

RFP NO. PUR 081

**REQUEST FOR PROPOSAL
FOR WALK IN PAYMENT PROCESSING SERVICES**



**EAST BAY MUNICIPAL
UTILITY DISTRICT
OAKLAND, CA 94607**

SPECIFICATIONS

EAST BAY MUNICIPAL UTILITY DISTRICT

OAKLAND, CALIFORNIA

REQUEST FOR PROPOSAL
FOR WALK IN PAYMENT PROCESSING SERVICES

Responses are due no later than 4:00 p.m., Thursday, July 26, 2012,
at 375 Eleventh Street, Oakland, California

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WALK IN PAYMENT PROCESSING SERVICES
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SCOPE OF PROJECT

The scope of this project is to provide walk in payment processing services throughout the District's service area to EBMUD customers, for a period of three (3) years beginning November 1, 2012 and ending October 31, 2015 with two (2) options, to be exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods.

NOTICE TO CONTRACTORS

Sealed proposals for providing walk in payment processing services will be received at the Purchasing Division Office of the East Bay Municipal Utility District, 375 Eleventh Street, First Floor, Oakland, California, until 4:00 p.m., Thursday, July 26, 2012. This will not be a public bid opening.

Bidders are responsible for reviewing www.ebmud.com for any published addenda. Hard copies of addenda will **not** be mailed out to bidders.

This proposal is available online at <http://www.ebmud.com/business-opportunities/professional-and-general-services>.

LYNELLE M. LEWIS
Secretary of the District

Oakland, California

INSTRUCTIONS TO BIDDERS

Submit original plus one copy of your proposal.

Proposals shall be made in accordance with the provisions of Paragraphs 1, 2, and 3 of the General Requirements.

All forms requiring specific information should be removed and stapled together. Special attention should be given to completing Form P-25, "Contractor Employment Data and Certification"; and Form P-46, "Designation of Subcontractors." Any bidder needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting a bid.

The supplement "Various Statistical Areas (Permanent, Full-Time Work Force)" is provided for the use of the bidder.

SMALL BUSINESS DISCOUNT: As authorized by California Public Contract Code Section 2002, the District has established a Small Business Discount Program which grants qualified small business enterprises (SBEs) a 5% bid discount when competing against non-small businesses for contracts. In accordance with the law, the discount is calculated as 5% of the lowest bid, with the discount not to exceed \$50,000. For material and supply contracts this discount will be calculated and applied to the estimated annual dollar value of the contract for each and every year the contract exists.

A small business is defined as an independently owned and operated business which is not dominant in its field of operation and which, together with affiliates, has fewer than 100 employees and average annual gross receipts of fourteen million dollars (\$14,000,000) or less over the previous three years or is a manufacturer with 100 or fewer employees.

ALL MAILED PROPOSALS SHALL BE ADDRESSED AS FOLLOWS: "Request for Proposal for Walk In Payment Processing Services, RFP NO. PUR 081, Andrew A. Akelman, Manager of Purchasing, East Bay Municipal Utility District, P.O. Box 24055, Oakland, California 94623." It shall also have stated thereon the bidder's name and address.

HAND DELIVERED, COURIER OR PACKAGED DELIVERY SERVICE SHALL BE ADDRESSED AS ABOVE AND PRESENTED TO: Purchasing Division, 375 Eleventh Street, First Floor, Oakland, California 94607.

Bids submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed bids and bids sent by electronic mail ("e-mail").

BID PROTESTS: Bid protests must be in writing and must be received no later than seven (7) working days after either of the following: posting of the bid results on the District's website (www.ebmud.com), or notification of selection/non-selection, whichever is sooner. The District may dismiss the protest as untimely if it is received after this specified time frame. Protests will be accepted from bidders or potential bidders only, and must be filed in accordance with District Procedure 116.

Protests must be on the protester's company letterhead. If the protest is mailed and not received by the District, the protesting party bears the burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent in a timely manner so that it would be received by the District within the bid protest period.

All bid protests must contain a detailed and complete written statement describing the reason(s) for protest and include the name, telephone number, and address of the protester or the person representing the protester. Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or PO Box 24055, Oakland, CA 94623-1055. Protests submitted to the Manager of Purchasing by facsimile transmission to (510) 287-0688 or electronic mail to contact person listed in proposal are acceptable as they allow staff to review concerns

in a timely manner. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest on company letterhead. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing. The District may transmit copies of the protest and any attached documentation to all other interested parties who may be affected by the outcome of the protest. Further information concerning bid protests is contained in District Procedure 116.

ELECTRONIC BIDS: The District is now posting proposals online for download by all potential bidders. Bidders must ensure that their business information is current in the District Vendor Registration system. In order to access this system, please go to www.ebmud.com, click on Business Opportunities, click on Vendor Registration and Login and follow the instructions included in this section.

Bidders are responsible for reviewing www.ebmud.com for any published addenda. Hard copies of addenda will not be mailed out.

BIDDER'S CHECKLIST

This checklist is provided to assist you in preparing a complete bid.

1. "Proposal" Sheet, Form E-058A

____ DATE

____ FIRM NAME entered exactly as it appears on your corporate seal and invoice.

____ CORPORATE SEAL legibly affixed where indicated; or POWER OF ATTORNEY with corporate seal authorizing the individual to sign the bid; or NOTARIAL ACKNOWLEDGEMENT OF SIGNATURE, if company is a partnership or proprietorship.

2. "Contractor Employment Data and Certification" Sheet, Form P-25

____ Complete Sections A, B, C & D.

____ Sign the form as indicated.

3. "Designation of Subcontractors" Sheet, Form P-46

____ Complete if appropriate.

4. "Contract Equity Participation" Sheet, Form P-40

____ Complete if appropriate.

5. "Bidder's References and Statement of Experience" Sheet, Form P-020

____ Filled in sufficient detail to establish your ability to carry out the specifications.

6. "Bidding Sheets" and "Bidding Summary Sheets"

____ Prices as indicated; check prices and extensions carefully (unit prices will prevail in case of error).

____ Discounts—this is intended for cash discounts only. Discounts off of list prices should be reflected in the unit price.

____ Bidder's Federal E.I. number.

7. "Questionnaire" (where applicable)

____ Answer as required, describing equipment as necessary.

____ Include literature, catalogs, drawings, etc., as required.

8. "Instructions to Bidder" Sheet

____ Sealed envelope clearly marked as instructed.

9. Exceptions

____ The specifications have been carefully prepared describing items desired. In almost all instances, exceptions to the specifications will automatically disqualify your bid. Please avoid them. (See General Requirements, Para. 2.)

10. "Addenda"

____ Include initialed copies, if any, of all addenda with the Proposal Form when submitting your bid.

11. "Errors"

____ Double check your bid carefully before submitting. There is no excuse for carelessness. Remember, you are committing your firm to large sums of money if your bid is accepted. Be careful.

____ Be sure your bid is received in the Purchasing Division office **prior to the specified time**. The District is not responsible for bids received late or delivered to the wrong location.

REQUEST FOR PROPOSAL NO. PUR 081
WALK IN PAYMENT PROCESSING SERVICES
SPECIFICATIONS

1.1 GENERAL

The Contractor shall provide walk-in payment processing services to District customers at locations throughout District service area (see Article 1.3 below), for a period of three (3) years beginning November 1, 2012 and ending October 31, 2015, with two (2) options, to be exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods.

1.2 BILL PAYMENT HISTORY

A. EBMUD collects water bill payments, sewage treatment charges and special agency charges:

1. 370,000 accounts are billed monthly or bi-monthly and are payable when received. EBMUD staff processed approximately 2.2 million payments in 2011. A late payment penalty is charged to the account if the bill becomes overdue;
2. 55.5% of the above transactions are handled by the District's remittance processing staff. EBMUD's current authorized pay stations collect 3.4% of the transactions. 5.8% of the transactions are credit card/debit card/e-check transactions collected by a vendor. The remaining 35.2% of the above transactions are collected electronically.

1.3 DISTRICT SERVICE AREA

This area includes: Alameda, Alamo, Albany, Berkeley, Castro Valley, Crockett, Danville, Diablo, El Cerrito, El Sobrante, Emeryville, Hayward, Hercules, Kensington, Lafayette, Moraga, Oakland, Orinda, Piedmont, Pinole, Pleasant Hill, Richmond, Rodeo, San Leandro, San Lorenzo, San Pablo, San Ramon, Selby and Walnut Creek.

1.4 EXPECTED SYSTEM

A. Contractor shall provide an existing client services infrastructure throughout the EBMUD service area to handle walk-in payment transactions. The District will select pay stations that will be authorized to collect utility payments where there will be no fee to EBMUD customers from vendor's network. All available pay station locations may not be selected. ***It is critical to have a pay station location within walking distance of 375 11th Street, Oakland, California.***

B. Contractor shall provide service that includes:

1. Equipping, training, maintaining, and overseeing pay station operations and personnel.
2. Consolidate all collections to produce one daily electronic payment information file for posting to EBMUD's Customer Information System and one corresponding deposit/ACH (credit only) fund transfer to EBMUD's bank account.
3. Provide customer support to pay station locations, to EBMUD staff, and to individual EBMUD customers to assist in problem resolution.
4. Bill payment at pay stations locations to be free of charge for EBMUD customers.
5. Supplying a single electronic data record file in ASCII format for daily transmission to

EBMUD by a TBD time daily. This file is to include all payments made to all pay station locations up to a TBD time. The file will contain the EBMUD 11-digit account number, the corresponding amount paid for each item in the file, and the payment tender method (cash, check, money order).

- 6. An example of the District’s current file format is shown below. The second field column is the amount and the third field is the account number.

10000000000000000000000000006111409270094000APS	EAST BAY MUD		
60000000000000000000000000000000	0000012053	42467800001	0000000001
60000000000000000000000000000000	0000004770	23650080001	0000000002

- 7. Pay station locations must issue a receipt to customers including exact payment amount, EBMUD 11-digit account number, date and pay station name. If multiple accounts are paid, receipt must include amount paid per corresponding EBMUD account number.
- 8. Contractor must deposit/ACH funds (credit only) to EBMUD bank account within two business days after receipt of customer payment information via pay station locations.
- 9. In addition to the regular payment data transfer, EBMUD may require a listing of all payments received since the last payment file transfer each morning. This list can be sent electronically or faxed.
- 10. Contractor must discontinue EBMUD bill payment collection at designated pay station location(s), if requested by EBMUD in writing.
- 11. Contractor and pay station locations must agree payment collection will remain free to the EBMUD customer, unless EBMUD decides otherwise in writing.
- 12. EBMUD reserves the right to periodically audit the vendor’s pay stations with respect to procedures, fiscal controls, and examination of records and documentation related to all matters covered in this RFP.
- 13. Contractor must maintain agents; recruit, train, supply equipment, software and supplies, all system support and maintain quality control including balanced deposits, and no payment or deposit delays.
- 14. Personnel trained to process customer payments, including data entry of payment information, must staff pay station locations.
- 15. Contractor must submit to EBMUD an updated pay station list including business name, address, languages spoken, pay station days and hours of payment collection, contact name and telephone number every time there is a change to the pay station list.

1.5 IMPLEMENTATION, TRAINING AND ON-GOING SUPPORT

- A. The Contractor shall pre-stage and test all hardware and software components at newly added or additional agent locations with EBMUD bill stub prior to implementation, including generating a test-HOST file. Contractor shall invite EBMUD staff to participate in final pre-staged testing process.
- B. The Contractor shall define functional requirement variances, and submit final system specifications for review and approval by EBMUD’s project staff.

- C. Describe steps/utilities involved in recovering a database in case of corrupted data.
- D. The Contractor shall provide a single point of contact for supplies, ongoing education and training and other areas related to the operation of the system.
- E. The Contractor shall provide phone and remote dial-in diagnostics and support provided that a dial-up phone line or TCP/IP connection with remote access software is made available.
- F. The Contractor shall be responsible for any debugging of its software with periodic quality control checks.
- G. A complete set of documentation and a minimum of 5 training manuals shall be provided with the proposed system, including instructions specific to the District's operation, in a fully indexed format.

1.6 MAINTENANCE

- A. Contractor must maintain all support for pay stations, including but not limited to hardware/software support, supplies, payment research and training. EBMUD has no responsibility for pay station maintenance.
- B. Hardware and software support shall be provided for the overall system through a single point of contact. The Contractor shall be this single point of contact.
- C. State the location(s) from which service will be provided and how many technicians are available in this area for hardware maintenance.
- D. If contractor provides remote diagnostic capabilities, describe these capabilities in full.
- E. Contractor must state its policy regarding services provided to customers beyond maintenance (i.e., time and materials cost basis). Include all these costs as a separate line item on Bidding Sheet.
- F. Does Contractor provide field notes to most commonly experienced problems to allow customers to read instructions and solve without the need to log support calls? Explain what is available.
- G. Describe Contractor's hardware/software support. If required, the District is interested in an annual maintenance program; however, the District would also be interested in looking at multi-year contracts if discounts are available. Please describe your maintenance package in detail.

END OF SECTION

REQUEST FOR PROPOSAL NO. PUR 081
WALK IN PAYMENT PROCESSING SERVICES
SPECIAL REQUIREMENTS

2.1 THE REQUIREMENT

Under this Request for Proposal (RFP), the Contractor shall provide walk in payment processing services to EBMUD customers at locations throughout the District's service area.

2.2 COMPARISON OF BIDS

Bids will be compared and a contract will be awarded based on the District's evaluation of the vendor's proposal with appropriate consideration given to functional, technical, business, cost, and management requirements.

The District reserves the right to reject all bids.

2.3 DESIRED INFORMATION AND POINTS TO COVER IN PROPOSAL SUBMITTAL

1. Describe any bonding or insurance provisions that would protect EBMUD from loss of funds.
2. List current authorized automated pay station locations in the District's service area, including name, address zip code, and languages spoken. Provide subtotals for each city. If possible, include names of other businesses/utilities that customers can pay bills for in each location.
3. Describe your ability to comply with all requirements of the Americans with Disabilities Act (ADA).
4. State willingness to recruit new automated pay station locations in areas the District designates. (List any additional cost to EBMUD for this on the Bidding Sheet.) Describe the process of locating and qualifying new pay station locations and preparing them for operation. How long does this process take?
5. Describe the notification process (to EBMUD and customers) when pay station locations change.
6. Do you maintain information on pay station locations by city than can be used by EBMUD staff to inform customers of locations and hours of operations? How often is this information updated? Is it available on the Internet?
7. Describe quality assurance procedures over pay station locations.
8. Describe, in detail, the entire payment process from the point a customer pays to the point the payment is deposited in the EBMUD bank account and the payment information is transmitted to EBMUD.
9. Describe the process of moving data from the pay station back to EBMUD. What technology is used? How often is the data transferred? How is the data managed? What security is placed around the data transfer process?
10. What kind of flexibility does the District have to organize the format of the data that is being transferred to the District? If the District wants to change the data format, how much flexibility does the District have without engaging the vendor?

11. Describe the timing of movement and availability of funds.
12. Describe electronic security measures in place in all areas EBMUD customer account information is sent, received or stored electronically.
13. Describe how you handle returned check/payment items. EBMUD does not allow for vendor-initiated debits to the District's fiscal account.
14. Describe any electronic check capabilities.
15. Describe all technologies supported for payments – cash, credit/debit cards, etc. Any future payment methods under consideration? Do you offer or are you planning to offer real-time payment posting?
16. State willingness to e-mail a report to EBMUD daily (time TBD) that contains EBMUD customer water bill payments made since last data transfer, showing amount paid per EBMUD account number, EBMUD account number and payment type (i.e. cash, check).
17. Describe how you can notify EBMUD immediately of payment in the event customer indicates water is off.
18. State willingness to allow file retrieval to be done by EBMUD from vendor's FTP site.
19. Provide a contact tree for data transfer problems, billing issues and any payment research items that may occur
20. State willingness to insure that signage (provided by EBMUD) is properly displayed at all pay station locations.
21. Describe standard reports that are available. Provide examples.
22. Describe systems and processes that would allow EBMUD staff or customers to confirm the amount of a payment and payment tender (check, cash) made by a customer at a pay station location. Do you provide real-time inquiry for bill payments received? Can EBMUD staff or customers call or go on-line to see if an account was paid at a pay station location at any time since the last file transfer?
23. Describe the process and timing of following up on customer questions such as payments not posted to a customer's account. Are images of the check and payment coupon available for viewing over secure Internet connections for EBMUD research?
24. Describe the resources (including number of employees) dedicated to information systems, customer and client services, pay station support and training, and operations.

2.4 DEVIATIONS/EXCEPTIONS

TAKING EXCEPTION TO THE PROPOSAL OR FAILURE ON THE PART OF THE BIDDER TO COMPLY WITH ALL REQUIREMENTS AND CONDITIONS OF THIS PROPOSAL MAY SUBJECT THE BID TO REJECTION. IF NO DEVIATIONS ARE SHOWN, THE BIDDER WILL BE REQUIRED TO FURNISH THE PRODUCTS AND SERVICES EXACTLY AS SPECIFIED HEREIN. THE BURDEN OF PROOF OF COMPLIANCE WITH THE SPECIFICATIONS SHALL BE THE RESPONSIBILITY OF THE BIDDER.

This Request for Proposal is subject to acceptance only on the terms and conditions stated in this Request for Proposal. Any additional or different terms and conditions proposed by vendor are hereby rejected, and shall be of no force or effect unless expressly assented to in writing by the District. There shall be no contract except upon the terms and conditions provided in this Request for Proposal.

District terms and conditions supersede bidders' terms and conditions.

2.5 PAYMENT

One hundred percent of the contract price of the service invoiced will be paid to the Contractor within thirty (30) days following performance and receipt of correct invoice, unless other specific payment terms are included on the Bidding Sheet.

2.6 TERM OF AGREEMENT AND PRICING

The term of the contract awarded under this proposal shall be for the three-year period beginning November 1, 2012, and ending October 31, 2015, with two (2) options, to be exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods.

The District may consider price increases in determining compensation only when the District exercises its option(s) to extend the term of this Agreement. Any price increase submitted by Contractor shall be based on the Bureau of Labor Statistics Consumer Price Index, the monthly CPI – W for the San Francisco/Oakland/San Jose Region, and shall cover the one-year period under consideration. Price increases above the CPI will not be considered. Price decreases can be submitted at any time during the term of this Agreement. If no price increase or decrease is made by the District for the option period(s), the price for each one-year option period shall be one-third of the price bid for the three-year base period.

2.7 INDEMNIFICATION AND INSURANCE

A. Indemnification

CONTRACTOR expressly agrees to defend, indemnify, and hold harmless DISTRICT and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from CONTRACTOR's, its associates', employees', subcontractors', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

B. Insurance Requirements

CONTRACTOR shall take out and maintain during the life of the Agreement all the insurance required in this Section, and shall submit certificates for review and approval by DISTRICT. The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence work until such insurance has been approved by DISTRICT. The certificates shall be on forms provided by DISTRICT. Acceptance of the certificates shall not relieve CONTRACTOR of any of the insurance requirements, nor decrease the liability of CONTRACTOR. DISTRICT reserves the right to require CONTRACTOR to provide insurance policies for review by DISTRICT.

C. Workers Compensation Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, DISTRICT will accept a Self-Insured Certificate from the State of California. CONTRACTOR shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

D. Commercial General Liability Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If CONTRACTOR elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONTRACTOR is required to notify the DISTRICT immediately. Any request to self-insure must first be approved by the DISTRICT before the changed terms are accepted. CONTRACTOR shall require any subcontractor to provide evidence of liability insurance coverages.

The amounts of insurance shall not be less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.
\$2,000,000/Occurrence, Bodily Injury, Property Damage - General Liability.

The following coverages or endorsements must be included in the policy(ies):

1. DISTRICT and its Directors, officers, and employees are **additional insureds** in the policy(ies) as to the work being performed under this Agreement.
2. The coverage is **primary** and non-contributory to any other insurance carried by DISTRICT.
3. The policy(ies) cover(s) **contractual liability** for the assumption of liability through the indemnity in this Agreement.
4. The policy(ies) is(are) written on an **occurrence** basis.
5. The policy(ies) cover(s) **broad form** property damage liability.
6. The policy(ies) cover(s) **personal injury** (libel, slander, and trespass) liability.
7. The policy(ies) cover(s) **products and completed operations**.
8. The policy(ies) cover(s) use of **non-owned** automobiles and equipment.
9. The policy(ies) shall not be canceled nor materially altered unless **30 days' written notice** is given to DISTRICT.

2.8 SAFETY OF PERSONS AND PROPERTY

Notwithstanding any other provision of this RFP, the Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property, during performance of the work. This requirement will apply continuously and will not be limited to normal working hours.

2.9 LEGAL COMPLIANCE

Contractor's performance of the work, including but not limited to health and safety matters shall conform to applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

2.10 TERMINATION FOR CONVENIENCE

This Agreement may be terminated for convenience by the District by giving the Contractor prior written notice of not less than 30 days.

If this Agreement is terminated, Contractor shall be entitled to compensation for services satisfactorily performed to the effective date of termination. Payment by DISTRICT for the services satisfactorily performed to the effective date of termination shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Agreement and Contractor shall be entitled to no other compensation or damages and expressly waives same.

2.11 BIDDER/CONTRACTOR COMMUNICATIONS WITH THE DISTRICT

All communications regarding this proposal should be directed to the individual named herein for the specific topics:

East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623

TECHNICAL SPECIFICATIONS/COMMERCIAL TERMS & CONDITIONS OF BID
PROCESS:

Attn: Suzanne Lyles, Customer Services Supervisor
(510) 287-2173

CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office
(510) 287-0114

AFTER AWARD OF CONTRACT:

Attn: Suzanne Lyles, Customer Services Supervisor
(510) 287-2173

* * * * *



PROPOSAL

DATE _____

TO THE EAST BAY MUNICIPAL UTILITY DISTRICT, OAKLAND, CALIFORNIA:

Pursuant to the foregoing notice to contractors, the undersigned bidder herewith submits a proposal on the bidding form or forms attached hereto and made a part hereof, and binds itself on award by the East Bay Municipal Utility District under this proposal to execute in accordance with such award a contract, of which this proposal and the said notice to contractors, instructions to bidders, general conditions, specifications, and drawings shall be a part, and to furnish the bond or bonds and insurance required by the specifications. The notice to contractors, instructions to bidders, general conditions, specifications, and drawings are made a part of this proposal and all provisions thereof are hereby accepted.

The bidder further agrees that, in case of its default in executing the required contract and the required bond or bonds, or furnishing the required insurance, the money payable under the bid bond accompanying this proposal shall be applied by the District towards payment of the damage to the District on account of such default, as provided in the specifications.

*(Affix Corporate Seal or
Notarial Acknowledgment of
Signature - if partnership or
proprietorship)*

FIRM _____

BY (Signature) _____

TITLE _____

ADDRESS _____

ZIP _____

PHONE _____

Nature of firm (corporation, partnership, etc.) and names of individual members of the firm, or names and titles of officers of the firm, or names and titles of officers of the corporation.

Corporation organized under the laws of the State of

REQUEST FOR PROPOSAL NO. PUR 081
WALK IN PAYMENT PROCESSING SERVICES
BIDDING SHEET

Vendor must provide itemized pricing for the following:

	DESCRIPTION	Estimated Quantity	Per Item Fee	AMOUNT
1.	Per Item Transaction Fee to Pay Station	120,000 annually	X	= \$
2.	Per Item Fee Paid to Vendor	120,000 annually	X	= \$
3.	Monthly Fee Per Pay Station (if any)	12 months X # of pay stations	X	= \$
4.	Returned Item Fee	360 annually	X	= \$
5.	Payment Research Fee	1,200 annually	X	= \$
6.	Set-up/Installation/Implementation Fees	25 annually	X	= \$
7.	Any other fees or costs not itemized above:			= \$
8.				= \$
9.				= \$
10.				= \$
11.				= \$
12.			Total:	\$

ANNUAL MAINTENANCE COSTS (IF APPLICABLE)	AMOUNT
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Total:	\$

Payment Term Discount _____

Any discount or discounts offered by the bidder must allow for payment after receipt and acceptance of the material or correct invoice, whichever is the later. **Payment terms less than 20 days will not be accepted.**

The price quoted shall include all taxes (except sales and use taxes), licenses, fees or any other costs associated with delivering the product to the District sites.

The prices quoted shall not include the California State Sales or Use Tax; said tax, wherever applicable, will be paid by the District to the Contractor, if licensed to collect same, or otherwise directly to the State.

Bidder's Federal E. I. Number _____

Small Business Enterprise?* Yes No
*As stated in the CEP/EEO Guidelines in this proposal.

Contact person for contract execution:

Company Name: _____

Name: _____ Title: _____

Mailing Address: _____

City, State, Zip Code: _____

Phone No.: _____ FAX No.: _____

E-mail Address: _____

EAST BAY MUNICIPAL UTILITY DISTRICT

**CONTRACT EQUITY PROGRAM
AND
EQUAL EMPLOYMENT
OPPORTUNITY GUIDELINES**



DECEMBER 2011

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I. CONTRACT EQUITY PROGRAM

The following Contract Equity Program Guidelines were established to enhance equal opportunities for business owners of all races, ethnicities and genders who are interested in doing business with the District pursuant to Policy 17 approved by the Board of Directors on June 9, 1998. Policy 17 was superseded by Policy 1.03 – Contract Equity Program and Policy 1.04 – Contractor’s Compliance with Equal Employment Opportunity, following the passage of Proposition 209. Further, the District provides assistance to all prospective bidders/proposers in obtaining subcontractor participation by all availability groups, including identification of possible business enterprises.

The Contract Equity Program requires bidders/proposers to conduct outreach to all potential subcontractors to ensure that opportunities to participate in District contracts are publicized as widely as possible. This outreach is intended to broaden the pool of competitive bidders, lower prices to the District, and help achieve diversity among District contractors¹ and subcontractors. The District’s expectation is that with bidders’/proposers’ Good Faith Outreach Efforts to subcontractors of all races and both genders, the composition of District contractors and subcontractors will reflect the broad diversity present in the marketplace, consistent with the Contracting Objectives of the Contract Equity Program.

Additionally, contractors located in counties, such as Alameda, Contra Costa, San Joaquin, Calaveras, Amador and other counties that are directly impacted by District contracts and/or operations, should be targeted in outreach efforts.

A potential contractor’s noncompliance with these guidelines may deem a bid or proposal nonresponsive, and therefore, ineligible for contract award.

The requirement of the District’s Contract Equity Program is that all bidders/proposers **must document** Good Faith Outreach Efforts in the ten areas set forth in Section A. Section B provides an exemption from this requirement for bidders/proposers who meet the District’s Contracting Objectives or obtain a waiver from the District’s Contract Equity Administrator.

Materiality: The documentation and certification required by the District are material, will govern the potential contractor and its subcontractors’ performance and will be made part of the bid/proposal and the resulting contract with the District.

Nondiscrimination: There shall be no discrimination or harassment or retaliation against any person, or group of persons, on account of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (genetic characteristics or cancer), age, marital status, or sexual orientation within the meaning of California Government Code Section 12940 in the performance of this contract.

¹ A company, firm, joint venture or individual who enters into an agreement with the District to provide services, i.e., construction, professional services and general services, and delivery of materials, supplies, and equipment. A contractor may be a construction contractor, a consultant, a vendor, a supplier, or a trucker.

The contractor shall not establish or permit any such practice(s) of discrimination, harassment or retaliation with reference to the contract or any part thereof. The contractor must post applicable EEO policies and the District's "Working Together With Respect" poster to this effect in their workplaces where the District contract is being performed.

Severability: Should any part of the Contract Equity (CE) Program be declared to be unconstitutional, invalid, or beyond the authority of the District to enter into or carry out, by a final decision of a court or tribunal of competent jurisdiction, such decision shall not affect the validity of the remainder of the Program, which shall continue in full force and effect.

A. GOOD FAITH OUTREACH EFFORTS

All potential contractors must implement all ten of the Good Faith Outreach Efforts listed below which are based on California Public Contract Code Section 2000², subject to the provisions of Section B.

The apparent low bidder/recommended proposer shall submit Form P-041 documenting such Good Faith Outreach Efforts, as applicable, within **48 hours** of bid opening or in accordance with submittal guidelines in the request for proposal, bid document, or Instruction to Bidders.

To demonstrate Good Faith Outreach Efforts in each of the ten areas, the potential contractor should have:

1. **attended** any pre-solicitation, pre-bid or pre-proposal meetings scheduled by the District to inform all bidders/proposers of the Contract Equity Program requirements, or **signed and submitted** the Contract Equity Program Guidelines Certification, Form P-042, with the bid or proposal documents, certifying that the bidder is informed as to the Program requirements;
2. **identified and selected** specific subcontracting areas of the contract to be performed by enterprises in all availability groups;
3. **advertised** not less than 10 calendar days before the date the bids/proposals are due, in one or more daily or weekly newspapers, minority, women or other association publications, trade-oriented journals, or other media, specified by the District, for all business enterprises that may be interested in participating in the contract;
4. **provided** written notice of interest in bidding/proposing on the contract to a reasonable number of enterprises in all availability groups not less than 10 calendar days before the date the bids/proposals are due. The District's business directory, which includes white men-, white women-, and ethnic minority-owned firms, is available free of charge³. A list of agencies that also provide business directories can be found in the appendix of these guidelines;

²The District will apply Section 2000 to include ALL business enterprises (not limited to minority- and women-owned business enterprises); and the term "local agency" in that section has been changed to "District".

³The names of the firms listed in these directories are offered as a service. EBMUD has no independent knowledge regarding the composition of the firm's ownership, or the quality of the work performed by any listed entity.

5. ***followed up*** initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises are interested in performing specific items of the project;
6. ***provided*** interested business enterprises with information about the proposal, plans, specifications, and requirements for the selected subcontracting or material supply work;
7. ***requested*** assistance from community organizations or contractor groups; local, state, or federal business assistance offices, or other organizations that provide assistance in the recruitment and placement of business enterprises, if any is available;
8. ***negotiated*** in good faith with the business enterprises in all availability groups, and did not unjustifiably reject as unsatisfactory bids/proposals prepared by any such business enterprises, as determined by the District;
9. ***advised and/or made*** efforts, where applicable, to assist interested business enterprises in all availability groups in obtaining bonds, lines of credit, or insurance required by the District or potential contractor; and
10. ***implemented*** efforts that the District could reasonably expect to obtain business enterprise participation reflective of the broad diversity of contractors in the marketplace.

B. EXEMPTIONS FROM OUTREACH REQUIREMENTS

1. CONTRACTING OBJECTIVES

The District has Contracting Objectives⁴ based on the availability of all firms located in the District's geographic market areas that are interested in and able to do business with the District. Contracting Objectives apply to all contractors, regardless of their gender or ethnicity and to all contracts that are determined to have subcontracting opportunities, including material or supply opportunities and trucking. The CE Program groups all businesses into three (business owner) availability groups⁵:

- White Men
- White Women
- Ethnic Minority (both men and women)

Publicly held corporations managed and controlled by 51% of one of the three availability groups may count their participation towards meeting the contracting objective for that group.

Potential contractors who already meet the Contracting Objectives for all three availability groups, as described in the chart on page 4, are exempt from the Good Faith Outreach Efforts requirements set forth in Section A.

⁴ The Contracting Objectives represent percentages of the total value of a contract. The dollar value of the work performed by the contractor and his/her subcontractors is included in calculating the amount of participation by each availability group and determining if the Contracting Objectives are met. Contracting Objectives are based on the results of a Disparity Study conducted by the District which verified the number of businesses located within the District's geographic market area available to perform prime and subcontract work in all contracting categories.

⁵ For example, when subcontracting opportunities are available, a \$200,000 construction contract would have 25% (\$50,000) or more of the work performed by white men-owned businesses, 9% (\$18,000) or more by white women-owned businesses, and 25% (\$50,000) by ethnic minority-owned businesses (both men and women.)

CONTRACTING OBJECTIVES			
AVAILABILITY GROUP	CONTRACTING CATEGORIES		
	Construction	Professional or General Services	Materials & Supplies
White Men	25%	25%	25%
White Women	9%	6%	2%
Ethnic Minorities (Men and Women)	25%	25%	25%

Contract participation includes all written agreements with business enterprises for any goods and services required for the completion of the project. This includes participation as a:

- Contractor
- Joint Venture Partner
- Subcontractor
- Vendor/Dealer of materials/supplies incorporated or expended in the work
- Supplier/Broker of other services necessary to fulfill the requirements of the contract, such as shipping, transportation, testing, equipment rental, insurance services, etc.

All business enterprises must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out their responsibility by actually performing, managing and/or supervising the work.

The dollar value of the following is included for determining the amount of participation by each availability group for the Contracting Objectives:

- the work to be performed by the contractor,
- the work to be performed by each member of a joint venture,
- the work to be performed by subcontractors at any tier
- material or supplies purchased from a manufacturer or dealer of such material or supplies, if not previously counted by contractor, joint venture, or subcontractor in their dollar value,
- reasonable fees and commissions for providing bona fide services to procure and/or deliver essential personnel, facilities, equipment, materials, or supplies required for performance of the contract,
- reasonable fees and commissions for providing bonds or insurance specifically required for the performance of the contract, and
- the dollar value of trucking is based on the following:
 - the amount to be paid to a trucker who performs the trucking with his/her own trucks, tractors, and employees,
 - the amount to be paid to trucking brokers provided the broker has submitted to the District information identifying the availability groups of all truckers to be used on the project, or
 - twenty percent (20%) of the amount to be paid to a trucking broker who has not provided such information.

2. NO SUBCONTRACTING OPPORTUNITIES

Contracts which have no subcontracting, supplying, or trucking opportunities are exempt from the Good Faith Outreach Efforts requirements.

3. WAIVER

Under limited circumstances, at the discretion of the Contract Equity Administrator, and upon written request by the bidder/proposer, a waiver of the Contract Equity Program's Good Faith Outreach Efforts requirements may be granted.

C. INFORMATIONAL MEETINGS

The District may hold pre-solicitation, pre-bid, and pre-proposal meetings to explain the technical specifications and the Contract Equity Program and Equal Employment Opportunity Guidelines for an individual project. All prospective bidders/proposers/subcontractors are strongly advised to attend such pre-meetings. The time and place of the meeting, if any, will be announced in the front section of the bid/proposal document.

Pre-award and/or pre-notice to proceed meetings may be held with the recommended awardee to ensure that the technical specifications and the Contract Equity Program and Equal Employment Opportunity Guidelines for the project are fully understood, and to discuss the contents of the submitted forms and documents.

D. DOCUMENTATION

1. CONSTRUCTION AND MATERIALS AND SUPPLIES CONTRACTS WITH SUBCONTRACTABLE ITEMS ONLY

Apparent low bidders may be required to document Good Faith Outreach Efforts to achieve subcontractor participation within **48 hours** after bid opening unless this requirement is otherwise stated in the Instruction to Bidders. Failure to submit the required information by the time specified may be grounds for determining the bid nonresponsive.

II. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Policy 1.04 – Contractors’ Compliance With Equal Employment Opportunity, approved by the Board of Directors, all business enterprises and their subcontractors performing work for the District must be Equal Employment Opportunity (EEO) employers. All business enterprises and their subcontractors shall assure that there is no discrimination, harassment or retaliation against any person based on sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (genetic characteristics or cancer), age, marital status, or sexual orientation within the meaning of California Government Code Section 12940, and shall be bound by all laws prohibiting such discrimination, harassment or retaliation in employment.

District contractors must have written policies and procedures that a) prohibit EEO discrimination, harassment and retaliation, and b) set forth the contractor’s investigation procedures for responding to EEO complaints. Contractors must submit documentation of those written policies and procedures upon request by the District in order to be considered as eligible for contract award. Contractors must also post applicable EEO policies, procedures and the District’s “Working Together With Respect” poster in their workplaces where the District contract is being performed.

A. EMPLOYMENT DATA & CERTIFICATION (Form P-025)

The Employment Data and Certification Form P-025 shall be completed as specified below or bid/proposal may be deemed nonresponsive:

1. For all Bidders/Proposers of the bid/proposal to be submitted with bid package:

Complete Sections A and B of Form P-025. In Section B, the required employment data shall be for the bidder’s/proposer’s permanent workforce⁶ only. An EEO-1 Report may be submitted in lieu of completing Section B. For informational purposes, the P-025 Form provides for a comparison of the bidder’s/proposer’s current workforce with the composition of the labor market in the Metropolitan Statistical Area or Areas (MSA) from which the bidder’s/proposer’s workforce is drawn. The bidder/proposer shall also complete Sections C and D of Form P-025.

2. For Subcontractors/Vendors/Truckers within 48 hours:

Each bidder/proposer shall submit a Form P-025 for each subcontractor/vendor/trucker known at this time performing work equal to or greater than **\$70,000** under this specification in accordance with submission requirements given in the Instructions to Bidders or the Request for Proposal. If no submission requirements are given, the Form P-025 must be submitted by the apparent low bidder or recommended proposer within **48 hours** after bid opening or proposal submission due date. The form shall be completed as provided in Paragraph 1. For informational purposes, the P-025 Form provides for a comparison of the subcontractor’s/vendor’s/trucker’s current workforce with the composition of the labor market in the MSA from which the subcontractor’s/vendor’s/trucker’s workforce is drawn.

⁶ Permanent workforce is defined as employees with 6 months or more of continuous service.

B. GOOD FAITH OUTREACH EFFORTS TOWARDS EQUAL EMPLOYMENT OPPORTUNITY

Upon request, the apparent low bidder/proposer shall submit satisfactory documentation showing voluntary and legal Good Faith Outreach Efforts on its part to assure that its employment practices comply with EEO laws.

The District has not attempted to set forth either the minimum or maximum voluntary steps that contractors may take to address their respective employment situations. Contractors who do business with the District have flexibility to make those efforts that are best suited to their particular employment situation so long as those efforts are legal, in good faith and will best serve the goal of equal employment opportunity. Contractors have the option of submitting a copy of their Affirmative Action Plan, if they have one, or documentation of Good Faith Outreach Efforts which may include, but is not limited to, the following:

- Disseminating an equal employment opportunity and affirmative action policy both within the organization and externally.
- Having a recruitment program designed to attract qualified members of all ethnic and gender backgrounds available in the relevant job market such as by:
 - ✓ Notifying community organizations when employment opportunities are available and maintaining records of the organizations' responses;
 - ✓ Maintaining a file of the names and addresses of every worker referred as a result of outreach efforts, indicating what action was taken with respect to each referred person, and if the person was not employed, the reasons why;
 - ✓ Promptly notifying the District when the union(s) with whom the contractor or subcontractor has a collective bargaining agreement has not referred a worker, as requested; and
 - ✓ Making periodic recruitment efforts at schools, organizations, recruitment and training centers.
- Having a systematic plan to organize work and redesign jobs in ways that provide opportunities for persons lacking journey-level knowledge or skills to enter and, with appropriate training, to progress in a career field.
- Revamping selection procedures and seniority practices which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications.
- Initiating measures designed to assure that members of all ethnic and gender backgrounds who are qualified to perform the job are included within the pool of persons from which the selection is made.
- Participating in community-based training programs and on-the-job training opportunities.
- Promoting after-school, summer and vacation employment for youth.
- Establishing a system to regularly monitor the effectiveness of the program for removing barriers to achieve equal employment opportunity, and the procedures for making timely adjustments in this program where effectiveness is not demonstrated.

C. CONTRACTORS' EEO RESPONSIBILITIES ARISING FROM THE PERFORMANCE OF THE DISTRICT CONTRACT

The District requires all contractors to comply with state and federal EEO laws.

Contractors are required to promptly and appropriately address all EEO concerns that arise from the performance of the District contract raised by:

- Their employees,
- Their job applicants,
- EBMUD employees who allege EEO discrimination or harassment by the contractor or contractor's employee, and/or
- Members of the public who allege EEO discrimination or harassment by the contractor or contractor's employees.

All contractors must cooperate fully with any District investigation of EEO complaints arising from the performance of the District contract that involve District staff. In that event, the District will provide copies of its policies and procedures regarding such investigations, and will require the contractor's cooperation in accordance with those policies and procedures.

All contractors must distribute copies of their EEO policy, EEO complaint procedure, and the District's "Working Together With Respect" brochure/poster to all of their employees and post them in a prominent and accessible location in the workplace or on the project site. These documents must provide the name and contact information of the contractor's staff responsible for responding to EEO concerns.

Contractors are required to provide training to all of their supervisors and managers to assure that they are aware of the contractor's prohibition against EEO discrimination, harassment and retaliation, and understand the process to report EEO concerns; and supervisors and managers must respond appropriately when they become aware of EEO concerns. This training must comply with California Government Code Section 12950.1.

D. MONITORING COMPLIANCE

1. PRE-CONTRACT AWARD:

The District will evaluate the documentation provided by the apparent low bidder/ proposer under Section II.B and may request further documentation. The apparent low bidder/proposer shall submit all additional documentation required by the District in a timely manner or may be deemed a nonresponsive bidder/proposer. A nonresponsive bidder/proposer may be deemed ineligible for contract award.

2. POST-CONTRACT AWARD:

The District will evaluate the documentation provided by the contractor in response to EEO complaints filed per Section II.C and may request further documentation. Contractors who fail to submit the required documentation in a timely manner may be denied future contracts with the District or have their contracts terminated.

III. CONTRACT COMPLIANCE

A. RECORDS

All firms doing business with the District shall:

- maintain records of all business enterprises performing work on the project, and records of total award and payments made to those enterprises,
- permit authorized District staff and/or authorized District representatives to review such records as may be required to assure the accuracy of the submitted information,
- submit a summary of subcontractor payments to the District with each payment request/invoice on the Subcontractor Payment Report (Form P-047) in the format required by the District,
- maintain all employment and personnel records of employees who worked on the District project for a minimum of two years, and
- maintain records of action(s) taken to address EEO discrimination, harassment, and retaliation complaints filed during and arising from the performance of the EBMUD contract.

NOTE: Failure to submit the required information in a timely manner may cause the District to hire an auditor, at the contractor's expense, to compile summary payment information, and/or may result in the withholding of payments and/or termination of the contract.

If requested by the District, the contractor shall submit the contractor's and/or subcontractors' records. These records are specified in the contract and may include any or all of the following:

- All contracts or purchase orders entered into with subcontractors, truckers, suppliers, and/or vendors;
- Payment records reflecting total contract award and total dollars actually paid to subcontractors, truckers, suppliers, and/or vendors. Such records shall indicate the name, business address, and actual monthly amount for each firm. Upon completion of the contract, the contractor shall submit, within thirty (30) calendar days, a summary of all the monthly summaries showing total dollars actually paid each firm during the whole contract;
- Certified weekly payroll records showing all employees and workers hired and dollar amounts and wage rates paid for work on this contract. Such payroll records shall include the name, address, social security number, sex, race, and other sufficient information for each employee to allow District verification of contractor and/or subcontractor compliance with the requirements for Equal Employment Opportunity;
- Monthly Employment Utilization Reports within ten (10) calendar days after the end of the month;
- Documentation of all Good Faith Outreach Efforts utilized in order to solicit, promote and increase all availability groups' participation;
- Records of action(s) taken to address EEO discrimination, harassment, and retaliation complaints filed during and arising from the performance of the EBMUD contract; and
- Any other records or documentation maintained by the contractor or its subcontractors which indicate their compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines.

The contractor and all its subcontractors shall maintain records which include for each employee their:

- name,
- address,
- telephone number,
- construction trade/union affiliation/trade status (if any),
- dates of changes in trade status (if any),
- employee identification number (if any)/social security number,
- race,
- sex,
- hours worked per week in the indicated trade/task, and
- rate of pay.

Records shall be maintained in an easily understandable and retrievable form approved by the District.

B. SUBCONTRACTOR SUBSTITUTION OR REPLACEMENT

The contractor may request to substitute or replace any subcontractor, including truckers, vendors, and suppliers, listed on the Form P-040, Contract Equity Participation, filed with the District prior to award of contract. Such requests must be in writing, clearly state the reasons for the substitution or replacement, and provide supporting evidence or documentation as appropriate. No substitution or replacement shall occur without the prior written authorization of the District.

Authorization to utilize another subcontractor may be requested for the following reasons:

1. When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to the subcontractor by the Contractor, or
2. When the listed subcontractor becomes bankrupt or insolvent, or
3. When the listed subcontractor fails or refuses to perform his subcontract, or
4. When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor as set forth in Section 4108 of the Public Contract Code, or
5. When the Contractor demonstrates to the District, subject to the further provisions set forth in Section 4107.5 of the Public Contract Code, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or
6. When the listed subcontractor is not licensed pursuant to the Contractors License Law, or
7. When the District determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work, or
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code, or
9. When the listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution the District shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the District shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

The contractor whose bid is accepted may not:

- (a) permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the District.
- (b) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

If a subcontractor is replaced, the contractor shall make Good Faith Outreach Efforts as set forth in these Contract Equity Program and Equal Employment Opportunity Guidelines when replacing the original or listed subcontractor with another District-approved firm. The contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed subcontractor or by other forces (including those of the contractor) pursuant to prior written authorization of the District.

IV. CONSEQUENCES OF NONCOMPLIANCE

A. ENFORCEMENT

During the performance of the contract, the District may review the contractor's and its subcontractors' compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines. Compliance shall be evaluated and measured from the initial day of performance under this contract. Noncompliance may be deemed a substantial material breach of the contract and the contract may be terminated.

Where the District finds the contractor or any of its subcontractors to be in noncompliance, the District may take such actions and impose such sanctions and penalties, described below, as may be appropriate to enforce compliance and recover District costs for damages caused by the breach of contract.

The District will notify the contractor in writing where the contractor or any of its subcontractors are not in compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines. The contractor shall then notify the District in writing within five (5) working days as to what corrective measures shall be implemented by the contractor and/or subcontractor, trucker, vendor, and supplier to effect compliance.

In the event that the contractor or any of its subcontractors is still in noncompliance fifteen (15) working days after the date of the District's written citation, the contractor shall provide the District, within two (2) working days from the District request to do so, written documentation of all corrective measures and Good Faith Outreach Efforts implemented and their results.

B. CONTRACTOR'S NONCOMPLIANCE

In the event of the contractor's willful or inadvertent noncompliance with these Contract Equity Program and Equal Employment Opportunity Guidelines during bidding/proposing, the contractor's bid/ proposal may be deemed nonresponsive, and therefore, ineligible for contract award.

In the event of the contractor's noncompliance with these Contract Equity Program and Equal Employment Opportunity Guidelines during the performance of the contract, whether willful or inadvertent, the contractor may be considered in material breach of contract. In addition to any other remedy which the District may have under this contract or by operation of law, the District in its sole discretion may impose the following provisions against the contractor:

- Withhold progress payments to the contractor starting from the date of the District's written notification of noncompliance to the contractor and continuing for up to sixty (60) working days after the notification date or until compliance is verified by the District, or the contractor demonstrates to the satisfaction of the District that Good Faith Outreach Efforts have been implemented to correct the noncompliance, whichever occurs first.

In the event of willful noncompliance as determined by the District, cancellation or suspension of the contract in whole or in part with continuance thereof conditioned upon a satisfactory showing to the District of the contractor's ability to comply.

C. SUBCONTRACTOR'S NONCOMPLIANCE

The contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Contract Equity Program and Equal Employment Opportunity Guidelines.

The contractor shall take such action, including sanctions and penalties as appropriate, with respect to any subcontract or purchase order as necessary to enforce the terms and conditions of these Contract Equity Program and Equal Employment Opportunity Guidelines. In the event that the District determines that a subcontractor is in noncompliance, the District may also ask the contractor to terminate any such subcontract and substitute an eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

Failure of the contractor to enforce subcontractor compliance with these guidelines may also be deemed a substantial material breach of the contract. The District, in its sole discretion, may impose against the contractor any or all of the provisions noted for contractor's noncompliance until such time that subcontractor's compliance is achieved.

V. SUMMARY OF FORMS

CONSTRUCTION BIDDERS MUST COMPLETE AND SUBMIT:

- Form P-025** – Employment Data and Certification
*(all Bidders must submit with their bid; the apparent low Bidder **must also submit** for all known Subcontractors doing \$70,000 or more worth of work within 48 hours of bid opening)*
 - Form P-040** – Contract Equity Participation
(apparent low and second low Bidders within 48 hours of bid opening)
 - Form P-041** – Good Faith Outreach Efforts Documentation
(apparent low and second low Bidders within 48 hours of bid opening)
 - Form P-042** – Contract Equity Program Guidelines Certification Form
(apparent low and second low Bidders within 48 hours of bid opening, if applicable)
 - Form P-046** – Designation of Subcontractors
(all Bidders must submit with bid)
-

MATERIALS AND SUPPLIES BIDDERS MUST COMPLETE AND SUBMIT:

- Form P-025** – Employment Data and Certification
*(all Bidders must submit with their bid; the apparent low Bidder **must also submit** for all known Subcontractors doing \$70,000 or more worth of work within 48 hours of bid opening)*
 - Form P-040** – Contract Equity Participation
(apparent low and second low Bidders within 48 hours of bid opening)
 - Form P-041** – Good Faith Outreach Efforts Documentation
(apparent low and second low Bidders within 48 hours of bid opening)
-

PROFESSIONAL/GENERAL SERVICES PROPOSERS MUST COMPLETE AND SUBMIT WITH PROPOSAL:

- Form P-025** – Employment Data and Certification
(all Proposers and their known Subcontractors doing \$70,000 or more worth of work)
- Form P-040** – Contract Equity Participation
(all Proposers)
- Form P-041** – Good Faith Outreach Efforts Documentation
(recommended Proposer as requested)

VI. APPENDIX

POLICY STATEMENTS

Policy 1.03 – Contract Equity Program

Prevent the District from participating in or perpetuating ongoing discrimination in the marketplace while avoiding the granting of preferences on the basis of race, gender and other protected categories as prohibited by Article 1, Section 31, of the California Constitution. The District will encourage balanced opportunities among all ethnic and gender groups by establishing objectives for contract participation based on the availability in its geographic market areas of businesses by race and gender that are willing and able to do business with the District. The contracting objectives will be reviewed regularly and the progress reported to the Board of Directors in order to steadily reach a fair and equal parity in contract participation among all ethnic and gender contracting groups.

Policy 1.04 – Contractors’ Compliance With Equal Employment Opportunity

Ensure that all enterprises that do business with the District take lawful and adequate steps to assure that their employment practices comply with EEO laws.

Equal employment opportunity is the law of the land. All contractors doing business with the District shall agree not to discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (genetic characteristics or cancer), age, marital status, or sexual orientation within the meaning of California Government Code Section 12940.

Contractors shall furnish all information and reports required by the District to ensure their compliance with this policy. Notification of this policy will be included in contract specifications and will serve as official notice in determining responsiveness and compliance. Contractors who fail to comply with this policy may be denied contracts with the District or have their contracts terminated.

AGENCIES WITH BUSINESS DIRECTORIES

- **State of California – Department of Transportation**
Civil Rights Program – MS 79
1823 – 14th Street, Sacramento, CA 95814
916-324-8347, Fax: 916-324-1949, Toll Free: 866-810-6346
Email: DBE_Certification@dot.ca.gov
Website: http://www.dot.ca.gov/hq/bep/find_certified.htm

Publication Distribution Unit - Disadvantaged Business Enterprise Directory
1900 Royal Oaks Drive, Sacramento, CA 95815-3800
916-445-3520
- **City of Oakland – Contract Compliance & Employment Services Division**
250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612
510-238-3970, Fax: 510-238-3363
Email: cces@oaklandnet.com
Website: <http://cces.oaklandnet.com/ContComp>
- **City and County of San Francisco – Human Rights Commission**
25 Van Ness Avenue, Suite 800, San Francisco, CA 94102-6033
415-252-2530
Email: Beverly.Popek@sfgov.org – Beverly Popek, Unit Representative
Website: <http://sf-hrc.org/index.aspx?page=86>
- **Port of Oakland**
530 Water Street, Oakland, CA 94607
510-627-1419
Email: pbell@portoakland.com – Pamela Bell, SRD Contract Compliance
Website: <http://www.portofoakland.com/srd/>
- **Alameda County General Services Agency**
1221 Oak Street, Room 249, Oakland, CA 94612
510-891-5500;
Email: Patricia McFadden for SLEB Certification – patricia.mcfadden@acgov.org
Susan Wewetzer for Contract Compliance – susan.wewetzer@acgov.org
Website: <http://www.acgov.org/auditor/sleb>
- **Department of General Services – Office of Small Business & DVBE Services**
707 3rd Street, 1st Floor, Room 400, West Sacramento, CA 95605
916-375-4940, Fax: 916-375-4950
Email: OSDSHelp@dgs.ca.gov

EBMUD BUSINESS DIRECTORY

375 – 11th Street, Oakland, CA 94623
510-287-0114, Fax: 510-287-2158
Email: cntrteq@ebmud.com

GLOSSARY OF TERMS

AVAILABILITY GROUPS:

- **White Men-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more nonethnic minority men who are citizens or lawful permanent residents of the United States.
- **White Women-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more nonethnic minority women who are citizens or lawful permanent residents of the United States.
- **Ethnic Minority-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more ethnic minority men and/or ethnic minority women from the following groups who are citizens or lawful permanent residents of the United States:
 - **Black/African American**
Persons having origins in any of the racial groups of Africa
 - **Hispanic/Latin American**
Persons of Mexican, Puerto Rican, Cuban, Central or South American origin
 - **Asian-Pacific Island American**
Persons having origins from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U. S. Trust Territories of the Pacific, or the Northern Marianas
 - **Asian-Indian American**
Persons having origins from India, Pakistan, or Bangladesh
 - **Native American**
Persons having origins in any of the original peoples of the Americas who maintain cultural identification through tribal affiliation or community recognition

CONTRACTING OBJECTIVES:

The minimum percentage of the total value of a contract to be represented by businesses in each availability group, depending on the type of contract.

CONTRACTOR:

A company, firm, joint venture or individual who enters into an agreement with the District to provide services, i.e., construction, professional services and general services, and delivery of materials, supplies, and equipment. A contractor may be a construction contractor, a consultant, a vendor, a supplier, or a trucker.

CONTROL:

There are two aspects of control: operational and managerial control. Under operational control, the 51% or more owner must show that he or she independently makes the basic decisions in daily and long-term business operations. To determine managerial control, the owner must demonstrate that he or she makes independent and unilateral business decisions that guide the future and destiny of payroll clerks, letters of credit, contractual matters, banking services, and other such agreements.

DEALER:

One who owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a dealer, the firm must engage in, as its principal business, and in its own name, the purchase and resale of the products in question. A dealer in such bulk items as steel, cement, stone, gravel, and petroleum products need not keep such products in stock, but must own and/or operate distribution equipment to receive full dollar credit.

INDEPENDENT BUSINESS:

A business that is not inextricably associated with another firm through ownership, affiliation, or sharing of employees, facilities, profits, and losses.

GEOGRAPHIC MARKET AREA:

Counties where most of the businesses are located which receive District contract awards based on contract type as identified in the District's 1997 Disparity Study.

- **Construction:** Alameda, Contra Costa, San Francisco, and San Mateo Counties
- **Professional & General Services:** Alameda, Contra Costa, San Francisco, Santa Clara, and Marin Counties
- **Materials & Supplies:** Alameda, Contra Costa, San Francisco, Santa Clara, and San Joaquin Counties

JOINT VENTURE:

An undertaking by two or more persons, without a corporate or partnership designation, formed for the purpose of carrying out a single business enterprise for profit.

LOCAL BUSINESS ENTERPRISE:

Businesses whose primary place of business is a fixed office located in counties, such as Alameda, Contra Costa, San Joaquin, Calaveras, Amador and other counties that are directly impacted by District contracts and/or operations. A fixed office is not a post office box, a temporary location, a movable property, a location that was established to oversee a project such as a construction project office, or work space provided in exchange for services, as opposed to monetary rent.

POTENTIAL CONTRACTOR:

A company, firm, joint venture, or individual who has participated in a competitive bid process or a qualification selection process to do business with the District as a construction contractor, consultant, vendor, supplier, or trucker.

REASONABLE FEES AND COMMISSIONS:

Fees and commissions that are not excessive as compared with those customarily allowed for similar services.

SMALL BUSINESS ENTERPRISE:

An independently owned and operated business with 100 or fewer employees and average annual gross receipts of \$14 million or less over the last three tax years or is a manufacturer with 100 or fewer employees.

SUBCONTRACTOR:

A company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services on a District contract. A subcontractor may be a construction subcontractor, a subconsultant, a vendor, a supplier, or a trucker at any tier/level of participation.

SUPPLIER:

A company, firm, joint venture, or individual who provides materials, supplies, or equipment.

VENDOR:

A company, firm, joint venture, or individual who enters into an agreement with the District to provide services, i.e., construction, professional services and general services, and delivery of materials, supplies, and equipment. A contractor may be a construction contractor, a consultant, a vendor, a supplier, or a trucker.



EMPLOYMENT DATA AND CERTIFICATION INSTRUCTIONS (P-025)

**COMPLETION OF THIS FORM IS REQUIRED FOR ALL BIDS AND PROPOSALS.
AN IMPROPER OR INCOMPLETE FORM MAY RESULT IN REJECTION OF YOUR BID OR PROPOSAL OR
TERMINATION OF YOUR CONTRACT**

The East Bay Municipal Utility District **REQUIRES** the completion of this form when submitting any formal bid in response to an Invitation for Bid (IFB), Statement of Qualifications (SOQ), or Request for Proposal (RFP) for materials, equipment, construction or professional or general services. It is the policy of the District to prohibit Equal Employment Opportunity (EEO) discrimination, harassment, and retaliation by any contractor, subcontractor, vendor, supplier, or consultant based on sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (genetic characteristics or cancer), age, marital status, or sexual orientation within the meaning of California Government Code Section 12940. Failure to complete all applicable sections of this form may be considered a nonresponsive reply to the IFB, SOQ or RFP and may cause its rejection.

THE SECTIONS OF FORM P-025 ARE DESCRIBED BELOW WITH SPECIAL DIRECTIONS.

SECTION A

TYPE OF ORGANIZATION AND COMPOSITION OF OWNERSHIP

SECTION B

EMPLOYMENT DATA AND WORKFORCE LOCATION

A firm's appropriate Metropolitan Statistical Area (MSA) is defined as the location in which the business solely or predominantly operates to provide requested product(s) or service(s).

SECTION C

CERTIFICATION OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

SECTION D

CERTIFICATION OF FIRM'S OWNERSHIP

FORM P-025 SUPPLEMENT

METROPOLITAN STATISTICAL AREA (MSA)

(for use in Section B-1a for comparing workforce parity)

Note: If you have difficulty completing this form or need clarification of the instructions, contact the Contract Equity Office at (510) 287-0114 for assistance prior to submitting your bid or proposal.

COMPLETION OF THIS FORM IS REQUIRED FOR ALL BIDS AND PROPOSALS

SECTION A

FIRM NAME				<input type="checkbox"/> PRIME <input type="checkbox"/> SUB Submit a separate P-25 form for each subcontractor/consultant doing work for \$70,000 or more.
STREET ADDRESS (City, State, ZIP)				
MAILING ADDRESS (City, State, ZIP)				
PHONE NO.	FAX NO.	WEBSITE	E-MAIL	

A1. TYPE OF ORGANIZATION Have you ever done business with EBMUD? YES NO

<input type="checkbox"/> INDIVIDUAL	NAME OF OWNER:		
<input type="checkbox"/> NONPROFIT CORP.	<input type="checkbox"/> PUBLICLY HELD CORP.	STATE OF INCORPORATION:	
<input type="checkbox"/> PRIVATE CORP.	<input type="checkbox"/> FOREIGN-OWNED		

Name(s), title, family relationship(s) and percentage of stock ownership for all shareholders who own 25% or more of stock in the corporation.

NAME	TITLE	FAMILY RELATIONSHIP	PERCENTAGE
_____	_____	_____	_____ %
_____	_____	_____	_____ %
_____	_____	_____	_____ %

JOINT VENTURE

List of Participants – Indicate percentage of work to be realized by each.

	_____ %
	_____ %

PARTNERSHIP

Names of Partners – Indicate whether (G) General or (L) Limited.

A2. COMPOSITION OF OWNERSHIP

Indicate the percent of ethnic and gender ownership below

	Non-Hispanic Origin		Hispanic/ Latin American	Asian			Native American	Other	Refuse to State*
	White/ Caucasian	Black/ African American		Asian American	Asian-Pacific Islander American	Asian- Indian American		_____	
MALE									
FEMALE									
TOTAL									

* Firms that refuse to state will be classified as "Other".

SECTION B

B1. EMPLOYMENT DATA

Indicate below the number of employees in each occupational category for each of the ethnic groups listed for your firm's permanent workforce. *(Report employees in only one category. Permanent workforce is defined as full- and part-time employees with 6 months or more of continuous service.)* You may attach your EEO1 report in lieu of completing section below. Please provide both your firm's consolidated and individual establishment EEO1 reports.

JOB CATEGORIES	RACE/ETHNICITY (number of employees)														Total A-N
	Hispanic or Latino		Not Hispanic or Latino												
	Male	Female	Male						Female						
			White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Executive/Senior Level Officials & Managers															
First/Mid-Level Officials & Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Laborers & Helpers															
Service Workers															
Firm's Total															
Bay Area* Total															

* Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, Sonoma, and Santa Clara Counties

B1a. Identify the metropolitan statistical area (MSA) from which your firm's total permanent workforce is drawn. (See page 5)

B1b. If your firms total permanent workforce is located in one county or parish, please identify:

B1c. Is employment data confidential? YES NO

B1d. Name of person responsible for affirmative action and compliance with equal employment opportunity laws in your firm:

PRINT NAME

TITLE

TELEPHONE NUMBER

SECTION C

CERTIFICATION OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

The undersigned has been (is) authorized to execute this certificate on behalf of _____
NAME OF FIRM

and does hereby certify that the answers to this compliance form and the information stated herein are true and correct.

The undersigned does further certify that _____
NAME OF FIRM

shall not discriminate against or harass or retaliate against any employee or applicant for employment on account of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (genetic characteristics or cancer), age, marital status, or sexual orientation within the meaning of California Government Code Section 12940, and shall comply with all applicable provisions of State and Federal requirements regarding equal employment opportunity and affirmative action reporting and compliance programs including having a District approved process for responding to complaints of discrimination, harassment, and retaliation.

SECTION D

CERTIFICATION OF FIRM'S OWNERSHIP

The undersigned has been (is) authorized to execute this certificate on behalf of _____
NAME OF FIRM

and swears under penalty of perjury that the foregoing statements are true and correct and that they include all material information necessary to identify and explain the operations of this firm as well as the ownership thereof. Any material misrepresentation will be grounds for terminating any purchase orders or contracts which may be or was awarded and for initiating actions under Federal or State laws concerning false statements. The District reserves the right to request support documentation, such as tax records, articles of incorporation and board minutes to verify composition of ownership.

EXECUTED IN _____
CITY, COUNTY, STATE

ON _____
DATE

BY _____
PRINT NAME TITLE

SIGNATURE PHONE NUMBER

Instructions to Determine Your Statistical Areas (SA): If you operate a business solely or predominantly within one of the SA's listed below, use that location. If you have multiple facilities within a single state, use a State SA. If you have multiple facilities throughout the United States, use Total United States percentage. If you have any questions, call 510-287-0114.

CA Statistical Areas	WM%	WW%	EM%	CA Statistical Areas	WM%	WW%	EM%
Bakersfield	29.7%	24.6%	45.7%	San Jose	26.9%	21.0%	52.1%
Fresno	25.1%	21.6%	53.3%	San Luis Obispo-Atascadero-Pasa Robles	42.3%	36.6%	21.1%
Los Angeles-Long Beach	20.2%	16.4%	63.5%	Santa Barbara-Santa Maria-Lompoc	31.8%	28.6%	39.6%
Merced	24.9%	21.1%	54.0%	Santa Cruz-Watsonville	37.5%	32.1%	30.4%
Modesto	33.0%	28.4%	38.6%	Santa Rosa	39.8%	36.9%	23.4%
Oakland	28.0%	24.2%	47.8%	Stockton-Lodi	28.1%	24.5%	47.4%
Redding	46.6%	41.5%	11.9%	Vallejo-Fairfield-Napa	30.2%	26.8%	42.9%
Riverside-San Bernardino	28.2%	23.4%	48.3%	Ventura	33.3%	27.6%	39.1%
Sacramento	36.1%	32.3%	31.6%	Yuba City	34.9%	31.0%	34.1%
San Diego	32.4%	27.5%	40.2%				
San Francisco	30.8%	25.1%	44.0%				

CA Counties	WM%	WW%	EM%	CA Counties	WM%	WW%	EM%
9 Bay Area Counties*	32.3%	27.8%	39.9%	San Bernardino	26.5%	22.3%	51.1%
Alameda/Contra Costa	28.9%	24.9%	46.2%	San Diego	32.4%	27.5%	40.2%
Alameda	24.5%	21.6%	53.9%	San Francisco	29.2%	22.5%	48.3%
Contra Costa	33.3%	28.2%	38.5%	San Joaquin	28.1%	24.5%	47.4%
El Dorado	46.7%	39.4%	13.9%	San Luis Obispo	42.3%	36.6%	21.1%
Fresno	24.7%	21.4%	54.0%	San Mateo	28.6%	23.6%	47.9%
Los Angeles	20.2%	16.4%	63.5%	Santa Clara	26.9%	21.0%	52.1%
Marin	42.8%	38.4%	18.8%	Santa Cruz	37.5%	32.1%	30.4%
Mendocino	40.4%	37.0%	22.6%	Shasta	46.6%	41.5%	11.9%
Merced	24.9%	21.1%	54.0%	Solano	27.8%	24.6%	47.6%
Monterey	23.8%	21.3%	54.9%	Sonoma	39.8%	36.9%	23.4%
Napa	37.6%	33.6%	28.8%	Stanislaus	33.0%	28.4%	28.6%
Orange	30.9%	25.5%	43.6%	Yolo	31.7%	29.8%	38.5%
Riverside	30.1%	24.7%	45.3%	Yuba	36.7%	34.0%	29.4%
Sacramento	32.7%	30.0%	37.3%				

*Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, Sonoma, And Santa Clara

STATES	WM%	WW%	EM%	STATES	WM%	WW%	EM%
Alabama	40.8%	33.2%	26.0%	Montana	49.1%	42.5%	8.4%
Alaska	40.2%	33.1%	26.7%	Nebraska	47.1%	42.7%	10.2%
Arizona	37.0%	31.7%	31.3%	Nevada	37.8%	31.3%	30.9%
Arkansas	44.0%	37.5%	18.5%	New Hampshire	50.6%	45.0%	4.4%
California	28.0%	23.6%	48.4%	New Jersey	36.7%	31.5%	31.7%
Colorado	42.2%	36.2%	21.6%	New Mexico	26.6%	23.1%	50.3%
Connecticut	42.4%	37.8%	19.8%	New York	35.0%	30.9%	34.1%
Delaware	39.3%	35.5%	25.3%	North Carolina	39.1%	34.0%	26.9%
District of Columbia	19.2%	18.0%	62.8%	North Dakota	49.6%	44.4%	6.0%
Florida	35.7%	30.9%	33.4%	Ohio	46.1%	40.2%	13.7%
Georgia	35.9%	30.0%	34.2%	Oklahoma	41.7%	35.4%	22.9%
Hawaii	13.1%	11.1%	75.8%	Oregon	45.5%	39.5%	15.0%
Idaho	48.6%	40.8%	10.5%	Pennsylvania	46.4%	40.2%	13.4%
Illinois	38.6%	33.6%	27.8%	Rhode Island	44.1%	41.4%	14.5%
Indiana	47.1%	40.6%	12.3%	South Carolina	37.6%	32.4%	30.0%
Iowa	49.2%	44.8%	6.0%	South Dakota	48.0%	43.6%	8.4%
Kansas	45.6%	40.1%	14.3%	Tennessee	44.1%	37.1%	18.8%
Kentucky	48.4%	41.9%	9.7%	Texas	31.5%	26.1%	42.4%
Louisiana	37.3%	30.0%	32.7%	Utah	47.7%	39.1%	13.2%
Maine	50.6%	46.5%	2.9%	Vermont	50.4%	46.3%	3.3%
Maryland	34.0%	30.2%	35.8%	Virginia	38.6%	34.0%	27.3%
Massachusetts	44.0%	40.6%	15.3%	Washington	43.6%	37.6%	18.8%
Michigan	44.1%	37.5%	18.4%	West Virginia	51.9%	43.3%	4.9%
Minnesota	47.6%	43.1%	9.3%	Wisconsin	47.5%	42.8%	9.6%
Mississippi	36.1%	29.6%	34.3%	Wyoming	49.0%	41.4%	9.6%
Missouri	45.6%	40.3%	14.1%				

Total USA 39.0% 33.7% 27.2%

WM = White Men, **WW** = White Women, **EM** = Ethnic Minority.
 Figures compiled from the 2000 Census of Population, U.S. Department of Commerce, Bureau of the Census.



CONTRACT EQUITY PARTICIPATION (P-040)

BIDDER'S / PROPOSER'S NAME _____

PROJECT NAME _____

ADDRESS _____

SPEC. / PROPOSAL NO. (If applicable) _____

E-MAIL ADDRESS _____

BID / PROPOSAL AMOUNT \$ _____

PHONE NO. _____

FAX NO. _____

*Note: This form shall be submitted by **first and second** apparent low bidders within 48 hours of bid for construction projects and by **all proposers** with their proposal for professional and general services. All subcontractors¹, truckers and suppliers shall be listed on this form and must also complete a P-025 form if they are doing work for over \$70,000.*

COMPANY AND CONTACT NAME, ADDRESS, PHONE NUMBER AND E-MAIL ADDRESS	OWNERSHIP			TYPE OF WORK TO BE DONE ³	ESTIMATED DOLLAR AMOUNT
	ETHNICITY ²	GENDER			
		M	F		

Note: Additional spaces are provided on the back of this form.

The above bidder/proposer shall enter into a formal agreement with the subcontractors, truckers and suppliers for work listed in this schedule conditioned upon execution of a contract with East Bay Municipal Utility District. Substitution or replacements of these subcontractors must comply with Section III.B. Substitution or Replacement in the Contract Equity Program and Equal Employment Opportunity Guidelines.

Signature of Authorized Bidder / Proposer's Official

Date

Print Name

Title

¹ Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services on a District contract. A subcontractor may be a construction subcontractor, subconsultant, vendor, supplier, or trucker at any tier level of participation.

² Ethnic Classifications: **A/PIA** Asian-Pacific Islander American **H/LA** Hispanic/Latin American **W/CA** White/Caucasian American
 B/AA Black/African American **NA** Native American

³ If 100% of items are not to be performed or furnished by the subcontractor, describe exact portion, location (if necessary) of item to be performed or furnished by that subcontractor.



GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

The apparent low bidder shall submit the following information to demonstrate that a good faith outreach effort to meet the contracting Objectives has been made if its Form P-040 Contract Equity Participation indicates that the Contracting Objectives will not be met. It is suggested that even if the Contracting Objectives appear to be met on Form P-040, this form still needs to be completed in case the contracting Objectives are determined by District evaluation to have not been met.

The *complete* description of the following items along with all of the Good Faith Outreach Efforts (GFOE's) are in the Section IA of the Contract Equity Program and Equal Employment Opportunity Guidelines:

- Items of works for which the bidder requested subbids, trucking or materials to be supplied by subcontractors in all availability groups
- Information furnished interested subcontractors, truckers, or suppliers in the way of plans, specifications and requirements for the work
- Any breakdown of items of work into economically feasible units to facilitate subcontractor participation (*GFOE's #2 & 6*)

ITEMS OF WORK OR SUPPLIES IDENTIFIED	
1	6
2	7
3	8
4	9
5	10
INFORMATION FURNISHED	
BREAKDOWN OF ITEMS	



GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

- The names of subcontractors who submitted bids for any of the work indicated on page one of this form whose bids were not accepted
- A summary of the bidder's discussions and/or negotiations with them
- The name of the subcontractor or supplier that was selected for that portion of the work, and the reasons for the bidder's choice. *(If the reason for rejecting a bid was price, give the price bid by the rejected subcontractor and the price bid by the selected subcontractor or supplier.) (GFOE #8)*

NAME OF REJECTED SUBCONTRACTOR	SUMMARY OF DISCUSSIONS / NEGOTIATIONS	NAME OF SELECTED SUBCONTRACTOR AND REASONS FOR THAT CHOICE

Please Note: Use additional sheets of paper, if necessary.



GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

- Assistance that the bidder has extended to rejected subcontractors identified above to remedy the deficiency in their subbids (GFOE #9)

NAME OF REJECTED SUBCONTRACTOR	ASSISTANCE EXTENDED

- Any additional data to support a demonstration of good faith efforts, such as contacts with subcontractor's assistance agencies (GFOE #7):

NAME OF COMMUNITY ORGANIZATIONS OR CONTRACTORS GROUPS	ADDITIONAL GOOD FAITH OUTREACH EFFORTS

Please Note: Use additional sheets of paper, if necessary. Appropriate documentation, such as copies of newspaper ads, letters soliciting bids, and telephone logs, should accompany this form.



CONTRACT EQUITY PROGRAM GUIDELINES CERTIFICATION (P-042)

Pursuant to the East Bay Municipal Utility District's ("District") Contract Equity Program Guidelines, Section I, Paragraph A.1, I hereby declare, under the penalty of perjury under the laws of the State of California, that

- 1) I am duly authorized to execute this certification on behalf of my company, corporation, joint-venture or sole-proprietorship, which has submitted a bid/proposal to District Specification/Proposal No. _____ ;
- 2) I am familiar with the District's Contract Equity Program Guidelines, and have read and understood all of the program's requirements;
- 3) I understand and agree to comply with the District's Contract Equity Program, and all of the requirements therein, including each of the Good Faith Outreach Efforts; and
- 4) I understand and agree to comply with the District's Equal Employment Opportunity (EEO) (nondiscrimination and harassment and retaliation) policies and procedures. I will post and distribute applicable District-supplied EEO material. My firm has a process for responding to complaints of EEO discrimination, harassment, and retaliation and a copy will be provided upon request.
- 5) I understand, and expressly agree, on behalf of my company, corporation, joint-venture or sole-proprietorship, that the District may disqualify the bid/proposal submitted if we have not complied with the District's Contract Equity Program, and all of the requirements therein.

EXECUTED IN _____

(City, County, State)

ON _____

FOR _____

(Month, Date, Year)

(Bidder's / Proposer's Company Name)

BY _____

(Print Name)

(Title)

(Signature)

(Phone Number)



DESIGNATION OF SUBCONTRACTORS (P-046)

Name of Bidder/Proposer _____

In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Division 2, Part 1, Chapter 4 of the Public Contract Code of the State of California, and any amendments thereof), each bidder shall set forth below:

1. The name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed in the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid.
2. The portion and estimated dollar amount of the work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor in his bid.

Please type or legibly print (attach additional sheets as necessary)

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT

Designation of Subcontractors – From Public Contract Code Section 4105 - 4110

Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

A prime contractor whose bid is accepted may not:

- (a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:
 - (1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
 - (2) When the listed subcontractor becomes bankrupt or insolvent.
 - (3) When the listed subcontractor fails or refuses to perform his or her subcontract.
 - (4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.
 - (5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
 - (6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.
 - (7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
 - (8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
 - (9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

- (b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.
- (c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

- (a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or
- (b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code.

- (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.
- (b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.
- (c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.
 - (2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.
 - (3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

**MATERIAL OR EQUIPMENT WITHOUT INSTALLATION
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1. DEFINITIONS

Wherever in the specifications and other contract documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as follows: **District** means the East Bay Municipal Utility District. **Bidder** means any individual, partnership, joint venture, or corporation submitting a proposal for performing the work and/or furnishing the material or equipment specified, acting directly or through a duly authorized representative. **Contractor** means the individual, partnership, joint venture, or corporation with whom the contract is made by the District. **Engineer** means the Chief Engineer of the District acting directly or through the Manager of the Purchasing Division, the Manager of the Design Division, the Manager of the Contraction Division, or other properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

On all questions concerning the acceptability of material or equipment and the execution of the work, the decision of the Engineer shall be final and bidding on both parties, except in the case of gross error.

2. PROPOSAL

(a) Forms. The proposal shall be made on the forms provided therefor. Blank spaces on the forms shall be properly filled, the phraseology shall not be changed, and no additions shall be

made to the items mentioned therein. Unauthorized conditions, limitations, or provisos attached to a proposal will render it informal and may cause its rejection. No telegraphic proposal nor telegraphic modification of a proposal will be considered.

(b) Name, address, and signature. The full name, business address, and business telephone number of the individual, partnership, joint venture or corporation submitting the proposal shall be typewritten or legibly printed on the proposal form. The bidder shall sign the proposal with his usual signature.

A partner shall sign for a partnership and the names and addresses of all partners shall be given.

Two officers shall sign for a corporation, the corporate name shall be attested by the corporate seal, and the names and titles of all officers of the corporation shall be given. A signature other than a corporate officer's will be accepted if an authenticated power of attorney is attached.

(c) Prices. The bidder shall state for each item on the bidding form, in clearly legible figures, the unit price and item total or lump sum, as the case may be, for which he proposes to perform the work and/or furnish material or equipment required by these specifications. Alteration of a price by erasure or interlineation must be explained or noted in the proposal over the signature of the bidder.

If the unit price for an item and the item total do not agree, the unit price shall prevail; however, if the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry for the item total, then the item total shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

Unit price extension controls. In the event of a discrepancy between the unit price extension and the total amount bid or summaries of totals, the unit price extension total shall prevail.

(d) Submission of proposal. The proposal with the complete specifications booklet intact shall be enclosed in a sealed envelope marked and addressed as required in the Instructions to Bidders. Proposals received after said time or at any place other than the place of bid opening as stated in the Notice of Contractors will not be considered. Prior to bid opening, a bidder may withdraw his proposal without prejudice to himself by submitting a written request for its withdrawal to the officer who holds it.

(e) Bid Openings. All proposals will be opened and declared publicly at the time and place stated in the Notice to Contractors. Bidders, their representatives, and others interested are invited to be present.

(f) Award of contract. The right is reserved to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

3. EXPERIENCE

Bidders, if required, shall present satisfactory evidence that they have been regularly engaged in furnishing such material and equipment and/or performing such work as they propose to furnish or perform and that they are fully prepared with necessary capital, equipment, and material to begin work promptly and to conduct it as required by these specifications.

4. PRICES AND PAYMENTS

Payment at the prices agreed upon will be in full for the completed work and will cover materials, supplies, labor, tools, equipment and all other expenditures incident to a satisfactory compliance with the contract, unless otherwise specifically provided.

5. CONTRACT AND BOND

(a) The bidder to whom award is made shall execute a written contract with the District, and shall furnish a good and approved faithful performance bond when required, within fifteen days after receiving the forms for execution. If the bidder to whom award is made fails to enter into the contract as herein provided, and furnish the said bond when required, this shall be just cause for the annulment of the award and the forfeiture of the bidder's security, if any; and award may, at the discretion of the Board of Directors of the District, be made to the bidder whose bid is the next most acceptable in the opinion of the Board; and such bidder shall fulfill every stipulation embraced herein as if he were the party to whom the first award was made.

(b) The contract shall be on the form of the District. The notice to contractors, instructions to bidders, proposal, general requirements, specifications and drawings, contained in or by reference made part of these specifications will be deemed a part of the contract.

(c) The faithful performance bond shall be on the form of the District and shall be executed by a responsible surety company or companies in an amount not less than 100% of the estimated aggregate payments to be made under the contract, conditioned upon the faithful performance by the Contractor of all covenants and stipulations in the contract. The surety or sureties on all bonds furnished must be satisfactory to the District. The District will reject surety bonds obtained from any company not holding Certificate of Authority from the U.S. Secretary of the Treasury under the Act of Congress approved July 30, 1947, (6 U.S.C., Secs. 6-13) as acceptable sureties on Federal bonds. A bond in a multiple of \$1,000 only will be made; provided, however, that the amount of the bond shall otherwise be fixed at the lowest sum that will fulfill all conditions herein set forth.

If, during the continuance of the contract, any of the sureties, in the opinion of the District, are or become irresponsible, the District may require other or additional sureties, which the Contractor shall furnish to the satisfaction of the District within ten days after notice, and in default thereof the contract may be suspended and the materials purchased or the work completed as provided in Paragraph 7 hereof.

It is understood and agreed that modifications or alterations made in these specifications shall not operate to release any surety from liability on any bond or bonds required to be given herein.

(d) Authority to sign contract and bond. A corporation, or a company, or partnership operating under a fictitious name, to which an award is made, will be required, before the contract is finally executed, to furnish evidence of its corporate existence and evidence that the officer signing the contract and bond for the corporation is duly authorized to do so.

6. TRANSFER OF INTEREST

No interest in the contract shall be transferred to any other party without permission of the Board of Directors of the District.

7. SUSPENSION OF CONTRACT

If the Contractor fails to begin the delivery of the material or to commence work as provided in the contract, or fails to make delivery of material promptly as ordered, or to maintain the rate of delivery of material or progress as ordered, or to maintain the rate of delivery of material or progress of the work in such a manner as in the opinion of the Engineer will ensure a full compliance with the contract within the time limit, or if in the opinion of the Engineer the Contractor is not carrying out the provisions of the contract in their true intent and meaning, written notice will be served on him to provide within a specified time for a satisfactory compliance with the contract. If he neglects or refuses to comply with such notice, the District may suspend the operation of all or any part of the contract, or it may in its discretion after such notice perform any part of the work or purchase any, or all of the material included in the contract or required for the completion thereof at the expense of the Contractor, without suspending the contract.

Any cost to the District in excess of the contract price, arising from the suspension of the contract or from work performed or purchase made by the District, either before or after suspension, and required on account of failure of the Contractor to comply with his contract or the orders of the Engineer issued in pursuance thereof, will be charged to the Contractor and his sureties, who shall be liable therefor. If the net credits shall be in excess of the claims of the District against the Contractor, the balance will be paid to the Contractor or his legal representatives.

If, in the opinion of the Engineer, an emergency exists for the furnishing of certain material or the performance of certain work in order to ensure compliance with the terms of the contract and if the Contractor fails to furnish such material or to perform such work within a reasonable time fixed by written notice from the Engineer to the Contractor, then the Engineer shall have the power to furnish such material or to perform such work at the

expense of the Contractor and his sureties, who shall be liable therefor.

In the determination of the question whether there has been such noncompliance with the contract as to warrant its suspension or the furnishing of material or the performance of work by the District, as herein provided, the decision of the Engineer shall be final and binding upon both parties. Suspension of the contract, or any part thereof, shall operate only to terminate the right of the Contractor to proceed with the work covered by the contract or the suspended portion thereof. The provisions of the contract permitting the District to make changes and to make proper adjustment of accounts to cover any increase or decrease of cost on account of such changes and all other stipulations of the contract except those giving the Contractor the right to proceed with work on the items covered by the suspension, shall be and remain in full force and effect after such suspension and until the contract shall have been completed and final payment or final adjustment of accounts made.

8. SUBCONTRACTORS

When requested, the Contractor shall furnish the name and address of each subcontractor contracting directly with him, together with a statement showing the character and location of work, time limit, if any, and if requested, the amount of money involved in each subcontract. Each subcontract shall contain a reference to the contract between the District and the principal Contractor, and the terms of the contract and all parts thereof shall be made part of such subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment at the order of the Engineer if in his opinion the subcontractor fails to comply with the requirements of the principal contract insofar as the same may be applicable to his work.

9. CHANGES

(a) General. The District reserves the right to make changes in the design of materials, equipment, or machinery, to make alterations or additions to or deviations or omissions from the specifications and drawings, to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to order such extra work as may be determined by the Engineer to be required for the proper execution and completion of the whole work contemplated. Any such changes will be ordered in writing by the Engineer.

The determination of the Engineer on all questions relating to changes, including extra work, shall be conclusive and binding against both parties to the contract except in the case of gross error.

(b) Extra work. New and unforeseen work will be classed as extra work when it is determined by the Engineer that such work is not covered by any of the bid items for which there is a bid price. Extra work also includes work specifically designated as extra work in the specifications or drawings. The Contractor shall furnish the required labor, materials, and equipment and shall perform such extra work upon receipt of a written change order therefor from the Engineer. Extra work performed in the absence of such written change order will not be paid for.

(c) Adjustments. If changes ordered by the Engineer result in an increase or decrease of cost to the Contractor, the Engineer will make such equitable adjustments as he may deem reasonable and proper. The written change order will specify the payment to be made or credit to be taken and adjustment of the contract time, if any. Payment in accordance with the terms and conditions set forth in such written change order shall constitute full compensation for all work included therein or required thereby.

Prior to issuing a change order, the Engineer may request the Contractor to submit a proposal covering the changes. Within 15 days after receiving such a request the Contractor shall submit his proposal to the Engineer, including in it any claim for compensation and extension of contract time. In his determination of equitable adjustment, the Engineer will use the Contractor's proposal or parts thereof as he deems reasonable and proper.

(d) Protest procedure. Should the Contractor disagree with any terms or conditions set forth in a change order, he shall proceed with the work and shall submit a written protest to the Engineer within 15 days after the receipt of the change order. The protest shall state the points of disagreement, contract references, quantities, and costs involved. The Engineer will consider and investigate such protest within a reasonable time and his decision thereon shall be conclusive and binding against both parties to the contract, except in the case of gross error. If a written protest is not submitted within the above-specified time, adjustment of contract payment and contract time will be made as set forth in the written change order.

When the protest relates to compensation, the Contractor shall keep full and complete records of the costs of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. When the protest relates to the adjustment of contract time for the completion of the work, the time to be allowed therefor will be determined as provided in Paragraph 14, Delays.

10. CHANGES AT THE CONTRACTOR'S REQUEST

If the Contractor, on account of conditions developing during the progress of the work, finds it impracticable to comply strictly with these specifications and applies in writing for a modification of requirements or of methods of work, such change may be authorized by the Engineer, if not detrimental to the work and if without additional cost to the District.

11. INSPECTION

All materials furnished and work done under this contract will be subject to rigid inspection. The Contractor shall furnish without cost to the District complete facilities, including the necessary labor, for the inspection of all material and workmanship. The Engineer, or his authorized agent or agents, at all times shall have access to all parts of the shop and the works where such material under his inspection is being manufactured or the work performed. Work or material that does not conform to the specifications, although accepted through oversight, may be rejected at any stage of the work. Whenever the Contractor is permitted to do night work, or work on Saturday, Sunday or a holiday, or to vary the period during which work is carried on each day, he shall give the Engineer due notice, so that inspection may be provided. Such work shall be done under regulations to be furnished in writing by the Engineer.

12. DATA TO BE FURNISHED BY THE CONTRACTOR

The Contractor shall furnish the Engineer reasonable facilities for obtaining such information as he may desire respecting the character of the materials and the progress and manner of the work. The Contractor shall furnish such data, drawings, and/or certifications required by the special provisions or specifications.

13. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of all specifications, drawings, and change orders pertaining to the work and shall at all times give the Engineer access thereto.

Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as though shown or mentioned in both. In case of different between drawings and specifications, the specifications shall govern. The Engineer will furnish from time-to-time such detail drawings and information as he may consider necessary for the Contractor's guidance, unless otherwise provided in the proposal, contract, or special requirements.

14. DELAYS

If any delay is caused the Contractor by specific orders of the Engineer to stop work, or by the performance of extra work ordered by the Engineer, or by failure of the District to provide material, or necessary instructions for carrying on the work, or by strikes having a direct effect on the work, or act of God, such delay will entitle the Contractor to an equivalent extension of time; provided that the Contractor has taken reasonable precautions to prevent delays due to such causes and provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer will investigate the facts and ascertain the extent of the delay, and his findings thereon shall be final and conclusive, except in the case of gross error.

An extension of time must be approved by the Engineer to be effective, but an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract. In no event shall the Contractor be entitled to compensation or damages resulting directly or indirectly from any of the causes of delay hereinabove specified or from delays or hindrances to the work from any cause or causes whatever.

15. INFRINGEMENT OF PATENTS

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented invention, process, equipment, article, or appliance employed in the execution of the work or included in the material or supplies agreed to be furnished under the contract, and should the Contractor, his agents, servants or employees, or any of them, be enjoined from furnishing or using any invention, process, equipment, article, material, supplies, or appliance supplied or required to be supplied or used under this contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials,

supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such invention, process, equipment, article, material, supplies, or appliances, as made by this contract be required to be supplied and used, in that event the Contractor shall at his expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the District, its officers, agents, servants and employees, or any of them, to use such invention, process, equipment, article, material, supplies, or appliances without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinabove required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Engineer shall have the right to make such substitution, or the District may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the District, or recover the amount thereof from him and his surety, notwithstanding final payment under this contract may have been made.

16. CONTRACTOR'S FINANCIAL OBLIGATION

The Contractor shall promptly make payments to all persons supplying labor and materials used in the execution of the contract.

17. METHODS AND APPLIANCES

The methods and appliances adopted by the Contractor shall be such as will, in the opinion of the Engineer, secure satisfactory quality of work and will enable the Contractor to complete the work in the time agreed upon. If any time the methods and appliances appear inadequate, the Engineer may order the Contractor to improve their character or efficiency, and the Contractor shall conform to such order; but failure of the Engineer to order such improvement of methods or efficiency will not relieve the Contractor from his obligation to perform satisfactory work and to finish it in the time agreed upon.

18. SAMPLES OR SPECIMENS

The Contractor shall submit samples or prepare test specimens of such materials to be furnished or used in the work as the Engineer may require.

19. MATERIAL AND WORKMANSHIP

All materials must be of the specified quality and equal to approved sample, if samples have been required. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these specifications or the drawings, and it shall be the duty of the Contractor to call attention to apparent errors or omissions and request instructions before proceeding with the work. The Engineer may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original specifications or drawings.

All materials furnished and all work done must be satisfactory to the Engineer. Work, material, or machinery not in accordance with these specifications, in the opinion of the Engineer, shall be made to conform thereto. Unsatisfactory material will be rejected.

20. DEFECTIVE WORK

The Contractor shall replace at his own expense any part of the work that has been improperly executed. If he refuses or neglects to replace such defective work, it may be replaced by the District at the expense of the Contractor, and his sureties shall be liable therefor.

21. DAMAGES

All loss or damage to material or equipment to be furnished under the contract occurring prior to receipt and final acceptance of the work shall be sustained by the Contractor. The Contractor shall sustain all losses arising from unforeseen obstructions or difficulties, either natural or artificial, encountered in the prosecution of the work, or from any action of the elements prior to final acceptance of the work, or from an act or omission on the part of the Contractor not authorized by the specifications.

22. CHARACTER OF WORKMEN

None but skilled foremen and workmen shall be employed on work requiring special qualifications.

23. HOURS OF LABOR

Eight (8) hours' labor constitutes a legal day's work under the contract. The time of service of any workman employed upon the work shall be limited and restricted to eight (8) hours during any one calendar day, and forty (40) hours during any one calendar week. The Contractor shall, as a penalty to the State or the District, forfeit twenty-five dollars (\$25.00) for each workman employed in the execution of the

contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 (Secs. 1810 and following) of the Labor Code of the State of California and any amendments thereof; provided however, that in accordance with the provisions of Section 1815 of the Labor Code, work performed by employees of the Contractor in excess of eight (8) hours per day and forty (40) hours during one calendar week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. The Contractor and every subcontractor shall keep an accurate record showing the name and the actual hours worked each calendar day and each calendar week by each workman employed by him in connection with the work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement of the State of California.

24. ASSIGNMENT BY BIDDER TO PURCHASING BODY OF RIGHTS UNDER FEDERAL LAW ARISING FROM PURCHASES PURSUANT TO BID

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [(Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.