

Civil Rights & Equal Opportunity Department
Economic Equity & Inclusion
Request for Modification/Substitution Approval Form

Date: 11/15/2023
Form Prepared By: Leona Walton

Contract/Project Number: 23002 / 60800043	Project Name: Water Treatment Plant Basin Cleaning
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Owning Department: Water Services	Project Manager: Jason Wright/816-513-4772/jason.wright@kcmo.org
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Funding: ☒ City ☐ State ☐ Federal ☐ CO-OP ☐ Grant: ☐ Other:
 Project Requirements: ☒ M/WBE ☐ DBE ☐ Section 3 ☐ N/A
 Tax Incentive: ☐ LCRA ☐ TIF ☐ PIEA ☒ N/A ☐ Other:

Developer/Prime: Environmental Works, Inc.	Address: 1731 Locust Street, KCMO 64108
Contact: Steve Fitzgerald	Phone: 816-285-8410
Contact Email: sfitzgerald@environmentalworks.com	Fax: n/a

Contract Type:

☐ Construction ☐ Design-Build ☐ Design Professional ☐ Professional Services
☒ General Service ☐ Concession ☐ Other Goods & Services ☐ Non-Municipal Agency
☐ Co-Operative ☐ Revenue Sharing ☐ Facilities Maintenance/Repair/Renovation
☐ Other:

Reason for Modification/Substitution Request:

CONTRACT SUMMARY*

Original Contract Maximum Obligation:	\$ 799,500.00
Amendment/Change Order No. 1:	\$
Amendment/Change Order No. 2:	\$
Amendment/Change Order No. 3:	\$
Amendment/Change Order No. 4:	\$
Amendment/Change Order No. 5:	\$
Current Maximum Obligation:	\$ 799,500.00
Proposed Amendment/Change Order No.	\$ 0.00
Proposed Revised Contract Maximum Obligation:	\$ 799,500.00

This document is submitted with all available facts. Intentionally falsifying this document or omitting pertinent facts is grounds for disciplinary action pursuant to KCMO Human Resources Rules & Policy Manual (eff. August 4, 2014).

FOR CIVIL RIGHTS & EQUAL OPPORTUNITY DEPARTMENT (CREO) USE ONLY:

The Request for Modification/Substitution is:

☒ Approved ☐ Disapproved
 11 % MBE 9 % WBE % DBE

The Request for Good Faith Efforts Waiver is:

☒ Approved ☐ Disapproved ☐ Not Applicable

RFM/S Affidavit Attached? ☒ Yes ☐ No

DocuSigned by:

CREO Signature:

Mark Runge

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Date: 11/21/2023

Civil Rights & Equal Opportunity Department
Economic Equity & Inclusion
Nondiscrimination & Equal Opportunity Review Form

Date:
Form Prepared By:

Contract/Project Number: 23002 / 60800043	Project Name: Water Treatment Plant Basin Cleaning
Developer/Prime: Environmental Works, Inc.	Contact Information: Steve Fitzgerald
Final Contract Value: \$799,500.00	Project Manager: Jason Wright/816-513-4772/jason.wright@kcmo.org

Funding: ☒ City ☐ State ☐ Federal ☐ CO-OP ☐ Grant: ☐ Other:

Project Requirements: ☒ M/WBE ☐ DBE ☐ Section 3 ☐ N/A

Tax Incentive: ☐ LCRA ☐ TIF ☐ PIEA ☐ Ch. 100 ☐ Other: ☒ N/A

Prevailing Wage: ☐ Yes ☒ No

Davis-Bacon: ☐ Yes ☒ No

Construction Employment Program: ☐ Yes: Workforce goals are 10% Minority & 2% Women. There are over 800 Workforce hours and project cost is \$300,000 or more.
☒ No: Workforce hours are less than 800 and project cost is less than \$300,000.

Contracts & Leases	Nondiscrimination
Ch. 3 Article IV: <u>yes</u>	Ch. 38: <u>yes</u>
RSMo 213: <u>yes</u>	Title VI: <u>yes</u>
MWDBE: <u>yes</u>	Prevailing Wage and Labor Standards: <u>n/a</u>
SLBE: <u>n/a</u>	RSMo 34 Anti-Discrimination Against Israel: <u>yes</u>

Contract Type:

- ☐ Construction ☐ Design-Build ☐ Design Professional ☐ Professional Services
☒ General Service ☐ Concession ☐ Other Goods & Services ☐ Non-Municipal Agency
☐ Co-Operative ☐ Revenue Sharing ☐ Facilities Maintenance/Repair/Renovation
☐ Other:

Additional Information:

This document is submitted with all available facts. Intentionally falsifying this document or omitting pertinent facts is grounds for disciplinary action pursuant to KCMO Human Resources Rules & Policy Manual (eff. August 4, 2014).

FOR CIVIL RIGHTS & EQUAL OPPORTUNITY DEPARTMENT (CREO) USE ONLY:

The Document is:

☒ Approved ☐ Disapproved

Changes Needed:

Federal Provisions Included:

☒ Approved ☐ Disapproved ☐ Not Applicable

CREO Signature: _____

Mark Runge
 6AFEC964B03641A...

Date: 11/21/2023

Comments:



Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances

Non-discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Ban the Box in Hiring and Promotion.

(a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

(b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

(c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source.

Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act,

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Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances

Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

(a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.

(b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.

(c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

(d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or

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Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances

electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Contractor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

Prevailing Wage. If the Agreement exceeds \$75,000.00 and any of the Services performed by Contractor includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, that is subject to the Missouri Prevailing Wage Law (Section 290.210, RSMo – 290.340, RSMo), Contractor shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates, the appropriate Wage Order. Contractor shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Contractor fails to notify the City.





REQUEST FOR MODIFICATION OR SUBSTITUTION

(This Form **must** be submitted to CREO KC to request substitutions for an MBE/WBE listed in the Contractor Utilization Plan or for modification of the amount of MBE/WBE participation listed in the Contractor Utilization Plan. This Form shall be an amendment to the Contractor Utilization Plan.)

BIDDER/PROPOSER/CONTRACTOR: Environmental Works Inc

ADDRESS: 1731 Locust, Kansas City MO 64108

PROJECT NUMBER OR TITLE: 60800043 - Contract 23002

AMENDMENT/CHANGE ORDER NO: (if applicable)

Project Goals:	<u>11</u> % MBE	<u>11</u> % WBE
Contractor Utilization Plan:	<u>11</u> % MBE	<u>11</u> % WBE

1. I am the duly authorized representative of the above Bidder/Contractor/Proposer and am authorized to request this substitution or modification on behalf of the Bidder/Contractor/Proposer.

2. I hereby request that the Director of CREO KC recommend or approve: (check appropriate space(s))

a. ☐ A substitution of the certified MBE/WBE firm _____,
(Name of new firm)
to perform _____,
(Scope of work to be performed by new firm)

for the MBE/WBE firm _____ which is currently
(Name of old firm)
listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan to
perform the following scope of work: _____.
(Scope of work of old firm)

b. ☒ A modification of the amount of MBE/WBE participation currently listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan from

11 % MBE 11 % WBE (Fill in % of MBE/WBE Participation currently listed
on Contractor Utilization Plan)

TO

10.7 % MBE 9 % WBE (Fill in New % of MBE/WBE Participation requested for
Contractor Utilization Plan)

- c. Attach 00450.01 Letter of Intent to Subcontract letter for each new MBE/WBE to be added.
d. Attach a copy of the most recent 00485.01 or on-line M/WBE Monthly Utilization Report

3. Bidder/Contractor/Proposer states that a substitution or modification is necessary because: (check applicable reason(s))



- ☒ The MBE/WBE listed on the Contractor Utilization Plan is non-responsive or cannot perform.
- ☐ The MBE/WBE listed on the Contractor Utilization Plan has increased its previously quoted price without a corresponding change in the scope of work.
- ☐ The MBE/WBE listed on the Contractor Utilization Plan has committed a material default or breach of its contract.
- ☒ Requirements of the scope of work of the contract have changed and make subcontracting not feasible or not feasible at the levels required by the goals established for the contract.
- ☐ The MBE/WBE listed on the Contractor Utilization Plan is unacceptable to the City contracting department.
- ☒ Bidder/Contractor/Proposer has not attempted intentionally to evade the requirements of the Act and it is in the best interests of the City to allow a modification or substitution.

4. The following is a narrative summary of the Bidder's/Contractor's/Proposer's good faith efforts exhausted in attempts to substitute the MBE/WBE firm named above which is currently listed on the Contractor Utilization Plan with other qualified, certified MBE/WBE firms for the listed scope of work or any other scope of work in the project:

For background, Contract #23002 is divided into a Fall Session and a Spring Session. Each session, M/WBE subcontractors provide the supplemental labor needed to successfully clean six (6) basin trains per session. This is a complex project, and it is vitally important that both Environmental Work Inc (EWI) and the M/WBE subcontractors' employees be consistent, reliable, and safe.

Contract #23002 was not finalized when the KCMO Water Plant had scheduled the project to start in Mid-September 2022. Thus, two (2) basin trains were cleaned and invoiced under Contract #18010-4, which was the previous contract for basin cleaning. As such, the first part of the project was performed under a different WBE/MBE participation goal and not under the #23002 contract goals. The work performed (and invoiced) under Contract #23002 started on 10/17/22.

During the Fall of 2022, the WBE and one of the MBE subcontractors experienced work force availability issues. It is our understanding that coming out of Covid, the W/MBE had difficulty providing employees willing to meet the reliability and performance requirements needed for the project. This issue was compounded by unexpected delays of the basin cleaning schedule mandated by the Water Plant, which further disrupted the ability of the subcontractor to provide consistent, qualified labor.

However, for the Spring Session 2023, EWI and the M/WBEs subcontractors expanded the labor pool and wages levels to significantly increase participation rates. For example, One Way Cleaning (MBE) was able to provide a more consistent labor force during the Spring session and was able to increase the participation payments to One Way Cleaning from \$2,925 during the Fall Session to \$24,480 for the Spring session. More significantly, A Clean Slate (WBE) was able to provide three reliable technicians for the majority of the Spring session, so EWI was able to increase payments to the WBE from \$8,769 in the Fall to \$47,600 in the Spring.

EWI and the W/MBEs made a good faith effort to meet the goals but the bottom line is that it took some time for the W/MBs to build the capacity to reach the goals.

5. Bidder/Proposer/Contractor will present documentation when requested by the City to evidence its good faith efforts.

Dated: 11/06/2023

Environmental Works Inc.

(Bidder/Proposer/Contractor)



By: (Authorized Representative)

