



U.S. Department
of Transportation

**Federal Highway
Administration**

1200 New Jersey Avenue, SE.
Washington, DC 20590

IN THE MATTER OF: Civil Constructors, LLC
 FHWA-2015-1062-001

ADMINISTRATIVE SETTLEMENT AND COMPLIANCE AGREEMENT

I. Parties

This Administrative Settlement and Compliance Agreement (“Agreement”) is entered into between the Federal Highway Administration (“FHWA”), an Operating Administration of the United States Department of Transportation (“USDOT”) acting for the United States of America (“Government” or “Federal Government”), and Civil Constructors, LLC (“Company” or “Civil Constructors”) (FHWA and Company are referred to generally as the “Parties”) under the authority of and in accord with Executive Order 12549, the USDOT implementing regulations found at 2 C.F.R. Part 180 as adopted by 2 C.F.R. Part 1200, USDOT Order 4200.5F, and FHWA Order No. 2000.2B.

II. Background

A. Civil Constructors is a fully integrated site development and heavy highways contractor. Civil Constructors is the successor-in-interest to the former Civil Constructors, Inc. (“CCI”), which had operated since 1994 and was headquartered in Franklin, TN. By operation of a Certificate of Conversion filed with the Tennessee Secretary of State on September 20, 2013, CCI was converted to a limited liability company. Civil Constructors remains headquartered in Franklin, TN.

In its business as a contractor, CCI entered into contracts for federally funded highway construction projects. The Government contends that it has certain civil claims against Civil Constructors arising from CCI's bidding, execution, and performance of the South Water Street Project, Federal Project No. ARRA-STP-M-5365(1) (“Project”), during the period from March 1, 2010, through March 31, 2012. The Government alleges that CCI agreed to employ a Disadvantaged Business Enterprise (“DBE”), to perform work on the Project in its bid for the work and pursuant to the resulting contract governing the Project and the applicable federal regulations. The DBE never performed actual work on the Project. The Government contends that, as a result, the DBE, Columbia Construction, operated as a “pass through” entity. The DBE work was actually done by another company, MarCor Construction, Inc., which is not a DBE. The Government further alleges that, as a result of this conduct, CCI submitted false or fraudulent claims for payment to the Government in violation of the False Claims Act, 31

U.S.C. §§ 3729-3733. The conduct described immediately above, is referred to below as the “Covered Conduct.”

B. Under 2 C.F.R. §180.635, the FHWA is authorized to administratively settle suspension and proposal to debar actions on behalf of the Government if settlement is determined to be in the best interests of the Government.

C. Without admission of criminal or civil liability on the part of Civil Constructors, the Company has accepted responsibility for the alleged misconduct described in section II.A above. Civil Constructors has agreed to undertake, or has already undertaken, remedial measures, as further described and appended to this Agreement, including: (1) adoption and implementation of an Ethics Code and a DBE Corporate Compliance Program and Policy; (2) appointment of a Corporate Compliance Officer; and (3) retention of Independent Monitors to evaluate Civil Constructors’ performance of this Agreement and to submit periodic reports directly to the FHWA.

D. The FHWA has determined that, once Civil Constructors implements the measures required by this Agreement, the FHWA can consider the Company to be presently responsible and that it is in the best interest of the Government to enter into an Administrative Monitoring and Compliance Agreement in order to resolve the suspension and proposal to debar of Civil Constructors.

The Parties agree as follows:

III. TERMS AND CONDITIONS

A. Effective Period of the Agreement. This Agreement will be effective for three (3) years from the date the Agreement is signed by the FHWA Suspending and Debarring Official (“SDO”). The date the SDO signs this agreement will be the effective date of this Agreement.

B. Scope of the Agreement

1. Civil Constructors has accepted responsibility for the alleged misconduct described in section II.A above, and has agreed to undertake remedial measures, as further described and appended to this Agreement, including: (1) adoption and implementation of an Ethics Code and DBE Corporate Compliance Program and Policy; (2) appointment of a Corporate Compliance Officer who was not involved in the Covered Conduct; and (3) retention of Independent Monitors to evaluate Civil Constructors’ performance of this Agreement and to submit periodic reports directly to the FHWA.

2. All locations in Tennessee where Civil Constructors works on federally funded contracts and keeps records for federally funded contracts, including but not limited to the Company’s office in Franklin, TN, are subject to the monitoring activities required by this Agreement, including the scope of the Independent Monitors’ actions as described at Terms and Conditions section III.F.3.

3. If, during the effective period of this Agreement, Civil Constructors changes ownership, control, or work locations to participate in Federal projects with a different or an additional company to Civil Constructors, the monitoring provisions of this Agreement will be extended to include that different company as well as Civil Constructors. The Company will notify both the FHWA and the Independent Monitors of any such changes in company and location promptly, in addition to fulfilling all applicable requirements of section IV.B of this Agreement.

C. Lifting of Suspension and Proposed Debarment

1. On the Effective Date, the Government will lift the suspension and terminate the proposed debarment of Civil Constructors. Within the first two days after the effective date of this Agreement, the FHWA will send updated paperwork and a copy of the agreement, as redacted for Freedom of Information Act ("FOIA") exempt information for public availability, to the USDOT to update the System for Award Management ("SAM.gov") and to the Federal Awardee Performance and Integrity Information System ("FAPIIS"), regarding the Agreement and the lifting of the suspension and proposal to debar. The FHWA will not initiate any new actions to suspend or propose debarment for Civil Constructors for the Covered Conduct (except as set forth below in Section C.2).

2. This Agreement in no way restricts the authority, responsibility, or ability of the FHWA, or any other Federal agency, to consider and institute, at any time, suspension or debarment proceedings against Civil Constructors based on information constituting an independent cause for such proceedings, including:

a. Upon reliable evidence that Civil Constructors has misrepresented any material fact in connection with this Agreement, the FHWA may, in its sole discretion, initiate suspension or debarment proceedings in accordance with 2 C.F.R. Part 180, based on both the violation of the Agreement for misrepresentation of any material fact, and upon the Covered Conduct described in section II of this Agreement. Material facts in this Agreement include, but are not limited to, facts described in section II of this Agreement, the facts regarding affiliated companies, and the facts represented to FHWA that Civil Constructors' Corporate Compliance Officer was not involved in the alleged DBE Noncompliance.

b. Upon reliable evidence that the Company has engaged in any material breach or violation of this Agreement, the FHWA may, in its sole discretion, initiate suspension or debarment proceedings in accordance with 2 C.F.R. Part 180; provided, however, that Civil Constructors will have ten (10) business days from the date of receipt of notice from the FHWA of a material breach or violation to correct that breach or violation. If correction is not possible within ten (10) business days, for reasons beyond the control of Civil Constructors, the Company must present to FHWA, within that ten (10) business days, an acceptable plan for correction. Any failure to correct the violation, or present an acceptable plan, may constitute an independent cause for suspension or debarment. If such a failure occurs, or if the FHWA Tennessee Division finds a corrective plan inadequate, the FHWA Tennessee Division will create a written report to send to Civil Constructors and to the FHWA Office of the Chief Counsel explaining the failure, and providing any evidence supporting the finding that a failure has occurred. The FHWA SDO will provide a notice as to the decision on suspension or debarment based on the report, or treat the

information as a new referral of a potential independent cause for suspension and debarment.

c. Evidence of any compliance problems with Federal laws or ethics requirements not covered by the scope of this Agreement, including any issue that raises questions about the present responsibility of Civil Constructors that could serve as a cause for a suspension and proposed debarment referral.

3. Civil Constructors does not, by this Agreement, or otherwise, waive its rights to oppose future action(s) under Part 180, or any other substantive, procedural, or due process rights it may assert.

D. Corporate Compliance Program

1. Code of Ethics. Civil Constructors has adopted and implemented a Code of Ethics, a copy of which is attached as Attachment 1, which has been and will continue to be distributed and made available to each of Company's employees.

2. DBE Corporate Compliance Program and Policy. Civil Constructors has adopted and implemented a DBE Corporate Compliance Program and Policy, a copy of which is attached as Attachment 2, to assist and ensure that all employees administer the Civil Constructors' DBE program in good faith and in compliance with all applicable DBE requirements to minimize the potential for fraud.

E. Corporate Compliance Officer

1. Civil Constructors has appointed a senior management official as a separate and independent Corporate Compliance Officer, responsible for the implementation and day-to-day administration of its DBE Corporate Compliance Program and Policy, reporting directly to the President of the Company and the Members of the LLC, and providing reports to the Independent Monitors as defined in section III.F. Civil Constructors affirmatively states that the person appointed as Corporate Compliance Officer was not involved in the Covered Conduct described in section II of this Agreement.

2. The Compliance Officer is responsible for conducting an appropriate investigation of each complaint and/or information concerning ethics or DBE compliance, as well as complaints and/or information alleging any violation or lack of compliance with this Agreement. The Compliance Officer will ensure the confidentiality of all investigations. For each investigation, the Compliance Officer will prepare and present a written report to the President of the Company and the Members of the LLC presenting findings, conclusions, and recommendations, including corrective action(s). Copies of each written report will be provided to the Independent Monitors and the FHWA. The FHWA may require the Corporate Compliance Officer to brief the FHWA, at the Company's expense, regarding the DBE Corporate Compliance Program and Policy, or any particular complaint or investigation.

3. The Corporate Compliance Officer will maintain a Compliance Log of all reported information, complaints, and investigations, showing the date and time information or a complaint

was received, the date of the alleged misconduct, a summary of the allegation, inquiry or investigation, and the resolution or referral of the matter. Upon request, the log will be provided to the Independent Monitors and the FHWA.

4. Civil Constructors has installed and will continue to maintain a dedicated private hotline for reporting suspected instances of improper conduct to the Corporate Compliance Officer, and will ensure that hotline calls can be made in confidence. The Company has and will continue to publicize the existence of the hotline to all employees. In addition, the Company will inform all employees of the telephone number of the USDOT's FraudNet Hotline, and will post the telephone number.

5. The Company appoints Glenn Rikard, Controller, as the Corporate Compliance Officer, with consultation on DBE issues provided by Todd Ketner, Vice-President of Estimating. Neither Mr. Rikard nor Mr. Ketner was involved in the Covered Conduct. The FHWA is satisfied that their training and experience qualify them for these positions, and that, based upon information provided by Company they were not involved in the Covered Conduct described in section II of this Agreement. The Company shall maintain the Corporate Compliance Officer appointment, as described in section III.E. of this Agreement, during all three (3) years of this Agreement, through both the Independent Monitors' monitorship and any self-reporting that could occur, and must notify the FHWA within ten (10) days of any determination of a need for a replacement by a different employee. Any replacement will be subject to the approval of the FHWA.

F. Independent Monitoring

1. Civil Constructors agrees to retain, for a period of three (3) years, (the "Monitoring Term"), Independent Monitors to conduct an assessment and oversee implementation of its DBE Corporate Compliance Program and Policy to conduct at least one (1) on-site, unannounced inspection per month of a Civil Constructors contract worksite involving the use of Federal funds, and to inspect the records for each such contract. During the Monitoring Term, Civil Constructors will allow the Independent Monitors access to the Company's records, wherever the records are located. The Independent Monitors will submit periodic reports, directly to the FHWA, regarding the Company's maintenance, institution, and implementation of the measures required by this Agreement for three (3) years following its effective date. A monthly report will be submitted to FHWA monthly with that includes a copy of the Corporate Compliance Logs for that month and a list of any inspection made by the Independent Monitor for that month ("Monthly Reports"). A quarterly (every three (3) months) report will be submitted to the FHWA that combines and analyzes the monthly report findings. A final report will be submitted at the end of the third-year ("Periodic Reports"). The Monthly and Periodic Reports are to be provided in courtesy copy to the Company, as documents not held solely by the FHWA.

2. The Independent Monitors must be approved by FHWA and are subject to the exclusive control and direction of the FHWA. The Independent Monitors will report directly to the FHWA. If any issues arise between an Independent Monitor and any Firm employing that Independent Monitor regarding this Agreement, the Monitor will contact FHWA immediately for resolution. The Independent Monitors will not be considered an employee or agent of Civil Constructors, and their work will not be subject to any assertion of attorney-client privilege or work-product doctrine

by Civil Constructors. The Independent Monitors will meet with FHWA Tennessee Division in person, as often as is useful to FHWA but at least annually, to review the state of the monitoring activities, and for a final meeting to discuss the how the Company is meeting the Agreement's requirements.

3. Scope of the monitoring investigations and reports: The Independent Monitors will be responsible for investigation of the following issues and will address each of these issues in the Periodic Reports required by the Agreement:

(a) The Independent Monitors will investigate the overall effectiveness of the Company's implementation of the Code of Ethics and DBE Compliance Program and Policy as described in III.D, and help the Company to make changes as appropriate to improve the implementation of those documents.

(b) The Independent Monitors will use the DBE Commercially Useful Function ("CUF") checklist included as Attachment 3. The CUF checklist will be used on the Company's federally-funded projects, at the Company's primary office and any other location storing DBE records. At a minimum, the CUF checklist will verify the following on Company's Federal-aid Highway Program projects under the scope of monitoring defined in Section III.B(2) herein:

(1) DBE CUF certifications for DBEs working on the projects, as outlined in the DBE CUF Inspection Review Guidelines, which are in Attachment 3 to this Agreement;

(2) Accurate reporting of DBE work on the projects, and clear communication with subcontractors and suppliers of DBE obligations; and

(3) Civil Constructors used good faith efforts to obtain DBEs for each Federal-aid Highway Program project on which it proposes to do work.

(c) The Independent Monitors will review the Civil Constructors DBE Compliance Program and Policy, and verify that Civil Constructors is taking all actions and processes required by the USDOT-DBE Regulation at 49 C.F.R. Part 26 and the Tennessee Department of Transportation ("TDOT").

(d) The Independent Monitors' report at a minimum must include the following:

(1) Status of Company's adherence to TDOT's DBE program requirements, that incorporate the requirements of the DBE regulation at 49 C.F.R. Part 26;

(2) A summary of the documents and activities reviewed, including the locations of the documents or activities reviewed;

(3) All failures or discoveries that do not appear to meet the appropriate TDOT DBE requirements;

(4) Answers to the following questions:

(i) Has the Civil Constructors Corporate Compliance Officer conducted appropriate investigations of each complaint and/or information received concerning DBE implementation efforts? For each investigation, has the Compliance Officer prepared and presented a written report to the President of the Company and the Members of the LLC presenting findings, conclusions, and recommendations, including corrective action(s)? Has the Compliance Officer provided copies of each written report to the Independent Monitors and the FHWA? If required, did the Corporate Compliance Officer brief the FHWA, at the Company's expense, regarding the DBE Corporate Compliance Program and Policy, or any particular complaint or investigation?

(ii) Has the Company's Corporate Compliance Officer conducted appropriate investigations of complaints and/or information alleging any violation or lack of compliance with this Agreement? For each investigation, has the Compliance Officer prepared and presented a written report to the President of the Company and the Members of the LLC presenting findings, conclusions, and recommendations, including corrective action(s)? Has the Compliance Officer provided copies of each written report to the Independent Monitors and the FHWA? If required, did the Corporate Compliance Officer brief the FHWA, at the Company's expense, regarding the DBE Corporate Compliance Program and Policy, or any particular complaint or investigation?

(iii) Has the Company's Corporate Compliance Officer maintained a Compliance Log of the reported information, complaints, and investigations as required by Sections III.D. and III.E.2 herein? Did the Corporate Compliance Office provide a copy of the Compliance Log monthly to the Independent Monitors?

(iv) Has the Company's Corporate Compliance Officer maintained the required dedicated private hotline for reporting suspected instances of improper conduct to the Corporate Compliance Officer, as described in this Agreement?

(e) Upon each anniversary of the effective date of this Agreement, during their tenure, the Independent Monitors will each furnish the FHWA with an affidavit certifying that they have no financial interest in, or other relationship with, Civil Constructors or any of its affiliates, other than that arising from their services as the Independent Monitors.

(f) If the Independent Monitors find evidence of any compliance problems with Federal laws or ethics requirements not covered by the scope of this Agreement, including any issue that raises questions about the present responsibility of the Company that could cause a suspension and proposed debarment referral, the Independent Monitors will report those problems promptly to the FHWA, the USDOT's Office of the Inspector General, and the Company's Corporate Compliance

Officer.

(g) The Independent Monitors' actions will occur in addition to, and will not replace, TDOT DBE requirements.

4. The Independent Monitors will be permitted to hire, at a reasonable cost, outside legal counsel, accountants, and/or other third-party professionals as may be reasonably needed to carry out their obligations.

5. All of the Independent Monitors' fees and expenses are the sole responsibility of Civil Constructors, which will establish an escrow account through which the fees and expenses will be paid. The escrow account will be established and funded within 15 days of the FHWA SDO signing this Agreement. The escrow account will be maintained by an independent escrow agent, who will pay all fees and expenses from funds in the account. Civil Constructors may select the escrow agent, and Civil Constructors will be responsible for payment of all the escrow agent's expenses for administering the fund. Consistent with the fiduciary duties assumed by the escrow agent, the escrow agent will have complete discretion regarding payment of the Independent Monitors' fees and expenses. Should a dispute arise as to whether any activity or expense is within the scope of this Agreement or is otherwise necessary, the escrow agent will promptly inform the FHWA in writing of the dispute. The FHWA will decide the matter in dispute, and the FHWA's decision is final.

6. The FHWA and Civil Constructors have agreed that the Independent Monitors will be Michael Self, President of EEO Networking Solution, with the assistance of Olivia Fonseca, the principal of GLA-Public Private Enterprises. The FHWA is satisfied that Mr. Self and Ms. Fonseca have the training and experience make them qualified for the position, and independent of the Company.

IV. Additional Provisions

A. Modification of Agreement

Any requirements imposed on Civil Constructors by this Agreement may be discontinued by the FHWA at its sole discretion. If one or both of the Independent Monitors fail to meet the requirements of this agreement, one or both of the Independent Monitors can be replaced by the FHWA, resulting in a new monitoring agreement between the Company and a new Monitor for remaining monitoring period, without a modification of this Agreement in writing requiring mutual consent of all Parties. Other modifications to this Agreement may be made only in writing and upon mutual consent of all Parties.

B. Sales, Mergers, Transfers, Bankruptcy; Survival of Agreement

If, during the term of this Agreement, Civil Constructors establishes new companies or subsidiaries, merges with another company, or transfers the entire company or major assets to new owners, Civil Constructors must notify the FHWA ninety (90) days in advance of such action and must provide copies of all corporate documents. This Agreement will inure to the benefit of, and

be binding upon, the parties and respective successors and assigns; provided, however, that the surviving entity, if other than Civil Constructors, may request and show good cause why this Agreement should not be applicable to its operations. Bankruptcy proceedings will not prevent or stay the enforcement of this Agreement or any suspension or debarment proceedings instituted by the FHWA based on Civil Constructors' alleged failure to comply with the terms of this Agreement, or based on allegations that the Company engaged in other conduct that is a cause for suspension or debarment.

C. Public Document

This Agreement is a public document and may be distributed by FHWA throughout the United States Government and entered into Government databases, and may also be used by Civil Constructors for its own needs as applicable. This Agreement is a public document, and any information in the FHWA's possession pursuant to the terms of the Agreement, are subject to the FOIA, 5 U.S.C. 552 *et seq.*, and USDOT implementing regulations (49 C.F.R. Part 7). To the extent that any of the requested information satisfies the criteria of FOIA Exemption 4, the FHWA will notify Civil Constructors that a request has been received and will identify the records in its possession that are responsive to the request. Civil Constructors will have the opportunity to object to the release of the information under 49 C.F.R. 7.29.

D. Administration of Agreement.

All submissions from FHWA to Civil Constructors required by this Agreement will be delivered to the Civil Constructors' office address for the Corporate Compliance Officer. All submissions from Civil Constructors to FHWA, required by this Agreement, will be delivered to:

Division Administrator
Federal Highway Administration
Tennessee Division
404 BNA Drive
Building 200, Suite 508
Nashville, TN 37217
Phone: (615) 781-5770
Fax: (615) 781-5773

E. Entire Agreement and Effective Date.

This Agreement constitutes the entire agreement between the FHWA and Civil Constructors, superseding any prior agreements or understandings, oral or written, with respect to the subject matter of this Agreement. This Agreement is effective on the date of the signature of the FHWA SDO.

