

DATE OF ISSUANCE: January 8, 2021

via email: kelliott@habitatedsv.org and daltangerel@habitatebsv.org

Kevin Elliott
Habitat for Humanity East Bay/Silicon Valley
2619 Broadway
Oakland, CA 94612

Diana Altangerel
Habitat for Humanity East Bay/Silicon Valley
2619 Broadway
Oakland, CA 94612

RE: Bernal/Monterey Emergency Housing Project Notice of Violation: Bay Area Pro Painting, Inc.

Dear Mr. Elliot and Ms. Altangerel:

The Office of Equality Assurance (“OEA”) delivered a Notice of Violation (“NOV”) via email to Habitat for Humanity (“Habitat”) on October 19, 2020. The NOV outlined a breach of contractual obligations by Bay Area Pro Painting, Inc. (“Subcontractor”), a second-tier subcontractor to VEEV on the Monterey/Bernal Emergency Housing project (“Project”). The Subcontractor was not notified about the NOV until December 20, 2020 when Labor Compliance CA (“Consultant”) contacted the Subcontractor to request a response to the NOV.

In their response, the Subcontractor stated that they were not aware of the public works status of the Project when they became involved. They provided a copy of their subcontract with VEEV as evidence of this fact. OEA reviewed the subcontract and it does not mention nor identify the Project as a public works project that is subject to state prevailing wage requirements. The Subcontractor has experience working on public works projects and they submitted their Public Works Contract Award Information (DAS 140) form as soon as they became aware of the Project’s prevailing wage requirements. The DAS 140 form is required to be submitted prior to work commencing on a project in which a contractor plans to utilize an apprenticeable craft.

Taking into consideration the facts presented above, OEA finds that the Subcontractor is not responsible for breach of contractual obligations because they were not properly notified of such requirements when they entered contract. OEA has determined that Habitat failed to fulfill their obligations as the prime contractor in a manner that is consistent with prime contractor responsibilities outlined in the following Labor Code sections:

§1777.5(n) states, “The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.”

§1777.7. (e) states, “If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor’s failure to comply with provision of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

- (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Section 1771, 1775, 1776, 1777.5, 1813, and 1815.”

The City included provisions regarding prevailing wage requirements in Section 31 of the Grant Agreement between the City and Habitat. Section 31(A) states, “GRANTEE shall abide by all of the CITY’s prevailing wage requirements during the development of the sites.” This violation is subject to \$100 per day penalty for each day the Subcontractor was out of compliance. The NOV stated that the Subcontractor was out of compliance for a total of 12 days. The total penalty amount is \$1,200.00.

Payment Process Information

Habitat for Humanity East Bay/Silicon Valley must mail a check in the amount of \$1,200.00 to the following: *State of California – DIR Division of Labor Standards Enforcement – Cashiering Unit*

The check should be delivered to the following recipient no later than 20 days from the Date of Issuance of this Notice:

Steven De La O, Contract Compliance Specialist
200 East Santa Clara Street, 5th Floor
San Jose CA 95113

Notice of Violation Review Process

If Habitat for Humanity is not satisfied with this decision, they can respond to the OEA Director with a written request for a hearing with the Director of Public Works no later than ten (10) days following the OEA Director's written response. A hearing with the Director of Public Works will be scheduled within 30 days from the hearing request. The Director of Public Works will issue a final decision for the City at that hearing.

Failure to Pay Violation Penalties

The City will not approve Habitat for Humanity's disbursement request if violation penalty checks are not received within twenty (20) days from the *Date of the Issuance* of this Notice. If a review is requested as provided above, the OEA Director decision will include a new payment time frame.

Sincerely;



Christopher Hickey
Director, Office of Equality Assurance

c: James Stagi, City of San José – Housing Department
Christopher Hickey, City of San José – Office of Equality Assurance
Frank Marsalas, Labor Compliance CA
Cheryl Carson, Labor Compliance CA