

EAST BAY MUNICIPAL UTILITY DISTRICT

REQUEST FOR PROPOSAL (RFP)

for

SB 1343 Sexual Harassment Prevention Training

Primary Contact Person: Maria Berbano, HR Analyst II

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Alternate Contact: Tiffany Chan (510) 287-0119

Email Address: tiffany.chan@ebmud.com

For complete information regarding this project, see RFP posted at <https://www.ebmud.com/business-center/requests-proposal-rfps/> or contact the EBMUD representative listed above. Please note that prospective bidders are responsible for reviewing this site during the RFP process, for any published addenda regarding this RFP.

RESPONSE DUE

by

4:00 p.m.

on

January 10, 2019

at

EBMUD, Purchasing Division

375 Eleventh St., First Floor

Oakland, CA 94607



375 Eleventh Street, Oakland, CA 94607

Website: ebmud.com

EAST BAY MUNICIPAL UTILITY DISTRICT

RFP for

SB 1343 Sexual Harassment Prevention Training

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STATEMENT OF WORK

A. SCOPE

It is the intent of these specifications, terms, and conditions to describe the services required for sexual harassment prevention training. This training should include CA SB 1343 compliance and refresher training in both online and live instructor-led formats for all EBMUD employees covering preventing sexual harassment, discrimination and retaliation that is compliant with state and federal laws. If your company has expertise in this area and an interest in providing the District with this type of service, please respond to this request for proposal.

East Bay Municipal Utility District (District) intends to award a one year contract with two (2) options to renew for one-year terms to the Proposer(s) who best meets the District's requirements.

B. PROPOSER QUALIFICATIONS

Proposer Minimum Qualifications

1. Proposer, Proposer's principal, or Proposer's staff shall have been regularly engaged in the business of providing and/or conducting sexual harassment prevention training both in online and classroom formats for at least three (3) years.
2. Proposer should have the required certifications, authority, or expertise to provide or conduct the training.
3. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.

C. SPECIFIC REQUIREMENTS

It is the policy of the East Bay Municipal Utility District to provide a workplace for all employees that is free from any form of sexual harassment.

EBMUD prohibits workplace harassment against an employee by any supervisor, manager, coworker, and /or any other third party (e.g., applicants, vendors, customers, members of the public, independent contractors) that comes into contact with an employee. EBMUD also prohibits workplace harassment by employees against third parties (e.g., vendors, customers, volunteers, students /trainees, members of the public and independent contractors).

It is EBMUD's belief that prevention of all forms of harassment is achieved through the formation of a purpose driven, caring, and results focused culture built through the embedding of our values of Stewardship, Integrity, Respect, and Teamwork.

It is the intent of these specifications, terms, and conditions to identify and contract a vendor/s to provide Sexual Harassment Prevention Training in accordance with California Senate Bill 1343 (SB 1343). The District is seeking appropriate vendors to provide training in both online and live instructor-led formats. The training should emphasize the required elements of SB 1343, and reflect EBMUD's culture and values focused approach referenced above.

The proposed training should include the following information and learning criteria:

- Methods and approaches for developing a respectful workplace culture that minimizes abusive conduct.
- Strategies to prevent sexual harassment in the workplace.
- A definition of unlawful conduct under FEHA and Title VII of the Civil Rights Act of 1964.
- FEHA and Title VII provisions concerning the prohibition against and the prevention of sexual harassment, discrimination and retaliation in employment.
- The types of conduct that constitute sexual and workplace harassment.
- Remedies available for sexual harassment victims in civil actions and potential employer or individual liability.
- An explanation about the limited confidentiality of the complaint process.
- Practical examples that illustrate sexual harassment, discrimination and retaliation.
- Resources for victims of harassment.
- EBMUD's obligation to conduct an effective workplace investigation of a harassment complaint and take remedial measures to correct harassing behavior.
- A supervisor's obligation to report any complaints of sexual harassment, discrimination and retaliation of which they're aware to a designated EBMUD representative, such as staff of the District's Diversity and Inclusion or Employee Relations divisions.
- What the supervisor should do if he or she is personally accused of harassment.
- The essential elements of the EBMUD anti-harassment policy, and how to use it if a complaint is filed

Per SB 1343, training will be provided to all EBMUD employees during calendar year 2019, with two hour training for all managers, supervisors, and lead employees (610), and one-hour training for all line staff (1290). To minimize operational impacts, training all employees hired in an even year that have not completed the online Harassment Prevention training or the Respect in the Workplace live instructor-led training within the last 12 months will be required to complete training during the first quarter by March 29, 2019. Employees hired during odd years will complete their training during November/December 2019.

D. DELIVERABLES / REPORTS

During the contract term, Proposer will issue a monthly report that includes among other information, the name and number of managers and supervisors and employees who completed the appropriate SB 1343 compliance or refresher training, the training completion date, and actual completion time. The report should also include information about employees who started training but did not complete the training.

II. CALENDAR OF EVENTS

PROPOSED SCHEDULE

EVENT	DATE/LOCATION
RFP Issued	December 21, 2018
Response Due	January 10, 2019 by 4:00 p.m.
Complete Proposal Review & Evaluation	January 18, 2019
Finalist Interviews	January 23-25, 2019
Vendor Notification	Week of January 28, 2019
Anticipated Contract Start Date	February 4, 2019

Note: All dates are subject to change.

Proposers are responsible for reviewing <https://www.ebmud.com/business-center/requests-proposal-rfps/> for any published addenda. Hard copies of addenda will not be mailed out.

III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS

A. RFP ACCEPTANCE AND AWARD

1. RFP responses will be evaluated by the Selection Committee and will be scored and ranked in accordance with the RFP section entitled "Evaluation Criteria/Selection Committee."
2. The Selection Committee will recommend award to the Proposer who, in its opinion, has submitted the RFP response that best serves the overall interests of the District. Award may not necessarily be made to the Proposer with the lowest overall cost.
3. The District reserves the right to award to a single or to multiple Professional Service Providers, dependent upon what is in the best interest of the District.

4. The District has the right to decline to award this contract or any part of it for any reason.
5. Any specifications, terms, or conditions issued by the District, or those included in the Proposer’s submission, in relation to this RFP, may be incorporated into any purchase order or contract that may be awarded as a result of this RFP.
6. Award of contract. The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

B. EVALUATION CRITERIA/SELECTION COMMITTEE

All proposals will be evaluated by a Selection Committee. The Selection Committee may be composed of District staff and other parties that have expertise or experience in this type of procurement. The Selection Committee will select a Proposer in accordance with the evaluation criteria set forth in this RFP. The evaluation of the RFP responses shall be within the sole judgment and discretion of the Selection Committee.

The Selection Committee will evaluate each RFP response meeting the qualification requirements set forth in this RFP. Proposer should bear in mind that any RFP response that is unrealistic in terms of the technical or schedule commitments, or unrealistically high or low in cost, will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District’s requirements as set forth in this RFP.

RFP responses will be evaluated and scored according to the Evaluation Criteria below, and scored according to a zero to five-point scale. The scores for all Evaluation Criteria will then be added to arrive at a weighted score for each RFP response. An RFP response with a high weighted total will be ranked higher than one with a lesser-weighted total.

In responding to this request, please describe your product in detail. The Evaluation Criteria are as follows:

	Evaluation Criteria
A.	<p>Technical Criteria (web-based training)</p> <p>In each area described below, an evaluation will be made of the probability of success of and risks associated with, the RFP response:</p> <ol style="list-style-type: none"> 1. Services - A comparison will be made of the proposed services with the requirements of this RFP. Credit will be given for convenience, responsiveness, and technical expertise. 2. Describe how the training can be accessed and provide information on

	<p>technical requirements to gain access or special hardware or equipment necessary for access to the training.</p>
B.	<p>Training Content (web-based and classroom training)</p> <ol style="list-style-type: none"> 1. Quality of training content - this includes samples of interactive case studies and compliance quizzes and skill building activities; 2. Interactive training offered in a variety of formats: online, webinar, Instructor-led.
C.	<p>Training Documentation (web-based training)</p> <ol style="list-style-type: none"> 1. Documentation of Training and management system – evidence of compliance and ability to track training progress and record retention for a minimum of two (2) years.
D.	<p>Cost and other fees associated with set up and maintenance of training:</p> <p>For classroom or Instructor-led training: provide a per-training class or per-seat cost proposal for delivering these training classes. Please itemize and include all costs involved with the delivery of the training. Include information on volume discounts available and cost of course customization. Also, include class minimum or maximum participants.</p> <p>For web-based or online training: provide the subscription rate or cost per training seat. Include set up fees, maintenance cost, upgrade fees, customization, etc.</p> <p>While not reflected in the Cost evaluation points, an evaluation may also be made of:</p> <ol style="list-style-type: none"> 1. Reasonableness (i.e., does the proposed pricing accurately reflect the Proposer’s effort to meet requirements and objectives?); 2. Realism (i.e., is the proposed cost appropriate to the nature of the products and services to be provided?); and 3. Affordability (i.e., the ability of the District to finance this project). <p>Consideration of price in terms of overall affordability may be controlling in circumstances where two or more RFP responses are otherwise judged to be equal, or when a superior RFP response is at a price that the District cannot afford.</p>
E.	<p>Implementation Plan and Schedule (web-based training)</p> <p>An evaluation will be made of the likelihood that the Proposer’s implementation plan and schedule will meet the District’s schedule. Additional credit will be given for the identification and planning for mitigation of schedule risks which the Proposer believes may adversely affect any portion of the District’s schedule.</p>
F.	<p>Relevant Experience:</p> <p>RFP responses will be evaluated against the RFP specifications and the</p>

	<p>questions below: Training developer experience – training designer must be an expert and the training content is based on materials produced by subject matter experts.</p> <ol style="list-style-type: none"> 1. Do the individuals assigned to the project have experience on similar projects? 2. Are résumés complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires? 3. How extensive is the applicable education and experience of the personnel designated to work on the project?
G.	<p>References (See Exhibit A – RFP Response Packet): If a short list process is used for a solicitation, references are only performed on the shortlisted Proposers and the score for reference checks is not included in the preliminary short list score.</p>
H.	<p>Oral Presentation and Interview: The oral interview may consist of standard questions asked of each of the Proposers and specific questions regarding the specific RFP response.</p>
I.	<p>Methodology: RFP responses will be evaluated against the RFP specifications and the questions below:</p> <ol style="list-style-type: none"> 1. Does the methodology depict a logical approach to fulfilling the requirements of the RFP? 2. Does the methodology match and contribute to achieving the objectives set out in the RFP? 3. Does the methodology interface with the District’s time schedule?
J.	<p>Contract Equity Program: Proposer shall be eligible for SBE or DVBE preference points if they are a certified small business entity, as described in the guidelines contained in Exhibit A-Contract Equity Program, <u>and</u> they check the appropriate box, requesting preference, in Exhibit A-Proposer Information and Acceptance. Qualified DVBEs and/or SBEs will receive an additional 5 points to their total score.</p>

C. PRICING

1. Prices quoted shall be firm for the first 12 months of any contract that may be awarded pursuant to this RFP.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the District.

4. Proposers are advised that in the evaluation of cost, if applicable, it will be assumed that the unit price quoted is correct in the case of a discrepancy between the unit price and extended price.

D. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after the District issues the Notice of Intent to Award, which is sent to all entities who submitted a proposal. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from proposers or potential proposers only.

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

Bid protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the bid, the name of the firm protesting, and include a name, telephone number, email address and physical address of the protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven day time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

The bid protester can appeal the determination to the requesting organization's Department Director. The appeal must be submitted to the Department Director no later than five business days from the date of receipt of the requesting organization's determination on the protest.

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Purchasing Division a copy of all materials sent to the Department Director. The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will

make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

The District may transmit copies of the protest and any attached documentation to all other parties who may be affected by the outcome of the protest. The decision of the District as to the validity of any protest is final. This District's final decision will be transmitted to all affected parties in a timely manner.

E. **INVOICING**

1. Payment will be made within thirty (30) days following receipt of a correct invoice and upon complete satisfactory receipt of product and/or performance of services.
2. The District will notify the General or Professional Service Provider of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized services description.
4. The District will pay General or Professional Service Provider in an amount not to exceed the negotiated amount(s) which will be referenced in the agreement signed by both parties.

IV. RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

A. **DISTRICT CONTACTS**

All contact during the competitive process is to be through the contact listed on the first page of this RFP. The following persons are to be contacted only for the purposes specified below:

FOR INFORMATION REGARDING TECHNICAL SPECIFICATIONS:

Attn: Tiffany Chan

EBMUD- Employee and Organizational Development Division

E-Mail: tiffany.chan@ebmud.com

PHONE: (510) 287-0119

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Tiffany Chan

EBMUD – Employee and Organizational Development Division

E-Mail: tiffany.chan@ebmud.com

PHONE: (510) 287-0119

SUBMITTAL OF RFP RESPONSE

1. Late and/or unsealed responses will not be accepted.
2. RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses or those sent by electronic mail (“e-mail”).
3. RFP responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 4:00 p.m. on the due date specified in the Calendar of Events. Any RFP response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened. All RFP responses must be received and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFP responses.
4. RFP responses are to be addressed/delivered as follows:

Mailed:

Kelley Smith, Manager of Purchasing
East Bay Municipal Utility District
SB 1343 Sexual Harassment Prevention Training
EBMUD–Purchasing Division
P.O. Box 24055
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Kelley Smith, Manager of Purchasing
East Bay Municipal Utility District
SB 1343 Sexual Harassment Prevention Training
EBMUD–Purchasing Division
375 Eleventh Street, First Floor
Oakland, CA 94607

Proposer’s name, return address, and the RFP number and title must also appear on the mailing package.

5. Proposers are to submit **one (1) original hardcopy RFP response and one (1) flash drive with exact copy of the original in PDF format** (Exhibit A – RFP Response Packet, including Contract Equity Program forms and all additional

documentation stated in the “Required Documentation and Submittals” section of Exhibit A), all with original ink signatures.

6. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
7. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.
8. Proposer expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
9. The RFP response shall remain open to acceptance and is irrevocable for a period of 180 days, unless otherwise specified in the RFP documents.
10. It is understood that the District reserves the right to reject any or all RFP responses.

B. RESPONSE FORMAT

1. **Proposers shall not modify any part of Exhibits A, B, C, or D, or qualify their RFP responses. Proposers shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.



EXHIBIT A

RFP RESPONSE PACKET

RFP for SB 1343 Sexual Harassment Prevention Training

To: The EAST BAY MUNICIPAL UTILITY District (“District”)

From: _____
(Official Name of Proposer)

RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFP RESPONSE WITH ORIGINAL INK SIGNATURES, AND ONE (1) ELECTRONIC COPY (preferably in PDF format and on a flash drive) CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFP RESPONSE PACKET**
 - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS”**
- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN WHOLE.**
- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**
- **BIDDERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE.**



PROPOSER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFP documents, including, without limitation, the RFP, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFP documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFP. List Addenda for this RFP on the line below:

Addendum #	Date

4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the Proposer, as set forth in this RFP Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the Proposer is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFP and associated RFP documents.
6. It is the responsibility of each Proposer to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFP response, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: General or Professional Service Providers who do business with the District shall hold the District, its Directors, officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.

8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.
9. The undersigned acknowledges that RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
10. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.
11. The undersigned acknowledges **ONE** of the following (please check only one box)*:
 - Proposer is not an SBE nor a DVBE and is ineligible for any Proposal preference; **OR**
 - Proposer is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, and has completed the CEP and EEO forms at the hyperlink contained in the CEP and EEO section of this Exhibit A.

*If no box is checked it will be assumed that the Proposer is ineligible for Proposal preference and none will be given. For additional information on SBE/DVBE Proposal preference please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above referenced hyperlink.

Official Name of Proposer (exactly as it appears on Proposer’s corporate seal and invoice): _____

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Non-Profit / Church |
| <input type="checkbox"/> Other: _____ | |

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Department of Industrial Relations (DIR) Registration Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



PROPOSAL FORM

Cost shall be submitted on this Proposal Form as is. The prices quoted shall not include Sales Tax or Use Tax; said tax, wherever applicable, will be paid by the District to the General or Professional Service Provider, if licensed to collect, or otherwise directly to the State.

No alterations or changes of any kind to the Proposal Form(s) are permitted. RFP responses that do not comply may be subject to rejection in total. The cost quoted below shall be the cost the District will pay for the term of any contract that is a result of this RFP process.

Quantities listed herein are annual estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

Description: Instructor-Led Training	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
Senior Consultant	hour		\$	\$
Junior Consultant	hour		\$	\$
TOTAL COST				\$

Description: Online Training	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
Set-up Fee			\$	\$
Course Subscription	# of seats		\$	\$
Customization				
Ongoing maintenance & support				
TOTAL COST				\$



REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFP Response Packet. Proposers shall submit all documentation, in the order listed below, and clearly label each section of the RFP response with the appropriate title (i.e. Table of Contents, Letter of Transmittal, Key Personnel, etc.).

1. **Letter of Transmittal**: RFP response shall include a description of the Proposer’s capabilities and approach in providing its services to the District, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. **Key Personnel**: RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services/training to District staff and all key personnel who will provide maintenance and support services. For each person on the list, the following information shall be included:
 - (a) The person’s relationship with the Proposer, including job title and years of employment with the Proposer;
 - (b) The role that the person will play in connection with the RFP;
 - (c) The person’s telephone number, fax number, and e-mail address;
 - (d) The person’s educational background; and
 - (e) The person’s relevant experience, certifications, and/or merits
3. **Description of the Proposed System**: RFP response shall include a description of the proposed system, as it will be finally configured during the term of the contract. Web-based proposers should provide URL and password access to training demo. The description shall specify how the proposed system will meet or exceed the requirements of the District and shall explain any advantages that this proposed system would have over other possible systems.
4. **Description of the Proposed Services**: The description shall contain a basis of estimate for services. The description must: (1) specify how the services in the RFP response will meet or exceed the requirements of the District; (2) explain any special resources or approaches that make the services of the Proposer particularly advantageous to the District; and (3) identify any limitations or restrictions of the Proposer in providing the services that the District should be aware of in evaluating its RFP response to this RFP.

For Instructor-led training: Proposers should provide a sample of the training course.

For web-based/online training: Proposers should provide access to a demo site.

5. **Implementation Plan and Schedule:** The RFP response shall include an implementation plan and schedule. In addition, the plan shall include a detailed schedule indicating how the Proposer will ensure adherence to the timetables for the final system and/or services.
6. **Sustainability Statement:** Contractors shall submit a statement regarding any sustainable, environmental or socially responsible initiatives or practices that they or their suppliers engage in. This information can be in relation to the specific services or work products solicited via this RFP, or in relation to the manufacture, delivery, or business practices of your firm.
7. **References:**
- (a) Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
 - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - Proposers must verify the contact information for all references provided is current and valid.
 - Proposers are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
 - (c) The District may contact some or all of the references provided in order to determine Proposer’s performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided in the RFP response and to use the information gained from them in the evaluation process.
8. **Exceptions, Clarifications, Amendments:**
- (a) The RFP response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, which shall be submitted with the proposer’s RFP response using the template in the “Exceptions, Clarifications, Amendments” section of this Exhibit A – RFP Response Packet.
 - (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**
9. **Contract Equity Program:**
- Every proposer must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. Special attention should be given to completing the following forms:
- **Form P-025 - Employment Data and Certification,** and
 - **Form P-040 – Contract Equity Participation**
- Any proposer needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFP response.



REFERENCES

RFP For SB 1343 Sexual Harassment Prevention Training

Proposer Name: _____

Proposer must provide a minimum of three (3) references

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFP For SB 1343 Sexual Harassment Prevention Training

Proposer Name: _____

List below requests for clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, and submit with your RFP response.

The District is under no obligation to accept any exceptions and such exceptions may be a basis for RFP response disqualification.

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	<i>Proposer takes exception to...</i>

*Print additional pages as necessary



CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

The District's Board of Directors adopted the Contract Equity Program (CEP) to enhance equal opportunities for business owners of all races, ethnicities, and genders who are interested in doing business with the District. The program has contracting objectives, serving as the minimum level of expected contract participation for the three availability groups: white-men owned businesses, white-women owned businesses, and ethnic minority owned businesses. The contracting objectives apply to all contracts that are determined to have subcontracting opportunities, and to all General or Professional Service Providers regardless of their race, gender, or ethnicity.

All Contractors and their subcontractors performing work for the District must be Equal Employment Opportunity (EEO) employers, and shall be bound by all laws prohibiting discrimination in employment. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), genetic information, or sexual orientation.

Contractor and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

All Contractors shall include the nondiscrimination provisions above in all subcontracts.

Please include the required completed forms with your proposal. Non-compliance with the Guidelines may deem a proposal non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

- 1) Reading and understanding the CEP guidelines.
- 2) Filling out and submitting with your bid the following CEP forms.
 - P-025 - Employment Data and Certification Instructions
 - P-040 – Contract Equity Participation

The CEP guidelines and forms can be found at the following direct link:

[Contract Equity Program Guidelines and Forms](#)

The CEP guidelines and forms can also be downloaded from the District website at the following link:

<http://ebmud.com/business-center/contract-equity-program/>

If you have questions regarding the Contract Equity Program please call (510) 287-0114.



EXHIBIT B

INSURANCE REQUIREMENTS

Insurance certificates are not required at the time of submission; however, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District, prior to award.

The following are the minimum insurance limits, required by the District, to be held by the GENERAL OR PROFESSIONAL SERVICE PROVIDER performing on this RFP:

INSURANCE

A. Insurance Requirements

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested shall submit certificates for review and approval by the District. The Notice to Proceed shall not be issued, and GENERAL OR PROFESSIONAL SERVICE PROVIDER shall not commence work until such insurance has been approved by the District. The certificates shall be on forms approved by the District. Acceptance of the certificates shall not relieve GENERAL OR PROFESSIONAL SERVICE PROVIDER of any of the insurance requirements, nor decrease the liability of GENERAL OR PROFESSIONAL SERVICE PROVIDER. The District reserves the right to require GENERAL OR PROFESSIONAL SERVICE PROVIDER to provide insurance policies for review by the District.

B. Workers Compensation Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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, the District will accept a Self-Insured Certificate from the State of California. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

C. Professional Liability Insurance (Errors and Omissions)

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall maintain during the life of the agreement professional liability insurance with a minimum of \$2,000,000/Occurrence. A three year tail is required if coverage on a claims-made basis. A deductible may be acceptable upon approval by the District. The policy will provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Consultant shall require any subcontractor to provide evidence of the same professional liability insurance coverage.

C. Commercial General Liability Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, GENERAL OR PROFESSIONAL SERVICE PROVIDER 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. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages.

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

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

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

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

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) covers explosion, collapse, and underground hazards.
8. The policy(ies) covers *products and completed operations*.
9. The policy(ies) covers the use of *owned, non-owned*, and hired automobiles.
10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.



EXHIBIT C

Professional Services Agreement

*(Standard Consulting Agreement for
Contracts \$80,000 or Less – Revised 7/10/18)*

CONSULTING AND PROFESSIONAL
SERVICES AGREEMENT FOR
EAST BAY MUNICIPAL UTILITY DISTRICT

(Project Title)

THIS AGREEMENT is entered into this ____ day of (*month*), 201_, by and between the **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, herein called "DISTRICT" and (*CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity (a corporation, etc.)*) herein called "CONSULTANT".

WITNESSETH

Whereas, DISTRICT requires consulting services to (*need for project*); and such services are authorized by Purchase Order No. _____; and

WHEREAS, CONSULTANT represents that it has the experience, qualifications, staff expertise, and where necessary, the required Department of Industrial Relations (DIR) registration to perform said services in a professional and competent manner;

NOW, THEREFORE, it is mutually agreed by DISTRICT and CONSULTANT as follows:

1. Scope of Services. CONSULTANT agrees to furnish services as set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein. The work to be performed pursuant to this Agreement shall be completed as outlined in the project schedule.
2. Compensation. DISTRICT agrees to pay CONSULTANT for services under this Agreement according to the rates in attached Exhibit "B" and incorporated herein, provided that total costs shall not exceed the Agreement Ceiling of \$(*dollars*).

CONSULTANT certifies that the proposed rates reflect the payment of prevailing wage rates where applicable.

3. Commencement of Work. 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 specify which tasks and/or optional services of the Scope of Services described in Exhibit "A" are authorized with ceiling prices within the Agreement Ceiling in paragraph 2 above. No work shall commence until the Notice to Proceed is issued.
4. Billing and Payment. CONSULTANT shall invoice DISTRICT monthly for services rendered, setting forth a description of the costs incurred, the services performed, the date the services were performed, the amount of time spent on each date services were performed and by whom. CONSULTANT shall also provide any information which will assist DISTRICT in performing any audit of the invoices. CONSULTANT acknowledges that construction work on public works projects requires DIR registration and 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. DISTRICT will pay CONSULTANT within thirty (30) days after receipt of a proper CONSULTANT invoice. CONSULTANT agrees to use every appropriate method to contain its fees and costs under this Agreement.
5. Termination. This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.

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, data, designs, drawings, report, manuals, photographs, computer software, videotapes, and other materials provided to or prepared by CONSULTANT 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 and CONSULTANT shall be entitled to no other compensation or damages including, but not limited to, loss of anticipated profits, and expressly waives the same. Termination under this Paragraph 5 shall not relieve CONSULTANT of any warranty obligations or the obligations under Paragraphs 6 and 10.

6. Release of Information. 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.

7. Ownership of Materials Prepared. 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.
8. Designation of Consulting Personnel. CONSULTANT agrees that all services under this Agreement shall be performed under the direction of (*Consultant Project Manager's name*). Any change of personnel by CONSULTANT shall have DISTRICT approval. DISTRICT contact throughout the period of this Agreement shall be (*District Project Manager's name*), Project Manager.
9. Independent Contractor and Professional Responsibility of Consultant.
 - a. 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. CONSULTANT is an independent consultant and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT. CONSULTANT represents that it has all necessary licenses to perform the work and shall maintain them during the term of this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from its professional responsibility for the work performed.
 - b. 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.
 - c. 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.
 - d. 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.

(IF DEPT. WANTS TO MODIFY INDEMNITY LANGUAGE, PLEASE SUBMIT JUSTIFICATION IN WRITING TO LEGAL, CC: RISK MANAGER.)

10. 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.

(OR if contract is NOT with a design professional (engineers, architects, landscape architects, land surveyors or their firms) USE THIS PARAGRAPH 10 INSTEAD:

10. Indemnification

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

11. Insurance. CONSULTANT shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested 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 approved by DISTRICT. *(see*

[Certificate of General and Auto Liability Insurance 8-11.doc](#)

[Certification of Professional Liability Ins.doc](#)

[Certification of Workers Comp Insurance 3-26-10.doc](#)

[Certificate of Pollution Liability Insurance 8-23-11.doc](#)

(print out for consultant to use)

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.

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.

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 shall be not less than the following:

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

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

The following coverages or endorsements must be included in the policy(ies): *(Use only those coverages that apply and type [x] in boxes on Commercial General Liability Certificate. Questions should be directed to Risk Management, x0177.)*

1. The DISTRICT, 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.
4. The policy(ies) is/are written on an occurrence basis.
5. The policy(ies) cover(s) District's Property in Consultant's care, custody and control.
6. The policy(ies) cover(s) personal injury (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) cover(s) explosion, collapse and underground hazards.

8. The policy(ies) cover(s) products and completed operations.
9. The policy(ies) cover(s) use of owned, non-owned and hired automobiles.
10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

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. The policy will provide 30 days' written notice to DISTRICT for cancellation or reduction in coverage.

12. Time of the Essence. CONSULTANT agrees to diligently perform the services to be provided under this Agreement in accordance with the schedule specified herein. In the performance of this Agreement, time is of the essence.
13. Notice. Any notice or communication given under this Agreement shall be effective when deposited postage prepaid with the United States Postal Service and addressed to the contracting parties as follows:

EBMUD
P. O. Box 24055
Oakland, CA 94623
Attn: (**Contact Person**)

(**Consultant's Name**)
(**Address**)
Attn: (**Contact Person**)

Either party may change the address to which notice or communication is sent by providing advance written notice to the other party.

14. Entire Agreement and Governing Law. This Agreement shall be governed by the laws of the State of California and constitutes the entire Agreement of the parties, superseding all prior agreements written or oral and superseding the reverse side of the purchase order, between them on the subject.
15. No Assignment or Modifications. This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and except

as provided herein CONSULTANT shall not assign, transfer, subcontract, or otherwise substitute its interest in this Agreement or any of its obligations herein without the written consent of DISTRICT. This Agreement may be modified only by a written amendment signed by the parties.

16. No Waiver. 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.
17. No Discrimination. There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

CONSULTANT shall include the nondiscrimination provisions above in all subcontracts.

- 18. Conflict of Interest. 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.
- 19. Term. Unless terminated pursuant to Article 5 herein, this Agreement shall expire when all tasks have been completed and final payment has been made by DISTRICT.

(NOTE: do not have a page break leaving signatures by themselves)

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
(Name),
(Title)

Date _____

Approved As To Form

By: _____
for the Office of the General Counsel

(Proc. 451 requires legal review and approval of contracts under \$80,000 that do not conform to standard consulting agreement; otherwise, signature block may be deleted.)

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

By: _____
(Name),
(Title)

Date _____

Rev.7/10/18

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)

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

A. Hourly Rates

Project Manager	\$(dollars)
Project Engineer	\$(dollars)
CAD Operator (Drafting)	\$(dollars)
Clerical	\$(dollars)

These hourly rates include salary, overhead and profit. Unless expressly agreed in writing prior to expenses being incurred, the DISTRICT will not reimburse the CONSULTANT for the following types of costs and expenses, which shall be considered part of the CONSULTANT's overhead included in the hourly billing rates:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage between CONSULTANT's office and DISTRICT offices or work locations within DISTRICT service area. For work outside of the DISTRICT's services area, DISTRICT approval to charge for vehicle usage and mileage and other travel expenses must be obtained prior to the expenses being incurred.
- 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 or overnight 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.
- Local meals, transportation or other travel charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

B. Prevailing Wages and Other Requirements for Construction Inspection, and Construction Related Work During Design and Preconstruction Phases of Construction. *(Optional Insert – include this paragraph B and the following paragraphs 1-14 if your Scope of Services includes construction, alteration, demolition, installation, maintenance, repair work, or other construction related work during the design or preconstruction phases of construction including but not limited to inspection and land surveying.)*

1. All Contractors and Subcontractors of any tier bidding on, or offering to performing work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).
2. All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required post job site notices, "as prescribed by regulation" (LC § 1771.4).
3. Pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. A copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at www.dir.ca.gov.
4. The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
5. Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
6. The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.
7. General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.
8. The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form
9. For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776

directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.

10. In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
11. Pursuant to the provisions of Sections 1810, et seq. of the Labor Code the time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week, unless work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one half times the basic rate of pay.
12. The Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of the provisions of Labor Code, Sections 1810, et seq.
13. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.
14. In the performance of a public works contract, the Contractor and any Subcontractor shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof. In the event the Contractor or any Subcontractor willfully fails to comply with this requirement the Contractor or Subcontractor shall be subject to the penalties for noncompliance in Labor Code section 1777.7.
15. The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

EXHIBIT D
EEO and Prevention of Workplace Harassment
Policies and Procedure

Policy 2.25 Equal Employment Opportunity

Policy 2.26 Prevention of Workplace Harassment

Procedure 227 Equal Employment Opportunity (EEO) Discrimination, Harassment and Retaliation Complaints, Investigations and Appeals



Policy 2.25

EFFECTIVE 28 MAR 17

SUPERSEDES 11 FEB 14

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Ensure equal employment opportunity for all persons in all aspects of employment.

Purpose To provide equal employment opportunity (EEO) for all persons on the basis of job-related merit and ensure fairness in the District's employment practices. Procedure 227 implements this policy and sets forth the complaint process and complaint mechanisms, in compliance with state law.

Scope This policy prohibits unlawful discrimination, harassment, and retaliation by any supervisor, manager, coworker, and/or any other third party that comes into contact with an employee. This policy prohibits EEO discrimination against any job applicant, employee or student/trainee by an employee of the District on the basis of a protected group status. Board members will not discriminate against or harass any person, as provided in the Ethics Policy of the EBMUD Board of Directors (Policy 6.04), and consistent with this policy.

Consistent with, and in furtherance of, this policy and applicable federal and state laws, the District develops and implements Affirmative Action Programs. The District uses inclusive and creative recruitment, outreach and placement methods that further the District's efforts to achieve a diverse workforce composition reflective of the labor market in regards to gender and race/ethnicity. The District uses good faith outreach efforts that are neutral and do not favor, discriminate against, or disparately impact any group. The District also takes affirmative action to employ and advance in employment qualified protected veterans and individuals with disabilities.

Definitions

Applicant

An individual who has completed an employment application and met minimum qualifications for a specific, available position at the District.

EEO Discrimination

EEO discrimination involves making employment decisions on the basis of an individual's protected group status, including but not limited to, decisions regarding the following aspects of the employment relationship:

- Recruitment
- Hiring
- Placement
- Promotion
- Transfer
- Training
- Working terms and conditions
- Wage and salary administration
- Employee benefits and application of policies

Discrimination includes harassment on the basis of a protected group and failure to accommodate a religious practice or provide a reasonable accommodation for a qualified individual with a disability.

In addition, discrimination includes retaliation. Retaliation against employees alleging discrimination or harassment, or involved as witnesses in a discrimination or harassment investigation is prohibited, regardless of whether or not the original complaint is substantiated. Employees who oppose and/or refuse to participate in prohibited discrimination or harassment are also protected against retaliation.

Employee

An individual selected and/or appointed to a position created and authorized by the Board of Directors and receiving compensation and benefits from the District, including individuals in Board authorized job classifications with the term intern in the title.

Student/Trainee

Any District authorized student or trainee who is not compensated by the District but is either paid by a third party or retained by a third party to work at the District in order to gain job experience or academic credit.

Protected Groups

This policy prohibits discrimination or harassment on the basis of race, color, religious creed, sex, gender, gender identity, gender expression, marital or registered domestic partnership status, age for individuals over forty years of age, national origin, ancestry, disability (mental or physical, including AIDS and HIV), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and/or local laws.

Retaliation

Retaliation involves taking an adverse action, e.g., firing, demoting, harassing, or otherwise "retaliating" against someone, because they engaged in a protected activity, i.e., filed a charge of discrimination, complained to the District or other entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).

Workplace

The workplace exists where there is a nexus between the behavior and the EEO rights of employees or others (customers, vendors, member of the public, etc.). The workplace may include District facilities and worksites, or off-site locations, outside of the District's facilities, such as off-site meetings and trainings and social functions involving District employees or related to District activities.

Responsibilities

All District employees are required to report to their supervisor and/or manager and/or to the Diversity and Inclusion Office (DIO) any EEO discrimination or workplace harassment of which they become aware. Supervisors and/or managers are held to a higher reporting standard. They are required to report to their supervisor and/or manager and to the DIO any EEO discrimination or workplace harassment of which they are notified or become aware. The report should be made within two (2) business days of the supervisor and/or manager becoming aware of the conduct prohibited by this policy.

Supervisors at all levels act on behalf of the District. A supervisor's duties include monitoring his or her work unit for discriminatory or harassing behavior and taking appropriate steps to stop and correct behavior that violates the District's EEO policy. At the same time, supervisors must enforce this policy as well as adhere to it. Each supervisor is expected to familiarize himself or herself with the District's policies prohibiting EEO discrimination and harassment, to incorporate them into his or her own workplace conduct, and to inform employees in the work unit to do the same. Supervisors, managers and Board Members are required to take sexual harassment prevention training within six (6) months of assuming their position and every two (2) years thereafter.

Once conduct prohibited by this policy has been reported in a work unit, periodic and regular follow-up by the supervisor or the DIO shall be taken to monitor the workplace for discriminatory or harassing behavior, and to prevent retaliation from occurring. Employees are also responsible for notifying the DIO or supervisors if retaliation occurs.

Remedies

Violations of this policy, regardless of whether an actual law has been violated, will not be tolerated. The District will promptly, thoroughly and fairly investigate every issue that is brought to its attention in this area and will take corrective actions, as appropriate, up to and including termination of employment. The investigation will provide all parties appropriate due process and reach reasonable conclusions based on the evidence collected.

Authority

Resolution 32952-95, December 12, 1995
As amended by Motion 173-01, October 9, 2001
As amended by Resolution 33438-04, September 14, 2004
Reaffirmed by Motion 195-07, November 13, 2007
As amended by Motion 016-09, February 10, 2009
Reaffirmed by Motion 006-11, January 11, 2011
As amended by Resolution 33864-12, January 24, 2012
Reaffirmed by Motion 026-14, February 11, 2014
As amended by Resolution 35029-17, March 28, 2017

Title VII, Civil Rights Act of 1964 as amended (42 USC §2000e et seq.), including The Pregnancy Discrimination Act; The Equal Pay Act of 1963 (29 USC §206(d) et seq.); The Age Discrimination in Employment Act of 1967 (29 U. S.C. §621 et seq.); Title I of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.); The Genetic Information Nondiscrimination Act of 2008; Immigration Reform and Control Act (8 USC 1101 et seq.); Executive Order 11246; Family and Medical Leave Act ([29 U.S.C. §2601, et seq.](#)); Rehabilitation Act of 1973, Section 503; Uniformed Services Employment and Reemployment Rights Act ([38 U.S.C. §§ 4301–4335](#)); Vietnam Era Veterans' Readjustment Assistance Act ([38 U.S.C. § 4212](#)); California Fair Employment and Housing Act (Gov. Code §12900 et seq.), including the California Family Rights Act ([Gov. Code §12945.2](#)).

Equal Employment Opportunity (EEO)

NUMBER 2.25

PAGE NO.: 4

EFFECTIVE DATE: 28 MAR 17

References

Policy 2.02 Accommodation for Individuals with Disabilities in the Workplace
Policy 2.05 Employee Discipline
Policy 2.26 Prevention of Workplace Harassment
Policy 6.04 Ethics Policy of the EBMUD Board of Directors
Procedure 201 Accommodation for Individuals with Disabilities in the Workplace
Procedure 223 Discipline
Procedure 227 Equal Employment Opportunity (EEO) Discrimination, Harassment and Retaliation Complaints, Investigations and Appeals

District Affirmative Action Programs



Policy 2.26

EFFECTIVE 28 MAR 17

SUPERSEDES 11 FEB 14

PREVENTION OF WORKPLACE HARASSMENT

IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Provide a workplace for all employees that is free from any form of harassment.

Purpose To prohibit workplace harassment and establish commitments to address violations and take appropriate corrective actions. Procedure 227 implements this policy and sets forth the complaint process and complaint mechanisms, in compliance with state law.

Scope This policy prohibits workplace harassment against an employee by any supervisor, manager, coworker, and/or any other third party (e.g., applicants, vendors, customers, members of the public, independent contractors) that comes into contact with an employee. This policy also prohibits workplace harassment by employees against third parties (e.g., vendors, customers, volunteers, students/trainees, members of the public and independent contractors). Board members will not discriminate against or harass any person, as provided in the Ethics Policy of the EBMUD Board of Directors (Policy 6.04), and consistent with this policy.

This policy applies to conduct in the workplace.

Definitions

Applicant

An individual who has completed an employment application and met minimum qualifications for a specific, available position at the District.

Customer

A person who receives District water and/or wastewater services.

Equal Employment Opportunity (EEO) Discrimination

EEO discrimination involves making employment decisions on the basis of an individual's protected group status, including but not limited to, decisions regarding the following aspects of the employment relationship:

- Recruitment
- Hiring
- Placement
- Promotion
- Transfer
- Training
- Working terms and conditions
- Wage and salary administration
- Employee benefits and application of policies

Discrimination includes harassment on the basis of a protected group and failure to accommodate a religious practice or provide a reasonable accommodation for a qualified individual with a disability.

Employee

An individual selected and/or appointed to a position created and authorized by the Board of Directors and receiving compensation and benefits from the District, including individuals in Board authorized job classifications with the term intern in the title.

Independent Contractor

A person that is not an employee of the District and provides goods or services to the District under terms specified in a contract.

Student/Trainee

Any District authorized student or trainee who is not compensated by the District but is either paid by a third party or retained by a third party to work at the District in order to gain job experience or academic credit.

Protected Groups

District policy prohibits discrimination or harassment on the basis of race, color, citizenship or immigration status, religious creed, gender (including gender identity and gender expression), marital or registered domestic partnership status, age, national origin, ancestry, disability (mental or physical, including AIDS and HIV), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy disability leave, or any other status protected by federal, state and/or local laws.

Retaliation

Retaliation involves taking an adverse action, e.g., firing, demoting, harassing, or otherwise "retaliating" against someone, because they engaged in a protected activity, i.e., filed a charge of discrimination, complained to the District or other entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).

Sexual Harassment

See Workplace Harassment definition below.

Vendor

An employee, owner, or agent of a company that provides goods or services to the District.

Volunteer

Individuals serving as unpaid helpers for various community events. Individuals who volunteer or donate their services, usually on a limited basis, for public service, religious or humanitarian objectives for non-profit organizations that receive their service.

Workplace

The workplace exists where there is a nexus between the behavior and the EEO rights of employees or others (customers, vendors, member of the public, etc.). The workplace may include District facilities and worksites, or off-site locations, outside of the District's facilities, such as off-site meetings and trainings and social functions involving District employees or related to District activities.

Workplace Harassment

Workplace harassment is unwelcome conduct that is based on protected group status, including **sexual harassment**. **Workplace harassment** is a form of EEO discrimination and may include verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her protected group status that:

- has the purpose or effect of creating an intimidating, hostile or offensive work environment,
- has the purpose or effect of unreasonably interfering with an individual's work performance, or
- otherwise adversely affects an individual's employment opportunities.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, physical, visual, or other conduct of a sexual nature, when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, e.g., explicitly or implicitly conditioning a job or promotion on an applicant or employee's submission to sexual advances or other conduct based on sex, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

An employee alleging sexual harassment is not required to sustain a loss of tangible job benefits to establish sexual harassment. In addition, hostile acts toward an employee because of his/her gender can amount to sexual harassment, regardless of whether the treatment is motivated by any sexual desire.

This policy prohibits harassing conduct, regardless of whether the conduct rises to the level of a legal violation.

Prohibited workplace harassment conduct includes, but is not limited to:

- **Verbal Conduct** such as epithets, derogatory jokes or comments, slurs (including racial and ethnic slurs), negative stereotyping, sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats, requests for any type of sexual favor (this includes repeated, unwelcome requests for dates), and verbal abuse.
- **Visual Conduct** such as threatening or intimidating acts; written or graphic material, including calendars, posters and cartoons, including items that are sexually suggestive or show hostility toward an individual or group because of sex; leering, staring; obscene gestures; offensive or abusive content in letters and notes, facsimiles, email, photos, text messages, tweets and Internet postings; and or other forms of communication based on a protected group status.
- **Physical Conduct** such as forced sexual intercourse, sexual acts or assault; unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing and fondling; intentionally blocking normal movement.
- **Threats or Demands** to submit to sexual requests in order to keep a job or affecting other employment status.
- **Offers** of employment benefits in return for sexual favors.

Prevention

The District believes that prompt appropriate action should be taken to prevent or stop incidents of workplace harassment, and strongly encourages employees to express their objections to unwelcome conduct, either to the perpetrator directly or to the Diversity and Inclusion Office (DIO) or any District supervisor. However, just because an employee has not complained about harassment does not mean that the employee has not been harassed. Failure to communicate with the perpetrator does not prevent an employee from filing a complaint, nor does it in any way exonerate the harasser.

Responsibilities

All District employees are required to report to their supervisor and/or manager and/or to the DIO any workplace harassment of which they become aware. Supervisors and/or managers are held to a higher reporting standard. They must report to their supervisor and/or manager **and** the DIO any apparent or suspected workplace harassment or retaliation. The report should be made within two (2) business days of becoming aware of the offending conduct. Managers and supervisors who knowingly allow or tolerate workplace harassment or retaliation, including the failure to timely report such misconduct, are in violation of this policy and subject to corrective action.

In cases of potential workplace harassment, including sexual harassment, supervisors have a legal responsibility to take timely action if they know or should have known of a harassing situation. When a supervisor learns of, observes, has reason to believe, or is informed of a potential harassment situation, the supervisor must consult with the DIO. The supervisor, upon learning of a possible harassment incident, *especially sexual harassment*, is required to take timely action, in coordination with the DIO, to address the concern regardless of the victim's stated desire to pursue or not to pursue the matter.

Enforcement

Workplace harassment, including sexual harassment, will not be condoned or tolerated. The District provides training to its managers, supervisors, and employees to prevent and address workplace harassment and abusive conduct, and to assist them in dealing sensitively and effectively with incidents of harassment. When any District supervisor or manager is notified or becomes aware of any behavior that violates this policy, they are required to take corrective actions.

Complaints and cases of harassment brought to the attention of the Diversity and Inclusion Officer or any District supervisor shall be handled promptly through a confidential procedure. Appropriate remedial or disciplinary action will be taken when warranted, up to and including termination. Retaliation against employees alleging harassment or involved as witnesses in a harassment investigation is prohibited, regardless of whether or not the original complaint is substantiated. Employees who oppose and/or refuse to participate in harassment are also protected against retaliation. If retaliation occurs, the District will take further corrective actions up to and including termination.

Consensual Relationships

The District is aware that consensual intimate relationships sometimes develop between District employees. Although these relationships do not in and of themselves violate this harassment policy, the District is sensitive to the potential for such relationships to give rise to conditions where sexual harassment might occur, especially where the relationship involves supervisor and subordinate. The District therefore adopts the following:

If current employees become involved in consensual intimate relationships where one employee is in a position to directly make or influence employment decisions about the other or to directly affect any term or condition of the other's employment, it is the responsibility of each of the employees to advise their supervisor of the relationship. The supervisors shall consult with Human Resources regarding the appropriate organizational response which will best protect both the District and the employees involved.

Authority

Resolution No. 32952-95, December 12, 1995
As amended by Resolution No. 33438-04, September 14, 2004
Reaffirmed by Motion 006-11, January 11, 2011
As amended by Resolution No. 33864-12, January 24, 2012
Reaffirmed by Motion 026-14, February 11, 2014
As amended by Resolution No. 35029-17, March 28, 2017

Title VII, Civil Rights Act of 1964 as amended (42 USC §2000e et seq.), including The Pregnancy Discrimination Act; The Age Discrimination in Employment Act of 1967 (29 U.S.C. §621 et seq.); Title I of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.); The Genetic Information Nondiscrimination Act of 2008; Immigration Reform and Control Act (8 USC 1101 et seq.); Executive Order 11246; Family and Medical Leave Act (29 U.S.C. §2601, et seq.; Rehabilitation Act of 1973, Section 503; Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §§ 4301–4335); Vietnam Era Veterans’ Readjustment Assistance Act (38 U.S.C. § 4212); California Fair Employment and Housing Act (Gov. Code §12900 et seq.), including the California Family Rights Act (Gov. Code §12945.2).

References

Policy 2.05	Employee Discipline
Policy 2.25	Equal Employment Opportunity (EEO)
Policy 6.04	Ethics Policy of the EBMUD Board of Directors
Procedure 223	Discipline
Procedure 227	Equal Employment Opportunity (EEO) Discrimination, Harassment and Retaliation Complaints, Investigations and Appeals



Procedure 227

EFFECTIVE 06 MAR 17

SUPERSEDES 17 JAN 12

LEAD DEPARTMENT HR

EQUAL EMPLOYMENT OPPORTUNITY (EEO) DISCRIMINATION, HARASSMENT AND RETALIATION COMPLAINTS, INVESTIGATIONS AND APPEALS

PURPOSE – This procedure implements Policies 2.25 and 2.26 and sets forth the complaint process and complaint mechanisms, in compliance with state law. This procedure assigns responsibilities within the District for investigating and resolving complaints reported to the Diversity and Inclusion Office (DIO) alleging Equal Employment Opportunity (EEO) discrimination, workplace harassment (including sexual harassment) or retaliation in violation of Policies 2.25 and 2.26 to assure timely, consistent, and appropriate action.

Forms Used Q-006 – EEO Discrimination/Harassment Complaint (from the DIO)
PE-105 – Statement of Grievance (from Locals 2019, 444, 39 and 21)

Scope For applicants for employment, employees and students/trainees to claim EEO discrimination and/or workplace harassment based on protected group status and/or for related retaliation claims. For independent contractors, vendors and volunteers to claim EEO harassment based on protected group status.

Independent contractors, vendors and volunteers should report any claims of EEO discrimination and/or retaliation to the District Contract Equity Office.

Definitions

Applicant

An individual who has completed an employment application and met minimum qualifications for a specific, available position at the District.

Complaint

An oral or written allegation of discrimination, harassment, and/or retaliation.

Complainant

The person raising a complaint.

EEO Discrimination

EEO discrimination involves making employment decisions on the basis of an individual's protected group status, including but not limited to, decisions regarding the following aspects of the employment relationship:

- Recruitment
- Hiring
- Placement
- Promotion
- Transfer
- Training
- Working terms and conditions
- Wage and salary administration
- Employee benefits and application of policies

Discrimination includes harassment on the basis of a protected group and failure to accommodate a religious practice or provide a reasonable accommodation for a qualified individual with a disability.

Employee

An individual selected and/or appointed to a position created and authorized by the Board of Directors and receiving compensation and benefits from the District, including individuals in Board authorized job classifications with the term intern in the title.

Independent Contractor

A person that is not an employee of the District and provides goods or services to the District under terms specified in a contract.

Student/Trainee

Any District-authorized student or trainee who is not compensated by the District but is either paid by a third party or retained by a third party to work at the District in order to gain job experience or academic credit.

Protected Groups

Policy 2.25 – Equal Employment Opportunity prohibits discrimination or harassment on the basis of race, color, religious creed, gender (including gender identity and gender expression), marital or registered domestic partnership status, age, national origin, ancestry, disability (mental or physical, including AIDS and HIV), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and/or local laws.

Respondent

The person accused of violating Policy 2.25 and/or 2.26, and related policies and procedures.

Retaliation

Retaliation involves taking an adverse action, e.g., firing, demoting, harassing, or otherwise "retaliating" against someone, because they engaged in a protected activity, i.e., filed a charge of discrimination, complained to the District or other entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).

Vendor

An employee, owner, or agent of a company that provides goods or services to the District.

Volunteer

Individuals serving as unpaid helpers for various community events. Individuals who volunteer or donate their services, usually on a limited basis, for public service, religious or humanitarian objectives for non-profit organizations that receive their service.

Workplace

The workplace exists where there is a nexus between the behavior and the EEO rights of employees or others (customers, vendors, member of the public, etc.). The workplace may include District facilities and worksites, or off-site locations, outside of the District's facilities, such as off-site meetings and trainings and social functions involving District employees or related to District activities.

**Complaint
Procedures**

Any complainant who believes that he/she has experienced EEO discrimination or harassment is encouraged to file a complaint within 30 working days of the last discriminatory or harassing incident. However, complainants have 365 calendar days from the date of the last incident to file a complaint with the DIO.

The District encourages the early reporting of conduct which can reasonably be construed as EEO discrimination, harassment and/or retaliation. Early reporting permits a timely and accurate review/investigation of the issue, and allows for a more timely District response, as appropriate.

Complaints can be made orally or in writing. The EEO Discrimination/Harassment Complaint Form (Form Q-006) may be obtained from the DIO. If the complaint is filed as a grievance, the appropriate grievance form must be used in addition to the Form Q-006.

A complaint may be raised with:

- the employee's supervisor or other District supervisor;
- a manager in Human Resources;
- the DIO; or
- an employee's union representative

Managers, supervisors, other District officials, and Union representatives should immediately forward complaints to the DIO. Written complaints should be placed in a sealed envelope, marked confidential, and then forwarded to the DIO.

Supervisor/Manager Responsibilities

Supervisors must be familiar with this procedure and be ready to assist employees (including those who do not report directly to them) who wish to lodge complaints. Supervisors must regard all complaints of discrimination, harassment and/or retaliation seriously. They should not ignore or minimize such complaints or otherwise discourage employees from reporting them.

During the complaint process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the complainant will be protected to the degree feasible. The expressed wishes of the complainant for confidentiality will be considered in the context of the District's legal obligation to act on the complaint and the right of the respondent to obtain information necessary to his/her defense of the complaint. In most cases, however, confidentiality will be strictly maintained by the District and those involved in the investigation. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to applicable state or federal law.

All employees have a right to file with an external agency. The statute of limitation to file a complaint with the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) is 365 calendar days and 300 calendar days, respectively, from the last discriminatory incident. DFEH contact information: www.dfeh.ca.gov, (800) 884-1684, contact.center@dfeh.ca.gov. EEOC contact information: www.eeoc.gov, (800) 669-4000, info@eeoc.gov.

Investigation Procedures

Intake Interview

Within 10 working days of receipt of a complaint, the DIO will schedule an intake interview. The intake interview will be recorded to maintain the accuracy of notes, unless the complainant declines to be recorded. If the complainant does not want to be recorded, a third party note-taker, of the investigator's choice, will be present during the interview. Complainants are expected to notify the DIO at least two working days in advance if they do not wish to be recorded so that the investigator can make arrangements for a third-party note-taker and to avoid a needless delay of the intake interview. If recorded, the complainant may also record the intake interview, upon consent of the investigator, or request a copy of the recording.

During the intake interview, complainant should state the basis for the charge of discrimination, harassment and/or retaliation, describe the specific action about which he/she is complaining, provide all details of the incident(s), and supply the names of all the individuals involved, including any witnesses.

The DIO will determine if the complainant's claim is:

- Timely;
- States a *prima facie* case – i.e., if complainant provided information that would lead the DIO to infer, absent other evidence, that discriminatory conduct or harassment may have occurred due to complainant's protected group status; and/or
- Requires formal investigation or the matter can be handled and resolved at the Department level in a manner that addresses the complainant's concerns.

If the DIO determines that a case is either untimely and/or that complainant has not stated a *prima facie* case, the DIO will not accept the case.

If the DIO determines that a case is timely, that complainant has stated a *prima facie* case, but that the case can be resolved at the Departmental level, the DIO will contact and work with the respondent's department to resolve the issue.

Supervisors working with the DIO to resolve complaints at the Departmental level should understand that all discussions with individuals involved or potentially involved in a discrimination, harassment or retaliation complaint shall be done in an objective non-accusatory fashion, with the goal of obtaining and understanding all of the facts. During the discussion, the employee(s) should maintain confidentiality and not discuss the situation with coworkers due to the sensitive nature of the issue and the potential for unsubstantiated rumors. The supervisor shall confer with the DIO throughout the process. (All formal EEO investigations will be forwarded to the DIO. The incident and actions taken will be documented in writing by the supervisor, and forwarded to the DIO.)

If the DIO determines that a case is timely, that the complainant has stated a *prima facie* case, and that a case involves matters that require further exploration, the DIO will accept the case for investigation.

Acceptance/Non-Acceptance

The DIO will notify the complainant whether or not their complaint was accepted within 10 working days of the intake interview. The DIO or responsible manager will notify the respondent within 10 working days of the intake interview only if the complaint is accepted for investigation.

Investigation

All DIO EEO investigations will be conducted by impartial and qualified personnel, i.e., the Diversity and Inclusion Officer or a qualified EEO investigator designated by the Diversity and Inclusion Officer or designated management official.

To maintain confidentiality to the fullest extent possible, the investigation will be conducted in a manner which will limit the dissemination of information.

Components of the investigation will include:

- Interviews with complainant and respondent;
- Interviews with witnesses with potentially relevant information that have been identified by complainant and/or respondent, and any other witnesses deemed appropriate by the investigator;
- Review of personnel records, prior EEO complaints, policies, procedures, and other relevant documents; and
- Credibility determinations under California Evidence Code section 780, as appropriate.

Interviews will be recorded to maintain the accuracy of notes unless the interviewee declines to be recorded. If the interviewee does not want to be recorded, a third party note-taker, of the investigator's choice, will be present during the interview. Interviewees are expected to notify the DIO at least two working days in advance if they do not wish to be recorded so that the investigator can make arrangements for a third-party note-taker and to avoid a needless delay of the interview. If recorded, interviewees may also record their interview, upon consent of the investigator, or request a copy of the recording.

Prior to being interviewed, complainant and Respondent will be notified that a union representative or another District person may be present during their interview.

Depending on the situation, temporary measures to restrict and/or eliminate contact between parties under investigation may be necessary. Such actions may include separating the employees, temporarily reassigning one or both, and/or restricting their work activities or locations until the investigation is complete and appropriate corrective actions are taken. If it becomes necessary to remove an employee from the workplace during an EEO investigation, the employee may receive paid leave.

Rights and Responsibilities

- The complaint and investigation are confidential to the degree they can be kept confidential in order to conduct the investigation. However, in limited circumstances during the investigation, the investigator may disclose the identity of the complainant(s) and/or some witnesses to the respondent(s) and/or witnesses due to the nature of the allegations and in order to adequately investigate the allegations. Such disclosure by the investigator does not relieve any employee participating in the investigation from exercising utmost care in maintaining confidentiality during the investigation.

- Retaliation against employees alleging discrimination or harassment, or involved as witnesses in a discrimination or harassment investigation is prohibited, regardless of whether or not the original complaint is substantiated. Employees who oppose and/or refuse to participate in prohibited discrimination or harassment are also protected against retaliation. Employees should notify the DIO or their supervisor if they feel they are being retaliated against or become aware of retaliation.
- After an EEO investigation has concluded and the EEO appeals process has been exhausted, either the complainant or respondent may have further appeal processes beyond Procedure 227. In such event, the disclosure of information about the investigation, such as the identity of the complainant, respondent or witnesses may be required, for example, in arbitration or in litigation.
- Complainants, respondents and witnesses are expected to keep the allegations, questions and findings/outcomes of the investigation confidential.
- The District is obligated under law and policy to investigate allegations of discrimination, harassment and retaliation.
- Employees are obligated to cooperate in an investigation and provide accurate, complete and truthful information.
- Intentionally deceiving or misleading an investigator will not be tolerated and constitutes falsehood under Policy 2.05, Employee Discipline, which requires corrective action up to, and including, termination of employment.
- Complaints received by the District will be timely closed.
- The DIO will document and track all complaints and investigations to ensure reasonable progress.

Determination

Upon completion of a thorough investigation, the investigator will prepare a report of factual findings. Factual findings for harassment, denial of reasonable accommodation, failure to engage in the interactive process, and failure to provide pregnancy disability leave or family care and medical leave will be made pursuant to the preponderance of evidence standard. Preponderance of the evidence is defined as just enough evidence to make it more likely than not that the fact the complainant seeks to prove is substantiated/unsubstantiated. Factual findings for discrimination and discriminatory retaliation complaints are reviewed as follows: if a preponderance of the evidence demonstrates that an enumerated basis was a substantial motivating factor in the denial of an employment benefit to that individual and the denial is not justified by a permissible defense.

The report and all supporting evidence will be maintained in the DIO in locked file drawers and/or in secured computer files. The report will not be distributed to the respondent(s) and/or complainant(s), or any other parties.

The DIO will review the report and issue a Notice of Determination to the respondent. Respondent's manager and Employee Relations will receive copies of the determination if any of the allegations are substantiated. The complainant will only receive a Notice of Determination if complainant filed a Q-006 EEO Discrimination/Harassment complaint. All determinations will result in at least one of the following conclusions regarding the facts alleged:

- **Substantiated** means supported by proof or evidence; verified by corroborating information; it is more likely than not to be true.
- **Unsubstantiated** means that the evidence did not support the claim; it is more likely than not that the allegation is not true or is without merit.
- **Inconclusive** means that the evidence did not conclusively indicate whether the allegations were founded or unfounded; the investigation could not establish the truth or falsity of the allegations.

DIO's Notice of Determination will include a summary of the basis for each factual determination. In addition, all determinations will also indicate what if any policies or procedures were violated and if such violation rose to the level of discrimination, harassment and/or retaliation.

**Appeal
Procedures**

If complainant or respondent is dissatisfied with the determination issued by the DIO, he/she may submit a written appeal (Appeal) with the DIO within 10 working days of the date of the determination. An Appeal can only be filed by complainant if they have filed a Q-006 EEO Discrimination/Harassment complaint. The Appeal must clearly detail the concerns about specific findings of the determination. The DIO will consider the issues presented in the Appeal and determine, in light of these facts, if the determination was supported by a preponderance of the evidence.

If the DIO concludes that the determination should be upheld, the individual has exhausted the District's administrative channels for addressing the complaint through the DIO.

If complainant filed the EEO complaint as a union grievance, the employee may pursue the appeals available through the respective Memorandum of Understanding.

No appeal will be processed through more than one procedure.

The complainant may also pursue a complaint through an external agency – the DFEH and/or the EEOC (see page 4 for detailed information).

**Corrective Action/
Discipline**

The District will take appropriate and prompt corrective remedial action where misconduct is found. Management, in consultation with Employee Relations, is responsible for taking corrective/disciplinary actions for violations of policy and procedure, to end discrimination, harassment and/or retaliation, and to correct the behavior that led to the incident/complaint. Depending upon the severity of the conduct, these actions may include, but are not limited to:

- an apology from Respondent
- a letter of counseling
- a written warning
- training
- mandatory counseling
- suspension
- reassignment, transfer, demotion; and/or discharge

**Equal Employment Opportunity (EEO)
Discrimination, Harassment and Retaliation
Complaints, Investigations and Appeals**

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References

Policy 2.05 Employee Discipline
Policy 2.25 Equal Employment Opportunity (EEO)
Policy 2.26 Prevention of Workplace Harassment
Procedure 223 Discipline
