

September 19, 2017



AGENDA ITEM 3 D

TITLE VI AND RELATED FEDERAL REQUIREMENTS LANGUAGE UPDATE TO CRTPA CONTRACTS

TYPE OF ITEM: Consent

STATEMENT OF ISSUE

This agenda item is being brought forward to ensure that the General Planning Consultant (GPC) contracts with Kimley-Horn and Associates (KHA) and RS&H and all future contracts are in compliance with Title VI and related Federal requirements (shown as **Attachment 1**).

RECOMMENDED ACTION

Option 1: Authorize the Executive Director to execute a contract addendum to include **Amendment 1** to the General Planning Consultant (GPC) contracts with Kimley-Horn and Associates (KHA) and RS&H to reflect the Title VI and related Federal requirements.

HISTORY AND ANALYSIS

Earlier this year the CRTPA met with FHWA, FDOT and FTA staff to discuss the CRTPA planning processes as part of the Transportation Management Area (TMA) Certification. The results of the TMA certification are outlined in Agenda Item 6A and include the need to add Title VI and related Federal requirements to the General Planning Consultant (GPC) contracts in the short term. In the long-term, the language needs to be in all contracts and requests for proposals (RFPS) that are released through the procurement process and executed by the CRTPA.

Additionally, this is one of the "Corrective Actions" required to be completed per the TMA Certification process (Agenda Item 6A, Attachment 1, Page 23, item 3). Approval of this item by the CRTPA Board will satisfy the requirement to have this completed by September 30, 2017.

The amendment language can be found in **Attachment 1**.

OPTIONS

Option 1: Authorize the Executive Director to execute a contract addendum to include **Amendment 1** to the General Planning Consultant (GPC) contracts with Kimley-Horn and Associates (KHA) and RS&H to reflect the Title VI and related Federal requirements.

(Recommended)

Option 2: Provide other direction.

ATTACHMENT

Attachment 1: GPC Contract Amendment 1 Title VI and Related Federal Requirements

CRTPA General Planning Consultant Contract**AMENDMENT 1****TITLE VI AND RELATED FEDERAL REQUIREMENTS**

The following terms apply to all current General Planning Consultant Contracts and all future contracts that involve the expenditure of federal funds:

- A. The CONSULTANT shall not discriminate on the basis of race, color, religion, national origin, age or sex in the award and performance of this contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The CONSULTANT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of this contract. The recipient's DBE program, as required by 49 CFR part 26 and as approved by FDOT, is incorporated by reference in this contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this contract. Upon notification to the recipient of its failure to carry out its approved program, the FDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- B. Under 49 CFR 26.21, the MPO is required to follow the FDOT DBE goal. Currently this goal is 9.91% and is entirely race neutral. Race neutral means that the MPO can likely achieve the overall DBE % through ordinary procurement methods. Therefore, no specific DBE contract goal is applied to this project. Nevertheless, the MPO is committed to supporting the identification and use of DBEs and other small businesses and encourages the Consultant to make all reasonable efforts to do so. Assistance with locating DBEs and other special services are available at no cost through FDOT's Equal Opportunity Office DBE Supportive Services suppliers. More information is available by visiting:
<http://www.fdot.gov/equalopportunity/serviceproviders.shtm> or calling 850-414-4750
- C. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of

the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- E. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
- Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation,

and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- I. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).