

March 26, 2010

To Whom It May Concern:

Re: Request for Proposals (RFP) for Professional Services
Infiltration/Inflow (I/I) Control Program Data Assessment and Modeling Project

The East Bay Municipal Utility District (EBMUD) is seeking consulting firms to submit proposals to provide data assessment and modeling services for EBMUD's Infiltration/Inflow (I/I) Control Program. The work to be completed under this RFP will assist EBMUD in developing a Flow Monitoring and Limits Report, as required by a regulatory enforcement order. The report will document wet weather flows in the East Bay collection system and will include alternative sets of capacity flow limits, defined by the enforcement order as limitations on the wet weather flows at specified locations that eliminate the need for discharges from EBMUD's Wet Weather Facilities. Work under this contract is expected to begin in June 2010 and continue until approximately early 2012.

The RFP is included as an enclosure to this letter. The RFP and all attachments to the RFP are available on the EBMUD website at www.ebmud.com (click on "Business Opportunities", then "Professional and General Services").

Firms interested in this work should review the RFP and all attachments in detail and submit a proposal to EBMUD. Five (5) copies of the proposal must be received at EBMUD, P.O. Box 24055, MS 702, Oakland, CA, 94623, or hand-delivered to EBMUD, 375 Eleventh Street, 2nd Floor Security Desk, Oakland, CA, Attention: Vince De Lange, Supervisor of Wastewater Planning, no later than **4:00 p.m., on Friday, April 16, 2010**. Questions concerning this RFP should be directed to Vince De Lange at vdelange@ebmud.com no later than 4:00 p.m., on Friday, April 2, 2010.

Thank you for your interest in this project.

Sincerely,



David R. Williams

DRW:HGO;jmj

Enclosure

**East Bay Municipal Utility District
Infiltration/Inflow (I/I) Control Program Data Assessment and Modeling RFP**

SELECTION PROCESS AND RFP CONTENTS

CONSULTANT SELECTION PROCESS

The East Bay Municipal Utility District (EBMUD) requests proposals from firms interested in providing data assessment and modeling services as part of EBMUD’s Infiltration/Inflow (I/I) Control Program. The consultant selection process is described below:

- 1) The proposals will be evaluated and ranked by a consultant selection panel based on criteria outlined in Section 3.
- 2) Firms best meeting the criteria may be requested to participate in a panel interview.
- 3) Final consultant selection will be based on information provided in the proposals and the interviews (if conducted).

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Attachments (available on www.ebmud.com for download):

- Attachment A – Stipulated Order for Preliminary Relief, Case No. CV 09-0186 MEJ
- Attachment B – EBMUD Flow Measurement Work Plan (FMWP)
- Attachment C – EBMUD Rainfall Measurement Work Plan (RMWP)
- Attachment D – EBMUD Data Assessment Work Plan (DAWP)

SUBMITTAL LENGTH

Proposals shall be limited to the following number of pages:

Transmittal Letter.....	1 Page
Team Qualifications (including Qualifications Summary Form)	8 Pages
Contract Disclosure Form.....	As Needed
Project Approach to Scope of Work	10 Pages
Project Management & Staffing	3 Pages
Labor Hours by Task	1 Page
Schedule.....	1 Page
CEP Forms	As Needed
Resumes (maximum two pages per person)	As Needed

SECTION 1 - Project Background, Objectives, Schedule**PROJECT BACKGROUND**

EBMUD receives wastewater from the sewer systems of seven local collection system agencies in the East Bay (Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, and Stege Sanitary District), collectively referred to as “Satellites.” Each Satellite owns and operates its own wastewater collection system, which delivers wastewater to EBMUD’s Interceptor System. The Interceptor System transports wastewater to EBMUD’s Main Wastewater Treatment Plant (MWWTP) near the eastern anchorage of the San Francisco-Oakland Bay Bridge.

The Satellite sewer systems historically have had serious problems with infiltration/inflow (I/I) during the wet weather season. Based on a sewer system evaluation study conducted in the mid 1980s, it was estimated that the Satellites’ sewers received up to 20 times more flow than in dry weather. As a result, the Satellites’ sewers overflowed to streets, local watercourses, and San Francisco Bay, creating a risk to public health and impairing water quality. The seven local agencies deliver wastewater to EBMUD’s facilities, and thus, EBMUD’s interceptors and treatment facilities were also subject to overflows during major storm events.

Since the 1980s, both the Satellite communities and EBMUD have implemented numerous projects to reduce wet weather overflows and discharges. Part of the program included the design and construction of EBMUD’s three Wet Weather Facilities (WWFs), located at 2755 Point Isabel Street, Richmond; 225 5th Avenue, Oakland; and 5597 Oakport Street, Oakland. During wet weather, EBMUD discharges wastewater from the three WWFs during peak flow events to help prevent sanitary sewer overflows at upstream locations.

In January 2009, EBMUD was issued an NPDES permit by the San Francisco Bay Regional Water Quality Control Board (RWQCB) that prohibits discharge from the WWFs. In July 2009, EBMUD was issued a Stipulated Order for Preliminary Relief (SO) by U.S. EPA, the State Water Resources Control Board (SWRCB), and the RWQCB. The SO requires that EBMUD take significant steps to reduce wet weather flows in the East Bay wastewater collection systems to eliminate discharges from the WWFs.

The work required by the SO is divided into five main components:

- A. FLOW MONITORING/DATA ASSESSMENT
- B. FLOW MODELING AND LIMITS REPORT
- C. REGIONAL PRIVATE SEWER LATERAL INSPECTION AND REPAIR OR REPLACEMENT PROGRAM
- D. ASSET MANAGEMENT AND INTERIM OPERATION
- E. CONDITIONAL ASSUMPTION OF RESPONSIBILITY FOR COLLECTION SYSTEMS

The scope of this RFP, as described further in Section 2, is intended to cover the work required under component B, FLOW MODELING AND LIMITS REPORT (FMLR). The primary

requirements for the development of the FMLR include analysis of sewer flow and rainfall monitoring data over two years and utilization of this data to: 1) describe flows from the East Bay collection system and 2) model possible reductions in flow that would eliminate the need for discharges from the WWFs.

Requirements and guidelines for preparation of the FMLR are included in the following documents:

- The SO – Attachment A
- EBMUD’s Flow Measurement Work Plan (FMWP) – Attachment B
- EBMUD’s Rainfall Measurement Work Plan (RMWP) – Attachment C
- EBMUD’s Data Assessment Work Plan (DAWP) – Attachment D

The three work plans listed above were submitted as final versions to EPA and the RWQCB in February 2010. The SO provides for a 90-day review and approval process for SO deliverables. EBMUD expects to receive any comments on the final work plans by mid-May 2010.

EBMUD has developed modeling tools over the last few decades to assist in analysis of sewer system response in the East Bay during wet weather conditions. EBMUD’s tools include both hydrologic and hydraulic models. These models have been based on a proven methodology that EBMUD recently employed to assess the results of a flow and rainfall monitoring program conducted in 2005-2007. The scope of work included in this RFP requires use of EBMUD’s existing modeling tools. EBMUD will provide all information and data needed to operate the model to the selected consultant. Additional detailed descriptions of the hydrologic and hydraulic modeling methodologies can be found in the DAWP (Attachment D).

During hydrologic modeling, flow components are modeled using a continuous simulation methodology. Custom software applications called the Program for Infiltration/Inflow Continuous Simulation (PICS) and the Model for Optimization of Storage and Treatment (MOST) are utilized for this purpose.

Hydraulic modeling is performed to dynamically route basin hydrographs through the EBMUD interceptors, including simulation of pump station operations and diversions of flow to the WWFs. The primary modeling tool is the EBMUD Interceptor Model, which was initially developed in the late 1970s and has been updated and refined over the years. The current version (created in 2006 and updated in 2009) utilizes the InfoSWMM modeling software from MWH Soft, which is a GIS-based dynamic hydraulic model that utilizes the public-domain EPA Storm Water Management Model (SWMM) hydraulic computational engine.

PROJECT OBJECTIVES

The project objectives include flow and rainfall data assessment, hydrologic and hydraulic modeling, and preparation of the Flow Modeling and Limits Report required by the SO.

PROJECT SCHEDULE

EBMUD has established a preliminary schedule for this project. The selection process will include a review of consultants' qualifications, project proposals, and interviews.

Issue Request for Proposals	Friday, March 26, 2010
Deadline for Consultant Questions on RFP	4:00 pm Friday, April 2, 2010
EBMUD Responses to RFP Questions*	Thursday, April 8, 2010
Consultant Proposals Due	4:00 pm Friday, April 16, 2010
Request for Interviews (if held)	Wednesday, April 21, 2010
Consultant Interviews (if held)	Week of April 26, 2010
Consultants Notified of Selection	Friday, April 30, 2010
Contract Negotiations Completed	Friday, May 28, 2010
Contract Award by Board of Directors	Tuesday, June 8, 2010
Notice to Proceed	Friday, June 11, 2010
Complete Assessment of 2009/2010 Data	Approx. December 2010
Complete Draft FMLR	Approx. August 2011
Conduct Stakeholder Workshop	Approx. September 2011
Complete Final FMLR to EPA & RWQCB	Approx. December 2011

* EBMUD will provide responses to appropriate questions related to the RFP. Responses will be posted to the RFP web page on www.ebmud.com by approximately April 8th.

SECTION 2 – SCOPE OF WORK

OVERVIEW:

Under this contract the selected consultant will perform tasks necessary to develop EBMUD's Flow Monitoring and Limits Report (FMLR) as required by the SO. All work shall be performed in accordance with the requirements of the SO and as described by the Flow Measurement Work Plan (FMWP), Rainfall Measurement Work Plan (RMWP), and Data Assessment Work Plan (DAWP), included as attachments to this RFP.

EBMUD wishes to engage the Consultant's creative and innovative capabilities in the successful completion of this complex project. The proposal should include a discussion of each task required to fulfill the project objectives with sufficient detail to present a clear summary of your firm's proposed approach, using the scope of work outlined below 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.

Task 1: Calibrate Hydrologic Model

Under this task, the Consultant will calibrate the EBMUD PICS basin flow model. EBMUD's hydrologic model is described in Section 3.1 of the DAWP (Attachment D). As described in the DAWP, EBMUD intends to use appropriate flow and rainfall data collected as part of the FM/DA program along with use of earlier data for calibration of the models and preparation of the FMLR. EBMUD has conducted flow monitoring every winter since 2005/2006.

Task 1.1: Obtain Needed Radar Rainfall Data

The Consultant will work with EBMUD staff to identify the appropriate rain gauge data to be utilized for calibration of radar rainfall data. The Consultant team will supply gauge-adjusted radar rainfall data meeting the requirements described in the SO and Section 2 of the RMWP (Attachment C). The Consultant's duties will include coordinating review of data to ensure appropriate data is provided for the modeling tasks described below. EBMUD has already procured and can provide radar rainfall data for monitoring efforts conducted in 2005-2007.

For the purposes of this proposal, the Consultant should assume that radar rainfall data is needed for periods in which rainfall occurred during the following EBMUD flow monitoring periods:

- January 21, 2008 – April 21, 2008
- December 1, 2009 – March 31, 2009
- November 1, 2009 – March 31, 2010
- November 1, 2010 – March 31, 2011

Task 1.2: Calibrate Hydrologic Model

The Consultant will calibrate the hydrologic model as described by Section 3.2 of the DAWP (Attachment D). Information developed during this task (sample calibration results) is to be included in the FMLR, to be developed under Task 3.

Task 2: Refine Hydraulic Model Parameters

Under this task, the Consultant will update and refine EBMUD's hydraulic model of the Interceptor System, identifying and incorporating revisions to model representation of facilities and operations, and calibrate the model. EBMUD's hydraulic model is described in Sections 4.1 & 4.2 of the DAWP (Attachment D).

Task 2.1: Verify Interceptor Connection Details

The Consultant will make efforts to verify elevations and pipeline diameters for each connection to EBMUD's Interceptor System. It is expected that this effort may include review of EBMUD and Satellite GISs and as-built drawings and possible meetings with Satellite agency staff to gather or confirm information. The work will also include review of connection information gathered by EBMUD's interceptor inspection consultant during inspection of approximately 400 EBMUD manholes performed in 2010 under a separate contract with EBMUD. As necessary, the Consultant will make updates to the hydraulic model based on the information gathered on interceptor connections.

Task 2.2: Review and Verify Model Details and Operating Rules

The Consultant will conduct a review the hydraulic model assumptions and operating rules, including operational controls, pipeline diameters, sediment depths, coefficients of friction, and additional assumptions as needed. Model assumptions should be verified using inspection and flow monitoring data, as-built drawings, and discussions with wastewater operations staff. For the purposes of the proposal, assume at least two meetings with EBMUD staff to discuss system operations and one meeting to review proposed changes to the hydraulic model. As necessary, the Consultant will make updates to the hydraulic model based on the information gathered under this task.

Task 2.3: Calibrate Hydraulic Model

The Consultant will calibrate the hydraulic model as described by Section 4.3 of the DAWP (Attachment D). Calibration will utilize the updated model parameters developed under Tasks 2.1 and 2.2, along with appropriate flow and rainfall monitoring data from available seasons of monitoring (2005-2011). Information developed during this task (sample calibration results) is to be included in the FMLR, to be developed under Task 3.

Task 3: Prepare Flow Monitoring and Limits Report (FMLR)

Under this task, the Consultant will develop a draft and final FMLR and assist with a workshop with regulatory agency, Non-Governmental Organizations (NGO), and Satellite representatives as outlined in the SO and DAWP.

Task 3.1: Develop Information on Flows from Satellite Communities

As described in the SO, the FMLR must summarize the data developed in the Flow Monitoring/Data Assessment Program. Under this task, the Consultant will analyze the flow and rain data and provide summaries to meet the requirements of the SO, including:

- Summary of the data developed under the FM/DA program
- Discussion of the technical accuracy and all correlations among the data
- Identification of any data gaps and discussion of appropriate methods to address such gaps
- Summaries of computer modeling results showing how flows from the Satellites vary as a function of intensity, duration and location of rainfall
- Discussion of any modifications that could be made to improve the computer modeling system

Based on data collected during the 2009-2010 wet weather season, initial summaries of the items above should be presented to EBMUD for review and discussion by approximately December 2010, and should be updated with the monitoring data collected during the 2010-2011 monitoring season. The summaries from both seasons of monitoring will be included in the draft FMLR, to be developed under Task 3.3. This task may also include training for EBMUD staff on improved use of the hydrologic and hydraulic models.

Task 3.2: Develop Five Alternative Sets of Capacity Flow Limits (CFLs)

The Consultant will conduct an interactive process with EBMUD to develop five alternative sets of CFLs to meet the requirements of the SO and following the description outlined in the DAWP. The proposed process should include review and discussion with EBMUD during the development of the assumptions to be used for the alternatives and during analysis of modeling results. The Consultant will use EBMUD's hydrologic and hydraulic models to analyze the selected alternatives. In addition to determining CFLs for each alternative, the Consultant will perform analysis needed to provide the information described under Section 5 of the DAWP, including selection/development of a critical storm event to use in addition to the East Bay I/I Study design event. The proposed process should assume at least three conference calls or meetings with EBMUD.

Task 3.3: Prepare Draft FMLR

The Consultant will prepare the Draft FMLR according to the requirements of the SO and the DAWP. The Draft FMLR should include the information developed under Tasks 3.1 and 3.2.

The proposed scope should allow for at least two rounds of review and revision by EBMUD, including at least one conference call or meeting.

Task 3.4: Provide Support for FMLR Stakeholder Workshop

The Consultant will prepare presentation materials and participate in a workshop with EBMUD, regulatory agency, NGO, and Satellite representatives to discuss the draft FMLR. Prior to the workshop, Consultant will submit draft presentation materials to EBMUD for review and revision, including at least one conference call or meeting. At the workshop, the Consultant may present information from the draft FMLR (or will prepare materials for presentation by EBMUD staff) and answer questions from workshop participants. Following the workshop, the Consultant will prepare a workshop summary to include names and affiliations of attendees, a summary of the workshop presentation, and verbal comments received at the workshop from attendees.

Task 3.5: Prepare Responses to Comments and Final FMLR

Following the workshop stakeholder comment period described by the SO, EBMUD will compile and transmit all written comments to the Consultant. The Consultant will incorporate all comments received into the workshop summary along with proposed responses. The Consultant will also prepare the Final FMLR. The proposed scope should allow for at least two rounds of review and revision by EBMUD, including at least one conference call or meeting.

Task 4: Project Management

The proposed scope should describe how the Consultant proposes to:

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

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

Task 5: Optional Services

Resources under this task are for work as may be specified by EBMUD that is not within the scope of services described under Tasks 1 through 4 of this scope of work. The proposed scope should include any optional services that the Consultant feels may improve successful completion of the project.

SECTION 3 – TEAM QUALIFICATIONS**QUALIFICATIONS SUMMARY FORM**

To be considered for this project, your firm must complete the Qualifications Summary Form on pages 3-5 through 3-8. For all projects listed in the Qualifications Summary Form, a project description must be included to show how it demonstrates the required experience. The Qualifications Summary Form must provide information to demonstrate that the firm(s) and the persons proposed for this project meet or exceed the minimum qualifications required for this project. References, including names and telephone number of individuals who can verify time, budget, and quality of reference work, must be provided for all qualifying project experience.

MINIMUM QUALIFICATIONS**Lead Firm**

The lead firm shall oversee and coordinate all of the study and report preparations, and shall coordinate the work of all its subconsultants. The lead consulting firm must provide information that demonstrates its experience as a prime or major subconsultant on projects of similar type, size and complexity as the one under consideration by including **at least two** examples of studies (completed or in progress, but near completion) in the areas of wet weather sewer flow analysis and assessment of I/I that:

- Utilized hydrologic/hydraulic modeling, with emphasis on separate sewer systems
- Included use of a fully dynamic hydraulic model calibrated to flow monitoring data
- Have a minimum fee of \$200,000
- Have occurred within the last five years

Additionally, provide at least one example of a project (completed or in progress, but largely completed) to meet regulatory enforcement orders related to wet weather overflows or discharges that:

- Has a minimum fee of \$200,000
- Has occurred within the last five years

Indicate the relevance of the projects to this proposed scope of work, and emphasize the experience of the specific individuals proposed to do the work. Up to five examples of relevant work may be included in the Qualifications Summary Form. At least three examples, as described above, are required to meet the minimum qualifications for this RFP.

Consultant Project Manager

The Project Manager will be the primary client contact and is responsible for the day-to-day management of the project and for ensuring that the project schedule, budget and scope concerns are met. Provide information regarding the Project Manager's qualifications and experience (both technical and managerial). The Project Manager must meet the minimum qualifications

outlined below:

- An employee of the lead firm
- A minimum of 10 years of experience
- Successful experience managing **at least one** wet weather management study involving modeling within the past 5 years, with a minimum fee of \$200,000
- Work on **at least one additional** wet weather management study involving modeling within the past 10 years, with a minimum fee of \$100,000.
- The project manager should have demonstrated competency in the following areas:
 - wet weather management studies,
 - hydrologic/hydraulic modeling
 - analysis of flow and I/I data for large wastewater collection systems
 - wet weather management programs driven by regulatory enforcement orders
- The Project Manager must have demonstrated strong project management and organization skills, contract management abilities, and effective communication and interpersonal skills.

The following information for the Project Manager shall also be provided in the proposal for the purpose of demonstrating qualifications beyond the minimums described above:

- Years of Experience
- Description of wet weather management experience, including specific studies worked on
- Minimum and maximum percent (%) time commitment for this project
- Resume (should demonstrate experience beyond minimum qualifications requirements)

Project Team

The lead firm's project team may consist of staff from the lead firm or from other consulting firms with expertise in specific areas (subconsultants). The proposal should clearly identify key personnel for the project and must include, at a minimum, Subject Matter Experts meeting the minimum qualifications listed for the following areas:

- Sewer system hydrologic and dynamic hydraulic modeling:
 - At least five years of project experience related to modeling of sewer system response to rainfall

- At least two projects with a minimum fee of \$75,000, one of which must be in the last 5 years, and one of which must include the use of hydrologic sewer system modeling continuous simulations over multiple storms.
- Development of gauge-adjusted radar rainfall data:
 - At least five years of experience related to development of gauge-adjusted radar rainfall data
 - At least two projects within the last 5 years (no minimum fee)

The proposed Project Team's Subject Matter Experts for the above specified areas must be clearly identified. One individual may be the Subject Matter Expert for more than one of the listed areas, or the Team Project Manager may serve as a Subject Matter Expert. Referenced experience should show successful (i.e., completed work within time and budget constraints and met project goals) completion of a major element of a project involving the area of expertise.

The following information for each Subject Matter Expert and up to three additional key personnel on the Project Team shall be also provided:

- Years of Experience
- Description of area of expertise
- Minimum and maximum percent (%) time commitment for this project
- Resumes (should demonstrate experience beyond minimum qualification requirements)

QUALIFICATIONS EVALUATION

The ability to meet the minimum qualifications requirements will be judged solely on the information contained in the Qualifications Summary Form. The adequacy of a team's response to the requested information will be evaluated by EBMUD. If information is deemed insufficient to meet the minimum requirements, no further review of the submitted documents will be conducted and the proposal will not be considered further.

EBMUD may consider existing or anticipated outside work by proposing teams on I/I analysis or hydrologic/hydraulic modeling of sewer systems and any potential conflicts of interest with the efforts to be completed under this project. The proposal should clearly identify any current work that any firms on the team are currently performing, or are anticipated to perform, for any stakeholder formally involved in the SO process. This includes any Satellite agency identified by the SO or stakeholder NGOs (San Francisco Baykeeper or Our Children's Earth Foundation). Existing contracts should be identified by completing the Project Team Contract Disclosure Form shown on page 3-9, indicating for each project the client (name of Satellite or NGO), the firm name, whether the firm is a lead or subconsultant on the project, a brief description of scope of work, names of the project manager and key personnel, and approximate work start and end dates. As part of the consultant agreement for this project, EBMUD may require the selected consultant and subconsultants to not perform any work directly related to the scope of this RFP

with these agencies for the duration of the agreement. Refer to Section 7 of this RFP for additional information on EBMUD's standard consultant services agreement.

Information provided in the Qualifications Summary Form, Project Team Contract Disclosure Form, and in additional areas of the proposal (such as resumes) may all be utilized by EBMUD in evaluating and comparing the qualifications of each proposing Project Team.

East Bay MUD Infiltration/Inflow (I/I) Control Program Data Assessment and Modeling Qualifications Summary Form				
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 personnel identified, and (3) refer to Section 3 for information on minimum qualifications. This form is available in Microsoft Word format on www.ebmud.com .				
PROJECT TEAM DEFINITION:				
	Firm	Area of Expertise		Est. %
Lead:				
Sub:				
	Individual & Firm	Expertise	Experience (Years)	% Availability
Project Manager				
Sewer System Modeling Subject Matter Expert				
Radar Rainfall Subject Matter Expert				
Additional Key Personnel #1 (optional)				
Additional Key Personnel #2 (optional)				
Additional Key Personnel #3 (optional)				
PRIMARY WORK LOCATION FOR PROJECT MANAGER, SUBJECT MATTER EXPERTS, AND OTHER KEY PERSONNEL:				



<p>LEAD FIRM QUALIFYING EXPERIENCE: Required: Project #1 Name: <i>(Hydrologic/hydraulic modeling)</i> Project Description: Year Prepared: <i>(2005-2010)</i> Contract Fee: <i>(>\$200,000)</i> Contact Name: Contact Phone:</p>	<p>District Use Only</p>
<p>Required: Project #2 Name: <i>(Hydrologic/hydraulic modeling)</i> Project Description: Year Prepared: <i>(2005-2010)</i> Contract Fee: <i>(>\$200,000)</i> Contact Name: Contact Phone:</p>	<p>District Use Only</p>
<p>Required: Project #3 Name: <i>(Response to wet weather regulatory enforcement)</i> Project Description: Year Prepared: <i>(2005-2010)</i> Contract Fee: <i>(>\$200,000)</i> Contact Name: Contact Phone:</p>	<p>District Use Only</p>
<p>Optional: Project #4 Name: Project Description: Year Prepared: Contract Fee: Contact Name: Contact Phone:</p>	<p>District Use Only</p>
<p>Optional: Project #5 Name: Project Description: Year Prepared: Contract Fee: Contact Name: Contact Phone:</p>	<p>District Use Only</p>



<p>PROJECT MANAGER QUALIFYING EXPERIENCE: Required: Project #1 Name: <i>(Project management of a wet weather study involving modeling)</i> Project Description: Year Prepared: <i>(2005-2010)</i> Role: Contract Fee: <i>(>\$200,000)</i> Contact Name: Contact Phone:</p>	
<p>Required: Project #2 Name: <i>(Work on a wet weather study involving modeling)</i> Project Description: Year Prepared: <i>(2000-2010)</i> Role: Contract Fee: <i>(>\$100,000)</i> Contact Name: Contact Phone:</p>	
<p>SUBJECT MATTER EXPERT #1 QUALIFYING EXPERIENCE: Required: Subject Matter Expert #1 Name: <i>(Sewer System Modeling)</i> Project #1 Name: Project Description: Year Prepared: <i>(2005-2010)</i> Contract Fee: <i>(>\$75,000)</i> Contact Name: Contact Phone:</p>	
<p>Required: Subject Matter Expert #1 Name: <i>(Sewer System Modeling)</i> Project #2 Name: Project Description: Year Prepared: Contract Fee: <i>(>\$75,000)</i> Contact Name: Contact Phone:</p>	<p>District Use Only</p>



<p>SUBJECT MATTER EXPERT #2 QUALIFYING EXPERIENCE: Required: Subject Matter Expert #2 Name: <i>(Gauge-adjusted radar rainfall)</i> Project #1 Name: Project Description: Year Prepared: <i>(2005-2010)</i> Contract Fee: Contact Name: Contact Phone:</p>	
<p>Required: Subject Matter Expert #2 Name: <i>(Gauge-adjusted radar rainfall)</i> Project #2 Name: Project Description: Year Prepared: Contract Fee: Contact Name: Contact Phone:</p>	

Project Team Contract Disclosure Form
 (Use additional pages as necessary)
 This form is available in Microsoft Word format on www.ebmud.com.

Client⁽¹⁾	Firm (indicate lead or sub)⁽²⁾	Project Manager and Key Personnel	Scope of work (1-2 sentences)	Approximate Work Start and End Dates⁽³⁾

Notes:

- (1) Include any current, pending, or proposed work with any Satellite agency identified by the SO or stakeholder NGOs (San Francisco Baykeeper or Our Children’s Earth Foundation).
- (2) Indicate whether the firm identified is the lead consultant or a subconsultant on the project for the client identified in column 1.
- (3) Anticipated start and end dates for work by firm indicated in column 2. End date may or may not be the same as the contract expiration date.

SECTION 4 - PROPOSAL

PROPOSAL CONTENTS

The proposal shall be organized and written to demonstrate the project team's approach to completing the work. Refer to the submittal length allowances on the first page of this RFP. The following items should be included in the proposal:

Transmittal Letter

Team Qualifications, including Qualifications Summary Form. Refer to Section 3 for information on minimum qualifications and the Qualifications Summary Form.

Contract Disclosure Form. This form is provided in Section 3.

Project Approach to Scope of Work. 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. Use the tasks outlined in Section 2 - Project Scope as a guide. If changes to the tasks are proposed, discuss reasons for such changes.

Project Management and Staffing. Include a clear statement of project team responsibilities and reporting relationships, work structure for project control and review, allocation of staff identified by name and firm for key tasks. Indicate the portion of time that key staff will be available to work on the project. Also, 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 work plan/schedule for the project including deliverables and other milestone dates.

Contract Equity. Discuss means of addressing EBMUD's contract equity objectives as identified in Section 6 and include the required contract equity forms.

Resumes. Provide resumes as needed (maximum of two pages per person).

PROPOSAL EVALUATION

EBMUD will convene a consultant selection panel to evaluate consultant proposals and interviews, if held. The criteria used to evaluate and rank proposals and interviews will include the following:

Project Team Experience

- Experience in wet weather management studies and analysis of flow and I/I data for large wastewater collection systems
- Experience with sewer flow analysis and assessment of I/I that utilized both hydrologic and hydraulic modeling, with emphasis on separate sewer systems
- Experience utilizing hydrologic models for analyzing sewer system response in continuous simulations over multiple storms
- Experience utilizing fully dynamic hydraulic models calibrated to flow monitoring data
- Familiarity and experience with EBMUD's existing hydrologic and hydraulic models
- Knowledge and experience working with the EBMUD Interceptor System and WWFs and/or EBMUD Satellite collection systems

Project Management

- Demonstration of Project Manager's ability to effectively manage a major I/I control planning study
- Outstanding communication/interpersonal skills of Project Manager
- Project schedule, including milestones and deadlines for key tasks
- Demonstration of ability to ensure completion of work on schedule
- Labor estimate by task and position, including subconsultants
- Demonstration of capability to employ cost control techniques to stay within budget
- Demonstration that Project Manager and Subject Matter Experts, including subconsultants, will be adequately committed through project completion
- Demonstration of avoidance of conflicts of interest specifically related to the work included in this effort

Approach to Work

- Demonstration of understanding of project scope
- Understanding of schedule demands of this project
- Strategies to contain project costs
- Effective and innovative approaches to accomplish the work

Contract Equity Program and Equal Employment Opportunities

- Demonstration of consultant's good faith efforts to meet EBMUD's Contract Equity Program goals

As a public agency, EBMUD is unable to accept proprietary information or confidentiality clauses. EBMUD cannot guarantee confidentiality and will return any confidential or proprietary proposals without reading them.

SECTION 5 - INTERVIEW

Those firms best meeting the project requirements may be invited to present their proposals to EBMUD's consultant selection panel at a seventy-five (75) minute oral review. Firms would be allowed to have up to five team members in attendance for a forty-five (45) minute presentation on the key aspects of their proposal. The remaining thirty (30) minutes would consist of questions by and discussions with EBMUD staff. If held, interviews would be conducted at the EBMUD Administration Building, 375 Eleventh Street, Oakland, CA.

Consultant selection will be based on information provided in the proposal and in the interview, if conducted.

SECTION 6 – M/WBE/EEO/AA GUIDELINES

EBMUD's Contract Equity Program and Equal Employment Opportunity Guidelines are included in the pages that follow. 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. On forms P-040 and P-046, do not enter estimated dollar amount for each firm. Instead, enter the estimated percentage of labor hours for each firm in the estimated dollar amount column. Consultants are expected to make good faith efforts to meet EBMUD's contracting objectives.



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%
BAKERSFIELD	29.7%	24.6%	45.7%
FRESNO	25.1%	21.6%	53.3%
LOS ANGELES-LONG BEACH	20.2%	16.4%	63.5%
MERCED	24.9%	21.1%	54.0%
MODESTO	33.0%	28.4%	38.6%
OAKLAND	28.0%	24.2%	47.8%
REDDING	46.6%	41.5%	11.9%
RIVERSIDE-SAN BERNADINO	28.2%	23.4%	48.3%
SACRAMENTO	36.1%	32.3%	31.6%
SAN DIEGO	32.4%	27.5%	40.2%
SAN FRANCISCO	30.8%	25.1%	44.0%

CA STATISTICAL AREAS	WM%	WW%	EM%
SAN JOSE	26.9%	21.0%	52.1%
SAN LUIS OBISPO-ATASCADERO-PASA ROBLES	42.3%	36.6%	21.1%
SANTA BARBARA-SANTA MARIA-LOMPOC	31.8%	28.6%	39.6%
SANTA CRUZ-WATSONVILLE	37.5%	32.1%	30.4%
SANTA ROSA	39.8%	36.9%	23.4%
STOCKTON-LODI	28.1%	24.5%	47.4%
VALLEJO-FAIRFIELD-NAPA	30.2%	26.8%	42.9%
VENTURA	33.3%	27.6%	39.1%
YUBA CITY	34.9%	31.0%	34.1%

CA COUNTIES	WM%	WW%	EM%
9 BAY AREA COUNTIES*	32.3%	27.8%	39.9%
ALAMEDA/CONTRA COSTA	28.9%	24.9%	46.2%
ALAMEDA	24.5%	21.6%	53.9%
CONTRA COSTA	33.3%	28.2%	38.5%
EL DORADO	46.7%	39.4%	13.9%
FRESNO	24.7%	21.4%	54.0%
LOS ANGELES	20.2%	16.4%	63.5%
MARIN	42.8%	38.4%	18.8%
MENDOCINO	40.4%	37.0%	22.6%
MERCED	24.9%	21.1%	54.0%
MONTEREY	23.8%	21.3%	54.9%
NAPA	37.6%	33.6%	28.8%
ORANGE	30.9%	25.5%	43.6%
RIVERSIDE	30.1%	24.7%	45.3%
SACRAMENTO	32.7%	30.0%	37.3%

CA COUNTIES	WM%	WW%	EM%
SAN BERNARDINO	26.5%	22.3%	51.1%
SAN DIEGO	32.4%	27.5%	40.2%
SAN FRANCISCO	29.2%	22.5%	48.3%
SAN JOAQUIN	28.1%	24.5%	47.4%
SAN LUIS OBISPO	42.3%	36.6%	21.1%
SAN MATEO	28.6%	23.6%	47.9%
SANTA CLARA	26.9%	21.0%	52.1%
SANTA CRUZ	37.5%	32.1%	30.4%
SOLANO	27.8%	24.6%	47.6%
SONOMA	39.8%	36.9%	23.4%
YOLO	31.7%	29.8%	38.5%
YUBA	36.7%	34.0%	29.4%

*ALAMEDA, CONTRA COSTA, MARIN, NAPA, SAN FRANCISCO, SAN MATEO, SOLANO, SONOMA, AND SANTA CLARA

STATES	WM%	WW%	EM%
ALABAMA	40.8%	33.2%	26.0%
ALASKA	40.2%	33.1%	26.7%
ARIZONA	37.0%	31.7%	31.3%
ARKANSAS	44.0%	37.5%	18.5%
CALIFORNIA	28.0%	23.6%	48.4%
COLORADO	42.2%	36.2%	21.6%
CONNECTICUT	42.4%	37.8%	19.8%
DELEWARE	39.3%	35.5%	25.3%
DISTRICT OF COLUMBIA	19.2%	18.0%	62.8%
FLORIDA	35.7%	30.9%	33.4%
GEORGIA	35.9%	30.0%	34.2%
HAWAII	13.1%	11.1%	75.8%
IDAHO	48.6%	40.8%	10.5%
ILLINOIS	38.6%	33.6%	27.8%
INDIANA	47.1%	40.6%	12.3%
IOWA	49.2%	44.8%	6.0%
KANSAS	45.6%	40.1%	14.3%
KENTUCKY	48.4%	41.9%	9.7%
LOUISIANA	37.3%	30.0%	32.7%
MAINE	50.6%	46.5%	2.9%
MARYLAND	34.0%	30.2%	35.8%
MASSACHUSETTS	44.0%	40.6%	15.3%
MICHIGAN	44.1%	37.5%	18.4%
MINNESOTA	47.6%	43.1%	9.3%
MISSISSIPPI	36.1%	29.6%	34.3%
MISSOURI	45.6%	40.3%	14.1%

STATES	WM%	WW%	EM%
MONTANA	49.1%	42.5%	8.4%
NEBRASKA	47.1%	42.7%	10.2%
NEVADA	37.8%	31.3%	30.9%
NEW HAMPSHIRE	50.6%	45.0%	4.4%
NEW JERSEY	36.7%	31.5%	31.7%
NEW MEXICO	26.6%	23.1%	50.3%
NEW YORK	35.0%	30.9%	34.1%
NORTH CAROLINA	39.1%	34.0%	26.9%
NORTH DAKOTA	49.6%	44.4%	6.0%
OHIO	46.1%	40.2%	13.7%
OKLAHOMA	41.7%	35.4%	22.9%
OREGON	45.5%	39.5%	15.0%
PENNSYLVANIA	46.4%	40.2%	13.4%
RHODE ISLAND	44.1%	41.4%	14.5%
SOUTH CAROLINA	37.6%	32.4%	30.0%
SOUTH DAKOTA	48.0%	43.6%	8.4%
TENNESSEE	44.1%	37.1%	18.8%
TEXAS	31.5%	26.1%	42.4%
UTAH	47.7%	39.1%	13.2%
VERMONT	50.4%	46.3%	3.3%
VIRGINIA	38.6%	34.0%	27.3%
WASHINGTON	43.6%	37.6%	18.8%
WEST VIRGINIA	51.9%	43.3%	4.9%
WISCONSIN	47.5%	42.8%	9.6%
WYOMING	49.0%	41.4%	9.6%

TOTAL USA	39.0%	33.7%	27.3%
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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 _____
E-MAIL ADDRESS _____ **SPEC. / PROPOSAL NO. (If applicable)** _____
PHONE NO. _____ **BID / PROPOSAL AMOUNT \$** _____
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.



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)

- 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.

SECTION 7 – EBMUD STANDARD CONSULTANT AGREEMENT

EBMUD's Standard Consultant Agreement is included in the pages that follow. Note that the consultant selected will be expected to enter into an agreement very similar to this example. Please be certain that your firm is able to meet the major requirements of the sample agreement, including confidentiality (paragraphs 1.4 & 1.5), indemnification (paragraph 7.1), and insurance requirements (paragraphs 7.5-7.8). In the event that the selected consultant and EBMUD are unable to reach agreement on the terms of the consultant agreement, EBMUD will enter into negotiations with the next best qualified firm.

*(Standard Consulting Agreement for
Contracts Greater than \$25,000 - Revised 4/22/08)*
(Note: Reference District Procedure No. 124)
**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

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

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.
- 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 pertaining or relating to CONSULTANT's, its associates', employees', subconsultants', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.

7.2 **Not Used**

7.3 **Not Used**

7.4 **Not Used**

7.5 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.

7.6 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.

7.7 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. Not Used
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.

7.8 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, or in any event, no later than _____.(*insert date*) The terms of this Agreement may be amended only in writing signed by both parties.

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)

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, ***(Optional insert - include the following words here only if retention will be accumulated: "the amount invoiced less a ten percent (10%) retention amount,"*** 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. ***(Optional insert - include the following sentence here only if retention will be accumulated: "The retention accumulated to date shall be paid by DISTRICT upon DISTRICT's acceptance of the final version of all documents specified in ARTICLE 1 - SCOPE OF WORK, paragraph 1.6.")***

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	Total			Project Eng.	Assist. Eng.	Total Cost	Project Eng.	Assist. Eng.	Total Cost	Profes- sional Fee**	Total Cost		
Salary Rate (\$/hr.) <u>Services</u>	(****)	(****)	(****)				(****)	(****)		(****)	(****)		(****)	(****)		

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)*.

ATTACHMENT A

STIPULATED ORDER FOR PRELIMINARY RELIEF
CASE NO. CV 09-0186 MEJ

[Available at www.ebmud.com. Click on “Business Opportunities” then “Professional and General Services”]

ATTACHMENT B

EBMUD Flow Measurement Work Plan
February 2010

[Available at www.ebmud.com. Click on “Business Opportunities” then “Professional and General Services”]

ATTACHMENT C

EBMUD Rainfall Measurement Work Plan
February 2010

[Available at www.ebmud.com. Click on “Business Opportunities” then “Professional and General Services”]

ATTACHMENT D

EBMUD Data Assessment Work Plan
February 2010

[Available at www.ebmud.com. Click on “Business Opportunities” then “Professional and General Services”]