



Midpeninsula Regional
Open Space District

R-24-101
Meeting 24-21
August 14, 2024

AGENDA ITEM 5

AGENDA ITEM

Adoption of Board Policy 3.03.A - *Procurement Procedures for Federal Awards*, as a supplement to Board Policy 3.03 - *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*

GENERAL MANAGER'S RECOMMENDATION

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Adopt the proposed Board Policy 3.03.A - *Procurement Procedures for Federal Awards* as a supplement to Board Policy 3.03 - *Public Contract Bidding, Vendor, and Professional Consultant Selection, and Purchasing* to govern District procurements for projects receiving Federal funds

SUMMARY

The District has obtained and is pursuing additional funding and grants from various agencies of the Federal government. Currently, the District has funding commitments from the Federal Emergency Management Agency (FEMA) and from the US Department of Transportation Federal Highway Administration. In the future, funding may also be pursued and obtained from other Federal agencies.

The District's current procurement practices do not completely align with the Federal procurement requirements. The proposed Board Policy 3.03.A - *Procurement Procedures for Federal Awards* as a supplement to Board Policy 3.03 - *Public Contract Bidding, Vendor, and Professional Consultant Selection, and Purchasing* would govern District procurements for projects receiving Federal funds. For non-Federal procurements/projects the existing Board Policy 3.03 continues to govern District procurement.

DISCUSSION

In late 2022 and 2023, a series of powerful winter storms struck the region, causing significant damage to several District preserves and trails. The District incurred over \$8 million in damages to roads, trails, dams, ponds, culverts, and bridges across multiple preserves in San Mateo and Santa Clara counties. Seeking federal and state funding to help cover repair costs is crucial for the District, and the District has applied for \$7.4 million in funding from FEMA and the California Office of Emergency Services (Cal OES). The District has applied for Federal reimbursement for a total of 22 projects. These projects are in various stages of review, but not all of them are expected to receive FEMA funding.

Additionally, we have secured, or are in the process of pursuing, federal funding for other projects such as:

- \$741,000 from FEMA for Wildfire Resiliency
- \$5,000,000.00 from the US Department of Transportation Federal Highway Administration for the State Route 17 Bicycle and Pedestrian Trail and Wildlife Crossing
- \$400,000.00 from the US Department of Transportation Federal Highway Administration / California Department of Transportation (Caltrans) for the Spooky Knoll Trail Construction

The *Procurement Procedures for Federal Awards* also addresses the requirements for all FEMA-related projects and grants, including: identifying and requiring the use of Federal Contract Provisions; establishing the Micro-Purchase Threshold (\$50,000) and the Simplified Acquisition Threshold (\$250,000), which would allow the District to procure property and services using informal procurement methods;¹ and addressing standards of conduct for District employees involved in procurement transactions.

As a requirement for using FEMA grant funds for the projects, the District must comply with the procurement standards set forth in the “Uniform Guidance” for federal awards (2 CFR Part 200), which require that recipients of a federal award “maintain and use documented procedures for procurement transactions under a Federal award” that are consistent with state and local law, as well as the procurement standards set forth in Uniform Guidance (“federal procurement standards”). The proposed *Procurement Procedures for Federal Awards* conform to the federal procurement standards and state and local laws.

The proposed Board Policy 3.03.A - *Procurement Procedures for Federal Awards* would be a supplement to the existing Board Policy 3.03 – *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing*. Board Policy 3.03.A would only apply to District projects that receive Federal funding. Existing Board Policy 3.03 would continue to govern all other District procurements. Moreover, even if a particular procedure is allowed under the *Procurement Procedures for Federal Awards* policy, the District would continue to follow Board Policy 3.03 and state and local law to the extent applicable.

FISCAL IMPACT

Failure to follow Federal contracting and procurement requirements puts the District at risk for either not receiving reimbursement, be subject to audits resulting in claw-backs, or not being able to use FEMA grant funds for otherwise eligible costs.

PRIOR BOARD AND COMMITTEE REVIEW

On July 24, 2024, the Board updated Board Policy 3.03 - *Public Contract Bidding, Vendor, and Professional Consultant Selection, and Purchasing* to reflect an increase in the General Manager’s authority.

¹ The micro-purchase threshold and simplified acquisition threshold are based on the District’s evaluation of internal controls and risk, and its documented procurement procedures. However, the federal procurement standards do not supersede the requirements for procurements imposed by state and local law. Therefore, notwithstanding higher thresholds allowed under federal law, the District would continue to follow its own procurement procedures to the extent required by state and local laws (e.g., the General Manager’s contracting authority).

No prior Board or Committee review or discussion has occurred on the proposed Board Policy 3.03.A - *Procurement Procedures for Federal Awards*, however, the Board has expressed support for FEMA-identified grants and projects. This policy is required to utilize FEMA grant funds for its projects.

PUBLIC NOTICE

Public notice was also provided pursuant to the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Following Board adoption of the *Procurement Procedures for Federal Awards*, the District will implement the requirements for all procurements subject to Federal funding. Future contracts receiving FEMA funding would be brought before the board for approval in accordance with Board Policy 3.03.

Attachment:

Board Policy 3.03.A. - *Procurement Procedures for Federal Awards*

Responsible Department Head:

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Prepared by/Contact person:

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Midpeninsula Regional Open Space District

Board Policy Manual

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| Procurement Procedures for Federal Awards | Policy 3.03.A. Chapter 3 – Fiscal Management |
| Effective Date: August __, 2024 | Revised Date: N/A |

Purpose

This Policy is intended to implement the Federal Procurement Requirements, as defined herein, and to ensure compliance with applicable state and federal legal requirements. The procedures in this Policy govern procurements under a federal award or subaward, including for acquisition of property or services, and are adopted as a supplement to Board Policy Manual, Policy 3.03, *Public Contract Bidding, Vendor and Professional Consultant Selection, and Purchasing Policy*.

Definitions

The definitions set forth below apply to the procedures for Federal Awards, regardless of whether the terms are capitalized herein:

Federal Procurement Requirements means the uniform federal award procurement requirements set forth in 2 CFR §§ 200.318 – 200.327, as may be amended from time to time, which apply to federally funded procurements, including FEMA reimbursements or funding, and any additional federal requirements that apply to a particular procurement.

FEMA means the Federal Emergency Management Agency.

Micro-Purchase Threshold means the dollar amount at or below which the District may purchase property or services subject to the Federal Procurement Requirements using micro-purchase procedures, currently \$50,000, which is based on the District's internal controls, an evaluation of risk, and its documented procurement procedures. (See Subsection VI(A)(1), Micro-Purchases, below.)

Simplified Acquisition Threshold means the dollar amount below which the District may purchase property or services subject to the Federal Procurement Requirements using small purchase methods, currently \$250,000, which is based on the District's internal controls, an evaluation of risk, and its documented procurement procedures. (See Subsection VI(A)(2), Informal Procurement Methods for Small Purchases, below.)

Vendor means a business entity or sole proprietor that may provide goods or services to the District.

Federal Procurement Policy

I. Legal Compliance.

Any procurement made pursuant to a federal award or subject to reimbursement, in whole or in part, with federal funds must comply with the District's procurement procedures, state law, and the Federal Procurement Requirements, including 2 CFR § 200.322, Domestic preferences for procurements; 2 CFR § 200.323, Procurement of recovered materials; 2 CFR § 200.324, Contract cost and price; 2 CFR § 200.325, Federal agency or pass-through entity review; 2 CFR § 200.326, Bonding requirements; and 2 CFR § 200.327, Contract provisions. (2 CFR § 200.318.) In the event of any conflict between District, state, or federal requirements, the most stringent requirement must be used. (See 2 CFR § 200.318.) The District must comply with funding agency requests for review of technical specifications or procurement documents as provided in 2 CFR § 200.325. The Federal Procurement Requirements are occasionally updated. The General Manager is hereby authorized to implement any necessary changes to District procedures necessary to comply with new or amended Federal Procurement Requirements, until such time as the changes may reasonably be brought to the Board for approval as part of this Policy 3.03.A.

II. Standards of Conduct.

No employee, officer, agent, or board member of the District with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract for the acquisition of property or services required under a federal award, as further specified in this Section.

A. *Conflict of Interest.* A conflict of interest includes any circumstances under which the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of those parties, has a financial or other interest in or a tangible personal benefit from a vendor considered for a contract. No employee, officer, agent, or board member of the District may solicit or accept gratuities, favors, or anything of monetary value from vendors. Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with District policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services. (See 2 CFR § 200.318(c)(1).)

B. *Prohibitions.* District employees may not violate laws pertaining to conflicts of interest, political contributions, or unlawful activities. A District employee may not participate in the vendor selection process if the employee has (1) a financial

relationship, as set forth in Government Code § 87100 et seq., with the person or firm seeking a contract; or (2) a real or apparent conflict of interest under Government Code § 1090 et seq.

C. *Vendor Conflicts.* Vendors that develop or draft specifications, requirements, statements of work, or invitations for bids for a procurement must be excluded from competing on those procurements. (See 2 CFR § 200.319(b) and Gov. Code § 1090 et seq.)

III. Administration.

A. *Oversight.* District Department Managers are responsible for overseeing procurements to ensure that vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (See 2 CFR §§ 200.318(b), 200.501(h).)

B. *Procurement Records.* Records will be maintained for each procurement of goods or services documenting the history of the procurement, including records of (1) the rationale for the procurement method, (2) contract type selection, (3) contractor selection or rejection, and (4) the basis for the contract price. (See 2 CFR § 200.318(i).)

C. *Dispute Resolution.* All protests, disputes, or claims arising from a procurement will be addressed promptly by the District, and in compliance with all applicable legal or contractual requirements. (See 2 CFR § 200.318(k).)

D. *Conflicting Requirements.* For projects involving grant agencies with specific requirements for procurement of consulting services, to the extent those requirements conflict or are inconsistent with these procedures, the more stringent provisions will control.

IV. General Federal Requirements and Recommendations.

A. *Full Competition.* District personnel must discharge their duties impartially to ensure full and open competition for District business by responsible vendors. (See 2 CFR § 200.319.) District personnel will treat all vendors equally and fairly, with equal information given to each vendor who participates in the procurement process. District personnel will ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, District personnel will consider objective factors that evaluate price and cost to maximize competition. District personnel may not place unreasonable restrictions on competition. Examples of situations that may restrict competition include, but are not limited to, the following (per 2 CFR § 200.319):

- (1) Placing unreasonable requirements on vendors to qualify for the procurement;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between vendors or affiliates;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;
- (7) Precluding potential bidders from qualifying during the solicitation period; and
- (8) Any arbitrary action in the procurement process.

B. *Economical Approach.* All procurements must be undertaken in a manner that will avoid the acquisition of unnecessary or duplicative items, which may include consideration of consolidating or breaking out procurements, lease alternatives, and other appropriate analysis to determine the most economical approach, subject to the limits of applicable law, including prohibitions against bid-splitting. (See 2 CFR § 200.318(d).)

C. *Procurement Solicitations and Specifications.* All procurement solicitations must be made in accordance with 2 CFR § 200.319(b), incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured, and identify any additional requirements which potential vendors must fulfill and all other factors that will be used in evaluating bids or proposals. (2 CFR § 200.319(d).) The description of technical requirements may include a statement of the qualitative nature of the property, equipment, or service to be procured and, when necessary, must provide minimum essential characteristics or standards to which the goods or services must conform. (See 2 CFR § 200.319(d)(2) and Cal. Pub. Cont. Code § 3400.)

D. *Required Contract Provisions.* Pursuant to 2 CFR § 200.327, contracts for federally-funded procurements must contain the applicable provisions described in Appendix II of Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Sample Federal Contract Provisions are attached as **Appendix A**. Contracts over \$10,000 must address the District’s ability to terminate for cause and for convenience, including the manner for effectuating termination, and the basis for final

payment to the terminated vendor. In addition, contracts for federally-funded procurements that exceed the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies for vendor violation of contract terms, and provide for sanctions and penalties as appropriate, subject to the limitations of law.

E. *Domestic Preferences for Procurements.* The District should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including, but not limited to, iron, aluminum, steel, cement, and other manufactured products, as further specified in 2 CFR § 200.322. This requirement must be included in all contracts and purchase orders under federal awards.

F. *Procurement of Recovered Materials.* Federally-funded procurements must comply with the Solid Waste Disposal Act, as further specified in 2 CFR § 200.323. This requirement must be included in the contract requirements. Additionally, the District should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. (See 2 CFR § 200.323.)

G. *Cost/Price Analysis.* For every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold, a cost or price analysis must be performed, and must include making independent estimates before receiving bids or proposals. (See 2 CFR § 200.324.) The method and degree of analysis will depend on the facts surrounding the particular procurement transaction. Costs or prices based on estimated costs for federally-funded contracts are allowable only as provided in 2 CFR § 200.324.

H. *Excess or Surplus Property.* When it will reduce project costs and is feasible, use of excess and surplus federal property is encouraged over purchasing new. (See 2 CFR § 200.318(f).)

I. *Value Engineering.* For larger federally-funded construction projects, a provision for value engineering may be added to the construction contract, subject to prior authorization from the District Representative. A value engineering provision must include a clear procedure for submission, approval, and cost-sharing of savings, consistent with Public Contract Code § 7101, and approval as to form by the District's General Counsel. (See 2 CFR § 200.318(g).)

J. *Time and Materials.* A time and materials contract may not be used for a federally-funded procurement, unless the District Representative has determined that no other type of contract is suitable for the procurement, and provided the procurement complies with 2 CFR § 200.318(j). Similarly, a "cost plus percentage of cost" and "percentage of construction costs" contract may not be used, as further

specified in 2 CFR § 200.324.

K. *Strategic Sourcing.* When appropriate for the procurement or use of common or shared goods and services, use of intergovernmental agreements or similar procurement arrangements using strategic sourcing is encouraged. (See 2 CFR § 200.318(e).)

V. Federal Contractor Requirements.

A. *Responsible Contractors.* Contracts subject to Federal Procurement Requirements will only be awarded to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. When conducting a procurement transaction, the District will consider contractor integrity, public policy compliance, proper classification of employees under the Fair Labor Standards Act (29 U.S.C. § 201, Chapter 8), past performance record, and financial and technical resources. (See CFR § 200.318(h).) A contractor must also be “responsible” as determined under California law, including Public Contract Code § 1103.

B. *Small and Minority Businesses.* When possible, the District should ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered for procurement transactions. (2 CFR § 200.321.) Consideration means:

- (1) These business types are included on solicitation lists;
- (2) These business types are solicited whenever they are deemed eligible as potential sources;
- (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (4) Establishing delivery schedules that encourage participation by these business types;
- (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring a vendor under a federal award to apply these considerations to subcontracts.

VI. Procurement Methods.

Depending on the type and amount of property or services, the District will use one of the below methods for federally-funded procurements, consistent with 2 CFR § 200.320, as it

may be amended from time to time.

A. *Informal Procurement Methods for Small Purchases.* Under 2 CFR § 200.320(a), informal procurement methods may be used when the value of the procurement does not exceed the Simplified Acquisition Threshold. Informal procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods include:

(1) **Micro-Purchases.** The District may use a micro-purchase if the aggregate amount of the procurement transaction does not exceed the Micro-Purchase Threshold. The District may award a micro-purchase without soliciting competitive price or rate quotations if the District considers the price reasonable based on research, experience, purchase history, or other information, and the District maintains documents to support its conclusion, and provided such is consistent with the District's standard purchasing procedures, as set forth in Board Policy 3.03. Purchase cards may be used as a method of payment for micro-purchases. To the extent practicable, the District will distribute micro-purchases equitably among qualified vendors. (See 2 CFR § 200.320(a)(1).)

(2) **Simplified Acquisitions.** The District may use simplified acquisition procedures if the aggregate amount of the procurement transaction is higher than the Micro-Purchase Threshold but does not exceed the Simplified Acquisition Threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The District may determine an appropriate number of qualified sources that it deems adequate. (See 2 CFR § 200.320(a)(2).) The District's use of simplified acquisition procedures must be consistent with the District's standard purchasing procedures, as set forth in Board Policy 3.03.

B. *Formal Procurement Methods.* Under 2 CFR § 200.320(b), formal procurement methods are required when the value of the procurement transaction under a federal award exceeds the Simplified Acquisition Threshold. Formal procurement methods are competitive and require public notice. The following formal procurement methods are used for procurement transactions above the Simplified Acquisition Threshold:

(1) **Sealed Bids.** This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services. If the District uses this method, it must comply with 2 CFR § 200.320(b)(1), in addition to any other local or state requirements.

(2) **Proposals.** This is a procurement method used when conditions are not

appropriate for using sealed bids. This procurement method may result in either a fixed price or cost-reimbursement contract. If the District uses this method, it must comply with 2 CFR § 200.320(b)(2), in addition to any other applicable local or state requirements.

C. Noncompetitive Procurement Method. Under 2 CFR § 200.320(c), the District may use a noncompetitive procurement method if one of the following circumstances applies: (1) The aggregate amount of the procurement transaction does not exceed the Micro-Purchase Threshold; (2) The procurement transaction can only be fulfilled by a single source; (3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation; (4) The District requests in writing to use a noncompetitive procurement method, and the federal agency or pass-through entity provides written approval; or (5) After soliciting several sources, competition is determined to be inadequate. The procurement must comply with 2 CFR § 200.320(c).

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APPENDIX A

SAMPLE FEDERAL CONTRACT PROVISIONS

Note: For contracts subject to federal funding, in whole or in part, the following applicable provisions must be included in the contract or contract documents. Consult the representative for the funding agency and General Counsel's Office regarding applicability and use of these contract provisions, as well as to determine whether any additional federal agency- or federal program- specific contract provisions should be included in the contract or contract documents.

Federally Funded Projects. This Project is funded in whole or in part by federal funds and subject to the following federal requirements under the terms of the funding agreement(s) between District and the federal agency or agencies providing federal funds, which are fully incorporated by this reference and made part of the Contract Documents. Copies of any funding agreement between District and a funding agency will be made available upon request.

1. Equal Opportunity. If this is a public works contract, during the performance of this Contract, the Contractor agrees as follows:

(A) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the

compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(D) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the United States Secretary of Labor.

(F) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the United States Secretary of Labor, or as otherwise provided by law.

(H) The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the United States Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the District or funding agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the District or funding agency, the Contractor may request the United States to enter into such litigation to protect the interests of the

United States.

- 2. Davis-Bacon Act.** If this is a public works contract, Contractor must comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) and the requirements of 29 CFR Part 5 as may be applicable. Contractor will pay wages to laborers and mechanics, not less than once a week, and at a rate not less than the current federal prevailing wages specified in the Davis-Bacon Act Wage Determination attached hereto and incorporated herein. By entering into this Contract, Contractor accepts the attached Wage Determination.
- 3. Copeland “Anti-Kickback” Act.** If this is a public works contract, Contractor will comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Contract. Contractor and subcontractors must insert this requirement into subcontracts of any tier. Contractor is responsible for compliance with these requirements by each subcontractor of any tier.
- 4. Contract Work Hours and Safety Standards Act.** In addition to the California state law requirements, Contractor and each subcontractor must comply with the requirements of the federal Contract Work Hours and Safety Standards Act, as set forth in 40 U.S.C. §§ 3701-3708, as supplemented by the regulations set forth in 29 CFR Part 5, as may be amended from time to time, which are fully incorporated herein, including:

 - (A) No Contractor or subcontractor will require or permit any laborer or mechanic performing Work for the Project to work in excess of 40 hours in a work week 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 40 hours during that work week.
 - (B) If Contractor or a subcontractor violates this requirement, the Contractor and any responsible subcontractor will be liable for the unpaid wages. In addition, the Contractor and subcontractor will be liable to the United States for liquidated damages. The liquidated damages will be computed with respect to each individual worker as specified under federal law.
 - (C) Contractor and subcontractors must insert this requirement into subcontracts of any tier. Contractor is responsible for compliance with these requirements by each Subcontractor of any tier.
- 5. Rights to Inventions.** If the federal funding for this Contract meets the definition of “funding agreement” under 37 CFR § 401.2(a) and constitutes an agreement between the District and a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency,

will apply to this Contract and are fully incorporated into the Contract Documents by this reference.

6. Clean Air Act. If the Contract is for an amount in excess of \$150,000, Contractor and each Subcontractor must comply with the requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671q), which are fully incorporated into the Contract Documents by this reference, including requirements for reporting violations to the awarding agency and the applicable Regional Office for the Environmental Protection Agency. Contractor and subcontractors must insert this requirement into subcontracts of any tier in excess of \$150,000.

7. Federal Water Pollution Control Act. If the Contract is for an amount in excess of \$150,000, the requirements of the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387) apply to this Contract and are fully incorporated into the Contract Documents by this reference, including requirements for reporting violations to the awarding agency and the applicable Regional Office for the Environmental Protection Agency. Contractor and subcontractors must insert this requirement into subcontracts of any tier in excess of \$150,000.

8. Suspension and Debarment. Contractor is required to verify that neither it, nor its principals, as defined at 2 CFR § 180.995, or its affiliates, as defined at 2 CFR § 180.905, are excluded or disqualified, as defined at 2 CFR §§ 180.935 and 180.940. Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, and must include a provision requiring compliance with these regulations in any subcontract of any tier. If it is later determined that the Contractor did not comply with the applicable subparts, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. By submitting a bid and entering into this Contract, Contractor agrees to comply with these requirements.

9. Byrd Anti-Lobbying Amendment. If the Contract is for an amount in excess of \$100,000, Contractor must comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and file the certification provided at 44 CFR Part 18, Appendix A, and any disclosures, with the applicable federal agency. Each tier certifies to the tier above that it will not and has not used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier will also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures will be forwarded from tier to tier up to the recipient.

10. Procurement of Recovered Materials. The requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 at 42 U.S.C. § 6962, apply to this Contract and are fully incorporated into the Contract Documents by this reference. For individual purchases of \$10,000 or more, Contractor will make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (A) competitively within the Contract schedule, (B) in conformance with

Contract performance requirements, or (C) at a reasonable price. Information on this requirement, including a list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines website: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11. Prohibition on Covered Telecommunications. Federal loan or grant funds must not be obligated or expended to procure or obtain covered telecommunications equipment or services, extend or renew a contract to procure or obtain covered telecommunications equipment or services, or enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services, as further specified in 2 CFR § 200.216, which is fully incorporated into the Contract Documents by this reference. "Covered telecommunications equipment or services" means any of the following: telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; or telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. The term "covered telecommunications equipment or services" also includes systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

12. Domestic Preferences for Procurements. The District should, to the greatest extent practicable and consistent with the law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, as further specified in 2 CFR § 200.322, which is fully incorporated into the Contract Documents by this reference, including, but not limited to, iron, aluminum, steel, cement, and other manufactured products, as specified therein. The requirements of 2 CFR § 200.322 must be included in all subcontracts and purchase orders for work or products under the federal award.

13. Small and Minority Businesses. The Contractor will consider small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms for subcontracts, as set forth in 2 CFR § 200.321. Consideration means:

- (A) These business types are included on solicitation lists;
- (B) These business types are solicited whenever they are deemed eligible as potential sources;
- (C) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

- (D) Establishing delivery schedules that encourage participation by these business types;
- (E) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (F) Requiring subcontractors to apply this section to lower-tier subcontracts, if any.

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