



**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**Notice of Time Change**


**LEGISLATIVE/HUMAN RESOURCES  
COMMITTEE MEETING**

**9:45 a.m.**

**Tuesday, November 12, 2013**

Notice is hereby given that on the Legislative/Human Resources Committee Meeting of the Board of Directors has been rescheduled from 10:15 a.m. to 9:45 a.m. The meeting will be held in the Training Resource Center of the Administration Building, 375 - 11th Street, Oakland, California.

Dated: November 7, 2013

  
Lynelle M. Lewis  
Secretary of the District





**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 – 11<sup>th</sup> Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

## **AGENDA**

### **Legislative/Human Resources Committee**

**Tuesday, November 12, 2013**

**9:45 a.m.**

**Training Resource Center**

**(Committee Members: Directors McIntosh {Chair}, Coleman and Mellon)**

#### **ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

#### **DETERMINATION AND DISCUSSION:**

1. FY13 Contract Equity Program Annual Report (Nishita)
2. Legislation Updates Related to Employee Benefit Plans – Defense of Marriage Act and Affordable Care Act (Turner)
3. Legislative Report (Dumaine)
  - Hydraulic Fracturing
  - Update on Legislative Issues of Interest to EBMUD

#### **ADJOURNMENT:**

##### **Disability Notice**

*If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.*

##### **Document Availability**

*Materials related to an item on this Agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours.*



## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: November 7, 2013

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ARC*

FROM: Carol Nishita, Director of Administration *CN*

SUBJECT: FY13 Contract Equity Program Annual Report

The Contract Equity (CE) Program FY13 Annual Report is attached. This item is scheduled for discussion with the Legislative/Human Resources Committee on November 12, 2013.

### SUMMARY

The report reflects two significant accomplishments for the District: 1) achieving its contracting objectives for ethnic minorities for the second time since the adoption of the CE Program in FY98 and 2) achieving the second highest combined participation of ethnic minorities (27%) and white women (6%) since the start of the District's diversity contracting program in FY84<sup>1</sup>. Local Business Enterprise (LBE) participation was 47% and Local/Small Business Enterprise (L/SBE) participation was 22% which represents increases of 9% and 4% respectively from FY12. The level of Small Business Enterprise (SBE) participation (47%) for contract awards ≤ \$70,000 increased 1% closer to the goal of 50% for contract awards ≤ \$70,000.

In FY14, staff will focus on the following program enhancements:

- Increase the maximum dollar cap for the 5% bid discount from \$50,000 per year to \$100,000 per year on all competitive bid projects effective January 1, 2014 and apply the cap to all bid projects advertised on or after that date.
- Participate in AGC/Caltrans<sup>2</sup> District 04 Mentor Protégé Program for Construction starting in January 2014.
- Implement new prime and subcontractor matchmaking session for targeted construction projects.
- Investigate "piggy-backing" on BART's proposed SBE Bonding Assistance Program.
- Investigate the feasibility of providing a bid discount for non-SBE Prime Bidders who use SBE subcontractors.
- Consider investigating a regional approach for local agencies to leverage their banking relationships in support of increasing the availability of loans and/or line of credit to SBEs.

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<sup>1</sup> In FY09, the District achieved 31% ethnic minority participation and 4% white women participation.

<sup>2</sup> AGC/Caltrans – Associated General Contractors of California, Inc. and California Department of Transportation.

- Continue to engage in aggressive outreach and education efforts which include:
  - Forming collaborative partnerships with external organizations for conducting business development forums and business expos and participating on business advisory committees.
  - Creating and managing the FY14/15 Engineering Consultant Roster which is designed to streamline the procurement of professional services and assist in meeting the District's contract objectives and small business goals.

ARC:CN:bj

Attachment

# **CONTRACT EQUITY PROGRAM FY13 Annual Report**



**October 2013**





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## SUMMARY

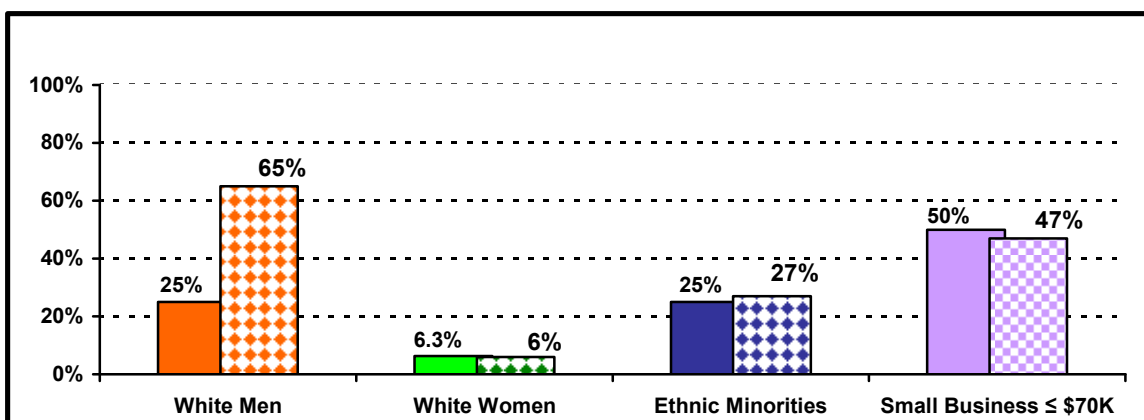
The Contract Equity (CE) Program FY13 Annual Report provides an overview of the District's contracting performance and related staff activities for the fiscal year and an update on future program enhancements. The continuing vision for the CE Program is to be a highly effective and integral business practice operating within the law to:

- increase diversity in participation on District contracts,
- increase small business<sup>1</sup> participation, and
- promote local business participation.

Overall, the CE Program ensures fairness and equity in contracting opportunities, in bidding on potential contracts, and in the execution of contracts to the business community especially those sectors historically underutilized, small and local. Fair, active and open competition is good business because it enhances the likelihood that we will receive the best value for our ratepayers' dollars.

FY13 contract awards totaled approximately \$100 million with exclusions totaling \$20 million. The overall contracting objective was achieved for white men (65%) and for ethnic minorities (27%). This is only the second time since the adoption of the CE Program in FY98 that the objective for ethnic minorities has been achieved. The participation level for white women remained the same at 6%. However, the FY13 combined participation of ethnic minorities and white women (33%) represent the second highest since the start of the District's diversity contracting programs in 1984<sup>2</sup>. Unclassified<sup>3</sup> firms received 2% of the contract awards. Chart 1 below shows the distribution of all contract awards by each availability group and the level of small business participation for contract awards ≤ \$70,000.

**CHART 1**  
**Distribution of FY13 Contract Awards**



Solid Color = Contracting Objective/Goal  
Checkerboard Color = Actual Results

<sup>1</sup> "Small business" is a business enterprise that has average annual gross receipts of \$14,000,000 or less over the previous three years or is a manufacturer with 100 or fewer employees.

<sup>2</sup> In FY09, the District achieved 31% ethnic minority participation and 4% white women participation.

<sup>3</sup> Firms who declined to state their gender or ethnicity.

The CE Program accomplished the following in FY13:

- Conducted five *Business Forums*
- Conducted the *Sixth Annual Construction Management Series* co-hosted with Builders Exchange of Alameda County, Har-Bro of Northern California, Turner Construction Company and Union Bank
- Participated in 47 community events, 8 public agency business meetings and 15 business expos promoting the District's mission for diversity in contracting
- Co-facilitated the *Contract Administration* and the *Contracting and CE Program Managers and Supervisors District Training (MAST)* Classes
- Produced 3 *Equalizer* Newsletters

The District also ensures that all firms doing business with the District take lawful and adequate steps in assuring that their employment practices comply with Equal Employment Opportunity (EEO) Laws. The District continues to provide brochures and to require that posters be prominently displayed at all contractors' worksites notifying contractors and their employees that discrimination, harassment, and retaliation are not tolerated by the District. Since FY11 two-thirds of the firms who were awarded contracts continue to have a minority workforce that reflected at least 50% or more of their applicable Metropolitan Statistical Area (MSA.)

## FY13 CONTRACT AWARDS

The District's contract awards for FY13 totaled \$100 million including approximately \$20 million in excluded contracts<sup>4</sup> and \$32 million in contract awards ≤ \$70,000. The total contract awards represent a decrease of \$35 million (27%) from FY12.

Compared to FY12, overall contract awards in FY13 saw a decrease of 13% to white men, an increase of 12% for ethnic minorities, and white women remained unchanged. Overall contracts to small businesses increased by 14% and increased by 1% for contract awards ≤ \$70,000. Overall contracts to Local Businesses also increased from 38% to 47% however decreased from 56% to 51% for contract awards ≤ \$70,000. See Table 1.

<b>Table 1.</b> <b>FY13 CONTRACT EQUITY PROGRAM PERFORMANCE</b> <i>(excludes awards to government agencies, nonprofit organizations, publicly held corporations, foreign owned, and sole source awards)</i>					
Availability Group/ Misc. Grouping	Contracting Objective %	Overall Results %		≤ \$70,000 Results %	
		FY12	FY13	FY12	FY13
White Men	25	78	65	74	69
White Women	6.3 <sup>5</sup>	6	6	11	13
Ethnic Minorities (Men/Women)	25	15	27	12	11
Unclassified	NA	1	2	4	7
Local Business	NA	38	47	56	51
Local/Small Business	NA	18	22	32	28
Small Business	50 <sup>6</sup>	29	43	46	47
<i>Micro-business</i>	NA	6	6	8	7
All Men	NA	93	93	86	84
All Women	NA	7	7	14	16
Exclusions	NA	21	20	16	18

<sup>4</sup> Excluded contracts are awards to government/nonprofit (\$4M), publicly held corporations (\$13M), foreign owned (\$3) and sole source providers (\$794k).

<sup>5</sup> Weighted average based on contract distribution per contract category for FY99-FY02.

<sup>6</sup> The 50% SBE goal is for contract awards of ≤ \$70,000

Table 2 shows the overall percentage of contract awards to the three availability groups and unclassified firms by contract category. White men achieved its highest level of participation in general services (79%), white women in general services and purchasing card purchases (9%) and ethnic minorities in construction (42%). See Attachment 1 for a list of top prime awards<sup>7</sup> by firm for each availability group and each contract category.

<b>Table 2.</b> <b>FY13 CONTRACT PARTICIPATION (\$80M)</b> <i>(excludes awards to government agencies, nonprofit organizations, publicly held corporations, foreign owned, and sole source awards)</i>						
Availability Group/Misc. Grouping	Contract Categories					Overall
	Construction	Professional Services	General Services	Materials & Supplies	Purchasing Card	
White Men	56%	73%	<b>79%</b>	71%	64%	65%
White Women	2%	6%	<b>9%</b>	8%	<b>9%</b>	6%
Ethnic Minorities (Men & Women)	<b>42%</b>	21%	10%	20%	8%	27%
Unclassified Firms	0%	0%	2%	1%	19%	2%

For contract awards  $\leq$  \$70,000, the contracting objectives for white men and white women were achieved but not for ethnic minorities (11%). The highest level of participation for white men was in construction (80%), white women in professional services (22%) and for ethnic minorities in professional services (16%).

## SMALL BUSINESS ENTERPRISE COMPONENT

Small businesses were awarded \$43M (43% of contracts overall), including \$6M (6%) to micro-businesses<sup>8</sup>. For contract awards  $\leq$  \$70,000, small businesses received \$15M (47%), including \$2M (7%) to micro-businesses.

The 47% Small Business Enterprise (SBE) participation in FY13 for contract awards  $\leq$  \$70,000 represents the District's highest SBE participation to date with a 1% increase over FY12; however, it still remains below the 50% goal. The level of participation by availability groups was 65% for white men, 19% for white women and 15% for ethnic minorities with 1% for unclassified firms. Based on the District's database of approximately 1,789 SBEs, the level of participation closely match the availability of White Men (64%) and Ethnic Minorities (15%) and exceeded the availability of White Women (15%).

<sup>7</sup> Listed top prime awards represent the largest two (2) contract awards, at minimum, per availability group per contract category along with other contract awards over \$100,000.

<sup>8</sup> "Micro-business" is a small business enterprise that, together with affiliates, has average annual gross receipts of \$3,500,000 or less over the previous three years or is a manufacturer with 25 or fewer employees.

The highest level of SBE participation for contract awards  $\leq$  \$70,000 was 55% for professional services awards.

The average dollar amount of contracts  $\leq$  \$70,000 for FY13 (\$6,134) indicates that while we achieved the highest SBE participation to date there are still opportunities to increase SBE awards to meet the goal of 50% participation. Because general services and materials and supplies contracts account for over 89% of awards  $\leq$  \$70,000, staff efforts continue to focus on increasing SBE participation from 47% to 50% for these contract categories. Materials & Supplies had the lowest average dollar amount of contracts  $\leq$  \$70,000 with Professional Services having the highest. (See Table 3).

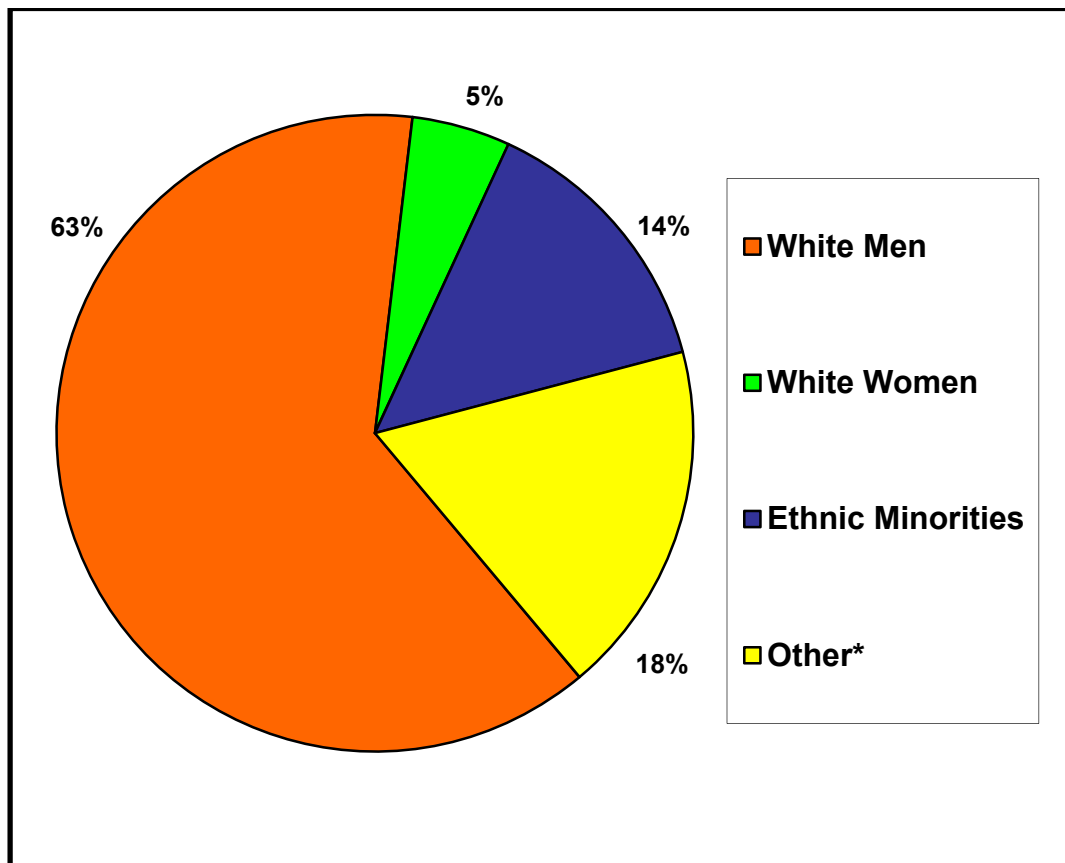
<b>Table 3.</b>			
<b>FY13 AVERAGE CONTRACT EXPENDITURE BY CONTRACT CATEGORY</b>			
<b>Contract Category</b>	<b>Total Expenditures</b>	<b>Total Awards</b>	<b>Average Contract Expenditure</b>
<b>AWARDS &gt; \$70,000</b>			
Professional Services	\$12M	38	\$306.1K
General Services	\$3M	14	\$194.1K
Construction	\$33M	20	\$1.7M
Materials & Supplies	\$21M	60	\$348.2K
<b>SUBTOTAL</b>	<b>\$68M</b>	<b>132</b>	<b>\$518.6K</b>
<b>AWARDS <math>\leq</math> \$70,000</b>			
Professional Services	\$2M	107	\$19.9K
General Services	\$5M	787	\$6.3K
Construction	\$346K	26	\$13.3K
Materials & Supplies	\$16M	2,883	\$5.5K
<b>SUBTOTAL</b>	<b>\$24M</b>	<b>3,803</b>	<b>\$6.1K</b>
Purchasing Card	\$8M	19,491	\$426
<b>SUBTOTAL</b>	<b>\$32M</b>	<b>23,294</b>	<b>\$1.4K</b>
<b>OVERALL TOTAL</b>	<b>\$100M</b>	<b>23,426</b>	<b>\$4.3K</b>

## LOCAL BUSINESS ENTERPRISE

The District encourages participation of firms located in the District's service area or in counties directly impacted by District contracts and/or operations. Even though no numeric goal was established for local businesses, they received \$47M (47%) in District contract awards. See Figure 1 for local business distribution awards. The highest overall level of LBE participation was for professional services (58%). For contract awards  $\leq$  \$70,000, local businesses received \$16M (51%) in District contract awards compared to \$19M (56%) in FY12. The highest level of participation was 58% in both FY09 and FY02.

*Figure 1.*

### FY13 DISTRIBUTION OF LOCAL BUSINESS AWARDS



\*Other is defined as contracts awarded to government/nonprofit, publicly held corporations, or foreign owned.

Local Small Business Enterprises (L/SBE) received \$22M (22%) in overall contract awards compared to \$24M (18%) in FY12. The highest overall level of L/SBE participation was for construction and general services (27% each). For contract awards  $\leq$  \$70,000, the participation was \$9M (28%) compared to \$11M (32%) in FY12. The highest level of participation was in general services at 34%.



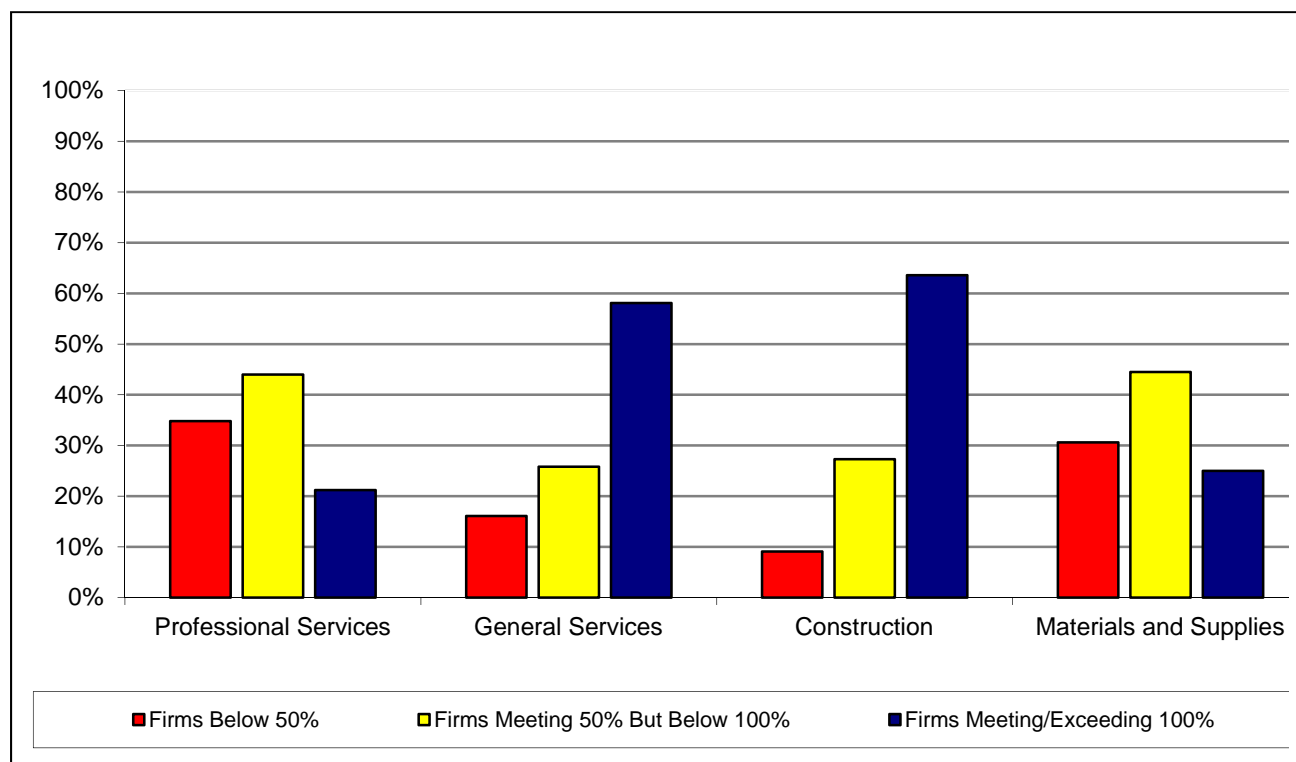
## THE CONTRACTORS' COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY (CCEEO) COMPONENT

District contractors must agree not to discriminate against any employee or applicant for employment and to provide evidence of their compliance to the District upon request. Firms are advised that they may not receive future awards if they do not comply with or if they violate the District's Equal Employment Opportunity Policy.

Of the 144 major contract awards in FY13, 72% (104 firms) were awarded to companies with minority workforces that reflect at least 50% or more of their applicable Metropolitan Statistical Area (MSA). Of the 104 firms, 33% either met or exceeded their MSA for their local communities.

Contractors' compliance results by contract category are shown in Figure 2. Firms providing construction for the District have the most diverse employment record with 91% having a minority workforce profile of at least 50% of their applicable MSAs. A review of the 66 professional services contract awards reflects that approximately 35% (23 firms) were below 50% of parity.

**Figure 2.**  
**FY13 CONTRACTORS' COMPLIANCE RESULTS FOR CCEEO**  
**BY CONTRACT CATEGORY**



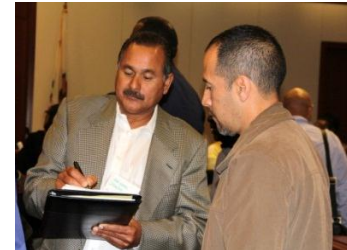
## FY13 ACTIVITIES

Staff continued race- and gender-neutral internal and external outreach activities designed to identify potential firms to bid on District projects, to spark a firm's interest in doing business with the District, to educate firms on how to do business with the District, and to educate District staff on our contracting process, including the CE Program.

FY13 activities included:

- ◆ Internal Training Workshops:
  - Contracting & CE Program Management and Supervisor Training (MAST)
  - Contract Administration MAST
- ◆ Business Development Forums and Workshops:
  - *2013 Small Business Forum & General Membership* – co-hosted with the American Indian Chamber of Commerce of California
  - *4<sup>th</sup> EBMUD Construction Business Roundtable*
  - *EBMUD Engineering Consultant Roster Business Forum*
  - *New Local Employment Dynamics Business Forum* – co-hosted with the Bay Area Contract Compliance Officers Association (BACCOA)
  - *SBEs – Let's Do Business Forum* – co-hosted with the Department of General Services
  - *Sixth Annual Construction Management Series* (a seven-week training program) co-hosted with Builders Exchange of Alameda County, Turner Construction Co., Har-Bro of Northern California and Union Bank.
- ◆ Presentations on Doing Business with EBMUD:
  - *Doing Business with Public Agencies* at the Bay Area Black Expo's *2012 Bay Area Black Expo & Show*
  - *EBMUD 2013 Construction Contract Opportunities* at Alameda County Public Works Agency's *Building Opportunity for Business (BOB) Breakfast meeting*
  - *EBMUD Contracting Processes, Small Business Incentives and Contract Opportunities* at the San Leandro African American Business Council's *Business Networking Workshop*.
  - *How to do Business with EBMUD* at the American Indian Chamber of Commerce of California's *2013 Small Business Forum & General Membership* (co-host with EBMUD.)
  - *Promoting Local Business Incentive Programs* at the California Association of Public Purchasing Officers' (CAPPO) *96<sup>th</sup> Annual CAPPO Conference & Vendor Expo*.
- ◆ Trade Fairs and Workshops:
  - *9<sup>th</sup> Annual Business Development Expo* - American Indian Chamber of Commerce.
  - *2013 Business Expo* - Business Matchmaking.
  - *2012 Silicon Valley Small Business Expo and Matchmaking Fair* - California Public Utilities Commission, Commissioner Catherine Sandoval and the California Water Association.
  - *2012 Small and Diverse Business Procurement Expo and Matchmaking Fair* - California Public Utilities Commission, the Department of General Services and the San Joaquin County Hispanic Chamber of Commerce.

- *West Contra Costa Chambers Super Mixer* - Chambers of Commerce for the cities of Richmond, Pinole, Hercules, El Sobrante, El Cerrito, San Pablo, Rodeo/Crockett and the Hispanic Chamber of Commerce Contra Costa County.
  - *Connecting You to Opportunities* Small Business workshop - Department of Corrections & Rehabilitation, the Department of General Services and the City of Oakland.
  - *2012 Fall Tradeshow & Passport Mixer* and the *2013 Spring Business Showcase & Tradeshow Mixer* - Greater Stockton Chamber of Commerce.
  - *Women of Success, Celebrating Women in Business* Conference - Hispanic Chamber of Commerce of Contra Costa County.
  - *44<sup>th</sup> National Conference & Business Trade Expo* - National Association of Minority Contractors.
  - *2012 Minority Business Opportunity Expo* - Northern California Minority Supplier Development Council.
  - *2012 Regional Connecting Point Expo* - Sacramento Public Agency Consortium.
  - *Latina Business Conference* - San Joaquin County Hispanic Chamber of Commerce.
  - *41<sup>st</sup> Annual Minority Business 2 Business Forum – One-on-One Matchmaking Business Session* - U.S. Department of Commerce Minority Business Development Agency in partnership with Asian, Inc.
  - *Western Region Chapter: Procurement Connection Expo* - US Pan Asian Chamber of Commerce.
- ◆ Production and distribution of the *Equalizer* newsletters
  - ◆ Maintenance and enhancement of the Materials Management Information System (MMIS) and Vendor Management Tool (VMT)
  - ◆ Management of the FY13 Engineering Consultant Roster (ECR)
  - ◆ Coordination and facilitation of Internal CE Program Advisory Committee Meeting
  - ◆ Participation on the Skanska USA NorCal Chapter Community Advisory Team, San Francisco Bay Area Rapid Transit (BART) Business Advisory Committee, the East Bay Interagency Alliance Committee, and the American Indian Chamber of Commerce California Corporate Advisory Committee.



## RECOMMENDATIONS FOR FY14

In response to comments from the Legislative and Human Resources Committee meeting discussion on the FY12 Contract Equity Program Annual Report and recent meetings initiated by members of the business community, staff is recommending the following enhancements to the Contract Equity Program:

**1. Increase the maximum dollar cap for the 5% bid discount from \$50,000 per year to \$100,000 per year on all competitive bid projects effective January 1, 2014 and applicable to all bid projects advertised on or after that date.**

There are two California statutes that address small business preference programs. The first is Public Contract Code § 2002 that authorizes local public agencies to promote the award of contracts to small business by giving small businesses a preference of up to five (5) percent of the lowest responsible bid meeting the specifications. It does not set a dollar limit on the amount of the preference. The second is the Small Business Procurement & Contract Act (Government Code § 14835, et seq.) which sets general guidelines, definitions and restrictions regarding small business preference programs implemented by the state.

The District currently bases its small business component of the Contract Equity Program on the guidelines set by the Small Business Procurement & Contract Act. This Act is a useful tool that the District can rely on for determining whether a contractor qualifies as a small business. Based on the Act, the District currently:

- defines a Small Business Enterprise (SBE) in accordance with the State's size standards,
- has a 50% SBE participation goal,
- has a goal to set-aside at least 25% of all contracts not requiring Board-approval, and
- allows a 5% bid discount up to a maximum of \$50,000 per year.

The District has the authority, per Public Contract Code §2002, to increase the maximum dollar cap for the 5% bid discount while maintaining the guidelines for defining a small business per Government Code §14837.

Increasing the maximum dollar cap for the 5% bid discount would provide greater contract award opportunities for SBEs at minimum cost to the District. For FY13, 8 SBE bidders were awarded contracts utilizing the 5% bid discount, at an additional cost to the District of \$1,807. Staff will continue to monitor the fiscal impact of the bid discount on the District.

**2. Participate in AGC/Caltrans<sup>9</sup> District 04 Mentor Protégé Program for Construction starting in January 2014.**

A mentor-protégé program partners large businesses (mentors) with small businesses (protégés) to offer assistance and training in their business development and growth. Typical assistance includes providing guidance on improved business systems, accounting processes,

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<sup>9</sup> AGC/Caltrans – Associated General Contractors of California, Inc. and California Department of Transportation

and construction practices. The typical timeframe for a mentor-protégé relationship is about two years. Participation is voluntary for all parties involved with no financial incentives.

AGC/Caltrans' current program has 7 mentors and 10 protégés. Each pairing of mentor and protégé requires a mentor and protégé agreement with includes a development assistance plan. This plan identifies needs of the protégé, milestones, assistance the mentor can offer, and metrics for measuring success. All efforts are documented and quarterly progress reports are produced by the protégé with the assistance of the mentor. These reports along with meeting the objectives in the development assistance plan are criterion for graduation.

AGC/Caltrans is expanding this program to each Caltrans District with District 10 (Stockton area) being targeted as the next one to come on board. Once that program is implemented, EBMUD may be able to partner with them to get some of our upcountry potential SBEs and prime contractors involved. Interestingly two graduates from AGC/Caltrans' first graduating class of 2011 have done business with EBMUD, Underwater Resources, Inc. and Suarez & Munoz Construction, Inc.

The key components of the program are:

- Mentors must be established, successful businesses in the industry and have a willingness to help others by sharing their knowledge and expertise.
- Protégés must be small disadvantaged businesses that have demonstrated some ability to succeed as a construction company and look to grow their business in the public sector arena.
- The measure of success includes:
  - The increase in sales volume and/or number of public work projects,
  - Successfully meeting objectives and established milestones, and
  - Successful transition out of the mentor-protégé program in the 2-year period

EBMUD's commitment would be that of a Program Sponsor and would require the District to provide in-kind services. No fee would be required to participate in the program.

### **3. Implement new prime and subcontractor matchmaking session for targeted construction projects.**

One-on-one matchmaking sessions between prime contractors and subcontractors are now being used by a number of agencies such as BART, Northern California Minority Supplier Development Council, Bay Area Business Roundtable, and California Department of General Services. The goal of the matchmaking session is to foster an ongoing relationship between potential primes and subcontractors and/or the owner and potential contractors. These sessions provide a vehicle for putting parties together for specific projects that may not meet otherwise.

EBMUD will start identifying projects with ample subcontracting opportunities to include a matchmaking session based on specific needs identified by the prime. Tentatively the first matchmaking component would be the Summit Reservoir Replacement project (\$15.5M) that is anticipated to advertise in February 2014.

**4. Investigate “piggy-backing” on BART’s proposed SBE Bonding Assistance Program.**

BART recently solicited proposals for a third-party administrator to provide technical assistance, match contractors to qualified partner resources based on need, and facilitate collateral support and/or fund administration as needed. Similar to other local agencies, BART plans to establish a collateral pool (line of credit) of \$5 million available for the program for providing bond guarantees. The estimated annual cost of the program is \$500,000 which is projected to be offset by low-bid contract awards. BART expects to have their program in place by February 2014.

Once BART’s contract is awarded, we will explore possible “piggy-back” options with their contract to provide bonding assistance to small construction contractors. Staff expects to provide a status report to the Board of Directors on this item in the Fourth Quarter of FY14 along with estimated costs.

**5. Investigate a bid discount for non-SBE Prime Bidders who use SBE subcontractors.**

Staff will investigate whether the District can apply an SBE bid discount to prime contractors who meet a targeted goal for SBE subcontractor participation, while complying with Public Contract Code and the MUD Act low bid requirements. The purpose of offering an incentive such as a bid discount is to encourage and facilitate full and equitable participation by SBEs on District contracts that are awarded through a competitive bid process. Currently the District provides that incentive to SBEs who bid as primes. However other agencies such as BART and the City of Oakland have expanded the bid discount to non-SBE primes who contract a designated percentage with SBE subcontractors. This provides greater opportunities for SBE subcontractors to work on a project since specialty trade (sub) prime contracts with an agency are often limited. In addition to investigating the legal issues associated with implementing such a program, we will also review the potential fiscal impact to the District.

**6. Consider investigating a regional approach for local agencies to leverage their banking relationships in support of increasing the availability of loans and/or line of credit to SBEs.**

Staff will investigate whether the District can participate in the development of a regional financial assistance program for SBEs. The idea is for local agencies to leverage their current banking relationships for generating a loan pool for SBEs without using any District funds (deposits) as collateral.



## 7. Continue to engage in aggressive outreach and education efforts.

In FY14, the CE Office staff efforts will include:

- Conducting the following Business Development Forums for local small businesses:
  - Understanding eDocs Document Management Software (February/March 2014)  
Provide an overview of and hands-on training on the electronic data management system that is now required when working on a District construction project.  
*Targeted Audience:*  
Local small construction businesses (~50)
  - Pipeline to Contract Connections Business Expo (May/June 2014)  
*Targeted Audience:*  
Local small businesses (~200)  
*Tentative Agency Partners:*  
Numerous local agencies and business resource organizations.
  - Sixth Annual Construction Management Training Series (Spring 2014)  
Provide an overview of key contracting components such as scheduling, estimating, safety, and bonding/insurance in at least 14 training sessions over a 7-week period based on a training curriculum developed by Turner Construction Company.  
*Targeted Audience:*  
Local small construction contractors, truckers, and suppliers (~50)  
*Tentative Local Partners:*  
Turner Construction Company and Builders Exchange of Alameda County
- Continuing to participate on the San Francisco Bay Area Rapid Transit's (BART) Business Advisory Committee (BAC), the East Bay Interagency Alliance Committee, and the American Indian Chamber of Commerce California Corporate Advisory Committee.
- Generating and managing the FY14/15 Engineering Consultant Roster (ECR) which streamlines the procurement of professional services and assists in meeting the District's contract objectives and small business goals.

# **ATTACHMENT**





## FY13 (July 1, 2012 – June 30, 2013)

### TOP PRIME CONSTRUCTION AWARDS

Prime Firm	Project Description	Availability Group	Contract Amount
J. R. Pipeline Co., Inc. (SBE)	South Interceptor Wood Street Rehabilitation – Phase 2	Ethnic Minority Male (Hispanic)	\$10,019,630
Aztec Consultants (L/SBE)	Proctor #2 Rilea, & Shawn Reservoirs Rehabilitation	Ethnic Minority Male (Hispanic)	\$3,913,600
Mountain Cascade, Inc. (LBE)	Danville No. 1 Pumping Plant Improvements	White Male	\$3,490,000
Monterey Mechanical Co. (LBE)	Oxygen Production Plant Cooling System Improvements	White Male	\$2,662,000
Monterey Mechanical Co. (LBE)	Sobrante Water Treatment Plant Electrical Upgrade	White Male	\$1,868,000
GE International, Inc. (LBE)	Pardee Powerhouse Unit Numbers 1-2 Hydropower Generator Rewind	Publicly Held Corp.	\$1,771,950
JMB Construction*	Berkeley View Regulator & Berkeley View, Las Aromas, Madrone, Schapiro and Skyline Pumping Plants	White Male	\$1,642,000
Ghilotti Construction	Lafayette Reservoir Parking Improvements	White Male	\$1,333,333
JMB Construction*	Influent Screens Replacement Project	White Male	\$1,177,000
City of Oakland (LBE)	Pipe Relocation by Lake Merritt	Government	\$1,170,000
GSE Construction Co. (LBE)	Buchanan Street Interceptor Rehabilitation	Ethnic Minority Male (Hispanic)	\$950,930
JMB Construction	Main Wastewater Treatment PGS1 District-Furnished Exhaust Heat Recovery Silencers Installation	White Female	\$358,900
JMB Construction	RAS Pumps No. 1&2 Discharge Piping Access	White Female	\$21,800

\*Change of ownership

## FY13 (July 1, 2012 – June 30, 2013)

### TOP PRIME MATERIAL & SUPPLIES AWARDS

Prime Firm	Project Description	Availability Group	Contract Amount
West Coast Pipe	Steel Pipe for Stock	Ethnic Minority Male (Asian)	\$3,134,950
Golden Gate Truck Center (LBE)	Original Equipment Manufacturer Parts and Accessories for Vehicles	White Male	\$2,025,268
CORE Education & Consulting Services	Dell Personal Computers and Laptops	Foreign-Owned	\$1,883,852
Badger Meter, Inc.	Purchase of Water Meters	Publicly Held Corp.	\$1,789,630
Duperon Corporation (SBE)	Influent Screens Equipment	White Male	\$1,526,850
Andes Construction (L/SBE)	Private Sewer Lateral Replacement Program	Ethnic Minority Male (Hispanic)	\$265,000
Rupert Construction Supply (L/SBE)	Water Meters	White Female	\$399,190
Integrated Archive Systems (SBE)	Disk Storage Expansion Hardware & Technical Support	White Female	\$42,236

### TOP PRIME PROFESSIONAL SERVICES AWARDS

Prime Firm	Project Description	Availability Group	Contract Amount
Athens Insurance Services (LBE)	Third Party Administrator Services	White Male	\$1,345,902
East Bay Regional Park District (LBE)	Law Enforcement Services	Government	\$1,058,294
AECOM Technical Services	Chabot Dam Seismic Upgrade Environmental Impact Report	White Male	\$1,004,033
Honeywell, Inc. (LBE)	Experion Control System for Orinda Water Treatment Plant	Publicly Held Corp.	\$990,000
V&A Consulting Engineers (L/SBE)	Wastewater Pump Station Discharge Pipeline Condition Assessment and Interceptor Corrosion Prevention	Ethnic Minority Male (Hispanic)	\$982,295
Royston Hanamoto Alley & Abey (SBE)	Architectural and Landscape Service	Ethnic Minority Female (Multi Ethnic)	\$435,782
Environmental Analytical (SBE)	Verification of the Gas Conditioning System Performance	White Female	\$60,000
TNT Enterprises (SBE)	Cal OSHA Safety Training	White Female	\$55,000

## FY13 (July 1, 2012 – June 30, 2013)

### TOP PRIME GENERAL SERVICES AWARDS

Prime Firm	Project Description	Availability Group	Contract Amount
Civicorps Schools (LBE)	Landscape and Vegetation Control	Non-Profit	\$429,000
Ashbrook-Simon-Hartley	Repair and Balancing of the Humboldt Centrifuge	White Male	\$400,000
Flottweg Separation Technology	Repair and Balancing of the Centrifuge	Foreign	\$350,000
Trimark Associates (L/SBE)	Qualified Reporting Entity Services and Meter/Data Processing/Gateway Services	White Male	\$290,000
Honeywell, Inc.	Heating, Ventilation, Air Conditioning, Refrigeration and Related Services and Software/Hardware Services	Publicly Held Corp.	\$230,000
State of California	Gas Service to the Micro-turbines in the Administration Building	Government	\$200,000
Maskell Pipe & Supply (SBE)	IPS Flange Adapters and HDPE Pipe	White Female	\$68,470
Moneygram Payment Systems	Automated Pay Station Services	Publicly Held Corp.	\$195,000
Bay Area Concrete Recycling (L/SBE)	Disposal of Concrete, Asphalt & Petromat Trench Spoils	Ethnic Minority Female (Asian)	\$50,000
KW Emerson, Inc. (LBE)	Demolition of Camanche North Shore Covered Berth	White Female	\$48,100
Bay Area Traffic Solutions (L/SBE)	Traffic Control System – Flagging Services	Ethnic Minority Male (Hispanic)	\$30,000

## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: November 7, 2013

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ARC*

FROM: Delores Turner, Manager of Human Resources *Delores Turner*

SUBJECT: Legislation Updates Related to Employee Benefit Plans – Defense of Marriage Act (DOMA) and Affordable Care Act (ACA)

The purpose of this memo is to inform you that staff will provide information on the impact of changes to the Defense of Marriage Act (DOMA), as well as an update on Affordable Care Act (ACA) mandates at the Legislative/Human Resources Committee meeting on November 12, 2013.

### **DOMA – REPEAL OF SECTION 3 REGARDING DEFINITION OF MARRIAGE**

On June 26, 2013, Section 3 of the Defense of Marriage Act (DOMA) was repealed by the U.S. Supreme Court. Section 3 of DOMA affects more than 1,000 federal laws, including those related to estate and gift taxes, Social Security benefits and tax return filings. Its effect on the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) will have a significant impact on employer-sponsored healthcare and retirement plans.

Section 2 of DOMA was not overturned or impacted during the case that overturned Section 3 of DOMA. Section 2 of DOMA provides that one state does not have to recognize a same gender marriage performed and recognized from another state. There are 14 states, including California, that recognize same gender marriages. Many IRS rules are based on 'State of Domicile' such that the laws of the state you reside in determine the IRS tax treatment.

IRS Revenue Ruling 2013-17 released in August provided much anticipated answers as to how the court decisions affect tax administration. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" now include an individual married to a person of the same gender and the term "marriage" includes a marriage between individuals of the same gender, as long as the individuals are lawfully married under any domestic or foreign law which authorizes the marriage of two individuals of the same gender, even if they are now domiciled in a state that does not recognize the validity of same gender marriage. For example, a same gender couple married in California, but now residing in Oregon, will be considered married for Federal tax purposes. However, the terms do not include individuals who have entered into a registered domestic partnership, civil union, or other similar form of relationship that is not denominated as a marriage under domestic or foreign law.

Below are the items we have edited or changed based on the repeal of Section 3 of DOMA.

#### Prior to DOMA Repeal

- We collected Federal and State tax on the cost of medical, dental and vision benefits for non-IRS dependent domestic partners (regardless of gender) covered on our group health plans.
- For those employees who were legally married in California previously, we collected only Federal tax and not California tax against the cost of the same gender spousal benefits.
- Pre-tax FSA contributions could not be used to reimburse costs incurred for domestic partner or same gender spousal healthcare.
- COBRA coverage was not offered to domestic partners or same gender spouses when benefits terminated at employment end.
- In the EBMUD Retirement Plan, same gender spouses were not eligible to receive the higher Health Insurance Benefit (HIB) for married couples of \$550. The HIB is an IRS regulated plan so Federal guidelines prevailed on administration of this benefit.
- In Deferred Compensation plans, those rules and administration items related to "spouse" (Rollovers, Qualified Domestic Relations Orders [QDROs], Hardship Withdrawals, and loans) applied only to opposite gender spouses.

#### Adjustment Post Repeal of DOMA

- Discontinued collecting Federal or State tax on the value of the partner benefit for any same gender legally married employee on our group health plans.
- There is no impact on imputed taxable income for domestic partner coverage. Impact is only for legally married spouses.
- Since status for same gender spouses has been updated simply to "married", there is no further limitation on use of pre-tax FSA contributions for reimbursement of healthcare costs for either spouse.
- COBRA coverage will now be offered to same gender spouses, in line with the same rules for opposite gender spouses. No change here to Domestic Partners as they are not offered COBRA.
- In Deferred Compensation plans, same sex spouse will now be considered a spouse in all rules and administrative items previously related to opposite sex spouse only (Rollovers, QDROs, Hardship Withdrawals, and loans).
- We are reviewing the life insurance, Deferred Compensation Plan, and Retirement Plan beneficiary forms on file for same sex spouses and reminding employees that spousal signature is required to authorize any beneficiary designation other than the spouse.
- We are sending out an email to all the employees we have listed currently as same sex Domestic Partners reminding them that if they are married or planning to get married they should contact us so we can stop the imputed income tax withholding.
- We have adjusted the monthly HIB benefit to the higher \$550/mo. spousal benefit for same sex married couples in the EBMUD Retirement Plan.

- We are reviewing all our Deferred Compensation plan documents with outside counsel for language updates needed post DOMA.

#### Recent and Pending IRS Guidance

Further IRS guidance in September of this year, IRS Notice 2013-61 provided corrective payroll/withholding steps for employers to claim refunds of over-withheld employment taxes (FICA and federal income taxes) applied to imputed income for same gender spouse benefits in 2013 and prior open tax years. This would include a requirement to refund the employee's portion of the tax in cash. Staff are evaluating the implications of these guidelines before taking any action.

The guidance related to qualified retirement plans under Revenue Ruling 2013-17 states that same gender spouses must be treated as spouses for all retirement plan rules, and that plans must comply by September 16, 2013, the effective date of Revenue Ruling 2013-17. To date, there has been no guidance on whether or how the rules apply to retirement plans for periods before September 16, 2013, which leaves unanswered whether or not EBMUD can make retroactive adjustments to the HIB benefit in our Retirement Plan. The IRS intends to issue future guidance on how qualified retirement plans and other tax-favored arrangements should treat same gender spouses for periods before September 16, 2013.

#### **HEALTH CARE REFORM - THE AFFORDABLE CARE ACT (ACA)**

The biggest items related to the ACA for 2014 do not impact EBMUD directly; they are the Individual Mandate and Healthcare Exchanges component of the law. The Individual Mandate requires that effective January 1, 2014, most individuals are required to obtain basic health insurance with minimum essential coverage, or pay a tax. In 2014, the amount of penalty for an individual would be \$95 or 1% of income, whichever is greater. The healthcare exchanges which rolled out October 1<sup>st</sup> are the tools by which individuals without minimum essential coverage through their employer can purchase insurance plans that are based on a formula set out by the ACA, and where federal discounts are available for low income households.

Each state either set up its own exchange or let the Federal government do it for them. The premium costs on the exchange are based on age, where a person lives (zip code), household size, and then the benefit level selected. Discounts are then applied based on household income.

The ACA mandates for 2014 that are most impactful to EBMUD are new fees imposed on the health insurance companies; many of which are passed on directly to the insured as increased premium costs. Transitional Re-insurance fees are one such fee charged for 2014 – 2016, which is \$63 per year per covered life. In total, approximately 1-3 percent of increases across our plans this year are attributable directly to ACA related fees.

#### Other Important ACA Provisions for Employers and Insurers for 2014

- Preventive care coverage without cost sharing, requiring plans to provide certain preventative services (e.g., well-woman visits, screening for gestational diabetes, etc.) without co-payments or cost sharing.

- Ban pre-existing conditions exclusions for all participants. Individual and group health plans can no longer impose pre-existing condition exclusions for any person of any age.
- Employers permitted to offer employee rewards of up to 30% (potentially increasing to 50%) of the cost of coverage if employee participates in a wellness program.
- Prohibition of discrimination in favor of highly compensated employees with respect to plan eligibility and benefits. Administrative testing will be required to show non-discrimination.
- Group plans must cover emergency room services without prior authorizations and in-or-out-of-network distinctions.
- Insurers have updated requirements for appeals and external review of claims.
- Plans that require a primary care physician election must allow members to designate OB/GYN or pediatricians as their primary care physician (PCP).

#### Additional Provisions of ACA

##### 2015

- Employers with more than 50 employees must offer medical care coverage to all employees who work more than 30 hours per week or pay penalties. Employers will be assessed an annual penalty of \$2,000 per full-time employee for failure to comply with this mandate. If any employee receives coverage through the exchange, the annual penalty rises to \$3,000 per full time employee.
- Employer reporting requirement – must report on minimum essential coverage of benefit plans to Federal government, and confirm whether any employees' contributions to health plan costs for employee only coverage exceed 9.5% of their wages.

Both of these provisions were slated to become effective in 2014, however, were delayed to 2015.

##### 2017

- Employers with 100 or more employees may be allowed to join State Health Care Exchanges.

##### 2018

- "Cadillac Plans" 40% excise tax will take effect. High cost health plans that exceed the threshold of \$10,200 for individual coverage and \$27,500 for family coverage will be subject to a non-deductible excise tax. The aggregate value of the plan includes employee and employer contributions to a medical plan and the District's supplemental benefit of \$905 allocated to Health Flexible Spending Account.

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## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: November 7, 2013

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager *ARC*

SUBJECT: Hydraulic Fracturing

### RECOMMENDED ACTION

Consider a resolution to urge protection of the state's water resources, including groundwater through the timely completion of the independent scientific study required by Senate Bill 4 (SB 4), Chapter 313, and urge the state to incorporate the study's findings into the regulation of oil and gas well stimulation treatments, such as hydraulic fracturing, and take the necessary action, up to and including a moratorium.

This item will be discussed with the Legislative/Human Resources Committee on November 12, 2013. Board consideration of this item is scheduled for November 12, 2013.

### SUMMARY

The California State Legislature recently approved, and Governor Brown signed into law, SB 4, by Senator Fran Pavley, to establish environmental protections and transparency requirements for oil and gas well stimulation treatments, including but not limited to hydraulic fracturing (also referred to as "fracking") and acid stimulation. SB 4 establishes a comprehensive regulatory program for oil and gas well stimulation treatments and requires that an independent scientific study on well stimulation treatments be conducted.

### DISCUSSION

The issue of well stimulation treatments, such as hydraulic fracturing and acid stimulation, and the potential effects of these practices on the environment, was the subject of discussion in the legislature during 2013, and has received increased attention in recent months.

Well stimulation treatments involve the injection of fluids or acid into oil and gas wells to enhance oil and gas production. A United States Government Accountability Office report from September 2012 states that oil and gas development, whether conventional or shale oil and gas (e.g. well stimulation), poses inherent environmental risks to air quality, water quality, land, and wildlife as well as public health risks, but the extent of these risks is unknown.

Well stimulation treatments are used in California. The California Senate Committee on Natural Resources and Water recently indicated that well stimulation treatments may be needed to produce oil in the Monterey Shale, a large deposit of underground shale running lengthwise through the center of the state which is estimated to contain approximately two-thirds of the United States shale-oil reserves.

From the District's perspective, the main focus of concern with well stimulation treatments is the protection of water resources. The protection of water resources, including groundwater, is important to the long term water supply reliability in the state. The District has established a comprehensive set of goals integrating sustainability principles that include ensuring a reliable high quality water supply for the future and meeting or surpassing environmental and public health standards and protecting public trust values.

However, well stimulation treatments are not considered to be a direct threat to the District's current and future water supplies. There are no known or planned oil exploration activities, including hydraulic fracturing and acid stimulation, undertaken on the District's land, in the watersheds of the District's water supply sources, or anticipated areas of future water supply; nor is the Monterey Shale formation located in any of these areas.

The legislature reviewed a number of bills related to well stimulation treatments in 2013, including SB 4. The District did not take a position on any of the bills. In August of 2013, the California State Legislature approved, and Governor Brown subsequently signed into law, SB 4 by Senator Fran Pavley, Chair of the California Senate Committee on Natural Resources and Water. According to Governor Brown's signing message, SB 4 establishes strong environmental protections and transparency requirements for hydraulic fracturing and other well stimulation treatments.

SB 4 sets forth a comprehensive regulatory program for oil and gas well stimulation treatments, which includes, among other things, the development of regulations, a permitting process, public notification and disclosure, provisions specifically intended to protect groundwater, and provides for interim requirements, including groundwater monitoring, public notice, and disclosure, while comprehensive regulations are being developed. SB 4 also requires, on or before January 1, 2015, the Secretary of the Natural Resources Agency to complete a comprehensive independent scientific study to evaluate the actual and potential hazards and risks that well stimulation treatments pose to natural resources and public, occupational, and environmental health and safety. SB 4 was signed into law by Governor Brown in September and takes effect January 1, 2014.

Subsequent to SB 4 being signed into law, a number of environmental groups including the Sierra Club, the Natural Resources Defense Council, and the California League of Conservation Voters have called for the governor to go beyond the provisions of the new law and impose a moratorium on well stimulation treatments in California. To date, the Governor has indicated that he does not agree with this approach.

In light of the increased attention on well stimulation treatments, the Board may wish to consider making a formal statement on the issue by adopting a resolution to urge the state to incorporate SB 4's scientific study, upon its completion, into the regulation of oil and gas well stimulation treatments, and take necessary action, up to and including a moratorium, to protect water resources.