

**ATLANTA NEW STADIUM PROJECT**  
**EQUAL BUSINESS OPPORTUNITY PLAN**

**May 24, 2013**

**1. BACKGROUND OF PROJECT**

The Atlanta Development Authority d/b/a Invest Atlanta (“Invest Atlanta”), the Geo. L. Smith II Georgia World Congress Center Authority (the “GWCCA”), Atlanta Falcons Stadium Company, LLC (“StadCo”), and Atlanta Falcons Football Club, LLC (the “Club”), have entered into agreements providing for the development and construction of a new operable roof, state-of-the-art multi-purpose stadium in the City of Atlanta (the “City”) which will serve as the successor facility to the Georgia Dome (the “New Stadium Project” or “NSP”).

**2. COMMITMENT TO M/FBE PARTICIPATION**

From the inception of the NSP discussions, StadCo has stated its commitment to complying with all applicable legal requirements for the achievement of equal opportunities in employment and contracting on the NSP. In its agreement with Invest Atlanta and the GWCCA, StadCo has pledged to use its best efforts to develop and implement an equal business opportunity (“EBO”) plan for enlisting and monitoring participation of minority and female business enterprises (“M/FBE”) in all business opportunities that relate to the design and construction of the NSP. This Equal Business Opportunity Plan (this “Plan”) is StadCo’s method to fulfill that pledge.

The GWCCA, in its agreement with Invest Atlanta and StadCo, has agreed to use good faith efforts to assure compliance by StadCo with this Plan, and StadCo welcomes its participation. The Club also fully supports this Plan.

**3. OBJECTIVES**

The objective of this Plan is to set forth the policies and procedures adopted by StadCo with the intent to achieve a minimum goal of at least 31% participation by M/FBEs in connection with the design and construction of the NSP. StadCo will make best efforts to identify and cause the General Contractor and the Lead Architect to enter into contracts with M/FBEs for participation in the design and construction of the NSP by complying with this Plan. This Plan describes the steps to be taken to identify and enter into contracts with M/FBEs, the requirements for reporting and monitoring participation, and the assistance that Invest Atlanta and the GWCCA will provide in meeting this goal. Furthermore, this Plan provides that all design professionals and construction service providers participating in the design and construction of the NSP (collectively, the “Contracting Parties”), including the general contractor for the NSP (the “General

Contractor”), the lead architect for the NSP (the “Lead Architect”), their respective subcontractors, and their respective sub-subcontractors, must comply with this Plan.

#### **4. ELEMENTS OF THE PLAN**

##### **4.1 The Goal.**

a. This Plan establishes a minimum goal of at least 31% participation by M/FBEs who are Georgia Certified Contractors and Vendors (as defined herein) (the “Goal”) expressed as a percentage of the dollar value of the contracts with Georgia Certified Contractors and Vendors to the total of all Modified NSP Costs (as defined below).

“Modified NSP Costs” means NSP Costs (as defined in the Project Development Agreement), other than:

- i. consideration paid directly to a grantor of property associated with an acquisition of real property (but not including commissions or other costs paid to real estate brokerage or other professionals which are included in NSP Costs);
- ii. NSP Site utilities (payments to public utilities for installing customary services);
- iii. any third-party legal, consulting and other professional fees that are not paid to design, engineering, environmental, geotechnical and construction professionals; and
- iv. any and all other NSP Costs that StadCo and Invest Atlanta mutually agree should be excluded from the definition of Modified NSP Costs, including, without limitation, the costs of certain specialty work on the NSP that StadCo and Invest Atlanta determine in their reasonable judgment cannot be performed by Georgia Certified Contractors and Vendors.

Modified NSP Costs will also include any and all costs required in the mutual and reasonable judgment of StadCo and Invest Atlanta for the design and construction of the NSP that are not otherwise NSP Costs.

b. This Plan requires, and StadCo will use its best efforts to enforce such requirement, that the Contracting Parties shall comply with the policies and procedures of this Plan and, by doing so, use their respective best efforts to achieve the Goal.

c. StadCo will also use commercially reasonable best efforts to cause other third party vendors and contractors being paid out of Modified NSP Costs to implement similar EBO plans and will provide outreach and resource information and assistance to facilitate such implementation, including but not limited to identifying Georgia Certified Contractors and Vendors.

d. Neither StadCo nor the Contracting Parties are required to use best efforts to meet the Goal for each individual subcontract they enter into. Instead, StadCo and the Contracting Parties shall make best efforts to meet the Goal by aggregating participation from all Georgia Certified Contractors and Vendors engaged by any of them within the category of Modified NSP Costs. Accordingly, both StadCo and the Contracting Parties anticipate that utilizing the policies and procedures set forth in this Plan will result in different participation levels with respect to different Contracting Parties.

#### 4.2 Implementation.

a. **General.** StadCo has primary responsibility to implement this Plan. In doing so, StadCo will use its best efforts to require that the Contracting Parties cooperate with StadCo's implementation plan as outlined in this section.

b. **Pre-Solicitation Phase.** As soon as practical after the adoption of this Plan:

i. StadCo will:

- A. Use best efforts to meet the Goal identified in this Plan for all contracts with Contracting Parties (taken as a whole) related to the design and construction of the NSP;
- B. Use the City's M/FBE database and other available sources to identify qualified M/FBEs;
- C. Participate in outreach efforts and programs designed to assist M/FBEs to become certified as Georgia Certified Contractors and Vendors, including coordinating with the City to participate in forums and other outreach programs and activities sponsored or coordinated by the City;
- D. Facilitate communication with the community and vendors regarding this Plan and related issues associated with this Plan, including, by way of example, through the use of presentations, seminars, newsletters, notices on the NSP's website or other formats;
- E. Work with non-profit business support organizations to develop strategies designed to reduce barriers for M/FBEs and create effective communication activities;
- F. Attend meetings and explain this Plan to interested attendees;
- G. Provide the other Contracting Parties with appropriate resources and assistance to find M/FBEs, including utilizing the City's M/FBE database and other available

resources to identify qualified M/FBEs for participation in the NSP and providing this information to the other Contracting Parties; and

- H. Use best efforts to cause the General Contractor to comply with the City's First Source Jobs Program in connection with the design and construction of the NSP.

ii. The Lead Architect and the General Contractor will:

- A. Provide one point of contact to StadCo and Invest Atlanta for the purpose of communications with respect to this Plan;
- B. Have the option to set individual goals on individual subcontracts consistent with StadCo's best efforts to achieve the Goal;
- C. In the case of the General Contractor, work with StadCo and Invest Atlanta to host, plan, adequately advertise and conduct at least two "meet and greet" sessions intended to facilitate the introduction of small businesses and Georgia Certified Contractors and Vendors to the General Contractor;
- D. In the case of the General Contractor, actively recruit lower-tier subcontractors to participate in pre-bid meetings and small business "meet and greet" sessions; and
- E. In the case of the General Contractor, hold a pre-bid meeting for all subcontractors prior to bid due date where, among other things, the Goal requirements shall be disseminated and discussed.

c. **Solicitation Phases.** During the General Contractor's and the Lead Architect's solicitation phases (between each subcontract's pre-bid meeting and the bid due date):

i. StadCo will:

- A. Assist the Contracting Parties, bidders and M/FBEs with any questions regarding this Plan;
- B. Provide, upon request, any rulings (based upon information submitted to it) regarding whether and how an M/FBE's subcontract will be counted toward the Goal; and

- C. Require the Contracting Parties to submit a form identifying by name the Georgia Certified Contractor or Vendor that is committed to be used on the specific subcontract, the scope of work, and the contract value and the percentage of total subcontract amount represented by the Georgia Certified Contractor or Vendor.
- ii. The Lead Architect and the General Contractor will:
    - A. Provide one point of contact to StadCo and Invest Atlanta for the solicitation phase of the NSP; and
    - B. Submit all documentation required by StadCo, including the M/FBE information forms described above.
- d. **Construction Phase.** During the construction phase (between the award of each subcontract and the Final Completion of the NSP (as defined in the Project Development Agreement)):
- i. StadCo will:
    - A. Make reasonable efforts to assist the Contracting Parties in resolving any M/FBE-related concerns on the NSP;
    - B. Actively participate in documenting and monitoring compliance with this Plan; and
    - C. Identify and track the value of work that counts toward the Goal pursuant to Section 4.3 on at least a quarterly basis and promptly provide said information to Invest Atlanta and the GWCCA as further described in Section 4.4.
  - ii. The Lead Architect and the General Contractor will:
    - A. Provide one point of contact to StadCo and Invest Atlanta for the construction phase of the NSP;
    - B. Actively participate in the compliance reporting and monitoring described in Section 4.4 and promptly provide said information to StadCo (for further distribution to Invest Atlanta and the GWCCA as described in Section 4.4), including submission of the progress reports described below; and
    - C. Work with StadCo to attempt to assist the Contracting Parties in resolving any M/FBE-related issues on the NSP.

#### 4.3 Measuring Participation.

a. **Source of Certification.** Any State of Georgia, county, municipal or governmental authority databases may be utilized in identifying qualified M/FBE's for participation in the NSP. In order to be counted towards the Goal, each M/FBE must be a certified participant in the City's Equal Business Opportunity Program as an African American Business Enterprise (AABE), a Female Business Enterprise (FBE), a Hispanic American Business Enterprise (HABE), or an Asian (Pacific Islander) American Business Enterprise (APABE) (collectively, a "Georgia Certified Contractor or Vendor").

b. **Certification Process.**

- i. The City will make best efforts to either certify or deny certification for any M/FBE (each, an "Applicant") that, in connection with the NSP, submits a complete or substantially complete application for certification as a Georgia Certified Contractor or Vendor (an "Application") within 10 business days after the submission of such Application (the "Deadline"). If the City fails to either certify or deny certification for an Applicant within 30 calendar days after the submission of such Applicant's Application, then such Applicant shall be deemed a Georgia Certified Contractor or Vendor for all purposes under this Plan, and StadCo may count the value of work performed by such Applicant after the Deadline towards the Goal.
- ii. Any Applicant which is "deemed certified" under subsection (b)(i) of this Section due to the passage of 30 calendar days without City certification or denial shall continue to require official certification by the City in order to be deemed a certified M/FBE under the City's Equal Business Opportunity Program for all other City projects other than the NSP.

c. **Counting.**

- i. StadCo will count toward the Goal the value (or a percentage of the value, as discussed below) of the Contracting Parties' contracts for work performed on the NSP only after an M/FBE is certified as a Georgia Certified Contractor or Vendor as described in Section 4.3(a).
- ii. Whether the Goal is achieved will be evaluated and determined upon the Final Completion of the NSP based on the total amount of Modified NSP Costs.
- iii. StadCo will utilize the following guidelines in determining the percentage of M/FBE participation that will be counted towards the Goal:
  - A. The value of work performed by a firm after it has ceased to be certified as a Georgia Certified Contractor or Vendor will not be counted towards the Goal (unless such Georgia

Certified Contractor or Vendor is re-certified within 90 days following the termination of its certification).

- B. Only amounts paid to and performed by a Georgia Certified Contractor or Vendor will be counted toward the Goal.
- C. Subject to G below, only the value of the work actually performed by a Georgia Certified Contractor or Vendor will be counted toward the Goal.
- D. When a Georgia Certified Contractor or Vendor subcontracts part of the work of its contract to another firm, the value of the subcontracted work will be counted toward the Goal only if the subcontractor is itself a Georgia Certified Contractor or Vendor.
- E. The entire amount of fees or commissions charged by a Georgia Certified Contractor or Vendor for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance required for the contract, will be counted toward the Goal.
- F. When a Georgia Certified Contractor or Vendor performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the portion of the work of the contract that the Georgia Certified Contractor or Vendor performs will be counted toward the Goal.
- G. Expenditures with Georgia Certified Contractors or Vendors for materials or supplies will be counted toward the Goal, as provided in the following:
  - (a) If the materials or supplies are obtained from a M/FBE manufacturer, 100% of the cost of the materials or supplies will be counted toward the Goal.
  - (b) If the materials or supplies are obtained from a M/FBE “full service supplier”, 60% of the cost of the materials or supplies will be counted toward the Goal. An M/FBE qualifies as a “full service supplier” if such vendor has warehoused or stored the materials or supplies for which credit toward the Goal is being sought.
  - (c) If the materials or supplies are not obtained from a M/FBE manufacturer or full service supplier, only

the mark-up or profit margin component of the costs will be counted toward the Goal.

#### 4.4 Compliance Reporting and Monitoring.

a. **General.** StadCo has primary responsibility to monitor and audit overall compliance with this Plan. The General Contractor and the Lead Architect are responsible for monitoring and accurately collecting M/FBE data from their respective subcontractors and reporting such data to StadCo. StadCo shall promptly provide such information as received to Invest Atlanta and the GWCCA or their respective designee on no less than a quarterly basis. The other Contracting Parties will cooperate with StadCo's monitoring plan and requests as outlined in this section.

b. **Reporting.** StadCo will require the General Contractor, the Lead Architect and any other first tier Contracting Parties to submit on a quarterly basis complete and accurate M/FBE utilization data, including the following:

- i. Name of each Georgia Certified Contractor or Vendor that the Contracting Parties has committed to use, as of the date of the report;
- ii. Identification of the Contracting Party that has hired each Georgia Certified Contractor or Vendor;
- iii. Total contract value for each committed Georgia Certified Contractor or Vendor;
- iv. Changes, if applicable, to the total contract value for each committed Georgia Certified Contractor or Vendor;
- v. Identification of each Georgia Certified Contractor or Vendor as a contractor, consultant, full service supplier, or other supplier or broker;
- vi. Value of work or supplies claimed by the Georgia Certified Contractor or Vendor during the report period;
- vii. Value of work or supplies to be counted toward the Goal during the report period;
- viii. Total value of work or supplies invoiced to date and paid to date for each Georgia Certified Contractor or Vendor; and
- ix. Total amount of Modified NSP Costs invoiced to date and paid to date.

StadCo shall require the General Contractor and Lead Architect to submit a monthly progress report on a form designated by StadCo.

c. **Noncompliance.** If StadCo, in its reasonable discretion, determines that any subcontractor has (i) failed to make a good faith effort to comply with this Plan (after

notification and a reasonable cure period) or (ii) intentionally or recklessly reported false M/FBE data, StadCo will require the General Contractor and the Lead Architect to exclude such subcontractor from further participation in the NSP.