

April 18, 2011

SUBJECT: Request for Statement of Qualifications and Proposal for the EBMUD
MWWTP Energy System Master Plan

Dear Consultant:

The East Bay Municipal Utility District (EBMUD) cordially invites firms to submit statements of qualifications (SOQs) and proposals for completing EBMUD's Main Wastewater Treatment Plant (MWWTP) Energy System Master Plan. The following attachments are provided for your review:

1. Request for Proposals (RFP)/Project Background, RFP Process and Schedule
2. Request for Qualifications (RFQ)/Qualifications Evaluation and Selection
3. Scope of Proposal and Submittal Requirements
4. EBMUD Standard Consulting Agreement
5. Contract Equity Program Guidelines and Forms

EBMUD will select firms to be interviewed based on the SOQs and proposals submitted. If you would like EBMUD to consider your firm for this work, seven (7) copies of your SOQ and proposal must be received at the following address, no later than 4:00 pm on Monday, May 9, 2011 (postmarks will not be accepted):

If delivered:

East Bay Municipal Utility District
375 Eleventh St.
Oakland, CA 94607
Attention: Vince De Lange

If mailed:

East Bay Municipal Utility District
P.O. Box 24055, MS 702
Oakland, CA 94623-1055
Attention: Vince De Lange

Consultant
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If you have any questions regarding this RFQ/RFP, please contact Alicia Chakrabarti via email at achakrab@ebmud.com by 4:00 p.m. on Wednesday, April 27, 2011. Answers to questions received will subsequently be posted at www.ebmud.com. Click on "Business Opportunities" then "Professional and General Services" then "Wastewater Energy System Master Plan." EBMUD looks forward to receiving your SOQ and proposal submittal for this challenging project.

Sincerely,

A handwritten signature in cursive script that reads "David R. Williams".

DAVID R. WILLIAMS
Director of Wastewater

DRW:ARC:bmy

Attachments

ATTACHMENT 1

REQUEST FOR PROPOSALS (RFP) PROJECT BACKGROUND, RFP PROCESS AND SCHEDULE

MWWTP ENERGY SYSTEM MASTER PLAN

EBMUD OVERVIEW

EBMUD is a publicly-owned utility formed under the Municipal Utility District Act (MUD Act) passed by the California Legislature in 1921. The MUD Act permits formation of multipurpose government agencies to provide public services on a regional basis. In accordance with the MUD Act's provisions, voters in the East San Francisco Bay Area created EBMUD in 1923 to provide water service. In 1944, voters decided to create EBMUD's Special District No. 1 to treat wastewater for six East Bay cities. Wastewater treatment began in 1951.

EBMUD has a seven-member Board of Directors, publicly elected from wards within EBMUD's service area. The Board and staff are committed to preserving the region's resources and setting industry standards for the way water and wastewater utilities conduct themselves. EBMUD is a customer-oriented and environmentally-sensitive public agency.

EBMUD provides wastewater services for the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, and the Stege Sanitary District, which includes El Cerrito, Kensington and part of Richmond. The wastewater system serves approximately 650,000 people in an 88 square mile area. EBMUD's wastewater system includes approximately 29 miles of sewer interceptors, seven miles of sewer forcemains, 15 pumping stations, three wet weather treatment facilities, and the Main Wastewater Treatment Plant (MWWTP).

MWWTP Process Description

The MWWTP is a high-purity oxygen activated sludge (HPOAS) plant with an annual average daily flow of 65 million gallons per day (MGD). The primary and secondary treatment process capacities are 320 MGD and 168 MGD, respectively. The peak wet weather flow rate is 415 MGD, which includes short-term diversion of 95 MGD to the on-site 11-MG wet weather storage basin during peak wet weather events. The MWWTP liquid process train includes coarse and fine bar screens, aerated and vortex grit chambers, primary sedimentation basins, HPOAS reactors, secondary clarifiers, disinfection, recycled water facilities, and dechlorination. The solids process train includes scum thickening, secondary solids thickening using gravity belt thickeners, anaerobic digestion, and digested solids dewatering using solid-bowl centrifuges. A schematic of the treatment process is shown in Figure 1. Treated final effluent from the MWWTP is discharged through a deep water outfall located approximately 1.2 miles off the East Bay shoreline immediately south of the San

Francisco-Oakland Bay Bridge. Biosolids are hauled off-site by an outside contractor for beneficial reuse as either alternative daily cover at nearby landfills or as a soil amendment at land application sites.

Energy Production

Biogas produced during the anaerobic digestion process is collected and used for on-site cogeneration at the Power Generation Station (PGS). In 1985, EBMUD installed three 2.1-megawatt (MW) engine-generators. Biogas production has increased over time leading to a permit revision in 2002 to allow operation of all three engines simultaneously. EBMUD is currently completing construction of the PGS Renewable Energy Expansion Project, as described below.

Resource Recovery Program

In 2002, EBMUD initiated the Resource Recovery (R2) Program, which includes acceptance of various trucked wastes to utilize existing capacity in the anaerobic digestion process to increase biogas and on-site energy production. This program has helped EBMUD increase its power production capacity from its historical average of 40% to a level approaching 100% of the average power demand. Low-strength trucked waste is discharged to the plant headworks. High-strength trucked waste is discharged directly to the anaerobic digesters via the R2 Receiving Station.

Current and Planned Projects

EBMUD has several major capital improvement projects that are currently in design or construction at the MWWTP. The first phase of construction for the PGS Renewable Energy Expansion Project, which will add a new 4.5-MW gas turbine, is expected to be operational by mid-2011. The total electrical power production capacity will be 11 MW, more than twice the average plant demand. The schedule for the second phase of construction, which includes a second turbine 4.5-MW gas turbine, will be determined in the future. In addition, EBMUD is constructing the second of three phases of a digester upgrade project, which includes mixing improvements, replacing existing floating covers with fixed covers, installation of a raw sludge blend tank and installation of a fats, oils and grease (FOG) receiving station. EBMUD is in the process of replacing the four existing dewatering centrifuges with new high-speed solid-bowl dewatering centrifuges. The first replacement is nearing completion. The other three replacements may be made in the future.

EBMUD completed a Draft MWWTP Land Use Master Plan, which identifies additional projects that may be implemented over the next 30 years. It includes detailed descriptions of two green energy projects identified for implementation in the near term – a food waste preprocessing facility and a biodiesel production facility. A Draft Environmental Impact Report (EIR) for the Master Plan was published on February 7, 2011. The Master Plan and the associated environmental documentation are available on the EBMUD website at www.ebmud.com/wastewater-master-plan.

MWWTP ENERGY SYSTEM MASTER PLAN BACKGROUND

The purpose of the MWWTP Energy System Master Plan (Plan) is to improve the overall energy efficiency at the MWWTP and key remote facilities by:

- Reducing on-site electrical and natural gas demands,
- Utilizing all available existing energy resources (including heat),
- Evaluating additional equipment or operational changes to produce more renewable energy,
- Exploring additional sources of energy, and
- Obtaining the best value for electricity sales.

These goals must be met while maintaining operational stability and without sacrificing the ability of the MWWTP to continue to meet or surpass all permit requirements.

Work Completed to Date

Following the 2000/2001 California energy crisis, the California Energy Commission (CEC) provided grant funding for several energy efficiency projects conducted at the MWWTP including advanced oxygen production controls, power distribution and metering improvements, conversion to an activated sludge anaerobic selector process, and conversion from an aerated grit to a vortex grit removal system. Two CEC grant-funded projects for on-site energy generation were also completed: natural gas blending facilities were installed at PGS and the R2 Receiving Station (see above) was constructed to accept high-strength waste for anaerobic digestion to increase digester gas production. In 2003, a California Public Utilities Commission funded Energy Management Study, including an energy audit, was prepared by KEMA-Xenergy. This study recommended a number of energy cost reduction measures, including peak demand management strategies, optimizing oxygen production for the HPOAS process, variable frequency drive and premium efficiency motor installation, grit system modifications, and dechlorination facility modifications. Many of these recommendations were implemented by 2004. A lighting audit and improvements were also implemented at selected locations at the MWWTP. Following implementation of these projects, the average annual on-site demand was reduced by nearly 1 MW from 5.4 MW to 4.5 MW between 2000 and 2004 (Figure 2).

Current Operations

Electricity Use

Electricity use is metered and usage data are recorded at 12 different areas. More than 40% of the average electricity demand is from the secondary treatment process, which includes oxygen production, distribution, and mixing within the reactors. Other major energy centers include the Influent Pump Station (over 10%), the combination of return activated sludge/waste activated sludge pumping with the Administration Building, Operations Control Center and Laboratory (over 15%), and the Solids Dewatering Building (over 10%), which includes centrifuges (for dewatering digested sludge) and gravity sludge thickeners (for thickening secondary sludge prior to digestion).

Electricity Generation and Sales

The MWWTP intermittently exports power to PG&E as a Qualifying Facility (QF) through a Power Purchase Agreement (PPA). The power is sold on an “as available” basis and the value is determined monthly by the Short-Run Avoided Cost (SRAC) and the As-Delivered Capacity price. The PPA was recently amended to include sales of power generated by the new gas turbine as well as the existing engines. After experience operating the turbine and the engines together, EBMUD will evaluate other options for selling renewable energy and potentially Renewable Energy Credits (RECs). Some of these options, including Feed-in-Tariff and unbundled RECs, are expected to be developed and available in the near future pending current legislative and regulatory proceedings.

Electricity Purchases

Electricity is delivered to the MWWTP through two PG&E distribution lines. All power is purchased from the Western Area Power Administration (WAPA). EBMUD receives an allocation of the WAPA cost-based hydroelectric power (“Base Resource”). In addition, WAPA acts as a portfolio manager and schedule coordinator and provides supplemental power to augment the Base Resource. EBMUD provides WAPA with hourly forecasts of demand each month.

MWWTP Energy System Master Plan Development

The overall budget for this project is estimated to be between \$350,000 and \$450,000. The Plan will be developed using a blended EBMUD/consultant team approach. EBMUD anticipates that in-house staff will lead and prepare selected elements of the Plan with guidance and support from the consultant and that the consultant will lead other elements of the Plan with support from EBMUD staff. It is estimated that the overall level of effort split would be approximately two thirds EBMUD staff and one third consultant staff. The consultant is encouraged to suggest additional tasks to be completed by either EBMUD or the consultant, or a blended team. The key tasks include the following:

I – Electrical Power Audit and Program Management (Consultant with EBMUD support)

Task 1.1: **Scope Clarification.** Review existing information provided by EBMUD in support of the Plan, including data on energy use, previous audits and recommendations, and EBMUD goals and strategy for improving energy efficiency.

Task 1.2: **Audit.** Perform a targeted operational audit of key load centers. Collect and analyze baseline energy data in order to determine areas to target. Survey existing equipment and interview staff to identify potential replacement equipment and altered operational strategies for improved energy efficiency. Identify prioritized list of opportunities to reduce energy use and evaluate alternatives based on a triple bottom line approach.

Task 1.3: **Goals.** Develop specific measurable goals related to energy production, use and sales. Develop implementation strategies (based on items evaluated in Task 1.2) to achieve them.

Task 1.4: **Monitoring & Evaluation.** Establish a system for ongoing monitoring and reporting to measure progress towards the identified goals and ensure ongoing program success.

II – Comprehensive Evaluation of Opportunities

Task 2: Alternative Technology Reviews (EBMUD/consultant team)

Review alternative technologies to increase energy recovery from existing waste streams and/or increase energy recovery by identifying new waste streams. Conduct high-level comparative evaluation of alternative wastes and technologies for improved energy recovery.

Task 3: Electrical Generation (EBMUD/consultant team)

Confirm that the MWWTP has sufficient electrical reliability. Evaluate options to increase the value of electricity sales including gas or high-strength liquid waste storage. Evaluate opportunities for demand reduction to coincide with peak electrical on the grid.

Task 4: Electricity Sales (EBMUD lead, consultant review)

Document current activities with regard to the evaluation of opportunities to sell excess power and renewable energy credits.

Task 5: Electricity Purchases (EBMUD lead, consultant review)

Document current activities with regard to the forecasting and scheduling of purchased power from Western Area Power Administration.

Task 6: Heat Production and Use (EBMUD/consultant team)

Review current practices and develop a heat balance around key heat users and producers. Identify opportunities for efficiency improvements based on operating strategies and, potentially, equipment replacement. Conduct high-level comparative evaluation of opportunities.

Task 7: Natural Gas Use (EBMUD/consultant team)

Identify natural gas users and review meter data. Use benchmarking or other approach to determine whether there are opportunities for reduced natural gas use. Examine natural gas rate schedule and determine if there are opportunities to reduce costs.

Task 8: Buildings (EBMUD/consultant team)

Collect building-level energy use data for the main office uses: Administration Building, Laboratory, Maintenance Building, Operations Center and Field Services Building. Use benchmarking or another approach to determine and identify opportunities to reduce energy use. Evaluate alternative practices and equipment to reduce energy use and prepare a high-level comparative analysis.

Task 9: **Remote Facilities** (EBMUD/consultant team)

Identify operating strategy to reduce power use and power costs at largest pump station.

Task 10: **Future Design** (EBMUD/consultant team)

Develop specific standards and practices in order to incorporate energy efficiency into designs going forward. Develop a streamlined means to incorporate annual energy use in design reviews.

RFQ/RFP PROCESS

EBMUD requests both a Statement of Qualifications (SOQ) and a Proposal from firms interested in participating in the preparation of the MWWTP Energy System Master Plan. Consultant selection will be completed in a three-step process:

1. Statements of qualifications will be reviewed to determine which firms meet the minimum qualifications outlined in Attachment 2.
2. Proposals from only those firms that meet the minimum qualifications will be evaluated and ranked by a consultant selection panel based on criteria outlined in Attachment 2.
3. Firms that best meet the specified criteria will be invited to a project interview. Final consultant selection will be based on information provided in the proposals and interviews.

PROPOSED SCHEDULE

The proposed schedule for the consultant selection process is as follows:

Consultant Selection:

Issue RFQ/RFP	April 18, 2011
Receive proposals	May 9, 2011
Notify firms selected for interviews	May 23, 2011
Interviews	May 31 – June 6, 2011
Selection of consultant or consultant team	June 8, 2011
Negotiate contract	June 8 – 29, 2011
Board approval	July 12, 2011
Notice to Proceed	July 13, 2011

The proposed schedule for key milestones is as follows:

Project Milestones:

Complete Electrical Audit	October 2011
Prepare Audit Recommendations	February 2012
Prepare Draft Master Plan	April 2012
Prepare Final Master Plan	June 2012

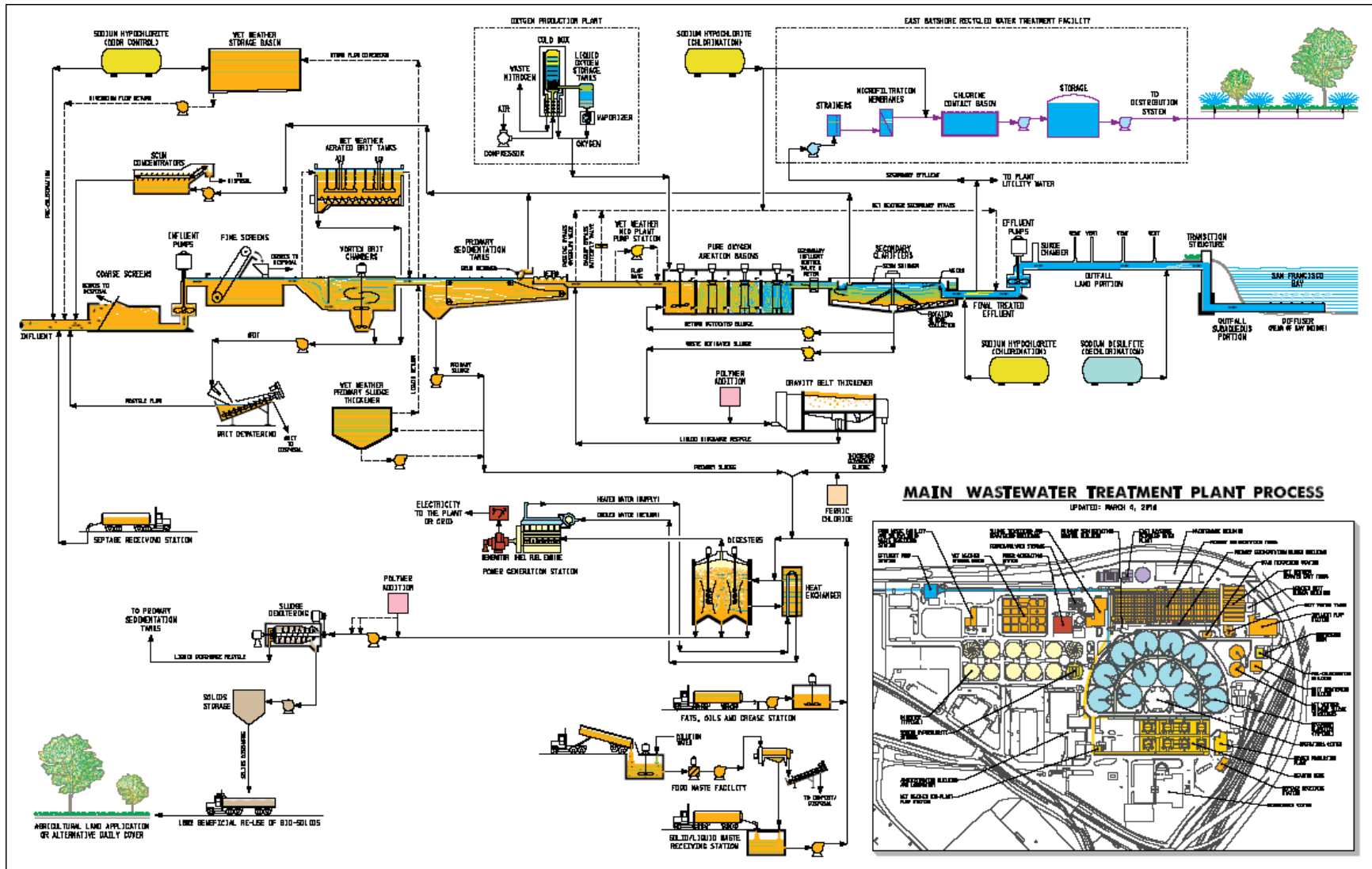


Figure 1 EBMUD Main Wastewater Treatment Plant Schematic

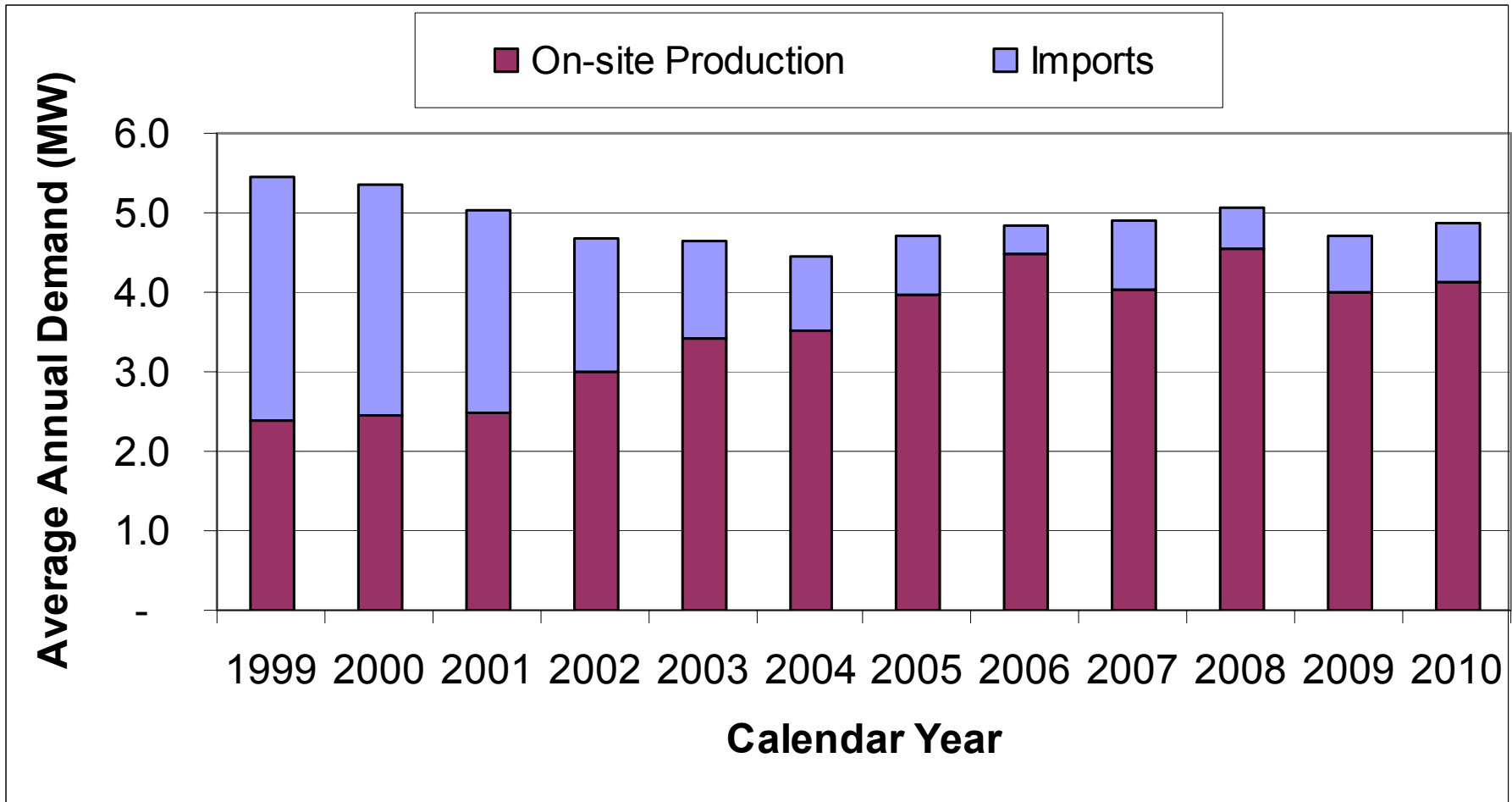


Figure 2 EBMUD MWWTP On-site Power Production and Use

ATTACHMENT 2

REQUEST FOR QUALIFICATIONS (RFQ) QUALIFICATIONS EVALUATION AND SELECTION

MWWTP ENERGY SYSTEM MASTER PLAN

Qualifications Summary Form

To be considered for this project, your firm must complete the Qualifications Summary Form included as part of this attachment. For all projects listed in the Qualifications Summary, a project description must be included, demonstrating that the firm(s) and the persons proposed for this project meet the minimum qualifications required. References must also be provided for all qualifying project experience to verify the project scope, budget, performance, and quality of work completed.

Minimum Qualifications

Lead Firm: The lead consulting firm must provide information that demonstrates its experience on projects of similar type, size, and complexity as the current project under consideration. Experience must include at least two master planning or energy planning efforts, completed within the last eight years with a minimum fee of \$50,000. The relevance of cited projects and the experience of specific individuals proposed for the current project should be emphasized. The lead firm shall oversee and coordinate all aspects of the proposed project team's scope of work.

Project Team: For each element indicated below, clearly indicate the firm on the project team with the required experience. The referenced experience must show successful completion of the project component involving the relevant project element. A referenced project may be used for more than one element.

- Wastewater Electrical Audit: Experience conducting a detailed review of existing operations and energy use at a wastewater treatment plant utilizing operator interviews, meter data and existing equipment evaluation, as well as any other methods. Reference at least two projects.
- Wastewater Master Planning: Experience developing alternatives for a municipal wastewater planning effort, including identification of recommended capital and operational improvements. Reference at least two projects.
- Innovative Energy Technologies: Experience evaluating and implementing state-of-the-art technologies for energy efficiency or power generation in any industrial process. Reference at least one project.
- Alternatives Evaluation: Experience preparing an evaluation of alternative technologies or projects that considers economic as well as non-economic factors,

such as environmental, social or community impacts. Reference at least one project.

Project Manager/Key Personnel: Provide both technical and managerial qualifications for the proposed Project Manager and Key Personnel. Proposed personnel must meet the following minimum requirements:

- Project Manager must have had successful experience in completing at least one energy-related planning effort in the last eight years with a minimum fee of \$50,000;
- Project Manager must be an employee of the lead firm with at least five years of experience;
- Key Personnel must have at least three years of experience in their respective disciplines and must demonstrate capabilities from at least two projects in one or more of the elements stated above.

The Project Manager will be the primary client contact and is responsible for the day-to-day management of the project and ensuring that the project scope, budget, and schedule are met. The following information should be provided for the Project Manager and Key Personnel:

- Years of experience
- Percent (%) time available for this project
- Resumes (should demonstrate experience beyond minimum qualification requirements)

Qualifications Evaluation

The ability to meet the requirements will be judged by EBMUD based solely on the information provided on the Qualifications Summary Form. If the information provided is deemed inadequate by EBMUD, no further evaluation of the submitted project proposal will be conducted.

Selection Interview

The best proposing consultants will be invited to an interview by EBMUD during the week of May 31, 2011. At the interview, the Consultant will introduce the project manager, the spokesperson, and any other key members of the proposing team (maximum 5 people total) and summarize their qualifications and experience in response to the RFP. The Consultant will also concisely present its approach to the key items noted in the qualifications evaluations criteria, and respond extemporaneously to questions.

Selection Criteria

A successful proposal will demonstrate the Consultant's experience in successfully performing an energy system master plan of similar scope and complexity. Evaluations

will be based on the proposed approach to the scope of work. Selection will be based on, but not limited to, the following:

- Clear and concise approach to executing the project scope of work
- Relevant experience in energy system analysis, wastewater planning, innovative energy conservation and production approaches and triple bottom line evaluations
- Qualifications of the designated Project Manager
- Qualifications of Key Personnel who will serve as team leaders in support of the individual Project Manager
- Labor estimates by task and position, including subconsultants
- Compliance with the Contracting Objectives of EBMUD's Contract Equity Program
- Proposed schedule and resource availability and commitment to complete Plan in a timely manner
- Responses to interview questions

Contract Negotiations and Award

Negotiations for a Consulting Services Agreement with a "not-to-exceed" contract price (for time and expenses) will be scheduled with the selected qualified project team. If an agreement cannot be achieved, EBMUD will proceed to negotiate with the next selected qualified project team.

**Wastewater Energy System Master Plan
Qualifications Summary Form**

Under Project Team Definition: (1) indicate the estimated portion of the total consulting fee for which each firm is responsible. Total should equal 100%; (2) provide resumes for all key project personnel, and (3) refer to Attachment 2 for information on minimum qualifications. For qualifying experience, space is provided for two projects, add additional rows as needed. This form is available in MS Word at <http://www.ebmud.com> or by contacting Bonnie Yee – byee@ebmud.com.

Project Team Definition

	Firm	Expertise	Est. %	M/WBE
Lead:				
Sub:				
Sub:				
Sub:				
Sub:				
	Individual & Firm	Expertise	Experience (Years)	% Availability
Project Manager				
Key Personnel				
Key Personnel				
Key Personnel				
Key Personnel				

PRIMARY WORK LOCATION:

LEAD FIRM QUALIFYING EXPERIENCE:	DISTRICT Use Only
Project #1 Name: Project Description: Year Prepared: (2003-2011) Contract Fee: (>\$50,000) Contact Name: Contact Phone:	
Project #2 Name: Project Description: Year Prepared: (2003-2011) Contract Fee: (>\$50,000) Contact Name: Contact Phone:	

<p>PROJECT TEAM QUALIFYING EXPERIENCE: Wastewater Electrical Audit</p> <p>Project #1 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:</p>	<p>DISTRICT Use Only</p>
<p>Project #2 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:</p>	
<p>PROJECT TEAM QUALIFYING EXPERIENCE: Wastewater Master Planning</p> <p>Project #1 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:</p>	
<p>Project #2 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:</p>	
<p>PROJECT TEAM QUALIFYING EXPERIENCE: Innovative Energy Technologies</p> <p>Project #1 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:</p>	
<p>Project #2 Name: (OPTIONAL) Project Description: Year Prepared: Contract Fee: Firm & Contact Name:</p>	

Contact Phone:	
PROJECT TEAM QUALIFYING EXPERIENCE: Triple Bottom Line Evaluation Project #1 Name: Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone::	
Project #2 Name: (OPTIONAL) Project Description: Year Prepared: Contract Fee: Firm & Contact Name: Contact Phone:	
PROJECT MANAGER QUALIFYING EXPERIENCE: Project #1 Name: Project Description: Year Prepared: (2003-2011) Role: Contract Fee: (>\$50,000) Contact Name: Contact Phone	
Project #2 Name: Project Description: Year Prepared: (2003-2011) Role: Contract Fee: (>\$50,000) Contact Name: Contact Phone:	
KEY PERSONNEL QUALIFYING EXPERIENCE: (Repeat For Each Person) Project #1 Name: Project Description: Year Prepared: Role: Contract Fee: Firm & Contact Name: Contact Phone	

Project #2 Name: Project Description: Year Prepared: Role: Contract Fee: Firm & Contact Name: Contact Phone:	
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ATTACHMENT 3

SCOPE OF PROPOSAL AND SUBMITTAL REQUIREMENTS

MWWTP ENERGY SYSTEM MASTER PLAN

SCOPE OF PROPOSAL

Proposals should describe the Consultant's approach to successful completion of the MWWTP Energy System Master Plan (Plan). EBMUD wishes to engage the Consultant's creative and innovative capabilities to successfully achieve the multiple goals of this complex project. The proposal should contain the following main areas:

Transmittal Letter: The letter or transmittal should clearly identify the Consultant and the office location(s) where the work would be performed, the overall project leader, key technical personnel, and subconsultants that will perform the work. The letter should be signed by an individual having authority to execute an agreement with EBMUD.

Statement of Qualifications: To be considered for this project, your firm must complete the Qualifications Summary Form in Attachment 2. The purpose of the Statement of Qualifications (SOQ) is to clearly identify relevant team experience that qualifies your firm for preparation of the Plan.

Project Approach: The proposal should include a clear and complete discussion of each task required to fulfill the project objectives, and in sufficient detail to present your approach. In general, the project approach should demonstrate:

- Adequate resources and expertise to complete the Plan, specifically knowledge of energy systems and wastewater treatment technologies and expertise to perform necessary studies to evaluate alternative technologies and their impact on energy use as well as treatment performance.
- The Consultant's understanding of the issues faced by wastewater treatment plants and the opportunities for energy savings.
- Extensive knowledge of cutting edge technologies in the wastewater treatment field to reduce energy use and meet increasingly stringent regulatory requirements.
- How the Consultant will utilize existing data, information and in-house expertise to analyze opportunities to increase energy efficiency.
- How the Consultant will work with EBMUD Wastewater Operations staff to develop alternative operating procedures and implement a monitoring and evaluation program that will ensure lasting results.

- How the Consultant will support project decision making and prioritization to prepare a successful implementation plan for the recommended energy efficiency projects (i.e., capital projects and/or operational changes).

Describe each task and subtask in sufficient detail to present a clear summary of your approach, using the information presented in the Request for Proposals as a guide. Clearly identify planned meetings and deliverables for each task. Discuss any reasons for significant changes to the scope of work. As part of the proposal, respondents are encouraged to recommend changes or additions to the scope of work that may improve performance, reduce costs, or shorten the project schedule. Portions of the tasks may be performed concurrently.

Project Management

The proposed scope should describe how the Consultant proposes to:

- Invoice EBMUD and provide progress reports on budget, scope and schedule
- Attend and support project management and/or working meetings with EBMUD
- Address any performance issues that may arise during the period of the contract

Additionally, the Consultant should provide estimates in hours of the level of effort required for project management activities.

Optional Services

The proposed scope should include any optional services that the Consultant feels may improve successful completion of the project. Resources under this task are for work that is not within the scope of services described previously.

Staffing: Include a clear statement of project team responsibilities and reporting relationships, work structure for project control and review, and allocation of staff identified by name and firm for key tasks. Identify the Project Manager and Key Personnel that will lead the Plan efforts. Indicate the portion of time that key staff will be available to work on the project. Indicate any tasks that the Consultant assumes will be completed by EBMUD.

Labor Hours by Task: Provide a detailed breakdown of labor hours by task and position, including subconsultants. The estimate of labor hours presented in the proposal will provide the basis for contract negotiations with the selected Consultant.

Schedule: Develop a detailed work plan and schedule for the project including deliverables and other milestone dates in order to complete the project in a timely manner. Clearly identify the critical path and which tasks will run concurrently. The following major milestone dates must be included (at a minimum):

- Completion of Electrical Audit for Targeted Areas
- Preparation of Draft Implementation Plan
- Preparation of Draft Alternative Technology Review

- Preparation of Draft and Final MWWTP Energy System Master Plan

Contract Equity: Discuss the means of addressing EBMUD’s Contract Equity Program objectives as identified in Attachment 5. EBMUD has the following Professional and General Services contracting objectives: 25% white men, 6% white women, and 25% ethnic minorities (men and women). Complete the attached EBMUD forms P-025, P-040, and P-046 for your firm and form P-025 for each proposed subconsultant. Consultants are expected to make good faith efforts to meet EBMUD’s contracting objectives.

Resumes: Attach resumes of pertinent key project staff. Resumes may be a maximum of two pages per person.

SOQ/PROPOSAL SUBMITTAL REQUIREMENTS

Submittal Length

	<u>Not to Exceed</u>
Transmittal Letter	1 page
Statement of Qualifications (including Qualifications Summary Form)	8 pages
Project Approach	8 pages
Staffing and Project Management	2 pages
Labor Hours by Task	1 page
Schedule	1 page
Contract Equity Program Forms	As needed
Resumes (maximum of two pages per person)	As needed

**CONSULTING AGREEMENT
FOR
EAST BAY MUNICIPAL UTILITY DISTRICT**

(Project Title)

THIS Agreement is made and entered into this _____ day of *(month)*, 200*(insert year)*, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and *(CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.])*, hereinafter called "CONSULTANT."

WITNESSETH

WHEREAS, DISTRICT requires consulting services for *(need for project)*; and

WHEREAS, DISTRICT has completed *(completed projects that pertain to this project - optional)*; and

WHEREAS, CONSULTANT has submitted a proposal to provide consulting services for *(state type - "preparation of planning documents", "preparation of design documents", or "construction management support services")* for the *(project title)* and CONSULTANT represents that it has the experience, licenses, qualifications, staff and expertise to perform said services in a professional and competent manner; and

IF OVER \$60,000:

WHEREAS, DISTRICT Board of Directors has authorized the contract by Motion Number _____;

-OR- IF BETWEEN \$25,000 AND \$60,000:

WHEREAS, DISTRICT has authorized the contract by approval of the General Manager.

NOW, THEREFORE, it is mutually agreed by DISTRICT and CONSULTANT that for the considerations hereinafter set forth, CONSULTANT shall provide said services to DISTRICT, as set forth in greater detail herein.

ARTICLE 1 - SCOPE OF WORK

- 1.1 CONSULTANT agrees to furnish services set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein. The services authorized under this Agreement shall also include all reports, manuals, plans, and specifications as set forth in Exhibit A.

- 1.2 CONSULTANT's work products shall be completed and submitted in accordance with DISTRICT's standards specified, and according to the schedule listed, in Exhibit A. The completion dates specified herein may be modified by mutual agreement between DISTRICT and CONSULTANT provided that DISTRICT's Project Manager notifies CONSULTANT of modified completion dates by letter. CONSULTANT agrees to diligently perform the services to be provided under this Agreement. In the performance of this Agreement, time is of the essence.
- 1.3 It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed to be performed under this Agreement, that DISTRICT relies upon the professional skills of CONSULTANT to do and perform CONSULTANT's work in a skillful and professional manner, and CONSULTANT thus agrees to so perform the work. CONSULTANT represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. CONSULTANT agrees that the work performed under this Agreement shall follow practices usual and customary to the (*state type - for example "engineering"*) profession and that CONSULTANT is the engineer in responsible charge of the work for all activities performed under this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from such professional responsibility for the work performed.
- 1.4 CONSULTANT agrees to maintain in confidence and not disclose to any person or entity, without DISTRICT's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by CONSULTANT during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.
- 1.5 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by CONSULTANT or its subconsultants in connection with these services shall be delivered to and shall become the exclusive property of DISTRICT. DISTRICT is licensed to utilize these documents for DISTRICT applications on other projects or extensions of this project, at its own risk. CONSULTANT and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.
- 1.6 CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT.
- 1.7 CONSULTANT is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work.

- 1.8 It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligations hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by the CONSULTANT for accomplishing the results.
- 1.9 If, in the performance of this agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and DISTRICT shall have no right or authority over such persons or the terms of such employment.
- 1.10 It is further understood and agreed that as an independent contractor and not an employee of DISTRICT, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONSULTANT shall not be covered by DISTRICT's worker's compensation insurance; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life or other insurance programs, or entitled to other fringe benefits payable by DISTRICT to employees of DISTRICT.

ARTICLE 2 - COMPENSATION

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of **\$(dollars)**, plus a Professional Fee (prorata dollar profit). The Professional Fee shall be subject to a Professional Fee Ceiling of **\$(dollars)**. Total compensation under the Agreement shall not exceed a Maximum Agreement Ceiling of **\$(dollars)**. Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein. CONSULTANT acknowledges that construction work on public works projects is subject to prevailing wage rates and includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT certifies that the proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate.
- 2.2 In case of changes affecting project scope resulting from new findings, unanticipated conditions, or other conflicts or discrepancies, CONSULTANT shall promptly notify DISTRICT of the identified changes and advise DISTRICT of the recommended solution. Work shall not be performed on such changes without prior written authorization of DISTRICT.

ARTICLE 3 - NOTICE TO PROCEED

- 3.1 This Agreement shall become effective upon execution of the second signature. CONSULTANT shall commence work upon receipt of DISTRICT's Notice to Proceed, which shall be in the form of a letter signed by DISTRICT's Project Manager. DISTRICT's Notice to Proceed will authorize the Contracted Services described in Exhibit A with ceiling prices described in ARTICLE 2 - COMPENSATION. No work shall commence until the Notice to Proceed is issued.
- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or all of the Optional Services tasks described in Exhibit A. Compensation for Optional Services shall be in accordance with the method and amounts described in Exhibit B.

ARTICLE 4 - TERMINATION

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.
- 4.2 If this Agreement is terminated CONSULTANT shall be entitled to compensation for services satisfactorily performed to the effective date of termination; provided however, that DISTRICT may condition payment of such compensation upon CONSULTANT's delivery to DISTRICT of any and all documents, photographs, computer software, videotapes, and other materials provided to CONSULTANT or prepared by CONSULTANT for DISTRICT in connection with this Agreement. Payment by DISTRICT for the services satisfactorily performed to the effective date of termination, shall be the sole and exclusive remedy to which CONSULTANT is entitled in the event of termination of the Agreement and CONSULTANT shall be entitled to no other compensation or damages and expressly waives same. Termination under this Article 4 shall not relieve CONSULTANT of any warranty obligations or the obligations under Articles 1.4 and 7.1.
- (Optional)*
- 4.3 This Agreement may be terminated by CONSULTANT upon 10 days written notice to DISTRICT only in the event of substantial failure by DISTRICT to fulfill its obligations under this Agreement through no fault of the CONSULTANT.
- 4.4 If this Agreement is terminated, payment of the Professional Fee shall be in proportion to the percentage of work that DISTRICT judges satisfactorily performed up to the effective date of termination. The Professional Fee shall be prorated based upon a ratio of the actual Direct Labor and Indirect Costs expended to date divided by the Cost Ceiling.

ARTICLE 5 - PROJECT MANAGERS

- 5.1 DISTRICT designates (*District Project Manager's name*) as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this

Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. CONSULTANT may be requested to assist in such coordinating activities as necessary as part of the services. In the event DISTRICT wishes to make a change in the DISTRICT's representative, DISTRICT will notify CONSULTANT of the change in writing.

- 5.2 CONSULTANT designates (*Consultant Project Manager's name*) as its Project Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. Any change in CONSULTANT designated personnel or subconsultant shall be subject to approval by the DISTRICT Project Manager. CONSULTANT hereby commits an average of (*1 to 100*) percent of (*Consultant Project Manager's name*) time on this project for the duration of the project.

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

- 6.1 CONSULTANT expressly agrees that this Agreement is subject to DISTRICT's Contract Equity Program ("CEP"). CONSULTANT is familiar with the DISTRICT's CEP and Equal Opportunity Guidelines, and has read and understood all of the program requirements. CONSULTANT understands and agrees to comply with the CEP and all requirements therein, including each of the Good Faith Efforts. CONSULTANT further understands and agrees that non-compliance with the CEP requirements may result in termination of this Agreement.
- 6.2 Designated CEP compliance for the duration of this Agreement is listed in Exhibit C, which is attached hereto and incorporated herein. CONSULTANT shall maintain records of the total amount actually paid to each subconsultant. Any change of CONSULTANT'S listed subconsultants shall be subject to approval by the DISTRICT'S Project Manager.

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

7.1 Indemnification

CONSULTANT 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 CONSULTANT's, its associates', employees', subconsultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

7.2 Insurance Requirements

CONSULTANT shall take out and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by DISTRICT. The Notice to Proceed shall not be issued, and CONSULTANT 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 CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. DISTRICT reserves the right to require CONSULTANT to provide insurance policies for review by DISTRICT.

7.3 Workers Compensation Insurance

CONSULTANT 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. CONSULTANT shall require any subconsultant to provide it with evidence of Workers Compensation Insurance.

7.4 Commercial General Liability Insurance

CONSULTANT 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 CONSULTANT elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONSULTANT 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. CONSULTANT shall require any subconsultant to provide evidence of liability insurance coverages.

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

\$1,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.

\$1,000,000/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 covers explosion, collapse and underground hazards (construction contracts only).
8. The policy(ies) cover(s) products and completed operations.
9. The policy(ies) cover(s) use of non-owned automobiles and equipment.
10. The policy(ies) shall cover Pollution liability for claims related to the release or threatened release of pollutants into the environment arising out of or resulting from CONSULTANT's performance under this Agreement.
11. The policy(ies) shall not be canceled nor materially altered unless 30 days' written notice is given to DISTRICT.

7.5 Professional Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, professional liability insurance (Errors and Omissions) with a minimum of \$1,000,000 of liability coverage. A deductible may be acceptable upon approval of the DISTRICT. The policy shall provide 30 days advance written notice to DISTRICT for cancellation or reduction in coverage.

ARTICLE 8 - NOTICES

Any notice which DISTRICT may desire or is required at any time to give or serve CONSULTANT may be delivered personally, or be sent by United States mail, postage prepaid, addressed to:

(consulting firm's name)

(address)

Attention: *(contact, usually the consultant's project manager),*

or at such other address as shall have been last furnished in writing by CONSULTANT to DISTRICT.

Any notice which CONSULTANT may desire or is required at any time to give or serve upon DISTRICT may be delivered personally at EBMUD, 375 - 11th Street, Oakland, CA 94607-4240, or be sent by United States mail, postage prepaid, addressed to:

Director of (*Wastewater Department or Engineering and Construction Department*)
P.O. Box 24055
Oakland, CA 94623-1055

or at such other address as shall have been last furnished in writing by DISTRICT to CONSULTANT.

Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases.

ARTICLE 9 - MISCELLANEOUS

- 9.1 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 9.2 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CONSULTANT shall not assign, transfer or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT.
- 9.3 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 9.4 Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file at the DISTRICT is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.
- 9.5 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 9.6 The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
- 9.7 There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this contract. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the

contract or any part thereof. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

9.8 CONSULTANT affirms that it does not have any financial interest or conflict of interest that would prevent CONSULTANT from providing unbiased, impartial service to the DISTRICT under this Agreement.

ARTICLE 10 - TERMS

Unless terminated pursuant to Article 4 herein, this Agreement shall expire when all tasks have been completed and final payment has been made by DISTRICT. The terms of this Agreement may be amended only in writing signed by both parties.

(NOTE: do not have a page break leaving signatures by themselves—must have at least the “in witness whereof” paragraph on signature page)

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____ Date _____
(Name),
(Insert title - Director of Engineering and Construction or Manager of Support Services)

Approved As To Form

By: _____
for the Office of the General Counsel

(CONSULTING FIRM'S NAME, ALL CAPS & BOLD)

By: _____ Date _____
(Name),
(Title)

Rev. 11/24/10

EXHIBIT A

**East Bay Municipal Utility District
(Project Title)**

SCOPE OF SERVICES

I. CONSULTANT SERVICES

CONSULTANT shall provide the following:

Contracted Services

(State each task with associated task number; specifically call out any survey work)

Optional Services

(State each task with associated task number)

II. PROJECT SCHEDULE

(List schedule milestones and completion dates)

EXHIBIT B

East Bay Municipal Utility District (Project Title)

COMPENSATION

Compensation for services provided in Exhibit A, SCOPE OF SERVICES, shall be in accordance with the methods and specific amounts described in this Exhibit.

1. DISTRICT shall pay CONSULTANT only the actual costs incurred, subject to the agreed cost ceiling. CONSULTANT certifies that the cost and pricing information used herein are complete, current and accurate. CONSULTANT acknowledges that it will expend public funds and hereby agrees to use every appropriate method to contain its fees and minimize costs under this Agreement.
2. Compensation for CONSULTANT services authorized shall be on a cost reimbursement basis and include Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and a Professional Fee. Costs to be paid comprise the following:

2.1 Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the actual hourly rate for such employee's labor. Hours worked shall be rounded-up to the nearest quarter-hour (0.25) increment. Labor costs for principals shall be based upon the actual hourly rate of pay for those individuals. Labor rates shall be based on a normal 8-hour day, 40-hour week. DISTRICT will pay all personnel at their regular rate including any work performed on overtime or on holidays or weekends.

2.2 Indirect Costs

DISTRICT shall pay CONSULTANT an overhead expense equal to *(insert overhead rate)* percent of labor costs incurred by CONSULTANT. CONSULTANT acknowledges and agrees that this overhead compensation is in lieu of itemized payments for indirect and overhead expenses which includes, but is not limited to:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage between CONSULTANT's office and DISTRICT service area.
- Parking (DISTRICT does NOT provide parking to CONSULTANT in the DISTRICT Administration Building, located at 375 11th Street, Oakland, California. CONSULTANT shall be responsible for parking elsewhere).

- Postage, or for certified or registered mail. Extraordinary postage, overnight delivery, or messenger delivery charges must be approved in advance.
- Routine copying costs for in-house copying.
- Local telephone charges, including cellular phone, modem and telecopier/FAX charges.
- Office space lease.
- Office supplies.
- Computer equipment.
- Computer usage charges.
- Books, publications and periodicals.
- Insurance.
- Miscellaneous hand tools or equipment rental.
- Safety training, seminars or continuing education.
- Utilities.
- Meals, transportation or other charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

2.3 Subconsultant Services

Subconsultant services shall be billed at cost (plus a *(insert rate)* percent markup).

2.4. Other Direct Costs

Other Direct Costs shall be approved by DISTRICT in advance in writing, and shall be billed at cost, without markup. These costs include, but are not limited to the following:

1. Automobile expenses at *(insert rate)* cents per mile when CONSULTANT is required to travel outside of the DISTRICT's service area. Mileage will NOT be reimbursed for rental car expenses, where the rental agreement specifies unlimited mileage.
2. DISTRICT will pay for necessary and reasonable travel expenses provided the travel is approved in advance by DISTRICT Project Manager, and providing that:
 - Each expense is separately identified (air fare, hotel, rental car) with an amount and date incurred. Confirming documents may be requested.
 - Charged mileage for vehicle mileage shall not exceed the current allowable Internal Revenue Service rate.

- Air travel is coach or economy rate for refundable tickets. Business and first class rates will not be reimbursed.
- Lodging accommodations are moderately priced.
- Meal charges are reasonable. (Reimbursement for meals will only be made in conjunction with out-of-town travel.)
- Taxis or shuttles are used rather than rental cars whenever cost effective.
- Rental cars are intermediate or compact class only.

2.5 Professional Fee

As a portion of the total compensation to be paid to CONSULTANT, DISTRICT shall pay the Professional Fee, subject to the agreed Professional Fee Ceiling of **\$(dollars)** as specified in Exhibit B-1, as profit for services rendered by CONSULTANT covered by this Agreement. CONSULTANT shall earn the Professional Fee based on a **(insert rate)** percent markup of CONSULTANT's Direct Labor and Indirect Costs billed and approved.

2.6 Budget Amounts

	<u>Contracted Services</u>	<u>Optional Services</u>	<u>Maximum Services*</u>
Cost Ceiling	\$(dollars)	\$(dollars)	\$(dollars)
Professional Fee Ceiling	(dollars)	(dollars)	(dollars)
Agreement Ceiling	(dollars)	(dollars)	(dollars)

*** (Maximum Services is the sum of Contracted and Optional Services. If your scope has no Optional Services, delete the Contracted and Optional Services columns.)**

The Cost Ceiling shown above is based upon the cost estimate and labor hours attached hereto as Exhibit B-1 and Exhibit B-2. Costs described above, comprising Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and Professional Fee, shall be payable up to the Agreement Ceiling as specified herein.

2.7 Billing and Payment

CONSULTANT shall invoice DISTRICT monthly for the actual costs incurred and a prorated Professional Fee for work performed during the previous month. Actual costs shall include Direct Labor, Indirect Costs, Subconsultant Services, and Other Direct Costs as specified herein. Actual costs shall be invoiced by task as described in Exhibit A. Invoices shall set forth a description of the actual costs incurred and the services performed, the date the services were performed and the amount of time spent rounded to the nearest quarterly hour increment (.25) on

each date services were performed and by whom. Supporting documentation for the invoice shall be organized to clearly identify the task charged and shall be supported by such copies of invoices, payroll records, and other documents as may be required by DISTRICT to authenticate invoiced costs. Copies of all invoices from any subconsultant(s) and outside service(s) shall be attached. DISTRICT shall pay CONSULTANT within thirty (30) days, upon receipt of a proper CONSULTANT invoice, provided that all invoices are accompanied by sufficient cost documentation, and DISTRICT Form P-47 (Subcontractor Payment Report - CEP Participation), to allow the determination of the reasonableness and accuracy of said invoice.

A ceiling price is in effect for the entire Scope of Services. If the authorized Agreement Ceiling, including the authorized Professional Fee Ceiling, is reached, CONSULTANT shall complete the agreed-upon work for the authorized Agreement Ceiling. Labor hours may be reallocated within the tasks without renegotiation of the Agreement with written approval from the DISTRICT Project Manager in such a manner so as not to exceed the Agreement ceiling price. In no event shall the Cost Ceiling of the Agreement or the Professional Fee Ceiling be increased unless there is a written amendment of this Agreement.

2.8 Budget Status Reports

For the duration of this Agreement, the CONSULTANT shall provide DISTRICT with ("*bi-weekly*" or "*monthly*" *depending on duration of project*) budget status reports that include, in tabular or graphical format, for each report period: (1) the original cumulative projected cash flows for the duration of the project (prepared at the start of the project), (2) the actual cash flows for the work completed to date, (3) the current projected cash flows to complete the project, and (4) the earned value (the amount of work actually completed to date compared to the budget expended). Current projected cash flows shall be based on all CONSULTANT and subconsultant time sheets up to a date within 3 weeks of the date of the budget status report.

(Note: this table is prepared by the consultant. The following is provided to show format.)

EXHIBIT B-1

**East Bay Municipal Utility District
(Project Title)**

COST DISTRIBUTION

	Consultant						Subconsultants							
	Direct Labor			Indirect Costs	ODCs*	Sub. #1			Sub. #2					
	Project Manager	Project Engineer	Drafting			Project Eng.	Assist. Eng.	Total Cost	Project Eng.	Assist. Eng.	Total Cost	Profes- sional Fee**	Total Cost	
Salary Rate (\$/hr.) <u>Services</u>	(****)	(****)	(****)	Total			(****)	(****)	(****)	(****)	(****)	(****)	(****)	(****)

I. Contracted Services

Task 1.1:
Task 1.2:
Task 2.1:
Task 2.2:
Subtotal I.

(***) (***) (***) (***) (***) (***)

II. Optional Services

Task 3:
Task 4:
Subtotal II.

(***) (***) (***) (***) (***) (***)

TOTAL Agreement (Total of Subtotals I. & II.)

* ODCs = Other Direct Costs.
 ** Professional Fee on consultant Direct Labor & Indirect Costs only. Should not include prime consultant markup on subconsultants.
 *** Amount includes prime consultant markup on subconsultant.
 **** ***Insert salary rate.***

(Note: this table is prepared by the consultant. The following is provided to show format.)

EXHIBIT B-2

**East Bay Municipal Utility District
(Project Title)**

LABOR DISTRIBUTION

	<u>Consultant</u>				<u>Subconsultants</u>						
	<u>Project Manager</u>	<u>Project Engineer</u>	<u>Drafting</u>	<u>Subtotal</u>	<u>Sub. #1</u>			<u>Sub. #2</u>			
					<u>Project Eng.</u>	<u>Assist. Eng.</u>	<u>Subtotal</u>	<u>Project Eng.</u>	<u>Assist. Eng.</u>	<u>Subtotal</u>	<u>Total</u>
<u>Services(*)</u>											
I. Contracted Services											
Task 1.1:											
Task 1.2:											
Task 2.1:											
Task 2.2:											
Subtotal											
II. Optional Services											
Task 3:											
Task 4:											
Subtotal											
TOTAL											

(Include both consultant and subconsultant hours. Also, include the percent time commitment for key personnel if a critical issue for success of the project.)*

EXHIBIT C

**East Bay Municipal Utility District
(Project Title)**

CEP COMPLIANCE

<u>FIRMS UTILIZED</u>	<u>MINIMUM AMOUNT*</u>	<u>MINIMUM PERCENT**</u>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
TOTAL	<i>\$(dollars)</i>	<i>(1 to 99)</i>

* Does not include consultant's markup.

** Based on a Maximum Services Agreement Ceiling amount of *\$(dollars)*.



EAST BAY MUNICIPAL UTILITY DISTRICT

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

MARCH 2009

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March 2009

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 below. 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 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 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;
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;

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.

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 contracts that are determined to have subcontracting opportunities, including material or supply opportunities, and to all contractors, regardless of their gender or ethnicity. The CE Program groups all businesses into three (business owner) availability groups⁵:

- White Men
- White Women
- Ethnic Minority

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 below, 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.

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 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 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 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 and procedures 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 **\$60,000** 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

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

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.

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 and EEO complaint procedure 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 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 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 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 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 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 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 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 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

ALL PRIME BIDDERS/PROPOSERS MUST COMPLETE AND SUBMIT WITH BID/PROPOSAL:

- Form P-025** – Employment Data and Certification

CONSTRUCTION BIDDERS AND PROFESSIONAL/GENERAL SERVICES PROPOSERS:

- Form P-025** – Employment Data and Certification
(for all Subcontractors doing over \$60,000 worth of work for the apparent low bidder/ recommended proposer)
- Form P-041** – Good Faith Outreach Efforts Documentation
(apparent low bidder and second low bidder as requested)
- Form P-042** – Contract Equity Program Guidelines Certification Form
- Form P-040** – Contract Equity Participation
(all proposers and apparent low and second low bidders)

CONSTRUCTION BIDDERS ONLY:

- Form P-046** – Designation of Subcontractors
(all bidders must submit with bid)

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
916-324-1700, Fax: 916-324-1949
Toll Free: 866-810-6346
Website: http://www.dot.ca.gov/hq/bep/doing_business.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
E-mail: 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
E-mail: larry.brinkin@sfgov.org
Website: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm

- **Port of Oakland**
530 Water Street, Oakland, CA 94607
510-627-1100 or 510-627-1436
E-mail: mjones@portoakland.com
Website: <http://www.portofoakland.com/srd/>

- **General Services Agency**
1401 Lakeside Drive, 10th Floor, Oakland, CA 94612
510-208-9717 or 9617; fax: 510-208-9720
Email address: SLEB@acgov.org
Website: <http://www.acgov.org/auditor/sleb>

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.

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

A business with fewer than 100 employees and average gross receipts of \$12 million or less over the previous three 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 \$60,000 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 %
_____	_____	_____	_____ %
_____	_____	_____	_____ %
_____	_____	_____	_____ %

<input type="checkbox"/> JOINT VENTURE	List of Participants – Indicate percentage of work to be realized by each.
_____	_____ %
_____	_____ %

<input type="checkbox"/> 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		Indicate	
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. (*Permanent workforce is defined as 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.

OCCUPATIONS	TOTAL	MALE					FEMALE				
		NON-HISPANIC ORIGIN		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	NON-HISPANIC ORIGIN		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native
		White	Black				White	Black			
a. OFFICIALS & MANAGERS											
b. PROFESSIONALS											
c. TECHNICIANS											
d. SALES WORKERS											
e. OFFICE & CLERICAL											
f. CRAFT WORKERS (SKILLED)											
g. OPERATIVES (SEMI-SKILLED)											
h. LABORERS (UNSKILLED)											
i. SERVICE WORKERS											
FIRM'S TOTALS											
BAY AREA*											

B-1a. Identify the Metropolitan Statistical Area (MSA) from which your firm's total permanent workforce is drawn. (See attached P-025 Supplement)

B-1b. If your firm's total permanent workforce is located in one county or parish, please identify.

B-1c. Is employment data confidential?

YES NO

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

(PLEASE PRINT)

NAME _____

PHONE _____

TITLE _____

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

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)

P-025 SUPPLEMENT

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 BERNADINO	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%	SOLANO	27.8%	24.6%	47.6%
MERCED	24.9%	21.1%	54.0%	SONOMA	39.8%	36.9%	23.4%
MONTEREY	23.8%	21.3%	54.9%	YOLO	31.7%	29.8%	38.5%
NAPA	37.6%	33.6%	28.8%	YUBA	36.7%	34.0%	29.4%
ORANGE	30.9%	25.5%	43.6%				
RIVERSIDE	30.1%	24.7%	45.3%				
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%
DELEWARE	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%	27.3%				

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 \$60,000.*

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		

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/PI** Asian-Pacific Islander American **H/LA** Hispanic/Latin American **W/C** White/Caucasian
 B/AA Black/African American **NA** Native American

³ If 100% of items is 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.



CONTRACT EQUITY PARTICIPATION (P-040)

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		



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 and dates of advertisements in the project’s geographic market area of each newspaper, trade paper, and availability group focus paper in which a request for subcontractor participation for this project was placed by the bidder (*GFOE #3*)

NAME OF PUBLICATION	DATES OF ADVERTISEMENT

- The names and dates of notices of all subcontractors in the project’s geographic market area solicited by direct mail, and the dates and methods used for following up initial solicitations to determine with certainty whether the subcontractors were interested (*GFOE's #4 & 5*)

NAME OF SUBCONTRACTOR SOLICITED	SOLICITATION DATES	FOLLOW UP METHODS	FOLLOW UP DATES



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.