

**Attachment 3****DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. Prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name
Bid/Proposal No.	Assistance Agreement ID No. ( If known)	Point of Contact
Address		
Telephone No.	Email Address	
Issuing/Funding Entity:		

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input type="radio"/> NO	
<b>Subcontractor Name/ Company Name</b>	<b>Company Address/Phone/Email</b>	<b>Est. Dollar Amt</b>	<b>Currently DBE Certified?</b>

<sup>1</sup> A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services.

## DBE Subcontractor Performance

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

## DBE Subcontractor Performance

This form is intended to capture the DBE<sup>3</sup> subcontractors'<sup>4</sup> description of work to be performed and the price of the work submitted to the prime contractor. Prime contractor is required to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name
Bid/Proposal No.	Assistance Agreement ID No. ( If known)	Point of Contact
Address		
Telephone No.		Email Address
Prime Contractor Name		Issuing/Funding Entity:

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
BDE Certified by <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds FEMA certification standards: <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

<sup>3</sup> A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205

<sup>4</sup> Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

### DBE Subcontractor Performance

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

## FEDERAL PROVISIONS FEMA

### I. DEFINITIONS

- A. **Government** means the United States of America and any executive department or agency thereof.
- B. **FEMA** means the Federal Emergency Management Agency.
- C. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

### II. FEDERAL CHANGES

- A. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Contractor's failure to so comply shall constitute a material breach of this contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

### IV. DEBARMENT AND SUSPENSION

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party

subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.

- C. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the “prospective lower tier participant.”
- D. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- E. This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### **V.NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **VI. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (applicable to all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

- A. Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- B. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- D. Contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

**VII. ANTI-KICKBACK ACT COMPLIANCE** (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))  
 Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**VIII. DAVIS-BACON ACT COMPLIANCE** (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)  
 To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.wdol.gov](http://www.wdol.gov). Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

**IX. CONTRACT WORK HOURS AND SAFETY STANDARDS** (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be

liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

- D. Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

## **X. NOTICE OF REPORTING REQUIREMENTS**

- A.** Contractor acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- B.** The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

- A.** Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
- 1) The copyright in any work developed with the assistance of funds provided under this Agreement;
  - 2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **XII. PATENT RIGHTS** (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.



- B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

### **XIII. ENERGY CONSERVATION REQUIREMENTS**

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **XIV. CLEAN AIR AND WATER REQUIREMENTS** (applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
- B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

### **XV. TERMINATION FOR CONVENIENCE OF COUNTY** (applicable to all contracts in excess of \$10,000)

See Paragraphs 10 and 11 of the Agreement.

### **XVI. TERMINATION FOR DEFAULT** (applicable to all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraphs 9 and 11 of the Agreement.

### **XVII. CHANGES.**

See Paragraph 17 of the Agreement.

### **XVIII. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)**

- A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee

of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- B.** Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C.** Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **XIX. MBE / WBE REQUIREMENTS**

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

### **PRIME CONTRACTOR RESPONSIBILITIES**

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

### **"GOOD FAITH" EFFORT PROCESS**

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A.** Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B.** Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C.** Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D.** Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E.** Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- F.** If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

## **XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)**

Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring

only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS**

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the FEMA terms and conditions.

**XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**XXIII. DHS SEAL, LOGO, AND FLAGS.**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

## **Attachment D1**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

#### **Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Contractor Signature

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Date

## **FEDERAL PROVISIONS FHWA**

### **EXHIBIT 10-R: CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL**

#### **ARTICLE I INTRODUCTION**

See the terms of the Agreement.

#### **ARTICLE II STATEMENT OF WORK**

See the terms of the Agreement and Exhibit A.

#### **ARTICLE III CONSULTANT'S REPORTS OR MEETINGS**

- A. In addition to those requirements set forth in Section 4 of the Agreement, CONSULTANT's Project Manager shall meet with COUNTY's Project Manager, as needed, to discuss progress on the contract.

#### **ARTICLE IV PERFORMANCE PERIOD (Verbatim)**

- A. This contract shall go into effect on the date first set forth set forth in Paragraph 1 of the Agreement, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end on that date set forth in Paragraph 1 of the Agreement, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

#### **ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal (Exhibit B). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this contract is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Mallika Ramachandran, P.E.  
Napa County  
1195 3rd St, Ste 101  
Napa, Ca 94559
- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed the amount set forth in Paragraph 3 of the main body of this Agreement. It is understood

and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

Q. All subcontracts in excess of \$25,000 shall contain the above provisions.

#### **ARTICLE VI TERMINATION (Verbatim)**

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the LOCAL AGENCY shall be liable if this contract is terminated is the amount calculated under Paragraphs 9 and 10 of the main body of this Agreement.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)**

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

#### **ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and



copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

#### **ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

#### **ARTICLE X SUBCONTRACTING (Verbatim)**

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

## **ARTICLE XI EQUIPMENT PURCHASE (Verbatim)**

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

## **ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)**

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

## **ARTICLE XIII CONFLICT OF INTEREST (Verbatim)**

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.

- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)**

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)**

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
  - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### **ARTICLE XVI STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or

official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

## **ARTICLE XVIII FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

## **ARTICLE XIX CHANGE IN TERMS**

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by LOCAL AGENCY's Contract Administrator.

## **ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 11.5%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or

subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.

- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

- K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

## **ARTICLE XXII DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and Public Works Director or his/her designee, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

## **ARTICLE XXIII INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

## **ARTICLE XXIV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

## **ARTICLE XXVI OWNERSHIP OF DATA**

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL

AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.

- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

### **ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

### **ARTICLE XXXI RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.





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### Outreach Coordinator

Zandra Massari

### Project Estimator

Sonja El-Wakil

### Contact Information

1195 Third St  
Napa, CA 94559  
Tel: (707) 253-4351  
Fax: (707) 253-4627  
Email:  
[zandra.massari@countyofnapa.org](mailto:zandra.massari@countyofnapa.org)

## Napa Co Public Works

is seeking qualified MBEs, WBEs

### Project Name

Napa Library Earthquake Repairs Project, PW 15-25

### Bid/Contract #

PW 15-25

### Awarding Agency

Napa County Public Works

### Project Location

Napa, Napa County, CA

### Bid Date & Time

02/29/2016 at 5:00 p.m.

### Project Details

Napa County is re-bidding an earthquake project for structural and surface repairs to slabs, including epoxy repairs.

The Plans and Specifications as well as all the back up information is available on [www.countyofnapa.org/Procurement](http://www.countyofnapa.org/Procurement) with all the bonding and insurance requirements.

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Prime's Name: **Napa County**  
Contact: **Sonja El-Wakil**  
Address 1: **1195 3rd Street Ste 101**  
Address 2:  
City: **NAPA** State: **CA**  
Zip: **94559** Zip+4: **3035**  
Phone: **707-259-6383**  
Fax: **707-299-4283**  
Email: [Sonja.El-Wakil@countyofnapa.org](mailto:Sonja.El-Wakil@countyofnapa.org)

Seeking: • **US Department Of Transportation Disadvantaged Business Enterprise (DBE)**  
• **Small Disadvantaged Business (SDB)**  
• **Women Owned Small Business (WOSB)**  
• **Hubzone Small Business (HUBZSB)**  
• **Veteran Owned Small Business (VOSB)**  
• **Historically Black Colleges and Universities and Minority Institutions (HBCU & MI)**  
• **Other Small Business**  
• **Service-Disabled Veteran-Owned Small Business (SD-VOSB)**

Description: **The project is for structural and surface repairs to slabs and walls, including epoxy injection for the Napa Library Earthquake Repairs, PW 15-25 at 580 Coombs Street in Napa, CA.**

NAICS Code: **236220**  
Place of performance: **CA - California**  
Prime Sol. Number:  
Subcontract Sol. Number: **PW15-25**  
Bid Closing Date: **2/29/2016**  
Time: **5:00 PM PDT**

[Back](#)

Privacy & Security Information Quality FOIA No Fear Act ADA Session timeout in 59 minutes

100%

**Massari, Zandra**

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**From:** no-reply@mbda.gov on behalf of asowah@mbda.gov  
**Sent:** Wednesday, February 10, 2016 3:19 PM  
**To:** Massari, Zandra  
**Subject:** [Broken Link or Missing Content] Posting opportunities link is missing

Thank you for contacting the Minority Business Development Agency (MBDA).

This auto-response is notification that your message has been received. MBDA will review your comment and respond to you shortly.









A Tradition of Stewardship  
A Commitment to Service

**ATTACHMENT #5**  
**Department of Public Works**

1195 Third Street, Suite 101  
Napa, CA 94559-3092  
[www.countyofnapa.org/publicworks](http://www.countyofnapa.org/publicworks)

Main: (707) 253-4351  
Fax: (707) 253-4627

**Steven Lederer**  
Director

June 8, 2017

Redwood Road Owner / Resident  
Napa, CA 94558

**Subject: Site Meeting on June 22, 2017 for Redwood Road Repair at Mile Post Marker 5.0**

Dear Owner / Resident,

In the continuing effort to repair the damage incurred in your area by past storms, the County will soon commence repair work at the above-mentioned site. The project is approximately located in the 4500 block of Redwood Road, Napa County, California. The project includes the construction of a retaining wall, earthwork excavation and backfill, erosion control measures and pavement repairs.

**The County would like to meet with the residents at the project site on Thursday, June 22, 2017 at 10 am, to discuss the project and seek feedback on road closures. We apologize for this short notice.**

Subject to changes, construction is tentatively scheduled to begin this upcoming summer and is expected to be completed before winter 2017, weather permitting.

The County and contractor will make all reasonable attempts at minimizing the disruption to the Redwood Road area's residents and deliveries and allow traffic through in a timely manner.

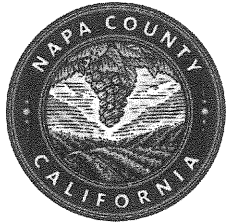
The contractor will be coordinating with the Emergency Services, the United States Postal Service and the Waste Disposal (Garbage) Service and not disrupt these services.

We acknowledge that this may cause you some inconvenience during the short construction period. We thank you for your patience and cooperation in the County's effort to maintain your road. Please contact James Reese of this office by phone at (707) 259-8281, or by email at [James.Reese@countyofnapa.org](mailto:James.Reese@countyofnapa.org) with any questions or comments.

Sincerely yours,

Steven Lederer  
Director, Napa County Public Works

Mallika Ramachandran P. E.  
Engineering Manager



A Tradition of Stewardship  
A Commitment to Service

1195 Third Street, Suite 101  
Napa, CA 94559-3092  
[www.countyofnapa.org/publicworks](http://www.countyofnapa.org/publicworks)

Main: (707) 253-4351  
Fax: (707) 253-4627

**Steven Lederer**  
Director

August 9, 2017

Redwood Road Owner / Resident  
Napa, CA 94558

**Subject: REDWOOD ROAD MPM 5.07, 2017 STORM DAMAGE REPAIR – RETAINING WALL**

Dear Owner / Resident,

Construction is scheduled to start on the Redwood Road MPM 5.07, storm damage repair project the week of August 21<sup>st</sup>, with tree removal. The project is located approximately in the 4500 block of Redwood Road, Napa County, California. The project includes tree removal, the construction of a retaining wall, earthwork excavation and backfill, erosion control measures and pavement repairs.

As has been previously discussed during the 6/22/17 on-site meeting, one lane will remain open except for potential two-hour closures between the hours of 9 to noon, and 1 to 4, during the approximate 70 day working schedule. The closures will be limited to Monday through Friday. Once the exact dates and hours of the closures are known, another notification will be mailed out with more details. In the event of an emergency during the road closure, the contractor will allow the emergency vehicle to ingress and egress.

The County and contractor will make all reasonable attempts to minimize the disruption to the Redwood Road area's residents and deliveries.

This notice will also be coordinated with the Emergency Services, the United States Postal Service, Waste Disposal (Garbage) Service, and other deliveries, to not disrupt those services.

We acknowledge that this may cause you some inconvenience during the short construction period. We thank you for your patience and cooperation in the County's effort to maintain your road. Please contact James Reese of this office by phone at (707) 259-8281, or by email at [James.Reese@countyofnapa.org](mailto:James.Reese@countyofnapa.org) with any questions or comments.

Sincerely yours,

Steven Lederer  
Director, Napa County Public Works

By For   
Mallika Ramachandran P. E.  
Engineering Manager



A Tradition of Stewardship  
A Commitment to Service

Department of Public Works

1195 Third Street, Suite 101  
Napa, CA 94559-3092  
[www.countyofnapa.org/publicworks](http://www.countyofnapa.org/publicworks)

Main: (707) 253-4351  
Fax: (707) 253-4627

**Steven Lederer**  
Director

9 de Agosto del 2017

Calle Redwood Road Propietario/Residente  
Napa, CA 94558

**Asunto: CALLE REDWOOD ROAD MPM 5.07, 2017 REPARACION DE DAÑOS POR  
TORMENTA - MURO DE RETENCIÓN**

Estimado Propietario / Residente,

La construcción está programada para comenzar en la calle Redwood Road MPM 5.07, este proyecto de reparación de los daños de la tormenta pasada comenzará la semana del 21 de Agosto con eliminación de árboles. El proyecto está localizado aproximadamente en el bloque 4500 de la calle Redwood Road, en el condado de Napa, California. El proyecto incluye la eliminación de árboles, la construcción de un muro de contención, excavación y relleno de tierras, medidas de control de erosión y reparaciones de pavimentos.

Como se ha mencionado anteriormente durante la junta en el sitio de construcción el 6/22/17, un carril permanecerá abierto excepto potencialmente por cierres de dos horas entre las horas de 9 al mediodía, y de 1 a 4, durante aproximadamente los 70 días del trabajo. Los cierres estarán limitados de lunes a viernes. Una vez que se conozcan las fechas y horas exactas de los cierres, se enviará otra notificación con más detalles. En caso de una emergencia durante el cierre de la carretera, el contratista permitirá que el vehículo de emergencia entre y pase.

El Condado y el contratista harán todo lo posible razonable para minimizar la interrupción a los residentes y agencias de entregas del área de la calle Redwood Road.

Este aviso también será coordinado con los Servicios de Emergencia, el Servicio Postal de los Estados Unidos, el Servicio de Eliminación de Desperdicios (basura) y otras agencias de entregas, para no interrumpir dichos servicios.

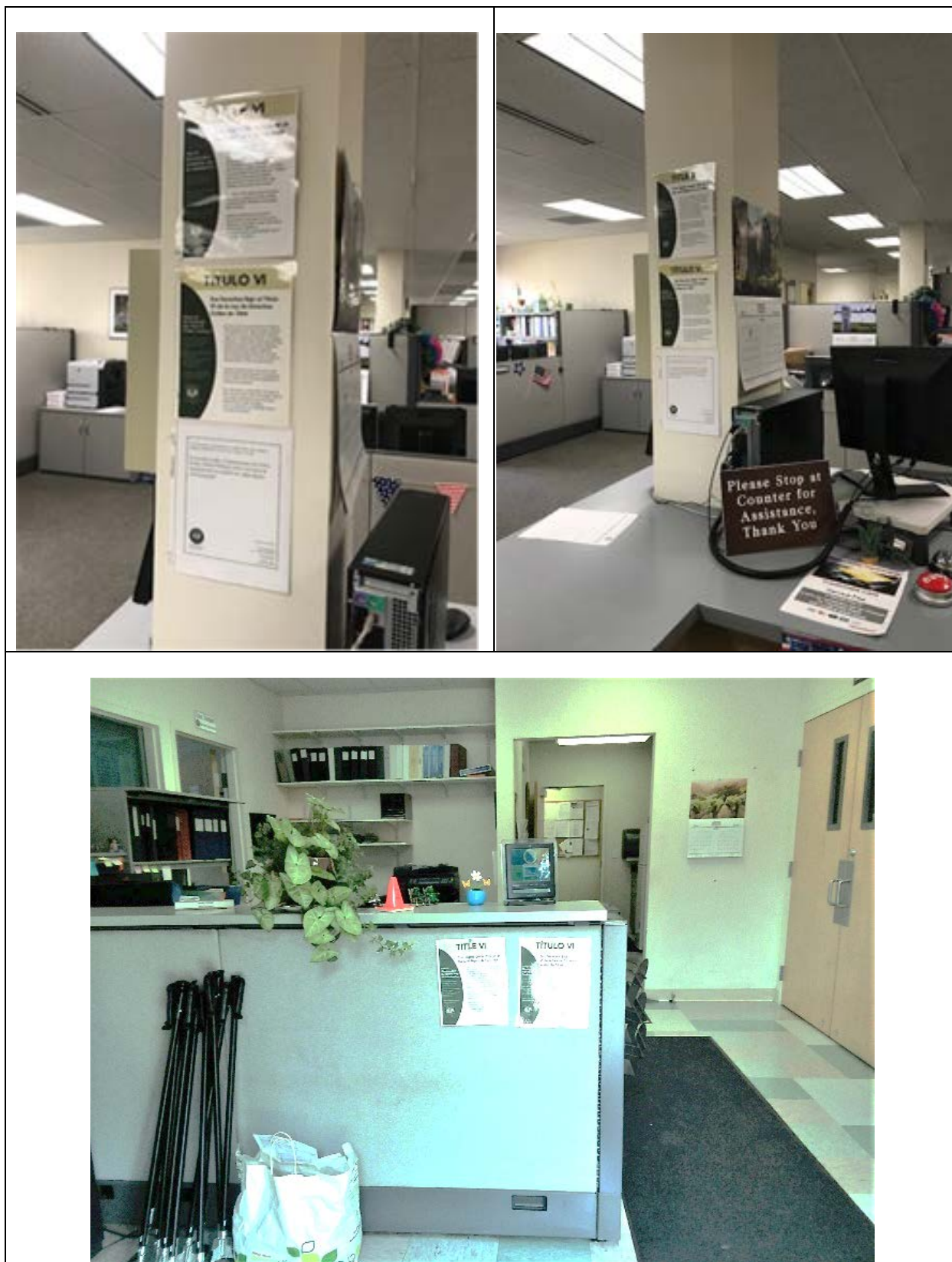
Reconocemos que esto podría causarle algún tipo de inconveniente durante este corto período de construcción. Le agradecemos su paciencia y cooperación con los esfuerzos del Condado por mantener su carretera. Por favor comuníquese con James Reese de esta oficina por teléfono al (707) 259-8281, o por correo electrónico a [James.Reese@countyofnapa.org](mailto:James.Reese@countyofnapa.org) con cualquier pregunta o comentario.

Sinceramente,

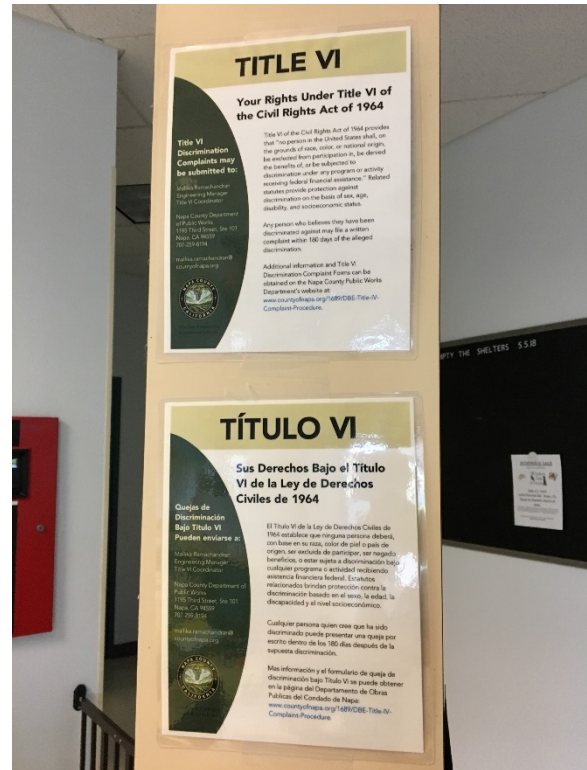
Steven Lederer  
Director, Napa County Public Works

By For   
Mallika Ramachandran P. E.  
Engineering Manager

TITLE VI POSTERS









# NAPA COUNTY

## CALIFORNIA

ATTACHMENT # 7

## DBE & Title IV Complaint Procedure

### Title VI Compliance

Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person in Napa County shall, on the grounds of race, color, national origin, sex, disability, age, or socioeconomic status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers. Napa County is committed to complying with Title VI requirements in all programs and services. Any person who believes they have been subjected to discrimination in the delivery of or access to public services on the basis of race, color, or national origin, sex, disability, age, or socioeconomic status may file a complaint with the Civil Rights Coordinator for the Napa County Department of Public Works, whose contact information is as set forth below:

Napa County Public Works / Civil Rights Coordinator  
1195 3rd Street #101  
Napa, CA 94559

Phone: 707-253-4351

Fax: 707-253-4627

For Napa County Public Work's policy on disability and ADA information, please see the [ADA information page](#).

### General

Any person who believes that they, individually, or as a member of any specific class of persons, has been subjected to discrimination on the basis of race, color, national origin, sex, disability, age, or socioeconomic status may as noted below may file a written complaint with the above-referenced Civil Rights Coordinator. Complainants also have the right to complain directly to the appropriate federal agency. Every effort will be made to obtain early resolution of complaints. The option of informal meeting(s) between the affected parties and the Civil Rights Coordinator may be utilized for resolutions.

A Complainant also has the right to file a formal complaint(s) with any other federal, state, or local agencies or seek private counsel for complaints alleging discrimination, intimidation, or retaliation of any kind that is prohibited by law. Title VI of the Civil Rights Act of 1964 and related statutes prohibit discrimination on the basis of race, color, national origin, sex, disability, age, or socioeconomic status in programs receiving federal financial assistance. You may download a [Title VI Complaint form \(PDF\)](#) in English or [Titulo VI documento de Queja \(PDF\)](#) en Español.

## Procedure

Napa County's Title VI Complaint Procedure outlines a process for local disposition of Title VI complaints and is consistent with guidelines found in the Federal Transit Administration Circular 4702.1A, dated May 13, 2007. The complaint procedure is outlined below:

1. **Submission of Complaint:** Any person who feels that they, individually, or as a member of any class of persons, on the basis of race, color, national origin, sex, disability, age, religion, or social economic status has been excluded from or denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance through Napa County Public Works may file a written complaint with the Civil Rights Coordinator. The Civil Rights Coordinator's contact information is provided to the left. Such complaint must be in writing and signed by the Complainant(s).
  1. In cases where a Complainant is unable or incapable of providing a written statement, a verbal complaint may be made. The Civil Rights Coordinator will interview the Complainant and assist the person in converting verbal complaints to writing. All complaints must, however, be signed by the Complainant or their representative.
  2. Include the date of the alleged act of discrimination date when the Complainant became aware of the alleged act of discrimination; or the date on which that conduct was discontinued or the latest instance of conduct.
  3. Present a detailed description of the issues, including names and job titles of those individuals perceived as parties in the complaint.
  4. Federal and state law requires complaints be filed within 180 calendar days of the alleged incident.
2. **Referral to Review:** Upon receipt of the complaint, the Civil Rights Coordinator will determine its jurisdiction, acceptability, need for additional information, in order to evaluate and investigate the complaint. The review shall be completed no later than 45 calendar days after the date Napa County received the complaint. If more time is required, the Civil Rights Coordinator shall notify the Complainant of the estimated time-frame for completing the review.
3. **Upon completion of the review:** The Civil Rights Coordinator shall make a recommendation regarding the merit of the complaint and whether remedial actions are available to provide redress. The Civil Rights Coordinator may also recommend improvements to Napa County's Title VI processes, as appropriate.
4. **Documentation:** The Civil Rights Coordinator shall complete an investigative report, and shall include a determination on the disposition of the complaint and identify any remedial actions needed.
5. **Notice of Determination:** The Civil Rights Coordinator shall mail a "Notice of Determination" to the Complainant. The Notice shall include information regarding appeal rights, including:
  1. Napa County will reconsider this determination, if new facts, come to light; and
  2. If a Complainant is dissatisfied with the determination and/or resolution set forth, the Complainant has the right to appeal.
6. **Appeals:** If the Complainant disagrees with the Civil Rights Coordinator's response set forth in the Notice of Determination, they may appeal by submitting a written request to the Director of Public Works within



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10 calendar days after receipt of the Notice of Determination. The appeal shall be sufficiently detailed and contain any items the Complainant feels were not fully understood by the Civil Rights Coordinator. The Director of Public Works will notify the Complainant of their decision to accept or reject the appeal within 10 calendar days of receipt. In cases where the Director of Public Works agrees to reconsider, the matter shall be reviewed in accordance with Paragraph 2, above.

7. **Submission of Complaint to the Federal Department of Transportation:** The Complainant may also submit a complaint to the Federal DOT. The DOT's complaint process can be found on the [DOT's website](#).

For more information regarding Title VI or if language assistance is needed, please contact [Napa County Public Works](#).

## Contact Us

### Mallika Ramachandran

Engineering Manager

[Email Mallika Ramachandran](#)

### Public Works

[Email the Public Works Department](#)

### Physical Address

1195 Third Street

Suite 101

Napa, CA 94559

Phone: 707-253-4351

Fax: 707-253-4627

[Directory](#)

County Administration Building

1195 Third Street

Napa, CA 94559

[Contact Us](#)

[Contact the Webmaster](#)