Alternative Agency Certification Participation: Participation of businesses that have an Alternative Agency Certification is limited to work packages estimated at or less than \$150,000.
- 5.6 Crediting of Contractor Participation: If the Contractor is an Equity Contractor and self-performs Work that is eligible for subcontracting, self-performed Work shall count toward the participation goal provided it is no more than thirty percent (30%) of the Hard Construction Costs.

VI. Outreach Plan

- 6.1 Contractors and Subcontractors will exercise best efforts and work in good faith to achieve the participation goals as set forth above and to fulfill the requirements of this Policy for the life of the Project, with particular emphasis on subcontracting opportunities for historically disadvantaged or underrepresented communities, including racial and ethnic minorities, women, and low-income people.
- 6.2 Contractors shall designate an employee to be responsible for fulfillment of the requirements of this Policy. The employee should have experience in inclusive procurement and contracting best practices in the construction industry, including diversification of Subcontractors and Suppliers. To the extent a Contractor does not have such a person on staff, Contractor shall retain a sub-consultant to provide such services.
- 6.3 During the pre-construction services phase, Contractors will develop an Outreach Plan as part of their Construction Procurement Plan for obtaining participation of Equity Contractors, identifying all opportunities by divisions of work, that complies with this Policy. The final Outreach Plan must be approved by the Owner before a construction services contract will be awarded.

Scopes of work as may be determined by the Owner as Specialty Work shall be identified and discussed with the Contract Compliance Specialist and Inclusive Contracting Manager during the development of the Construction Procurement Plan to determine whether such scope of work may reasonably be performed in compliance with this Policy.

- 6.4 Contractors and Major Subcontractors shall identify subcontracting opportunities for Equity Contractors which could allow them to successfully bid and build capacity to bid for larger contracts on future Owner projects.
- 6.5 To promote smaller qualified Equity Contractors to successfully bid on subcontracts, Contractors and Major Subcontractors shall provide targeted Work scopes where feasible and as determined collaboratively with the Owner.
- 6.6 The procurement for the Project will consist of an open, fair, and competitive solicitation process, incorporating both the Owner's and Contractor's commitment to encouraging maximum participation of Equity Contractors. The process, at a minimum, will include the following:
 - A. Contractors and Subcontractors will prepare solicitation packages that comply with this Policy and shall submit them to the Owner, Contract Compliance Specialist, and Inclusive Contracting Manager no less than fourteen (14) calendar days prior to their release for review and comment.
 - B. Contractors and Subcontractors shall notify Equity Contractors who specialize in the type of work that will be subcontracted in writing and shall provide them solicitation packages and/or make them available for pick-up. The solicitation package shall include all the Owner's contracting requirements as referenced in the Project's Contract Documents.
 - C. Contractors and Subcontractors will make themselves available to assist prospective Equity Contractors in understanding solicitation requirements.
 - D. Solicitations for work packages shall be advertised in at least one trade newspaper of general statewide circulation, and a minimum of two minority focused publications (e.g., El Hispanic News, The Skanner, The Portland Observer, The Asian Reporter).
 1. Contractors and Subcontractors may negotiate Work packages estimated at or less than \$150,000 directly with Equity Contractors. While attempts should be made to informally solicit these work packages to at least three Equity Contractors, only one Equity Contractor needs to be solicited in this category and

contract award may occur provided the bid amount does not exceed \$150,000 and other bid requirements are properly met.

2. Notification of directly negotiated contracts shall be provided to the Contract Compliance Specialist.
- E. Contractors and Subcontractors shall conduct continued outreach to available Certified Businesses specializing in the type of work being solicited until a minimum of three written responses have been received from Certified Businesses.
 - F. Access to solicitation packages shall be provided to local plan centers and the following Equity in Contracting Partners:
 1. Oregon Association of Minority Entrepreneurs (OAME)
 2. National Association of Minority Contractors Oregon (NAMCO)
 3. Professional Business Development Group (PBDG)
 4. Latino Built
 5. Associated General Contractors (AGC)
 6. Northwest Utility Contractors Association (NWUCA)

Confidential drawings and specifications must be handled separately and shall only be distributed in accordance with the Owner's Confidentiality Policy.

- 6.7 Outreach shall start during the pre-construction services phase to provide advance notice to Equity Contractors, and shall include:
- A. Notice will be sent to the Contract Compliance Specialist, Inclusive Contracting Manager and Equity in Contracting Partners.
 - B. Contractors and Subcontractors shall contact Equity Contractors by email notifying them of the anticipated Work available on a Project.
 - C. Information shall be posted on the Contractor's website, or to a shared website approved by the Owner, to facilitate soliciting interest of Equity Contractors for the Work on the Project.
 - D. Contractor's outreach shall continue during the life of the Project and will be tailored to specific opportunities made available in solicitation packages, as necessary.
- 6.8 During the construction services phase, Contractors and Major Subcontractors shall conduct outreach apprising the construction industry and Equity Contractors of the

subcontracting procurement process and approach to providing maximum opportunities for Equity Contractors' participation, including:

- A. Providing information on anticipated solicitation dates; and
- B. Providing information on the resources that will be available to potential bidders, proposers and Subcontractors during the solicitation and construction phases.

6.9 Contractors shall conduct pre-bid/pre-proposal meetings for all competitive solicitation packages, including:

- A. Providing clarity and understanding of the Project and its solicitation requirements, providing an opportunity to view the jobsite, and advising bidders/proposers of the expectations, importance of and commitment to providing the maximum opportunities for Equity Contractors' participation.
- B. Offering assistance to bidders/proposers in conducting effective solicitation steps to provide the maximum opportunities for Equity Contractors' participation.
- C. Contractors shall notify the Contract Compliance Specialist, Owner and Equity in Contracting Partners of all pre-bid/pre-proposal meetings.
- D. For solicitation packages with an estimated value greater than \$150,000, Contractor shall coordinate pre-bid/pre-proposal meetings with the Contract Compliance Specialist, who must attend all such meetings.

6.10 Where the Work package involved requires specialized knowledge, skills, experience, and expertise, a Request for Proposal ("RFP") may be used. RFPs must request the following information from each proposer:

- A. Describe your company's policy and practice of contracting with small, minority and women-owned businesses certified by the Oregon Certification Office for Business Inclusion and Diversity (COBID) and minority and women-owned businesses that are not currently certified by COBID or which have chosen an alternative agency for certification. Include the number of individual small, minority and women-owned businesses contracted, the dollar amount contracted and paid to these businesses over the past three years. List the name, nature of work, and dollar amount of each small, minority and women-owned business for the cited projects; and
- B. Describe objectives for increasing small, minority and women-owned subcontracting capacity in the Work of the Project, including an estimate of the dollar volume of participation you will aspire to achieve; and

- C. Describe your company's hiring policy and practice for hiring, retaining, and advancing minorities and women in your workforce.

6.11 If a Contractor or an affiliate or subsidiary of a Contractor will be participating in the solicitations as a bidder or proposer for a subcontracted scope of the Work, the Contractor shall disclose that fact in the solicitation announcements and selection process. When an affiliate or subsidiary will be bidding or proposing, the Contractor shall identify the procedures the Contractor will utilize to make the process impartial, competitive, and fair. This shall include, but is not limited to, opening of bids by an independent third party. A Contractor's or its affiliates' participation in solicitations as a bidder is subject to the Owner's approval.

6.12 Contractors and Major Subcontractors shall provide in all subcontracts that Subcontractors and Suppliers of any tier providing quotes, bidding, or proposing on any package, division of Work and/or Work element having an estimated value greater than \$150,000 shall be bound by the terms and conditions of this Policy and be required to comply, including the submission of all required forms, reporting, and any supporting documentation. Contractors or Subcontractors shall deem bids or proposals not meeting this requirement to be non-responsive.

6.13 Contractors and Subcontractors shall comply fully with the provisions of the Policy in the solicitation and award of subcontracts during the life of the Project. Contractor and Subcontractors shall submit all bid results, responses to RFPs and other supporting documentation to the Owner after each solicitation, but prior to subcontract award, to allow Owner to review and verify compliance with the Policy's outreach and procurement procedures.

6.14 Contractor shall submit a Utilization Plan and Form 2 listing their Subcontractors at every tier level and disaggregated participation percentages that they are committing to use on the Project.

VII. Technical and Business Assistance

7.1 Contractors shall establish and maintain contact with all participating Equity Contractors, regardless of tier, to monitor and coordinate efforts, to prevent problems from arising, and/or solve those that have arisen that are or may contribute toward unsuccessful performance by the affected Equity Contractor(s).

7.2 Once subcontracts are awarded and secured, Contractors shall support all Equity Contractors, regardless of tier, to ensure their successful completion of the subcontracted Work, and are encouraged to offer technical assistance that includes, but is not limited to, the following:

- A. Establishing a schedule of values for the Work to be performed.

- B. Preparation of cash flow projections required for successful performance of the Work.
- C. Correctly calculate and submit pay requests, invoices, and required documentation to obtain progress payments consistent with the Owner's twice-monthly accelerated payment provisions.
- D. Advance payment for materials on hand where appropriate to facilitate successful participation of all tier Equity Contractors.
- E. Establishing projected measurable capacity building elements (e.g., additional equipment, expanded expertise, improved production efficiency, etc.) anticipated as a result of participating in the capacity building component of this Policy.
- F. Provide technical assistance and training in the use of Building Information Management ("BIM") as needed and as it relates to specific scopes of Work for Subcontractors for the Project.
- G. Look for opportunities to increase participation of small Equity Contractors on incidental Project Work such as flagging, trucking/hauling, landscaping, or cleanup. Contractor may establish unit price Project packaging for Work such as trucking, erosion control, and flagging through which a pool of Equity Contractors can profitably perform.
- H. Provide mentoring opportunities, which could include sharing with Equity Contractors some general contractor duties, contract administrations tasks, scheduling, Subcontractor coordination, or permitting activities for the Equity Contractor to gain knowledge and experience not commonly passed on through the general contractor/subcontractor relationship

7.3 All subcontracts are subject to the Owner's accelerated payment requirements specified in the General Conditions within the Contract Documents. In addition, Contractors shall release a Subcontractor's retainage upon completion and acceptance of the Subcontractor's Work, irrespective of whether the Owner has released any of the Contractor's retainage, except to the extent a claim or dispute exists as to that Subcontractor's Work. These provisions are mandatory on all Project subcontracts at any tier.

7.4 May purchase Subcontractor Default Insurance meeting the requirements of payment and performance bonds as set forth in the statute, instead of requiring surety bonds from Equity Contractors. If an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP) is executed on this Project, this condition may become a part of that policy.

7.5 The individual identified Section VI, paragraph 2 shall participate during the life of the Project and provide assistance to the Contractor and Subcontractors in Equity Efforts and compliance with the Policy requirements.

7.6 Upon the request of an unsuccessful bidder or proposer, Contractor shall provide unsuccessful bidders or proposers with information on the qualification and selection process and on the Contractor's selection decisions to enable the unsuccessful bidders or proposers to understand the reasons why they were not selected and to improve their substantive qualifications or methods of competing. This includes, but is not limited to, briefing meetings held with individual bidders or proposers, or if agreed upon by the bidders or proposers, in groups of bidders and proposers who all submitted on the same package.

VIII. Administration and Reporting

8.1 Throughout the term of a Contract, the Contractors and Subcontractors shall document all Equity Efforts and maintain documentation of implementation of and compliance with the Policy. All documentation is subject to review by the Contract Compliance Specialist, Inclusive Contracting Manager, and the independent advisory body set forth in Section IV, paragraph 3.

8.2 Contractors and Subcontractors shall submit all required documentation and reporting of Equity Efforts to the Contract Compliance Specialist via the City's Contract Compliance Reporting System ("CCRS") at <https://portlandoregon.diversitycompliance.com>.

8.3 Contractors and Subcontractors shall not remove or replace any Subcontractor after the bid/proposal is submitted or the Contract is awarded without the consent of the Contract Compliance Specialist and concurrence of the Inclusive Contracting Manager.

8.4 Where Contractors must add, remove, or replace a Subcontractor after the bid/proposal is submitted, Contractors and Subcontractors shall submit a Subcontractor Change Request Form along with documentation of how their contracting efforts comply with this Policy to the Contract Compliance Specialist for approval prior to making any changes.

8.5 If an Equity Contractor on the Project is terminated, the basis for termination must be communicated to the Contract Compliance Specialist prior to termination, along with any supporting documentation requested by the Owner.

8.6 Equity Contractors who have multiple certifications or self-identifications shall be tracked with multiple certification types but shall be counted only once towards the participation goals.

8.7 Contractors and Subcontractors shall submit complete documentation and reports to the Contract Compliance Specialist within the timeframes set forth below. Such documentation includes the following:

- A. Utilization Plan and Form 2 (e.g., Equity Contractors interests in bidding/proposing, bid amounts, and contract awards);
- B. All solicitation packages no less than fourteen (14) days prior to release;
- C. All solicitation results, including disaggregated racial, ethnic, and gender data, within thirty (30) days following award of any Subcontract;
- D. Records demonstrating that Subcontractor and Supplier payments were provided monthly by the 15th of each month;
- E. Subcontractor replacement requests/decisions, when applicable;
- F. Information about technical assistance requested, provided, or referred shall be provided quarterly;
- G. A document summarizing any issues and successes Contractor experienced in their Equity Efforts and their utilization of Equity Contractors shall be provided quarterly;
- H. Other reports as requested by the Owner.

8.8 Contractors and Subcontractors shall ensure that Subcontractors are confirming payments reported to them in the Contract Compliance Reporting System (“CCRS”). If a Subcontractor fails to confirm payment by the end of the month, the City will assume the Subcontractor has been paid, as reported, and will confirm payment on the Subcontractor’s behalf. Subcontractors are also responsible for reporting participation of their lower tier Subcontractors.

If any changes occur to the subcontract value during the reporting period, Contractors and Subcontractors shall contact the Contract Compliance Specialist no later than the 15th of each month.

8.9 All persons subject to this Policy shall comply with the rules governing the Owner’s access to records, including the following:

- A. Copies of applicable records shall be submitted as required or made available upon request, as indicated in this Policy.
- B. The Owner, either directly or through a designated representative, may conduct performance audits of the services specified in this Policy at any time in the course of the Project and during the six (6) year retention period, following Final Payment. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

IX. Compliance

9.1 Failure to comply with this Policy impairs the Owner's efforts to promote contracting diversity and inclusion and to provide fair and equal opportunities to the public which is an intended benefit of the expenditure of public funds on Owner's Projects. Therefore, failure to comply with this Policy will constitute a material breach of the Contract.

9.2 In the event of a breach of this Policy, the Owner may take any or all the following actions:

A. Withholding Progress Payments. The Owner may withhold all or part of any progress payment or payments until the Contractor has come into compliance with this Policy. In the event that progress payments or partial payments are withheld, the Contractor and Subcontractors shall not be entitled to interest on said payments.

B. Liquidated Damages:

1. The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for Contractor's or Subcontractors' failure to comply with Sections VI, VII, or VIII of this Policy. Accordingly, if Contractor or a Subcontractor fail to fulfill those Sections of this Policy, the Owner may assess and the Contractor agrees to pay damages of \$2,000 for each instance of noncompliance.
2. If the Contractor or a Subcontractor fail to utilize any Equity Contractor as identified in their Utilization Plan, or to utilize any Equity Contractor within twenty percent (20%) of the Subcontract amount as identified in their Utilization Plan, the Contractor shall pay \$5,000 for each violation. Exceptions will be made for approved change orders, reductions in scope of work as requested by the Owner, failure of an Equity Contractor to complete Work or having breached the subcontract, and substitution requests approved by the Owner.
3. These damages are independent of any other damages that may be assessed under other provisions of the Contract.

C. Non-Responsible Designation. If the Contractor or Subcontractor(s) fail to fulfill their Equity Efforts or comply with their Utilization Plan, the City may find that the Contractor or Subcontractor(s) do not meet the standards of responsibility for subsequent City projects and may deem them unqualified to work on future City projects, resulting in rejection of their offers or disqualification from consideration of award for a period of up to two years.

D. Termination. If the Contractor or Subcontractor(s) fail to fulfill their Equity Efforts or comply with their Utilization Plan, the Contractor may be terminated for material breach of contract.

E. Other Remedies. The Owner's foregoing rights and remedies shall not be deemed exclusive and shall be in addition to any and all rights otherwise available at law or in equity. The exercise by the Owner of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the Contractor, including, without limitation, the right to compel specific performance.

X. Severability

10.1 If any clause, sentence or any other portion of the terms and conditions of this Policy becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

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