

File No. 130584

Committee Item No. 12

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date October 3, 2013

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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Completed by: Linda Wong Date September 30, 2013

Completed by: _____ Date _____

1 [Administrative Code - California Benefit Corporation Discount Program - Contract Monitoring
2 Division]

3 **Ordinance amending the Administrative Code by transferring the implementation of the**
4 **California Benefit Corporation Discount Program from the Human Rights Commission**
5 **to the Contract Monitoring Division of the City Administrator.**

6 NOTE: Additions are single-underline italics Times New Roman;
7 deletions are ~~strike-through italics Times New Roman~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough-normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The Administrative Code is hereby amended by amending Sections 14C.2
12 through 14C.3, to read as follows:

13 **SEC. 14C.1. SHORT TITLE.**

14 This Chapter shall be entitled "the California Benefit Corporation ('Benefit Corporation')
15 Discount Ordinance."

16 **SEC. 14C.2. DEFINITIONS.**

17 (a) — "Benefit Corporation" means a California Benefit Corporation that is incorporated
18 in California under California Corporations Code §§ 14600-14631, as amended, or any
19 successor legislation, and is in good standing with the State of California.

20 (b) — "Benefit Corporation Discount" means the downward adjustment in price or
21 upward adjustment in rating of a proposal or bid, whichever applies, that is made under
22 Section 14C.3(c).

23 (c) — "Contract" means any agreement that falls within the scope of Administrative
24 Code Chapter 6 or Chapter 21.

1 (d) — "Contractor" means any person or entity who contracts directly with the City.

2 (e) — "Contract Awarding Authority" means any City officer, department head,
3 commission, or board authorized to enter into Contracts on behalf of the City.

4 (f) — ~~"HRC" means the Human Rights Commission.~~ "CMD" means the Contract Monitoring
5 Division of the Office of the City Administrator to which the City Administrator has delegated
6 responsibility to implement this Chapter, and shall also mean and include any department or division
7 of the Office of the City Administrator that the City Administrator may in the future designate as
8 successor to the Contract Monitoring Division to assume the duties of the Contract Monitoring
9 Division set forth in this Chapter.

10 "Director" means the Director of the Contract Monitoring Division or his or her designee.

11 (g) — "Nonprofit" means a nonprofit corporation that is incorporated in California under
12 California Corporations Code § 5000 et seq. as amended, or any successor legislation
13 organized primarily or exclusively for charitable purposes and qualifies for the exemptions
14 provided under California Revenue and Taxation Code Section 23701 and Internal Revenue
15 Code Section 501(c)(3).

16 (h) — "Regional Business" means a business that has a principal place of business
17 located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San
18 Mateo, Santa Clara, Solano, Sonoma and Sacramento.

19 (i) — "S.F. Business" means a business that has a principal place of business located
20 in the geographic limits of San Francisco and is registered with the Office of the Treasurer &
21 Tax Collector's Business Registration records, excluding a certified 14B LBE.

22 (j) — "14B LBE" means a Micro-LBE, a Small-LBE, nonprofit enterprise, PUC-LBE,
23 SBA-LBE as defined in San Francisco Administrative Code Chapter 14B, including Joint
24 Ventures for Professional Services and Architect/Engineering with one or more 14B LBE
25 prime contractor participant.

1 ~~(#)~~ "14B LBE Discount" means a downward adjustment in price or upward
2 adjustment in rating of a bid or proposal, whichever applies, that is made under San Francisco
3 Administrative Code Chapter 14B.

4 **SEC. 14C.3. BENEFIT CORPORATION DISCOUNTS.**

5 (a) **Eligibility.** To be eligible for the Benefit Corporation Discount, the corporation
6 must:

- 7 (1) not be a subsidiary of a non Benefit Corporation; and
8 (2) have been incorporated as a Benefit Corporation in California for at least
9 six (6) months preceding the application of the Benefit Corporation Discount.

10 (b) **California Secretary of State Verification.** The HRCCMD shall verify current
11 Benefit Corporation status with the California Secretary of State and apply the Benefit
12 Corporation Discount. As part of the verification process, HRCCMD may require a Benefit
13 Corporation to submit additional documentation with the bid or proposal to verify status.

14 (c) **Third Party Verification.** HRCCMD may not apply the Benefit Corporation
15 Discount until the Benefit Corporation has received third party verification. HRCCMD shall
16 adopt rules and regulations consistent with this OrdinanceChapter for determining if a Benefit
17 Corporation has complied with third party verification.

18 (d) **Discount.** Notwithstanding any other provision of the Administrative Code,
19 HRCCMD shall apply a Benefit Corporation Discount as provided in this OrdinanceChapter to
20 bids or proposals submitted by a Benefit Corporation for purpose of determining the apparent
21 highest ranked proposal or the apparent low bid, unless application of the Benefit Corporation
22 Discount would adversely impact the ranking for negotiation or award process of a bid or
23 proposal submitted by the following:

- 24 (1) 14B LBE, or
25 (2) Nonprofit bidder or proposer, or

1 (3) S.F. Business unless the Benefit Corporation is also a S.F. Business; or
2 (4) Regional Business unless the Benefit Corporation is also a Regional
3 Business.

4 (e) **Contract Awarding Authority.** The Contract Awarding Authority is required to
5 cooperate with the HRCMD in applying the Benefit Corporation Discount.

6 (f) **Contracts Subject to Discount.** The Benefit Corporation Discount shall apply
7 to all Contracts the estimated cost of which exceeds the Threshold Amount in Chapter 6 or
8 the Minimum Competitive Amount in Chapter 21, but is less than \$10,000,000.

9 (g) **Amount of Discount.** HRCMD shall apply a Benefit Corporation Discount as
10 follows:

11 (1) For bids and proposals from Benefit Corporations that are ineligible for
12 Administrative Code Chapter 14B LBE Discounts, HRCMD shall apply a Discount in the
13 amount of four percent (4%), such that bids or proposals shall be reduced or increased, as
14 appropriate, by an amount equal to four percent (4%) at each stage of the proposal selection
15 process for purposes of determining the apparent highest ranked proposal or the apparent low
16 bid. Benefit Corporations that receive a 14B LBE Discount may not also receive a Benefit
17 Corporation Discount.

18 (2) The Benefit Corporation Discount shall not apply to bids or proposals
19 submitted by Joint Ventures unless all Joint Venture Members for Professional Services and
20 Architect/Engineering would individually qualify for the Benefit Corporation Discount.

21 (h) **Review by HRCMD and Controller.** For the first two years this
22 OrdinanceChapter is in effect, the Director of the HRCMD, in coordination with the Controller,
23 shall conduct a biannual evaluation of the impact of the Benefit Corporation Discount in City
24 contracting. Thereafter, the HRCMD Director and the Controller shall conduct an annual
25 evaluation. This report shall analyze Benefit Corporation participation levels by reviewing the

1 number of City contracts awarded to Benefit Corporation bidders or proposers, including the
2 size, type, and dollar amount of the contract. This report may provide recommendations to the
3 Board of Supervisors for amendments to this OrdinanceChapter.

4 (i) **Exceptions.** This OrdinanceChapter shall not apply where the Contract Awarding
5 Authority finds that the requirements of this OrdinanceChapter would violate or conflict with the
6 terms or conditions of a grant, subvention or agreement with a public agency or other grant
7 awarding entity or the instructions of an authorized representative of any such agency with
8 respect to any such grant, subvention or agreement, provided that the Contract Awarding
9 Authority shall make a good faith attempt to change the terms or conditions of any such grant,
10 subvention or agreement to authorize application of this OrdinanceChapter.

11 (j) **Severability.** If any section, clause, phrase, or portion of this OrdinanceChapter
12 is for any reason held invalid or unconstitutional by any court or Federal or State agency of
13 competent jurisdiction, such portion shall be deemed a separate, distinct and independent
14 provision and such holding shall not affect the validity of the remaining portions thereof. To
15 this end, the provisions of this OrdinanceChapter shall be deemed severable.

16 (k) **General Welfare Clause.** In undertaking the enforcement of this Chapter, the City is
17 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on
18 its officers and employees, an obligation for breach of which it is liable in money damages to any
19 person who claims that such breach proximately caused injury.

20 Section 2. Effective Date. This ordinance shall become effective 30 days from the
21 date of passage.

22 Section 3. In enacting this ordinance, the Board intends to amend only those words,
23 phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts,
24 diagrams, or any other constituent parts of the Administrative Code that are explicitly shown in
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this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Yadira Taylor
Deputy City Attorney

LEGISLATIVE DIGEST

[Administrative Code – Transferring Benefit Corporation Discount Program from Human Rights Commission to City Administrator]

Ordinance amending the Administrative Code by transferring the implementation of the California Benefit Corporation Discount program from the Human Rights Commission to the Contract Monitoring Division of the City Administrator.

Existing Law

Administrative Code Chapter 14C provides a four percent (4%) bid discount or rating bonus to bids or proposals submitted by eligible California Benefit Corporations for purposes of determining the apparent low bid or highest ranked proposal during the acquisition of certain commodities and services or the procurement of public works construction or design services subject to Chapters 6 or 21 of the Administrative Code. To be eligible for the bid discount or rating bonus, the entity, among other requirements, must be incorporated as a Benefit Corporation in California. The discount or bonus only applies to contracts less than \$10 million and greater than the Threshold Amount in Chapter 6 (\$400,000) or the Minimum Competitive Amount in Chapter 21 (\$100,000). The Human Rights Commission (HRC) is tasked with the program's implementation.

Amendments to Current Law

The proposed ordinance would transfer the authority to implement the California Benefit Corporation Discount program from the HRC to the City Administrator's Contract Monitoring Division (CMD).

Background Information

In July 2012, the Chapter 14B Local Business Enterprise contracting programs and administration of the Chapter 12B Equal Benefits Ordinance were transferred from the HRC to the CMD of the Office of the City Administrator. As part of this transfer of duties and functions, the majority of the HRC's contract compliance staff positions were also transferred to the City Administrator. The proposed Ordinance would consolidate related contract compliance functions and duties within the CMD.

Wong, Linda (BOS)

To: Kelly, Naomi
Subject: FILE 130584 - REFERRAL FROM BOARD OF SUPERVISORS (Rules Committee)
Attachments: 130584-1.pdf

Ms. Kelly,

The Board of Supervisors Rules Committee has received the attached proposed ordinance, which is being referred to the City Administrator's Office for informational purposes.

File 130584

Ordinance amending the Administrative Code by transferring the implementation of the California Benefit Corporation Discount Program from the Human Rights Commission to the Contract Monitoring Division of the City Administrator.

Should you wish to provide a response, please submit it directly to Linda Wong, Rules Committee Clerk at Linda.Wong@sfgov.org or the address listed below.

Thank you:

Sincerely,

Linda Wong
Rules Committee Clerk
Board of Supervisors / SF LAFCo
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: 415.554.7719
Fax: 415.554.7714

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisor Chiu

Subject:

Ordinance transferring the Benefit Corporation Discount Program from Human Rights Commission to City Administrator.

The text is listed below or attached:

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

130584