



Rochester Schools Modernization Program

Rochester Joint Schools Construction Board

Management Response to Third Party Audit of
Independent Compliance Officer Services

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RJSCB Members,

In November 2013, the Rochester Joint Schools Construction Board (“RJSCB”) awarded the Compliance Audit Services contract to the firm Northeast Preconstruction Ventures Inc. (“NPV”). NPV immediately engaged and began an audit of the Independent Compliance Officer’s (“ICO”) records for Phase 1 of the Rochester Schools Modernization Program (“RSMP”).

The audit concentrated on the completeness and accuracy of records kept and maintained by the ICO, the effectiveness of the ICO’s internal controls, and the subsequent diversity reporting by the ICO to the RJSCB. The scope includes all nine projects currently under construction as part of Phase 1, and all professional service contracts.

Their work has revealed several material weaknesses in the ICO’s controls and contains numerous recommendations for eliminating the risk and reoccurrence of these deficiencies. For each compliance document, they have provided suggested measures that can be implemented for more accurate reporting.

The RJSCB understands and accepts its responsibility as the agent of The City of Rochester and the Rochester City School District to successfully implement all aspects of the RSMP. We are committed to both fixing the issues raised in the audit report and to increase our vigilance and oversight of the diversity compliance component of this project.

On January 13, 2014 the RJSCB hired a new ICO for the remainder of Phase 1. Changes to the process of data collection, reporting, record keeping, and other deficiencies identified in the audit report will begin immediately with the new ICO.

This document is our Management Response to the recommendations provided by NPV. As you will read, many of their recommendations can be implemented relatively easily and will help to improve our project. However, some are beyond the scope of this Phase 1 project and may require changes to the Legislation for future Phases, while others are not likely to add any value or provide the desired results if implemented.

I look forward to your comments and to discussing this report with you.

Sincerely,

Thomas M. Renauto
Executive Director
Rochester Joint Schools Construction Board

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1.0 - DP-1 EBE Utilization Plan

DP-1 Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - There is clear indication that most Prime Contractors have, at one time or another, provided a DP-1 form to the ICO. However, there is not a clear indication of when each form was provided.

RJSCB Response - The RJSCB will confirm that the DP-1 form includes a location for the submission date to be indicated by the contractor. The ICO will be required to stamp each item received with the date of receipt. If the date is not filled in by the contractor at the time of submission, the ICO's "received" stamp will be used as the official date.

Recommendation 2 - When an approved DP-1 form is revised, for any reason, there should be written justification attached to the new DP-1 explaining the adjustments.

RJSCB Response – The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include revised DP-1 forms, justification letters, and ICO approvals for changes to DP-1s. Changes to DP-1s will be presented by the ICO at the RJSCB MWBE Services and Procurement Committee meeting each month.

Recommendation 3 - It may be advantageous to require that DP-1 forms are resubmitted along with DP-3A forms, which are submitted monthly to the ICO.

RJSCB Response – DP-1s will be required to be submitted with each monthly pay requisition. The pay requisition review "check list" will be modified to include a DP-1/DP-3A verification by the ICO. Missing paperwork or discrepancies will cause payment to be withheld until the DP-1 and the DP-3A match.

Recommendation 4 - Every change order that is issued to contractors that changes their utilization should first require them to submit a revised DP-1 form outlining how the additional costs will be allocated.

RJSCB Response – It would be exhaustive to require a revised DP-1 for every change order that impacts the utilization plan. However, the RJSCB understands the importance of this issue and will implement a \$50,000 threshold requirement for a new DP-1 submission (the \$50,000 threshold could either be a single change order or the cumulative amount of several change orders that impact the utilization plan).

Recommendation 5 - During the course of the audit, the Audit Team found at least five Professional Service contracts that had no documentation available.

RJSCB Response – Professional Service tracking did not begin until October of 2011. Several professional service contracts had been awarded prior to the ICO starting project related compliance work. The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for EBE utilization and DP-1s. The tracking chart will record which EBE firms are being utilized, for what scope of work, the contract amount, and the percentage towards meeting the goal in each category. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance.

Recommendation 6 - It is unclear to the Audit Team why contractors have been awarded projects while their original DP-1 has not met the business development diversity goals.

RJSCB Response – The ICO shall provide a written description of its approval, including all supporting documents (including certifications), to the Board prior to contract award.

Recommendation 7 - The Audit Team believes that it may be advantageous to allow a substantially greater review period before bid opening and award.

RJSCB Response – Future bids will be scheduled to allow for enough time to complete the de-scope process prior to the monthly MWBE and Services Procurement Committee. This is the responsibility of the Program Manager.

2.0 - DP-2 EBE Letter of Intent to Perform

DP-2 Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - Based on the documentation reviewed by the Audit Team, it does not appear that the ICO is reviewing the names of the EBE participants on DP-1 forms and DP-3A forms to confirm that they have submitted a completed DP-2 form.

RJSCB Response - The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for DP-2 submissions. The chart will record which firms have submitted DP-2s and will be compared against those firms on the approved DP-1. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance.

Recommendation 2 - On the DP-2 form it clearly states that, "...a certification letter from the appropriate certifying authority confirming the current MBE, WBE, DBE or SBE status," should be provided with the completed DP-2 form.

RJSCB Response – The ICO will be required to submit completed DP-2 packets for each Prime Contractor on each project to the Executive Director. This will be required within 45 days of award.

Recommendation 3 - As outlined in the EBE Audit section of this report, where an EBE contractor's certification has expired, the ICO has no evidence that this EBE was previously certified at the time of award.

RJSCB Response – The ICO shall provide a written description of its approval, including all supporting documents (including certifications), to the Board prior to contract award.

Recommendation 4 - The DP-2 form states terms such as "Women-Owned Business Enterprise" (WBE) and "Minority-Owned Business Enterprise" (MBE). On numerous occasions, firms have selected these criteria, but are not New York State certified WBE or MBE contractors. The DP-2 form should be revised to clearly state "New York State Certified MBE and WBE".

RJSCB Response – The RJSCB shall modify the DP-2 form to state "New York State Certified MBE and/or WBE".

Recommendation 5 - The ten day completion period for the DP-2 forms is rarely attained by the EBE contractors. It is difficult for most contractors to enter into a written agreement with each EBE, have them complete and return the DP-2 form, and subsequently return the form to the ICO within ten days. This period should be extended to allow time for each Prime Contractor to have their EBE participants complete the DP-2 forms.

RJSCB Response – The RJSCB will extend the timeframe to 30 days from award. The ICO will be responsible to provide a report to the Executive Director within 45 days.

Recommendation 6 - The DP-2 forms are not dated when they are received by the ICO's office; the only dates available are those provided next to each signature. If the contractor will be held responsible for returning the forms within a designated period, then the ICO should take precautions to accurately document when these forms are received.

RJSCB Response – The ICO will be required to date stamp each DP-2 received.

3.0 - DP-3A Monthly EBE Utilization Report

DP-3A Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - The ICO should mark each DP-3A as reviewed and make any notes of inaccuracy on the forms before they are filed.

RJSCB Response - The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a verification report for DP-3As. This report will record errors on the DP-3a form and will also provide a place to track discrepancies between the DP-3a information and the approved DP-1. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance.

Recommendation 2 - If a form needs to be revised by a contractor, then the incorrect form should be noted as such.

RJSCB Response - The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include monthly tracking chart for deficiencies and required corrections (see response to recommendation 1 in this section). This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance. The CM and the Program Manager will be notified of the deficiencies and payments will be withheld until corrections have been made to the satisfaction of the ICO and the RJSCB.

Recommendation 3 - The ICO should be requesting invoices and cancelled checks and reviewing them to ensure data provided on the DP-3A forms is accurate.

RJSCB Response – Cancelled checks will be required to be submitted with each monthly pay requisition. The pay req review “check list” will be modified to include check verification by the ICO. Discrepancies will cause payment to be withheld.

Recommendation 4 - The values that are portrayed on the ICO’s monthly reports to the RJSCB should not be taken from the DP-3A form. The DP-3A form should be used only as a monthly check of the Prime Contractor's progress in meeting the goals that were previously outlined in the DP-1 forms. Projections used on the monthly reports should be taken from the DP-1 forms only.

RJSCB Response – The RJSCB will require that the ICO include DP-1 and DP-3a paperwork as back-up to the Monthly Compliance Report.

Recommendation 5 - Overall, the number of inaccuracies in the DP-3A reports should be addressed, perhaps by employing more staff to review these documents.

RJSCB Response – The RJSCB will request that the ICO add additional (qualified) staff to handle the volume of work.

Recommendation 6 - In addition, management should make an effort in reviewing the work of the compliance officers to ensure that the procedures are strictly followed.

RJSCB Response – The ICO will be required to sign the Monthly Compliance Report prior to submission to the Board.

4.0 - Eligible Business Enterprise Certification Audit

Eligible Business Enterprise Certification Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - Multiple firms currently participating as EBE firms are not certified or do not qualify. A comprehensive review of all firms participating should be completed and missing documentation should be requested. Where applicable, the Prime Contractors should be notified and required to provide revised Utilization Plans outlining an effort to remediate the discrepancies.

RJSCB Response - The ICO shall provide a written description of its approval, including all supporting documents (including certifications), to the Board prior to contract award.

Recommendation 2 - All EBE firms currently working on the RSMP should be asked to immediately provide these forms.

RJSCB Response - Retroactively, the former ICO has requested certifications from all firms listed on DP-1s. The new ICO will follow up on those requests that are still outstanding. Those firms who do not produce the proper certifications will not be counted toward the Diversity Goals. The Executive Director, with the assistance of the new ICO and with the advice of general counsel, will also investigate all EBE firms who are not certified and make recommendations to the Board for potential penalties per contract and the diversity plan.

Recommendation 3 - All SBE contractors proposed on Prime Contractors DP-1 forms should be required to submit an RSMP Certification of Small Business Enterprise Status form as part of the DP-2 completion process. The DP-2 form should be changed to include verbiage explaining this new requirement.

RJSCB Response – The RJSCB will modify the DP-2 form and/or the front end documents (i.e. the project specifications) to include the Certification of Small Business Enterprise Status form. The ICO shall provide a written description of its approval, including all supporting documents (including certifications), to the Board prior to contract award.

Recommendation 4 - Any Prime Contractor could potentially open a new company and use that to meet the [SBE] requirements. The ICO should ensure that all EBE contractors are legitimate contractors and not shell companies.

RJSCB Response – The RJSCB does not believe that there is a need or any incentive for a firm to go through the trouble of setting up a shell company in order to meet the Diversity Goals for this project. The Empire State Certification process requires that a company list the scopes of work for which they do business. The ICO must verify that the description of work listed on the DP-1 is within the scope of services identified in the Empire State database.

5.0 - DP-3 Monthly Employment Utilization

DP-3 Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - Most of the DP-3 forms reviewed by the Audit Team held no indication that said forms were ever reviewed by the ICO.

RJSCB Response – The ICO will be required to sign the DP-3 forms received each month. The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for corrections. This chart will track discrepancies between the certified payroll reports and the DP-3. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance.

Recommendation 2 - Where discrepancies existed between the certified payroll reports and DP-3 forms provided, the submitting contractor must be required to correct and resubmit the DP-3 form.

RJSCB Response - The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for corrections (see response to recommendation 1 in this section). This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance. The CM and the Program Manager will be notified of the deficiencies and payments will be withheld until corrections have been made to the satisfaction of the ICO and the RJSCB.

Recommendation 3 - Multiple instances arose wherein documentation that should have been submitted to the ICO was missing.

RJSCB Response – DP-3s and DP-3As are already required to be submitted with each monthly pay requisition. The pay requisition review “check list” includes verification by Gilbane and the ICO. Discrepancies will cause payment to be withheld. The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for corrections. This chart will track missing paperwork each month. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance. The CM and the Program Manager will be notified of the deficiencies and payments will be withheld until corrections have been made to the satisfaction of the ICO and the RJSCB.

Recommendation 4 - Rather than having cumulative goals for the entire Prime Contract, it may be beneficial to request monthly goals.

RJSCB Response – Monthly goals are unrealistic. Depending on the scopes of work/ activities taking place on a project during any given month, the workforce necessary to meet the goals may or may not be available.

Recommendation 5 - There was no indication provided by these contractors as to why they were unable to meet the requirements.

RJSCB Response – The RJSCB has yet to receive final reports from the ICO for the first group of projects completed in 2013. Following review of the final reports, the RJSCB will address specific issues on a case by case basis with the ICO and the contractors.

6.0 - Rochester Careers in Construction (RCC)

Rochester Careers in Construction Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - The greatest concern discovered during the review of the RCC forms were the inaccuracies contained within these reports. Policies must be in place to review these documents and ensure the accuracy of the information provided.

RJSCB Response - The RJSCB will require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include a tracking chart for corrections. This chart will track discrepancies between the certified payroll report and the RCC reports/check amounts. This will assist the ICO and the RJSCB in verifying that all current contracts are in compliance.

Recommendation 2 - The ICO could also allow the Prime Contractors to pay only a few times during the course of the project rather than each month. However, more complete documentation would need to be maintained by the ICO for this process to work effectively.

RJSCB Response – The process and procedure for Rochester Careers in Construction (“RCCI”) checks will be reviewed for changes/improvements in Phase 2. This review will include the participation of the RCCI staff to determine a path going forward. Some ideas currently being discussed are:

- Base the total amount owed by each contractor on the amount of labor hours included in their original bid.
- The amount owed could be paid in two installments; one at 50% complete and the second at 75% complete. This will eliminate monthly checks and checks for very small amounts (some checks in Phase 1 have been issued for less than \$1).
- Checks could be required by Prime Contractors only. This eliminates the burden put on to subcontractors to issue checks and keep up with paperwork.

7.0 - Rochester Resident Reporting (RRR)

Rochester Resident Reporting Auditor Recommendations and Corresponding Management Responses

Recommendation 1 - The greatest concern for accuracy in the Rochester Resident Reporting is the lack of a working document used by the ICO's office. At minimum, a hand-written document should be available, which outlines which employees are considered Rochester Residents and which employees are not.

RJSCB Response - The RJSCB will require the ICO to maintain a database with all employee addresses. This will assist the ICO and the RJSCB in verifying that all data is correct.

Recommendation 2 - Because of these deficiencies, the reports provide nothing more than an estimate of what percentage of the workforce is Rochester Residents.

RJSCB Response – Although this is neither a Legislative requirement nor a program goal for Phase 1, the RJSCB understands the importance of putting local residents to work.

The financing for Phase 1 comes from Bonds sold through the County of Monroe Industrial Development Agency (COMIDA). COMIDA requires "local workforce" to be utilized on any projects that it funds. "Local workforce" as defined by COMIDA includes 9 surrounding counties considered the Greater Rochester area.

During the course of Phase 1, at the request of Rochester City Council and the Rochester City School District Board of Education, the RJSCB directed the ICO to begin tracking specific City of Rochester Resident Participation based on street address information provided by the contractors.

Legislation for Phase 2 should consider including City of Rochester resident participation as a goal. The RJSCB is not aware of the current residency breakdown of workers in the local Building Trades. Based on the tracking information that the RJSCB has been able to record for Phase 1, this should serve as a benchmark when looking to establish a goal for the project.

8.0 - General Recommendations and Corresponding Management Responses

Detailed ICO Controls Document

Recommendation 1 - Some of the expectations of the RJSCB and Executive Director have not been documented in enough detail to clearly provide a source of expectations.

RJSCB Response – The contract for ICO Services for the remainder of Phase 1 was recently awarded to a new firm. The next ICO contract will include more specific scope of work requirements.

Recommendation 2 - There are discrepancies between the ICO’s understanding and interpretation of the role, and the understanding held by the RJSCB and Executive Director.

RJSCB Response – The contract for ICO Services for the remainder of Phase 1 was recently awarded to a new firm. The next ICO contract will include more specific scope of work requirements.

Recommendation 3 - As per the ICO’s contract, a set of controls for the Landon & Rian process was developed by the ICO. However, it is our professional opinion that these controls do not adequately outline the process that the ICO should be following nor provide direction for all scenarios that may be encountered.

RJSCB Response – The RJSCB will require the ICO to provide a detailed controls process, in writing, for review. This document will be required prior to the release of any monthly payments.

Recommendation 4 - Although it may have been the ICO’s responsibility to develop a more detailed set of controls for associated procedures, there is no incentive for the ICO to create a detailed document outlining the process.

RJSCB Response - The RJSCB will require the ICO to provide a detailed controls process, in writing, for review. This document will be required prior to the release of any monthly payments.

Recommendation 5 - We believe that the design and publication of one single document developed independently of the ICO, and subject to change as necessary, will be a key initiative in the improvement of the Diversity Plan. This document should include the requirements contained within the multiple documents already available and further outline the expectations of the RJSCB and Executive Director. This document should be detailed enough to provide thorough operating procedures and a comprehensive plan for document control and deliverables.

RJSCB Response – The RJSCB is not responsible to provide a process and controls document for the ICO. The ICO is hired by the RJSCB as the “expert” in its given field. The ICO is expected to

have the knowledge and expertise to provide the scope of work for which it has been hired. But the RJSCB, as indicated previously in this response, will be asking for and demanding more detailed reporting from the ICO. The contract with the new ICO will provide a more detailed scope of services and expectations. The new ICO will be co-located in the RSMP office which will encourage and promote much greater interaction among the Program Manager.

Division of ICO's Responsibilities

Recommendation 1 - Separating the responsibility of promotion and advertising from monitoring would eliminate the disincentive and the possibility of gaming by the ICO. The Audit Team believes that an ICO with the sole responsibility of promoting the opportunities to EBEs and the community would be more effective than the combined role currently established. A separate Diversity Document Officer position could be established to provide document control services and deliverables. Both roles would be independent of each other and provide a more autonomous and judicious review for the RJSCB.

RJSCB Response - The Phase 1 legislation officially combined the two functions of promotion and monitoring. This could change in Phase 2, but for now the ICO serves in both of these roles.

Electronic Document Reporting

Recommendation 1 - Internet-based programming solutions for document control and management are available and have been successfully implemented in similar programs. Given the size of the overall program, and the RJSCB's monetary commitment to meeting the goals of the Diversity Plan, it seems that further investigation into development of electronic or Internet based reporting could result in both an economical and constructive platform.

RJSCB Response – This option will be evaluated as the RJSCB works to improve the ICO performance and accountability.

More Frequent Review of ICO Records

Recommendation 1 - If the intent of the Diversity Plan is to absolutely ensure that the diversity goals are met and accurately reported, then there must be more frequent reviews of the ICO's records.

RJSCB Response – The new ICO will be co-located in the RSMP office which will encourage and promote much greater interaction among the Program Manager. The RJSCB will also require additional, more detailed reports that previously received. This, along with an annual audit, will provide the RJSCB with assurances that the compliance data is being accurately reported.

Recommendation 2 - There is a need for an extensive review of documentation for each project nearing completion before retainage is released to ensure that documentation is correct.

RJSCB Response – The CM will be required to communicate with the ICO prior to the release of any retainage. In addition, the ICO will be required to report deficiencies on a monthly basis to the CM, keeping them informed as to the open issues.

Increased Involvement of the Construction Managers

Recommendation 1 - The most important area of concern was the lack of awareness by Construction Managers of errors and missing documentation identified by the ICO.

RJSCB Response - The ICO will be required to report deficiencies on a monthly basis to the CM, keeping them informed as to the open issues.

Recommendation 2 - A regularly scheduled meeting with the ICO to identify areas of concern with the Construction Managers would be extremely beneficial to all parties.

RJSCB Response – The ICO will be required to attend project meetings on site with the CM and the contractors. At those meetings the ICO will update the status of each Prime’s goals for Business Utilization and Workforce Participation.

Recommendation 3 - The Construction Mangers should have the opportunity to review all DP-1 forms and provide objections where necessary based on scope or capability of the EBE firms.

RJSCB Response – The RJSCB does not believe that the CM should have the authority to reject the Prime’s selections for any of its subcontractors. The contractor is responsible to meet all of the requirements of the project including performing the Work and meeting the Diversity Goals. That responsibility should remain fully in their court. However, the RJSCB does believe that the CM should act in the best interest of the owner and the project and should therefore bring attention to any issues that the CM is aware of that could impact the successful completion of the project.

Implementation of Digital Record Keeping

Recommendation 1 - Implementing a File Transfer Program (FTP) or cloud (i.e. Internet-based) system to electronically manage and store all diversity paperwork would enable various parties to inspect the documents on a regular basis.

RJSCB Response – This option will be evaluated as the RJSCB works to improve the ICO performance and accountability.

More Frequent Interaction with Gilbane

Recommendation 1- An interview with a Gilbane representative revealed that both parties, ICO and Gilbane, would benefit from more frequent communication. Gilbane staff noted that communication from the ICO office is extremely infrequent.

RJSCB Response – The ICO and Gilbane will be required to meet regularly, at a minimum on a monthly basis, to discuss project related issues.

Improve Independent Compliance Officers Management and Workforce

Recommendation 1 - Due to the large number of deficiencies outlined in this report, the Audit Team believes that changes to the ICO's team may be required. Increasing the number of staff available to review documentation could reduce some of the deficiencies discovered.

RJSCB Response – The RJSCB will request that the ICO increase its staffing in order to better support the project. This is assumed to be at no cost to the project.

Recommendation 2 - A more thorough review by management of the Compliance Officer's and Administrative Assistant's work could help reduce events where the controls are not being followed.

RJSCB Response – The RJSCB will require ICO management sign-off on the Monthly Compliance Report. The RJSCB will also require the ICO to provide a Monthly Project Report, in addition to the Monthly Compliance Report, which will include monthly updates and/or "working papers".

Collect Contracts and Change Orders between Primes and EBE's

Recommendation 1 - The ICO should request that contracts and change orders between the Prime Contractors and EBE Contractors be submitted. These documents could be reviewed and kept on file at the ICO's office.

RJSCB Response – The RJSCB will require that Prime Contractors provide copies of subcontracts to the ICO and to the RJSCB. The RJSCB will also require that copies of all change orders between Prime Contractors and subcontractors be provided to the ICO and the RJSCB.

This concludes the RJSCB's Management Response to Recommendations provided by the Third Party Auditor