

EAST BAY MUNICIPAL UTILITY DISTRICT



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CONTRACT EQUITY PROGRAM  
AND  
EQUAL EMPLOYMENT  
OPPORTUNITY GUIDELINES

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MARCH 2019



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# I. CONTRACT EQUITY PROGRAM

The following Contract Equity (CE) Program Guidelines were established to enhance equal opportunities for business owners.

The District provides assistance to all prospective bidders/proposers in obtaining subcontractor participation by all availability groups, including identification of possible business enterprises.

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

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

**A bidder's/proposer's noncompliance with these guidelines may deem its bid or proposal nonresponsive, and therefore, ineligible for contract award.**

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

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

**Nondiscrimination:** There shall be no discrimination against any person, or groups of persons, per Government Code Section 12940, Labor Code Section 1735, or any other applicable law or regulation in the performance of this contract.

There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including genetic characteristics or cancer), genetic information, marital or domestic partnership status, family or medical leave status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, military and veteran status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and local laws. The Contractor shall not establish or permit any such practice(s) of discrimination with reference to the contract. Contractors determined to be in violation of this section will be deemed to be in material breach of the contract.

**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.**

The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts.

The Contractor shall post applicable EEO policies and the District's "Working Together With Respect" poster to this effect in its workplace where the District contract is being performed.

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

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## A. GOOD FAITH OUTREACH EFFORTS

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All bidders/proposers shall implement all ten of the Good Faith Outreach Efforts listed below which are based on California Public Contract Code Section 2000<sup>1</sup>, subject to the provisions of Section B, and are encouraged to attend any pre-solicitation, pre-bid or pre-proposal meetings scheduled by the District to inform all bidders/proposers of the CE Program requirements.

The apparent low bidder/recommended proposer shall submit Form P-041 documenting such Good Faith Outreach Efforts, as applicable, within **2 Work Days** of bid opening time or in accordance with submittal guidelines in the request for proposal, bid document, or Instruction to Bidders.

To demonstrate Good Faith Outreach Efforts in each of the ten areas, the bidder/proposer shall have:

1. ***signed and submitted*** the Contract Equity Program Guidelines Certification, Form P-042, with the bid or proposal documents, certifying that the bidder is informed as to the Program requirements;
2. ***identified and selected*** specific subcontracting, supplying, and trucking areas of the contract to be performed by business enterprises in all availability groups as defined herein;
3. ***advertised*** not less than 10 calendar days before the date the bids/proposals are due, in one or more daily or weekly newspapers, minority, women or other association publications, trade-oriented journals, or other media, specified by the District, for all business enterprises that may be interested in participating in the contract;
4. ***provided*** written notice of interest in bidding/proposing on the contract to a reasonable number of enterprises in all availability groups not less than 10 calendar days before the date the bids/proposals are due. The District's business directory, which includes white men-,

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<sup>1</sup>The District will apply Section 2000 to include ALL business enterprises (not limited to minority- and women-owned business enterprises); and the term "local agency" in that section has been changed to "District".

white women-, and ethnic minority-owned firms, is available free of charge<sup>2</sup>. A list of agencies that also provide business directories can be found in the appendix of these guidelines;

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

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## B. EXEMPTIONS FROM OUTREACH REQUIREMENTS

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### 1. CONTRACTING OBJECTIVES

The District has Contracting Objectives<sup>3</sup> based on the availability of all firms located in the District's geographic market areas that are interested in and able to do business with the District. Contracting Objectives apply to all contractors, regardless of their race, ethnicity, gender, or sex and to all contracts that are determined to have subcontracting opportunities, including supply opportunities and trucking. The CE Program groups all businesses into three (business owner) availability groups<sup>4</sup>:

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

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

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<sup>2</sup>The names of the firms listed in these directories are offered as a service. EBMUD has no independent knowledge regarding the composition of the firm's ownership, or the quality of the work performed by any listed entity.

<sup>3</sup> The Contracting Objectives represent percentages of the total value of a contract. The dollar value of the work performed by the contractor and his/her subcontractors is included in calculating the amount of participation by each availability group and determining if the Contracting Objectives are met. Contracting Objectives are based on the results of a Disparity Study conducted by the District which verified the number of businesses located within the District's geographic market area available to perform prime and subcontract work in all contracting categories.

<sup>4</sup> For example, when subcontracting opportunities are available, a \$200,000 construction contract would have 25% (\$50,000) or more of the work performed by white men-owned businesses, 9% (\$18,000) or more by white women-owned businesses, and 25% (\$50,000) by ethnic minority-owned businesses (both men and women.)

Bidders/Proposers who already meet or exceed the Contracting Objectives for **all three availability groups**, as listed in the chart below, are exempt from the Good Faith Outreach Efforts requirements set forth in Section A.

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

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

- Contractor
- Joint Venture Partner
- Subcontractor (including Trucker)
- Supplier (including provider of other services necessary to fulfill the requirements of the contract, such as shipping, transportation, testing, equipment rental, insurance services, etc.)

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

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

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

## **2. NO SUBCONTRACTING OPPORTUNITIES**

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

## **3. WAIVER**

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

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## **C. INFORMATIONAL MEETINGS**

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

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

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## **D. DOCUMENTATION**

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

Apparent low bidders may be required to document Good Faith Outreach Efforts to achieve subcontractor participation within **2 Work Days** of bid opening time unless this requirement is otherwise stated in the Instruction to Bidders. Failure to submit the required information by the time specified may be grounds for determining the bid non-responsive.

## II. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Policy 1.04 – Contractors’ Compliance with Equal Employment Opportunity, approved by the Board of Directors, all business enterprises and their subcontractors performing work for the District shall be Equal Employment Opportunity (EEO) employers. All business enterprises and their subcontractors shall assure that there is no discrimination, harassment or retaliation against any person based on race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including genetic characteristics or cancer), genetic information, marital or domestic partnership status, family or medical leave status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, military and veteran status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and local laws, and shall be bound by all laws prohibiting such discrimination, harassment or retaliation in employment.

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

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

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

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

Complete Sections A and B of Form P-025. In Section B, the required employment data shall be for the bidder’s/proposer’s permanent workforce<sup>5</sup> only. An EEO-1 Report may be submitted in lieu of completing Section B. For informational purposes, the P-025 Form provides for a comparison of the bidder’s/proposer’s current workforce with the composition of the labor market in the Metropolitan Statistical Area or Areas (MSA) from which the bidder’s/proposer’s workforce is drawn. The bidder/proposer shall also complete Section C of Form P-025.

2. For Subcontractors/Suppliers/Truckers of the apparent low bidder, to be submitted within 2 Work Days of bid opening time or proposal submission due date:

Each bidder/proposer shall submit a Form P-025 for each subcontractor/supplier/trucker known at this time performing work equal to or greater than **\$80,000** under this specification in accordance with submission requirements given in the Instructions to Bidders or the Request for Proposal. The form shall be completed as provided in Paragraph 1. For informational purposes, the P-025 Form provides for a comparison of the subcontractor’s/supplier’s/trucker’s current

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<sup>5</sup> Permanent workforce is defined as employees with 6 months or more of continuous service.

workforce with the composition of the labor market in the MSA from which the subcontractor's/supplier's/trucker's workforce is drawn.

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## **B. GOOD FAITH OUTREACH EFFORTS TOWARDS EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

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

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

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

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

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

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

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

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## **D. MONITORING COMPLIANCE**

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### **1. PRE-CONTRACT AWARD:**

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

### **2. POST-CONTRACT AWARD:**

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

# III. CONTRACT COMPLIANCE

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## A. RECORDS

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All firms doing business with the District shall:

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

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

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

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

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

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

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

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## **B. SUBCONTRACTOR SUBSTITUTION OR REPLACEMENT**

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

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

1. When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to the subcontractor by the Contractor, or
2. When the listed subcontractor becomes bankrupt or insolvent, or
3. When the listed subcontractor fails or refuses to perform his subcontract, or
4. When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor as set forth in Section 4108 of the Public Contract Code, or
5. When the Contractor demonstrates to the District, subject to the further provisions set forth in Section 4107.5 of the Public Contract Code, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or
6. When the listed subcontractor is not licensed pursuant to the Contractors License Law, or
7. When the District determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work, or
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1725.5, 1777.1 or 1777.7 of the Labor Code, or
9. When the listed subcontractor is not a responsible contractor.

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

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

The contractor whose bid is accepted may not:

- (a) permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed on the P-040 Form, without the consent of the District.
- (b) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

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

## IV. CONSEQUENCES OF NONCOMPLIANCE

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### A. ENFORCEMENT

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

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

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

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

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### B. CONTRACTOR'S NONCOMPLIANCE

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

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

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

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

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### **C. SUBCONTRACTOR'S NONCOMPLIANCE**

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

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

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

## V. SUMMARY OF FORMS

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### CONSTRUCTION BIDDERS SHALL COMPLETE AND SUBMIT:

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- Form P-025** – Employment Data and Certification  
*(all Bidders shall submit with their bid; the apparent low Bidder **shall**, within 2 Work Days of bid opening time, **also submit** for all known Subcontractors doing \$80,000 or more worth of work)*
  - Form P-040** – Contract Equity Participation  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-041** – Good Faith Outreach Efforts Documentation  
*(apparent low Bidder within 2 Work Days of bid opening time)*
  - Form P-042** – Contract Equity Program Guidelines Certification Form  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-046** – Designation of Subcontractors  
*(all Bidders **shall** submit with bid; for all subcontractors doing over one-half of one percent of the Contractor's total bid amount)*
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### MATERIALS AND SUPPLIES BIDDERS SHALL COMPLETE AND SUBMIT:

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- Form P-025** – Employment Data and Certification  
*(all Bidders shall submit with their bid; the apparent low Bidder **shall**, within 2 Work Days of bid opening time, **also submit** for all known Subcontractors doing \$80,000 or more worth of work)*
  - Form P-040** – Contract Equity Participation  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-041** – Good Faith Outreach Efforts Documentation  
*(apparent low Bidder within 2 Work Days of bid opening time)*
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### PROFESSIONAL/GENERAL SERVICES PROPOSERS SHALL COMPLETE AND SUBMIT WITH PROPOSAL:

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- Form P-025** – Employment Data and Certification  
*(all Proposers and their known Subcontractors doing \$80,000 or more worth of work)*
- Form P-040** – Contract Equity Participation  
*(all Proposers)*
- Form P-041** – Good Faith Outreach Efforts Documentation  
*(recommended Proposer as requested)*

# VI. APPENDIX

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## POLICY STATEMENTS

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### **Policy 1.03 – Contract Equity Program**

Prevent the District from participating in or perpetuating discrimination in the marketplace or granting of preferences based on race, sex, ethnicity or other protected categories as prohibited by Article 1, Section 31, of the California Constitution. The District will encourage balanced opportunities among all sexes, and racial and ethnicity groups by establishing contract participation objectives based on the availability, in its geographic market areas, of businesses by race, sex and ethnicity that are willing and able to do business with the District. The contracting objectives will be reviewed regularly and the progress toward achievement of the objectives will be reported to the Board of Directors in order to monitor achievement of equitable parity in contract participation.

### **Policy 1.04 – Contractors’ Compliance With Equal Employment Opportunity**

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

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

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## AGENCIES WITH BUSINESS DIRECTORIES

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- **State of California – Department of Transportation**  
Civil Rights Program – MS 79  
1823 – 14<sup>th</sup> Street, Sacramento, CA 95814  
916-324-8347, Fax: 916-324-1949, Toll Free: 866-810-6346  
Email: [DBE\\_Certification@dot.ca.gov](mailto:DBE_Certification@dot.ca.gov)  
Website: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)  
**Publication Distribution Unit - Disadvantaged Business Enterprise Directory**  
1900 Royal Oaks Drive, Sacramento, CA 95815-3800  
916-445-3520
- **City of Oakland – Contract Compliance & Employment Services Division**  
250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612  
510-238-3970, Fax: 510-238-3363  
Email: [cces@oaklandnet.com](mailto:cces@oaklandnet.com)  
Website: <http://cces.oaklandnet.com/ContComp>
- **City and County of San Francisco – Human Rights Commission**  
25 Van Ness Avenue, Suite 800, San Francisco, CA 94102-6033  
415-252-2530  
Email: [hrc.info@sfgov.org](mailto:hrc.info@sfgov.org) Website: <http://sf-hrc.org/>
- **Port of Oakland**  
530 Water Street, Oakland, CA 94607  
510-627-1419  
Email: [pbell@portoakland.com](mailto:pbell@portoakland.com) – Pamela Bell, SRD Contract Compliance  
Website: <http://www.portofoakland.com/srd/>
- **Alameda County General Services Agency**  
1221 Oak Street, Room 249, Oakland, CA 94612  
510-891-5500;  
Email: Patricia McFadden for SLEB Certification – [patricia.mcfadden@acgov.org](mailto:patricia.mcfadden@acgov.org)  
Susan Wewetzer for Contract Compliance – [susan.wewetzer@acgov.org](mailto:susan.wewetzer@acgov.org)  
Website: <http://www.acgov.org/auditor/sleb>
- **Department of General Services – Office of Small Business & DVBE Services**  
707 3<sup>rd</sup> Street, 1<sup>st</sup> Floor, Room 400, West Sacramento, CA 95605  
916-375-4940, Fax: 916-375-4950  
Email: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov)  
Website: <http://www.dgs.ca.gov/pd/programs/osds.aspx>

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## EBMUD BUSINESS DIRECTORY

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- **Contract Equity Office**  
375 – 11<sup>th</sup> Street, Oakland, CA 94623  
510-287-0114, Fax: 510-287-2158  
Email: [cntrteq@ebmud.com](mailto:cntrteq@ebmud.com)

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## GLOSSARY OF TERMS

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### AVAILABILITY GROUPS:

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

### CONTRACTING OBJECTIVES:

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

### CONTRACTOR:

The individual, partnership, joint venture, or corporation with whom the contract is made by the District. A contractor may be a construction contractor, a consultant, a supplier, a trucker, or a service provider.

### CONTROL:

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

### DISABLED VETERAN BUSINESS ENTERPRISE:

See **SMALL BUSINESS ENTERPRISE**.

### INDEPENDENT BUSINESS:

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

## **GEOGRAPHIC MARKET AREA:**

Counties where most of the businesses are located which receive District contracts.

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

## **JOINT VENTURE:**

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

## **LOCAL BUSINESS ENTERPRISE:**

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

## **LOCAL RESIDENT:**

An individual employee who resides in Alameda, Contra Costa, San Joaquin, Calaveras, or Amador County or in any county(ies) directly impacted by this EBMUD project.

## **POTENTIAL CONTRACTOR:**

An individual, partnership, joint venture, or corporation who has participated in a competitive bid process or a qualification selection process to do business with the District as a construction contractor, consultant, supplier, trucker, or service provider.

## **REASONABLE FEES AND COMMISSIONS:**

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

## **SMALL BUSINESS ENTERPRISE:**

“Small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years, or is a manufacturer, as defined in Government Code Section 14837 subdivision (c), with 100 or fewer employees.

For the purposes of public works contracts, as defined in Section 1101 of the Public Contract Code, and engineering contracts, as described in Section 4525 of the Government Code, for public works projects, awarded through competitive bids or otherwise, “small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 200 or fewer employees, and average annual gross receipts of thirty-six million dollars (\$36,000,000) or less over the previous three years.

A Disabled Veteran Business that meets the following requirements shall also fall under the definition of a small business.

**DISABLED VETERAN BUSINESS ENTERPRISE:**

An independent business that is at least 51% owned and managed or controlled by one or more disabled veteran(s) who are citizens or lawful permanent residents of the United States and meets all the following:

- A veteran of the U.S. military, naval, or air service;
- The veteran must have a service-connected disability of at least 10% or more; and
- The veteran must be domiciled in California.

**SUBCONTRACTOR:**

The person or persons, co-partnership, firm or entity in direct contract with the Contractor or with any other Subcontractor for the purpose of furnishing materials, equipment, and/or performing a part of the contract work.

**SUPPLIER:**

A manufacturer, fabricator, distributor, or any person or organization who supplies materials or equipment for the contract work, including that fabricated to a special design, but who does not ordinarily perform labor at the jobsite.





# EMPLOYMENT DATA AND CERTIFICATION INSTRUCTIONS (P-025)

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

The East Bay Municipal Utility District **REQUIRES** the completion of this form when submitting any formal bid in response to a Notice to Contractors (NTC), Request for Statement of Qualifications (RSOQ), Request for Quotation (RFQ), or Request for Proposal (RFP) for materials, equipment, construction or professional or general services. Bidder/Proposer who fails to complete all applicable sections of this form may be denied contracts with the District.

**Note:** If you have difficulty completing this form or need clarification of the instructions, contact the Contract Equity Office at 510-287-0114.

## SECTION A

FIRM NAME	<input type="checkbox"/> PRIME  <input type="checkbox"/> SUBCONTRACTORS/TRUCKERS/SUPPLIERS <b>Submit a separate P-25 form for each subcontractor/trucker/supplier doing work for \$80,000 or more.</b>		
PARENT COMPANY			
STREET ADDRESS (City, State, ZIP)			
MAILING ADDRESS (City, State, ZIP)			
PHONE NO.	FAX NO.	WEBSITE	E-MAIL

### A1. TYPE OF ORGANIZATION

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

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

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

**JOINT VENTURE**

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

_____	_____ %
_____	_____ %

**PARTNERSHIP**

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

_____	_____
_____	_____

### A2. COMPOSITION OF OWNERSHIP

Indicate the percent of ethnic and gender ownership below

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

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

**SECTION B**

**B1. EMPLOYMENT DATA**

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

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

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

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

**B1c.** Name of person responsible for affirmative action and compliance with equal employment opportunity laws in your firm:

**B1b.** If your firm's total permanent workforce is located in one county or parish, please identify:

PRINT NAME

TITLE

TELEPHONE NUMBER

**SECTION C**

**CERTIFICATION OF FIRM'S OWNERSHIP AND COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS REGARDING EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REPORTING AND COMPLIANCE PROGRAMS INCLUDING HAVING A DISTRICT APPROVED PROCESS FOR RESPONDING TO COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND RETALIATION**

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

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

The undersigned does further certify that the firm named above complies with the following non-discrimination clauses:

There shall be no discrimination against any person, or groups of persons, per Government Code Section 12940, Labor Code Section 1735, or any other applicable law or regulation in the performance of this contract.

There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, religious 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, sexual orientation, or military and veteran status. The Contractor shall not establish or permit any such practice(s) of discrimination with reference to the contract. Contractors determined to be in violation of this section will be deemed to be in material breach of the contract.

**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.**

The Contractor shall include the nondiscrimination and compliance provisions of these clauses in all subcontracts

EXECUTED IN \_\_\_\_\_  
CITY, COUNTY, STATE

ON \_\_\_\_\_  
DATE

BY \_\_\_\_\_  
PRINT NAME TITLE

\_\_\_\_\_  
SIGNATURE PHONE NUMBER

## P-025 SUPPLEMENT

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

CA STATISTICAL AREAS	WM%	WW%	EM%	CA STATISTICAL AREAS	WM%	WW%	EM%
BAKERSFIELD	29.7%	24.6%	45.7%	SAN JOSE	26.9%	21.0%	52.1%
FRESNO	25.1%	21.6%	53.3%	SAN LUIS OBISPO-ATASCADERO-PASA ROBLES	42.3%	36.6%	21.1%
LOS ANGELES-LONG BEACH	20.2%	16.4%	63.5%	SANTA BARBARA-SANTA MARIA-LOMPOC	31.8%	28.6%	39.6%
MERCED	24.9%	21.1%	54.0%	SANTA CRUZ-WATSONVILLE	37.5%	32.1%	30.4%
MODESTO	33.0%	28.4%	38.6%	SANTA ROSA	39.8%	36.9%	23.4%
OAKLAND	28.0%	24.2%	47.8%	STOCKTON-LODI	28.1%	24.5%	47.4%
REDDING	46.6%	41.5%	11.9%	VALLEJO-FAIRFIELD-NAPA	30.2%	26.8%	42.9%
RIVERSIDE-SAN BERNADINO	28.2%	23.4%	48.3%	VENTURA	33.3%	27.6%	39.1%
SACRAMENTO	36.1%	32.3%	31.6%	YUBA CITY	34.9%	31.0%	34.1%
SAN DIEGO	32.4%	27.5%	40.2%				
SAN FRANCISCO	30.8%	25.1%	44.0%				

CA COUNTIES	WM%	WW%	EM%	CA COUNTIES	WM%	WW%	EM%
9 BAY AREA COUNTIES*	32.3%	27.8%	39.9%	SAN BERNARDINO	26.5%	22.3%	51.1%
ALAMEDA/CONTRA COSTA	28.9%	24.9%	46.2%	SAN DIEGO	32.4%	27.5%	40.2%
ALAMEDA	24.5%	21.6%	53.9%	SAN FRANCISCO	29.2%	22.5%	48.3%
CONTRA COSTA	33.3%	28.2%	38.5%	SAN JOAQUIN	28.1%	24.5%	47.4%
EL DORADO	46.7%	39.4%	13.9%	SAN LUIS OBISBO	42.3%	36.6%	21.1%
FRESNO	24.7%	21.4%	54.0%	SAN MATEO	28.6%	23.6%	47.9%
LOS ANGELES	20.2%	16.4%	63.5%	SANTA CLARA	26.9%	21.0%	52.1%
MARIN	42.8%	38.4%	18.8%	SANTA CRUZ	37.5%	32.1%	30.4%
MENDOCINO	40.4%	37.0%	22.6%	SHASTA	46.6%	41.5%	11.9%
MERCED	24.9%	21.1%	54.0%	SOLANO	27.8%	24.6%	47.6%
MONTEREY	23.8%	21.3%	54.9%	SONOMA	39.8%	36.9%	23.4%
NAPA	37.6%	33.6%	28.8%	STANISLAUS	33.0%	28.4%	28.6%
ORANGE	30.9%	25.5%	43.6%	YOLO	31.7%	29.8%	38.5%
RIVERSIDE	30.1%	24.7%	45.3%	YUBA	36.7%	34.0%	29.4%
SACRAMENTO	32.7%	30.0%	37.3%				

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

STATES	WM%	WW%	EM%	STATES	WM%	WW%	EM%
ALABAMA	40.8%	33.2%	26.0%	MONTANA	49.1%	42.5%	8.4%
ALASKA	40.2%	33.1%	26.7%	NEBRASKA	47.1%	42.7%	10.2%
ARIZONA	37.0%	31.7%	31.3%	NEVADA	37.8%	31.3%	30.9%
ARKANSAS	44.0%	37.5%	18.5%	NEW HAMPSHIRE	50.6%	45.0%	4.4%
CALIFORNIA	28.0%	23.6%	48.4%	NEW JERSEY	36.7%	31.5%	31.7%
COLORADO	42.2%	36.2%	21.6%	NEW MEXICO	26.6%	23.1%	50.3%
CONNECTICUT	42.4%	37.8%	19.8%	NEW YORK	35.0%	30.9%	34.1%
DELEWARE	39.3%	35.5%	25.3%	NORTH CAROLINA	39.1%	34.0%	26.9%
DISTRICT OF COLUMBIA	19.2%	18.0%	62.8%	NORTH DAKOTA	49.6%	44.4%	6.0%
FLORIDA	35.7%	30.9%	33.4%	OHIO	46.1%	40.2%	13.7%
GEORGIA	35.9%	30.0%	34.2%	OKLAHOMA	41.7%	35.4%	22.9%
HAWAII	13.1%	11.1%	75.8%	OREGON	45.5%	39.5%	15.0%
IDAHO	48.6%	40.8%	10.5%	PENNSYLVANIA	46.4%	40.2%	13.4%
ILLINOIS	38.6%	33.6%	27.8%	RHODE ISLAND	44.1%	41.4%	14.5%
INDIANA	47.1%	40.6%	12.3%	SOUTH CAROLINA	37.6%	32.4%	30.0%
IOWA	49.2%	44.8%	6.0%	SOUTH DAKOTA	48.0%	43.6%	8.4%
KANSAS	45.6%	40.1%	14.3%	TENNESSEE	44.1%	37.1%	18.8%
KENTUCKY	48.4%	41.9%	9.7%	TEXAS	31.5%	26.1%	42.4%
LOUISIANA	37.3%	30.0%	32.7%	UTAH	47.7%	39.1%	13.2%
MAINE	50.6%	46.5%	2.9%	VERMONT	50.4%	46.3%	3.3%
MARYLAND	34.0%	30.2%	35.8%	VIRGINIA	38.6%	34.0%	27.3%
MASSACHUSETTS	44.0%	40.6%	15.3%	WASHINGTON	43.6%	37.6%	18.8%
MICHIGAN	44.1%	37.5%	18.4%	WEST VIRGINIA	51.9%	43.3%	4.9%
MINNESOTA	47.6%	43.1%	9.3%	WISCONSIN	47.5%	42.8%	9.6%
MISSISSIPPI	36.1%	29.6%	34.3%	WYOMING	49.0%	41.4%	9.6%
MISSOURI	45.6%	40.3%	14.1%				

TOTAL USA 39.0% 33.7% 27.2%

**WM** = White Men, **WW** = White Women, **EM** = Ethnic Minority.

Figures compiled from the 2010 Census of Population, U.S. Department of Commerce, Bureau of the Census.



# CONTRACT EQUITY PARTICIPATION (P-040)

**BIDDER'S / PROPOSER'S NAME** \_\_\_\_\_ **PROJECT NAME** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**E-MAIL ADDRESS** \_\_\_\_\_ **SPEC. / PROPOSAL NO. (If applicable)** \_\_\_\_\_

**PHONE NO.** \_\_\_\_\_ **BID / PROPOSAL AMOUNT \$** \_\_\_\_\_

**FAX NO.** \_\_\_\_\_

This form shall be submitted by **first and second** apparent low bidders within 2 Work Days of bid opening time for construction projects and by **all proposers** with their proposal for professional and general services. All subcontractors<sup>1</sup>, truckers and suppliers at any tier level of participation, known at this time shall be listed on this form. Submit a separate P-025 form for each Subcontractor/Trucker/Supplier with a subcontract amount of \$80,000 or more.

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

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

The subcontractors, truckers, and suppliers listed in this schedule shall be utilized for the Work conditioned upon execution of a contract with East Bay Municipal Utility District. Substitution or replacements of these subcontractors, truckers, and suppliers must comply with Section III.B. Substitution or Replacement in the Contract Equity Program and Equal Employment Opportunity Guidelines.

\_\_\_\_\_  
Signature of Authorized Bidder / Proposer's Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

<sup>1</sup> The person or persons, co-partnership, firm or entity in direct contract with the Contractor or with any other Subcontractor for the purpose of furnishing materials, equipment, and/or performing part of the contract work.

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

<sup>3</sup> Describe exact portion, location (if necessary) of item to be performed or furnished by that subcontractor.





# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

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

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

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

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





# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

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

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

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



# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

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

NAME OF REJECTED SUBCONTRACTOR	ASSISTANCE EXTENDED

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

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

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



# CONTRACT EQUITY PROGRAM GUIDELINES CERTIFICATION (P-042)

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

- 1) I am duly authorized to execute this certification on behalf of my company, corporation, joint-venture or sole-proprietorship, which has submitted a bid/proposal to District Specification/Proposal/Quotation No. \_\_\_\_\_ ;
- 2) I am familiar with the District's Contract Equity Program and Equal Employment Opportunity Guidelines and understand all of the program's requirements;
- 3) I understand and agree to comply with the District's Contract Equity Program, and all of the requirements therein, including each of the Good Faith Outreach Efforts;
- 4) I will post and distribute applicable District-supplied Equal Employment Opportunity material. My firm has a process for responding to complaints of Equal Employment Opportunity discrimination, harassment, and retaliation and a copy will be provided upon request;
- 5) I understand and agree that promoting local access to jobs that pay prevailing wages may improve the workforce diversity and may benefit employment in communities being impacted by this project; and
- 6) I understand, and expressly agree, on behalf of my company, corporation, joint-venture or sole-proprietorship, that the District may disqualify the bid/proposal submitted if we have not complied with the District's Contract Equity Program, and all of the requirements therein.

EXECUTED IN \_\_\_\_\_  
*(City, County, State)*

ON \_\_\_\_\_ FOR \_\_\_\_\_  
*(Month, Date, Year) (Bidder's / Proposer's Company Name)*

BY \_\_\_\_\_  
*(Print Name) (Title)*

\_\_\_\_\_  
*(Signature) (Phone Number)*





# DESIGNATION OF SUBCONTRACTORS (P-046)

Name of Bidder/Proposer \_\_\_\_\_

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

1. The name, the location of the place of business, and the California Contractor license number of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid. List all Subcontractors meeting these criteria, including sole-source Subcontractors.
2. The portion and estimated dollar amount of the work that will be done by each Subcontractor listed below. The Contractor shall list only one Subcontractor for each portion as is defined by the Contractor in its bid.
3. The California State Department Industrial Relations (DIR) registration number of each subcontractor.

All Contractors bidding on a public works project and all Subcontractors of any tier shall be registered with the State Department of Industrial Relations pursuant to Section 1725.5 of the Labor Code.

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

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	CALIFORNIA LICENSE NUMBER and DIR REGISTRATION NUMBER	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT



# DESIGNATION OF SUBCONTRACTORS (P-046)

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

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

**4105.** Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

**4106.** If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

**4107.** A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

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

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

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

**4107.2.** No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

**4107.5.** The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

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

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

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

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

**4107.7.** If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

**4108.** (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.

(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

**4109.** Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

**4110.** A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

