

# MONTEREY COUNTY

## PUBLIC WORKS, FACILITIES & PARKS

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**DATE: November 9, 2021**

**TO: All Contractors Submitting Proposal Packages for Request for Proposals (RFP) #10808  
Construction Management Services for Bradley Road Bridge Scour Repair Project Located in Monterey  
County, California**

### **ADDENDUM NO. 2**

This addendum to **RFP #10808 Construction Management Services for Bradley Road Bridge Scour Repair Project** provides additional requirements and Project details to the following sections:

**Section 2.0, Licensing/Security Requirements**

**Section 3.0, Background**

**Section 6.0, Scope of Work**

**Section 7.0, Required Content/Format for Proposal Package**

**Section 9.0 Selection Criteria**

**Section 12.0 Agreement Terms and Conditions**

**Appendix III, Exhibit B- Federal Provisions Caltrans Local Assistance Procedures Manual**

- ☐ The signed acknowledgement page of Addendum No. 2 must be signed and submitted with your proposal package.
- ☐ Proposal packages received without the signed acknowledgement page, will be considered non-responsive.

***RECEIPT OF ADDENDUM No. 2, RFP #10808 IS HEREBY ACKNOWLEDGED***

\_\_\_\_\_  
Authorized Company Representative Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

This Addendum No. 2 consists of the following **additional requirements and Project details** for **RFP #10808 Construction Management Services for Bradley Road Bridge Scour Repair Project Located in Monterey County, California**

**Add the following to Section 2.0, Licensing/Security Requirements on page 3:**

2.1.4 The Contractor's Resident Engineer (RE) assigned to the Project is required to be a California licensed Civil Engineer.

**Add the following to Section 3.0, Background on page 4:**

3.2 The federal lead agency for the project is the Federal Highway Administration with oversight from the California Department of Transportation (Caltrans) District 5 Division of Local Assistance. The project shall fully comply with Chapter 6 of the Local Assistance Programs Guidelines (LAPG) and the entire Local Assistance Procedures Manual (LAPM)

**Add the following to Item 6.4, of Section 6.0, Scope of Work on page 5:**

**Constructability Review:** CONTRACTOR shall review of the final plans and specifications Coordinate prior to start of Project construction, (or if time permits prior to the advertisement construction contract) and provide County with recommendations to improve the Project documents.

**Replace the following headings under Item 6.4, of Section 6.0, Scope of Work on page 6:**

**Environmental Compliance:** Coordinate and supervise pre-construction biological survey(s) and environmental monitoring. CONTRACTOR shall provide environmental monitoring and surveying services. CONTRACTOR shall coordinate with the County and regulatory agencies and report on the results of each survey. **CONTRACTOR shall be qualified to survey and relocate California Red Legged Frog and Steelhead.**

**Surveying:** Coordinate and supervise construction surveying and staking. CONTRACTOR **shall have a licensed land surveyor** provide construction staking services.

**Material Testing:** Coordinate, interpret, certify, and supervise all required soils and material tests in accordance **with County's Quality Assurance Plan (QAP)**, Caltrans test methods and Standard Specifications. CONTRACTOR shall provide County with a Caltrans certified material testing company to provide materials testing services per Caltrans Standard Specifications.

**Pre-Construction Conference:** Assist in the pre-construction meeting with the construction contractor and other Project participants. This discussion affords all the parties of the contract a common understanding of the proposed work and problems, and possible solutions that may be expected during the life of the contract. Labor compliance, equal employment opportunity, safety requirements, **DBE requirements**, water pollution requirements, agreements, and permits shall also be discussed. Respond to questions the construction contractor may have and address issues that need to be resolved before work commences.

**Replace the following Item 7.11, of Section 7.0, Required Content/Format for Proposal Package on page 10:**

**7.11 Fee Schedule: (Attachment I) (submit in separate sealed envelope)**

CONTRACTOR shall complete Appendix IV, Exhibit 10-H2 Cost Proposal **and LAPM Exhibit 10-01 Consultant Proposal DBE Commitment** and submit within their qualifications package. Fees may be negotiated after the tentative award announcement is made for this solicitation. If fee negotiations with the firm determined most qualified are not successful, and/or the fees discussed are outside the budgetary constraints for the Project, County reserves the right to suspend negotiations with the most qualified firm, and proceed to second most qualified firm, and so on. Selection of CONTRACTOR shall be based on qualifications per the Selection Criteria listed herein.

**Replace Item 9.2 of Section 9.0 Selection Criteria on page 12 with the following:**

9.2 The scoring criteria includes the following:

<b>CRITERIA</b>	<b>Scoring Criteria</b>
<b>Proposed Team Qualifications and Resume (0-40 points)</b>	<b>Points</b>
Organizational Chart of Proposed Team provides a clear picture of the working relationship between all key personnel on the proposed team	
Proposed team members have relevant technical expertise to provide engineering inspection services, material testing, and surveying and construction staking tasks listed in County Scope of Work in Section 6.0	
Staff has appropriate licenses, registrations, and certifications to provide engineering task listed in County Scope of Work in Section 6.0	
Some or all team members/firms have previously worked together on similar projects	
<b>Proposed Team Qualifications and Resume Subtotal Possible Points - 40</b>	
<b>Project Experience (0-30 points)</b>	<b>Points</b>
<b>Example Project 1</b> description indicates (0-10 points): <ol style="list-style-type: none"> <li>(1) Previous experience with project of similar scope and/or complexity;</li> <li>(2) Specific role the team member(s) had in the project;</li> <li>(3) Project funding and funding reporting requirements;</li> <li>(4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project;</li> <li>(5) Construction contractor change orders negotiated and approved;</li> <li>(6) Project documentation and file management system used;</li> <li>(7) Conformance to project's construction schedule and budget.</li> </ol>	
<b>Example Project 2</b> description indicates (0-10 points): <ol style="list-style-type: none"> <li>(1) Previous experience with project of similar scope and/or complexity;</li> <li>(2) Specific role the team member(s) had in the project;</li> <li>(3) Project funding and funding reporting requirements;</li> <li>(4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project;</li> <li>(5) Construction contractor change orders negotiated and approved;</li> <li>(6) Project documentation and file management system used;</li> <li>(7) Conformance to project's construction schedule and budget.</li> </ol>	
<b>Example Project 3</b> description indicates (0-10 points): <ol style="list-style-type: none"> <li>(1) Previous experience with project of similar scope and/or complexity;</li> <li>(2) Describe the specific role the team member(s) had in the project;</li> <li>(3) Project funding and funding reporting requirements;</li> <li>(4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project;</li> <li>(5) Construction contractor change orders negotiated and approved;</li> <li>(6) Project documentation and file management system used;</li> <li>(7) Conformance to project's construction schedule and budget</li> </ol>	
<b>Project Experience Subtotal Possible Points – 30</b>	
<b>Experience with Caltrans Local Assistance (0-15 points)</b>	<b>Points</b>

Firm's proposed project team has experience with Caltrans Local Assistance procedures.	
<b>Client References (0-5 points)</b>	<b>Points</b>
List of recent client references	
<b>Project Specific Quality Components:</b>	
<b>Project Management Approach as described (one [1] page limit) (0-5 points)</b>	<b>Points</b>
Describes approach and the steps and methods used to ensure project is constructed to the approved plans and specifications. Methods or steps used to minimize project change orders and claims.	
<b>Schedule Management Approach as described (one [1] page limit) (0-5 points)</b>	<b>Points</b>
Describes schedule management approach; scheduling software used, and methods used to recover from slippage of schedule milestones; progress meetings with contractor, system to track timely review of submittals and request for information (RFI's).	
<b>Project Management and Schedule Management Approach Subtotal Possible Points - 10</b>	
<b>Total (100 Points Possible)</b>	

**Replace Item 12.1 of Section 12.0 Agreement Terms and Conditions on page 15 with the following:**

12.1 The term of the AGREEMENT will be for the duration of the entire Project. The County estimates the construction portion of the Project to be approximately 90 days. The AGREEMENT term will last no more than a period of three (3) years and one (1) additional year to satisfy mitigation compliance requirements described in permits (Appendix VI Project Notification Package and Permits) for a total of a four-year term.

**Replace the following sections of Appendix III, Exhibit B- Federal Provisions Caltrans Local Assistance Procedures Manual:**

**Article IX Audit Review Procedures (pages 34-36)**

- 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 COUNTY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONTRACTOR may request a review by COUNTY'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 COUNTY will excuse CONTRACTOR from full and timely performance, in accordance with the terms of this contract.

~~For contracts \$150,000 or greater, paragraph D below applies:~~

- D. CONTRACTOR and subcontractor contracts, including cost proposals and Indirect Cost Rates (ICR), ~~are may be~~ 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 CONTRACTOR's responsibility to ensure federal, state, COUNTY 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 CONTRACTOR and approved by COUNTY ~~Cecontract manager-Administrator~~ to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the federal, ~~state~~, COUNTY 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.

For contracts \$3,500,000 or greater, paragraph E below applies:

- E. CONTRACTOR's Cost Proposal ~~is~~ may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). ~~IOAI, by Caltrans' Audit and Investigation (A&I).~~ Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONTRACTOR and approved by the COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONTRACTOR to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. During ~~a Caltrans' A&I~~ IOAI's review of the ICR audit work papers created by the CONTRACTOR's independent CPA, ~~IOAI Caltrans A&I~~ will work with the CPA and/or CONTRACTOR toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If ~~IOAI Caltrans A&I~~ identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse the CONTRACTOR at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR, ~~P~~part 31; GAGAS (Generally Accepted Government Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the ~~provisional~~ accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If ~~IOAI Caltrans A&I~~ is unable to issue a cognizant letter per paragraph E.1. above, ~~IOAI Caltrans A&I~~ may require CONTRACTOR to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI Caltrans

~~A&I~~ will then have up to six (6) months to review the CONTRACTOR's and/or the independent CPA's revisions.

3. If the CONTRACTOR fails to comply with the provisions of this ~~Section-paragraph~~ E, or if ~~IOAI Caltrans A&I~~ is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this contract.
4. CONTRACTOR may submit to COUNTY final invoice only when all of the following items have occurred: (1) ~~IOAI Caltrans A&I~~ accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of COUNTY; and, (3) ~~IOAI Caltrans A&I~~ has issued its final ICR review letter. The CONTRACTOR MUST SUBMIT ITS FINAL INVOICE TO County no later than sixty (60-) calendar days after occurrence of the last of these items. The accepted ICR will apply to this contract and all other contracts executed between COUNTY and the CONTRACTOR, either as a prime or subcontractor, with the same fiscal period ICR.

#### **Article X Subcontracting (Page 36)**

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subcontractor(s), and no subcontract shall relieve CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to COUNTY for the acts and omissions of its subcontractor(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 CONTRACTOR. CONTRACTOR's obligation to pay its subcontractor(s) is an independent obligation from COUNTY'S obligation to make payments to the CONTRACTOR.
- B. CONTRACTOR 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 COUNTY's Contract Administrator, except that, which is expressly identified in the CONTRACTOR's approved Cost Proposal.
- ~~C. CONTRACTOR shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to CONTRACTOR by COUNTY.~~
- C. Any subcontract-subagreement in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this entire contract to be applicable to subcontractors unless otherwise noted.
- D. CONTRACTOR shall pay its subcontractors within Fifteen (15) calendar days from receipt of each payment made to the CONTRACTOR by the COUNTY.
- ~~D-E.~~ Any substitution of subcontractor(s) must be approved in writing by COUNTY's Contract Administrator in advance of assigning work to a substitute subcontractor(s).



#### F. Prompt Progress Payment

CONTRACTOR or subcontractor shall pay to any subcontractor, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONTRACTOR on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONTRACTOR or subcontractor to a subcontractor, CONTRACTOR or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

#### G. Prompt Payment of Withheld Funds to subcontractors

The COUNTY may hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the contract work, and pay retainage to CONTRACTOR based on these acceptances. The COUNTY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONTRACTOR or subcontractor to a subcontractor. (Choose either Method 1, Method 2, or Method 3 below and delete the other two.)

**Method 1:** No retainage will be held by the COUNTY from progress payments due to CONTRACTOR. CONTRACTORS and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 2:** No retainage will be held by the COUNTY from progress payments due to CONTRACTOR. Any retainage kept by CONTRACTOR or by a subcontractor must be paid in full to the earning subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 3:** The COUNTY shall hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY of the contract work and pay retainage to CONTRACTOR based on these acceptances. CONTRACTOR or subcontractor shall return all monies withheld in retention from all subcontractors within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the COUNTY. Any delay or postponement of payment may take place only for good

cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontract performance, or noncompliance by a subcontractor.

**Article XVI Non-Discrimination Clause and Statement of Compliance (Pages 43-44) ~~(Verbatim)~~**

- A. CONTRACTOR's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with, the nondiscrimination program requirements of Government Code ~~§Section~~ 12990 and ~~Title 2, California Administrative Code, CCR §Section~~ 8103.
- B. During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 ~~(a-f)~~ et seq.), the applicable regulations promulgated there under (~~2 California Code of Regulations, Title 2, Section 7285~~ CCR §11000 et seq.), the provisions of Gov. Code ~~§§11135-11139.5~~, and the regulations or standards adopted by COUNTY to implement such article. 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, Section 2 CCR §§~~ 8100-8504, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- D. CONTRACTOR shall permit access by representatives of the Department of Fair Employment and Housing and the COUNTY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or COUNTY shall require to ascertain compliance with this clause.
- E. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.



- G. The Contractor, with regard to the work performed under this contract, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.). 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~~United States 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.
- H. The Contractor, shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subcontractors.
- I. CONTRACTOR, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COUNTY components of the DBE Program Plan, CONTRACTOR, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### Article XX Disadvantaged Business Enterprises (DBE) Participation

- A. CONTRACTOR, subrecipient (COUNTY), or Subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The COUNTY shows a contract goal for DBEs. CONTRACTOR shall make work available to DBEs and select work parts consistent with available DBE Subcontractor s and suppliers.

CONTRACTOR shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONTRACTOR 's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONTRACTOR purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
  - 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
  - Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."
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This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Contractors who enter into a federally funded agreement will assist the COUNTY in a good faith effort to achieve California's statewide overall DBE goal.

B. The goal for DBE participation for this contract is 7%. Participation by DBE contractor or subcontractors shall be in accordance with information contained in ~~the Contractor Proposal DBE Commitment (Exhibit 10-01), or in the Exhibit 10-02: Contractor/sultant~~ Contract DBE ~~Information (Exhibit 10-02) Commitment~~ attached hereto and incorporated as part of the Contract. If a DBE subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.

C. CONTRACTOR can meet the DBE participation goal by either documenting commitments to DBEs to meet the contract goal, or by documenting adequate good faith efforts to meet the contract goal. An adequate good faith effort means that the CONTRACTOR must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONTRACTOR has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

~~D. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of~~Contract Assurance

Under 49 CFR 26.13(b)

~~-contracts financed in whole or in part with federal funds. The COUNTY, CONTRACTOR,~~  
subrecipient ~~-or~~ subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR, ~~Part~~ 26 in the award and administration of federal aid US DOT-assisted contracts.

Failure by CONTRACTOR 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 ~~COUNTY~~ the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future ~~-biddingproposing~~ as non-responsible

E. Termination and Substitution of DBE Subcontractors

CONTRACTOR shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONTRACTOR or DBE Subcontractor obtains the COUNTY's written consent. CONTRACTOR shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the COUNTY. Unless the COUNTY's consent is provided, the CONTRACTOR shall not be entitled to any payment for work or material

unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The COUNTY authorizes a request to use other forces or sources of materials if CONTRACTOR shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The COUNTY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COUNTY's bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the AGREEMENT.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the AGREEMENT
11. The COUNTY determines other documented good cause.

CONTRACTOR shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONTRACTOR and the COUNTY of the reasons why the use of other forces or sources of materials should not occur.

CONTRACTOR's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONTRACTOR to the DBE regarding the request.
3. Notices from the DBEs to CONTRACTOR regarding the request.

If a listed DBE is terminated or substituted, CONTRACTOR must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

#### F. Commitment and Utilization

The COUNTY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. The COUNTY shall request CONTRACTOR to:

1. Notify the COUNTY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier Subcontractor

- Name and business address of each DBE Subcontractor, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONTRACTOR is a DBE CONTRACTOR, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONTRACTOR in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONTRACTOR in writing of the certification date. CONTRACTOR shall submit the notifications to the COUNTY. On work completion, CONTRACTOR shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the COUNTY within 30 days of contract acceptance.

Upon work completion, CONTRACTOR shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the COUNTY within 90 days of contract acceptance. The COUNTY will withhold \$10,000 until the form is submitted. The COUNTY will release the withhold upon submission of the completed form.

In the COUNTY's reports of DBE participation to Caltrans, the COUNTY must display both commitments and attainments.

~~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 COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONTRACTOR must meet the procedural requirements specified in 49 CFR 26.53(f). If a DBE subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.~~

~~F. Contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Contractor) pursuant to prior written authorization of the COUNTY's Contract Administrator.~~

G. A DBE is only eligible to be counted toward the contract goal if it performs a Commercially Useful Function (CUF) on the contract. CUF must be evaluated on an agreement by agreement basis. A DBE performs a 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.

H. 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.

- I. 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.
- J. CONTRACTOR 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~~ contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- ~~K. 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 Subcontractors" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONTRACTOR or CONTRACTOR'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 CONTRACTOR when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors" is submitted to the Contract Administrator.~~
- K. If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify CONTRACTOR in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Contract, the subcontractor shall notify CONTRACTOR in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

**Replace Exhibit 10-I Notice to Proposers DBE Information on pages 53-56 with the form on the following page:**

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## EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 7%

### 1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

### 2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### 3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1: Consultant Proposal DBE Commitment must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards meeting the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in best qualified consultant’s executed consultant contract. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

### 4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its



own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## **5. RESOURCES**

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#).
  - 1. Click on the link titled "Access the DBE Query Form"
  - 2. Click on "Start DBE Firms Query" link

Searches can be performed by one or more criteria. Follow instructions on the screen.

## **6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:**

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
  - B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
  - C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
  - D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
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**Add the following Article XXXI Prompt Payment from the County to the Contractor to page 56:**

**Article XXXI Prompt Payment from the County to the Contractor**

The COUNTY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONTRACTOR on a professional service contract. If the COUNTY fails to pay promptly, the COUNTY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the COUNTY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the COUNTY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONTRACTOR as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

*~ END ADDENDUM No. 2 ~*