

1 [Reauthorizing the Minority/Women/Local Business Utilization Ordinance.]

2

3 **Ordinance amending the San Francisco Administrative Code by amending Chapter**

4 **12D.A. thereof (1) to extend the Minority/Women/Local Business Utilization Ordinance**

5 **to June 30, 2008 in order to continue to remedy identified discrimination against certain**

6 **Prime MBE/WBE Contractors in City Contracting, to continue the City's policy of**

7 **protecting Prime LBE Contractors from the economic competitive disadvantage of**

8 **doing business in San Francisco, and to continue to remedy identified discrimination**

9 **against certain MBE/WBE subcontractors in City Contracting by requiring City**

10 **continue to require City contracting departments to implement MBE/WBE programs**

11 **mandating Prime Contractors to use good faith efforts to provide use MBE/WBEs with**

12 **opportunities to compete for City when there are subcontracting opportunities in City**

13 **Contracts; (2) to repeal Sections 12D.A.6(B)(9), 12D.A.8(3) and 12D.A.9(F) to eliminate**

14 **the contract set aside program; (3) to revise section 12D.A.17 to include prime general**

15 **services contracts in the subcontracting program; (4) to increase the economic**

16 **thresholds under which disadvantaged professional service, architectural and**

17 **engineering, specialty construction, and supplier firms can qualify for the remedial**

18 **programs of this ordinance; (5) to preclude businesses owned by full time City**

19 **employees and officers from becoming certified as an MBE, WBE or LBE; and (46) to**

20 **make various technical revisions to the Minority/Women/Local Business Utilization**

21 **Ordinance to conform it with existing City ordinances and administrative practices.**

22 Note: Additions are *single-underline italics Times New Roman*;

23 deletions are *strikethrough italics Times New Roman*.

24 Board amendment additions are double underlined.

25 Board amendment deletions are ~~strikethrough normal~~.

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

1 Section 1. The San Francisco Administrative Code is hereby amended by amending
2 Sections 12D.A.1, 12D.A.2, 12D.A.5, 12D.A.6, 12D.A.8, 12D.A.9, 12D.A.10, 12D.A.11,
3 12D.A.12, 12D.A.13, 12D.A.14, 12D.A.15, 12D.A.16, 12D.A.17, 12D.A.18, 12D.A.20, and
4 12D.A.21 to read as follows:

5 **SEC. 12D.A.1. SHORT TITLE.**

6 This ordinance shall be entitled the "Minority/ Women/Local Business Utilization Ordinance"
7 and may be cited as the "MBE/WBE/LBE Ordinance – ~~IV~~V."

8 **SEC. 12D.A.2. GENERAL FINDINGS.**

9 This Board initially passed Ordinance No. 139-84 on April 2, 1984 to combat the City and
10 County of San Francisco's own active and passive participation in discrimination against
11 minority- and women- owned businesses, both in its own contracting for goods and services
12 and in the private market for such goods and services. At the time of passage, women- and
13 minority-owned businesses were virtually excluded as contractors on prime City contracts.
14 The ordinance also sought to offset economic disadvantages faced by local businesses that
15 are not shared by nonlocal businesses, and to increase employment in the City and County of
16 San Francisco by encouraging the participation of local business enterprises in City
17 contracting.

18 Since that time, this Board and the City's Human Rights Commission have actively and
19 extensively documented and studied discrimination against and disadvantages faced by these
20 groups to gauge the effectiveness of the prior Minority, Women and Local Business Enterprise
21 Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and continuing
22 action.

23 The earlier studies are documented in the legislative history of the previous amendments and
24 re- enactments of the ordinance, including Ordinance Nos. 175-89, enacted on May 30, 1989,
25 ~~Ordinance Nos. 155-92, 210-97, 457-97 and 82-98, 296-989, 210-99 and 283-99.~~ The 1989

1 Ordinance was challenged in federal court and upheld by the Ninth Circuit Court of Appeals.
2 *See Associated General Contractors of California v. Coalition for Economic Equity*, 950 F.2d
3 1401 (9th Cir. 1991).

4 The findings underlying the 1984 and 1989 ordinances have been reviewed and analyzed in
5 the preparation of the current ordinance and are hereby incorporated by reference into the
6 legislative history of this ordinance. These materials, prepared up to and including May 1989,
7 include disparity studies, transcripts of live testimony by dozens of witnesses, case studies of
8 discrimination, and voluminous other materials. An index and a separate synopsis of this
9 material are on file with the Clerk of this Board in File No. 98-0612.

10 Since 1989, the City has devoted substantial additional resources to the task of understanding
11 and documenting discrimination against women and minorities in awarding City contracts and
12 in the private market for such contracts. Given the prior findings of discrimination and the
13 need for this ordinance, this Board examined whether the identified discrimination had been
14 eradicated.

15 Between 1989 and 1998, together this Board and the Human Rights Commission held 14
16 hearings on the subject of women- and minority-owned business enterprises, heard live
17 testimony from 254 witnesses, reviewed videotaped oral histories by numerous witnesses,
18 reviewed many volumes of social science materials, three disparity studies undertaken by the
19 City and County of San Francisco and numerous other relevant statistical disparity studies
20 undertaken by the City agencies and various other groups and governments from around the
21 Bay Area. The Board also reviewed case studies and other statistical information gathered by
22 the Human Rights Commission. These materials are all incorporated by reference into the
23 legislative history of this ordinance and are in file with the Clerk of this Board in File No. 98-0612.

24 In its hearings on the MBE/WBE/LBE ordinance between 1989 and 1998, this Board gave close
25 consideration to the need for adding Native Americans and Arab Americans to the list of

1 minority groups covered by the ordinance. As part of this process, the Board and the Human
2 Rights Commission heard or reviewed testimony from 47 individuals concerning
3 discrimination against Arab Americans and Native Americans. In addition, ~~as discussed in~~
4 ~~greater detail below, the~~ a Mason Tillman Associates study covering City contracting in the
5 years 1992 through 1995 found statistically significant evidence of discrimination against
6 Native Americans and Arab Americans in several categories of contracting. That study also
7 closely reviewed testimonial evidence of discrimination against these groups.
8 In 1997 and 1998, this Board and the Human Rights Commission held eight public hearings
9 at which testimony was given by 170 individuals concerning discrimination against Minority
10 and Women Business Enterprises, the transcripts of which ~~and~~, the written submittals
11 accompanying same, and other evidence that was before the Board are in file with the Clerk of
12 this Board in Board File No. 98-0612. On January 4, 1999 and June 30, 1999, the Human
13 Rights Commission issued reports regarding discrimination in City contracting against Iranian
14 Americans. ~~That~~ Those reports recounted testimony from HRC hearings regarding
15 discrimination against Iranian American contractors.
16 In addition, the Board considered and reviewed oral histories from many persons involved in
17 the bidding and compliance process taken in the summer of 1998. Many of the oral histories
18 have been preserved on videotape. These oral histories recount personal incidents of
19 discrimination as well as compliance difficulties. The oral histories were taken in this manner
20 because many of the individuals were fearful of retaliation and further discrimination if they
21 testified at a public forum. In fact, this fear caused some of the oral histories to be given in a
22 manner in which the identities of those testifying were not identified. An index and a separate
23 synopsis of the oral histories are on file with the Clerk of this Board in File No. 98-0612, 99-
24 0266 and 99-1326.

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1 The findings and evidence underlying the 1998 ordinance and the subsequent amendments to that
2 ordinance have been reviewed and analyzed in the preparation of the current ordinance and are hereby
3 incorporated by reference into the legislative history of this ordinance.

4 In 2002 and 2003, this Board and the Human Rights Commission, held additional public hearings to
5 determine the extent to which the remedies provided by this Ordinance continue to be necessary. At
6 these hearings, 134 individuals and organizations testified about the discrimination minorities and
7 women continue to face in City contracting and in obtaining contracts in the Bay Area that are not
8 subject to affirmative action programs. Additionally, in 2002 and 2003, the Human Rights Commission
9 and this Board received written statements of individuals describing the discrimination minorities and
10 women continue to experience in City contracting and in other contracting in the Bay Area. In
11 December 2001, the Human Rights Commission issued a report entitled “Violence in Our City:
12 Research and Recommendations to Empower Our Community” regarding increasing violence and
13 discrimination against African Americans in San Francisco.

14 In September 2002, the Human Rights Commission issued a report entitled “Blacklash, Violence,
15 Human Rights Violations & Discrimination in San Francisco in the Wake of September 11, 2001.” The
16 report found that the bombing of the World Trade Center and Pentagon on September 11, 2001 have
17 led to a significant increase in San Francisco in discrimination and violence against those who are
18 perceived to have Middle Eastern ancestry.

19 In April 2003, the Human Rights Commission conducted a disparity analysis of the utilization of
20 minority owned businesses and women owned businesses in City prime contracting and subcontracting.
21 Even with the remedial programs set forth in this Ordinance in place, the study shows statistically
22 significant underutilization of minorities and women in most City contracting programs.

23 But as the Tenth Circuit Court of Appeal recently recognized in upholding the City and County of
24 Denver’s remedial contracting program in Concrete Works of Colorado, Inc. v. City and County of
25 Denver (10th Cir. 2003) 321 F.3d 950, a public entity cannot reliably ascertain whether a remedial

1 race- and gender- conscious affirmative action contracting program that has been in place should be
2 continued based on a disparity analysis of the utilization of minority and women- owned businesses in
3 the public entity's contracting programs: That the remedial program in place has given some
4 minorities and women contracting opportunities in certain limited industries provides little evidence of
5 whether minorities and women would be given those opportunities in the absence of the remedial
6 program. Instead, the Tenth Circuit concluded that disparities in private markets in the region provide
7 a strong indicator of the extent to which minorities and women would be used in public entity's
8 contracting programs absent the remedial affirmative action program.
9 Accordingly, the Human Rights Commission retained the National Economic Research Associates
10 (NERA) – the same firm whose studies about discrimination in the Denver metropolitan area the Tenth
11 Circuit found to be so persuasive -- to conduct studies to assess the level of discrimination against
12 minority and women owned businesses in the Bay Area private sector. NERA examined business
13 formation and earnings rates, and NERA found significant disparities in the formation and earnings
14 rates of minorities and women as compared to majority men. These disparities are especially
15 pronounced for African Americans and Latino Americans. NERA also examined the market for credit
16 and capital and found strong evidence of discrimination against minorities, as well as evidence of
17 recent discrimination against women. Consistent with the Tenth Circuit's ruling, NERA concluded that
18 the evidence of discrimination it found in Bay Area private markets is a valid substitute for evidence of
19 actual discrimination in City contracting programs. In April 2003, the Human Rights Commission also
20 retained Godbe Research to conduct a telephone survey of minority and women-owned businesses
21 certified with the HRC. Twenty one percent of the 266 firms surveyed reported that since 1998, they
22 have been declined Bay Area subcontracting work that was not subject to affirmative action
23 requirements by prime contractors who typically do award them work on contracts that are subject to
24 the remedial subcontracting requirements of this Ordinance. And each of those firms that experienced
25 such discrimination reported that it had been rejected as a subcontractor by a prime contractor who

1 gave it work on City contracts on average 13 times in the last five years. Additionally, the Board has
2 reviewed studies undertaken by various public entities in the Bay Area, and testimony, articles and
3 studies prepared by academicians. All of these materials are incorporated by reference into the
4 legislative history of this Ordinance. The collection and analysis of relevant information is ongoing.As

5 a result of these hearings and review of these materials and the materials archived by the
6 Human Rights Commission and the relevant statistical and social science data, oral histories,
7 articles and studies, the Board makes the following findings:

8 ~~•~~
9 ~~From 1996 to the present, there were 48 white male department heads and general and deputy~~
10 ~~managers, constituting 65 percent of the total. During the same period, there were 14 male minority~~
11 ~~department heads and general and deputy managers, constituting 19 percent of the total, five white~~
12 ~~female department heads and general and deputy managers, constituting four percent of the total, and~~
13 ~~seven female minority department heads or managers, constituting 10 percent of the total.~~

14
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16 1. In April 2003, NERA conducted studies to assess the level of discrimination against minority
17 and women-owned businesses in the Bay Area private sector. NERA examined business formation
18 rates, earnings rates, and disparities in the market for credit and capital.

19 • NERA reported significant disparities in the formation rates of minority and women-
20 owned business as compared to businesses owned by Caucasian men. In particular, African-
21 Americans, Asian Americans, Latino Americans, and women have statistically significantly lower
22 business formation rates in the Bay Area than do comparable Caucasian men in the construction,
23 architectural and engineering, professional services, general services and goods and services
24 industries. These disparities are especially large in the construction industry, where, for example
25 business formation rates for African Americans are approximately 12 percentage points lower than for

1 comparable Caucasian men. Further, NERA found that the disparities for African Americans and
2 Latino Americans are especially pronounced and have increased in the recent six years over the prior
3 fourteen years.

4 • NERA further reported significant disparities in the earnings of self-employed minorities
5 and women compared to the earnings of self-employed Caucasian men. The disparity in earnings
6 between self-employed African Americans and self-employed Caucasians, for example, has increased
7 dramatically from 1991-2001 over the prior 13 years, and is much greater than the disparity between
8 African American wage and salary workers and Caucasian wage and salary workers over the same
9 time period.

10 • NERA also reported discrimination against minorities and women in the credit markets
11 in all industries, which NERA concluded partially explains the large disparities found in minority and
12 women business formation rates. NERA reported that even when controlling for firm size, credit
13 history and other valid credit worthiness factors, the loan applications of minority-owned firms were
14 substantially more likely to be denied than the loan applications of Caucasian firms. For example, the
15 loan rejection rates for African American and Latino American firms are roughly twice that of
16 Caucasian firms. NERA also found that minority firms are more likely not to apply for loans because
17 of the low loan approval rate for such firms, and that when minority businesses did receive loans, they
18 had to pay higher interest rates, regardless of their credit worthiness or geography. NERA further
19 reported that credit market conditions are a far bigger concern for minority-owned firms than for
20 Caucasian-owned firms, and that a greater share of minority-owned firms than Caucasian-owned firms
21 believe that credit availability is the most important issue likely to confront the firm in the next 12
22 months. NERA also reported that discrimination in the market for credit has increased for minority
23 groups during the 1990s, and re-appeared for women in the late 1990s.

1 Based on NERA's studies, the testimony and all of the other evidence before the Board, the Board finds
2 that minority- and women-owned businesses continue to face systemic race and gender discrimination
3 in public and private markets in the Bay Area.

4 2. In April 2003, the City conducted a comprehensive disparity study to gauge discrimination
5 against women- and minority-owned businesses in the City's contracting from 1998 to early 2003.
6 Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to
7 minority- and women-owned business enterprises would be equal to the proportion of willing and able
8 minority- and women-owned enterprises in the relevant market area. If, based on statistical testing,
9 there is a very low probability of attributing to chance the existence of a disparity between these
10 proportions, the Supreme Court has stated that an inference of discrimination can be made.

11 3. The Human Rights Commission's 2003 study thoroughly and conclusively documented the fact
12 that – even with the City's remedial contracting programs in place – minority- and women- owned
13 business enterprises continue to receive a smaller share of certain types of contracts for the purchases
14 of goods and services by the City than would be expected based on the number of able and available
15 women- and minority-owned businesses. This poor utilization cannot be attributed to chance. This
16 Board finds, based on these statistical studies, testimony and on all the other evidence of persistent
17 discrimination presented to the Board, that the disproportionately small share of City contracting and
18 subcontracting that goes to women-and minority-owned businesses in certain industries is due to
19 discrimination by the City and discrimination in the private market.

20 4. The Human Rights Commission's April 2003 study also documents that in the last five years, in
21 certain limited industries, some minority groups and women have received City contract dollars close
22 to or above the level that would be expected based on their availability. Based on the studies and
23 reports issued by NERA and Godbe Associates, the testimonial evidence, the history of discrimination
24 against minority and women contractors in City contracting programs and the other materials before
25 the Board, the Board finds that these favorable minority utilization rates are attributable to the fact that

1 the City has remedial contracting programs in place, and that the discrimination the City previously
2 identified in its prime contracting and subcontracting programs has not yet been eradicated. In
3 particular, the Board finds that if the City were to discontinue, at this time, the race- and gender-
4 conscious bid discount program or the subcontracting program authorized by this Ordinance, minority
5 and women utilization rates in City contracting would plummet. Under those circumstances, the Board
6 finds that minority and women utilization rates would likely return to the same judicially-recognized
7 low levels to which they fell in 1989 after the City discontinued its prior race- or gender-conscious
8 remedial contracting programs. In fact, many minorities and women report that they are frequently
9 refused subcontracting opportunities on contracts that are not subject to a race- or gender-conscious
10 affirmative action program by the same prime contractors that do hire them on contracts that are
11 subject to a race- and gender conscious affirmative action program. And, many minority- and women-
12 owned businesses that have benefited from the City's remedial program and have since graduated from
13 the program, report that prime contractors who gave them subcontracts on contracts subject to the
14 City's subcontracting requirements before they graduated, refuse to give them subcontracts now that
15 they are no longer certified under the M/WBE program.

16 -5. The Human Rights Commission Study reviewed contracts entered into by the City and
17 County of San Francisco in a variety of areas and categories from 1998 through early 2003, and
18 determined the following:

19 A. For prime construction contracts, even with the race- and gender-conscious
20 bid/ratings discount program in place, African Americans, Arab Americans, Asian Americans and
21 women *still* received fewer construction prime-contracting dollars than would be expected
22 given their availability. ~~Arab Americans did not receive any contract dollars at all.~~ The disparity
23 was statistically significant for African Americans, Asian Americans and Arab Americans. ~~In~~
24 addition, there was statistically significant evidence of discrimination in favor of Caucasian men.
25 Although African Americans represent 4.49 percent of the available construction firms, they

1 received only 1.01 percent of the construction contract dollars. Although Arab Americans
2 represent 0.14 percent of the available construction firms, they received no construction
3 contract dollars at all. Although Asian Americans represent 13.74 percent of the available
4 construction firms, they received only 4.98 percent of the construction contract dollars.
5 Although women represent 8.84 percent of the available construction firms, they received only
6 8.23 percent of the construction contract dollars. Although Caucasian men represent 67.74
7 percent of available construction firms, they received 70.79 percent of the construction
8 contract dollars. Although Latino American firms received more construction contracts than expected
9 based on their availability, the Board finds, based on the studies, statistics, testimony and other
10 evidence before it of discrimination against Latino Americans in City contracting and contracting in
11 other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had
12 in place, Latino Americans would receive well below the level of prime City construction contracts that
13 one would expect based on their availability. B. For architecture and engineering prime
14 contracts between 1998 and early 2003, even with the race- and gender-conscious bid/ratings
15 discount program in place, African Americans, Arab Americans, Asian Americans, Iranian
16 Americans, Latino Americans and women received fewer contracts than would be expected
17 given their availability. Notwithstanding the bid/ratings discount program, more than 87 percent of
18 the contracts in this area went to Caucasian male-owned businesses, even though those firms
19 represent less than 63 percent of the available architecture and engineering firms. The disparities
20 against Arab Americans, Asian Americans, Iranian Americans, Latino Americans and women, and
21 the particularly pronounced disparity in favor of Caucasian men, were statistically significant.
22 C. For professional services prime contracts in the years 1998 through early 2003,
23 even with the race-conscious bid/ratings discount program in place, Arab Americans Iranian
24 Americans and Latino Americans received fewer contracts than expected based on their
25 availability, and the disparities were statistically significant for those groups. Arab Americans,

1 who represent .11 percent of the available professional service firms, received only .08
2 percent of the professional services contract dollars. Iranian-Americans, who represent .11
3 percent of the available professional services firms, received 0.00 percent of the professional
4 services dollars. Latino Americans, who represent .79 percent of the professional services firms,
5 received .22 percent of the professional service dollars. And, although African Americans, Asian
6 Americans and women received more than the number of professional service contracts one would
7 expect based on their availability, the Board finds, based on the studies, statistics, testimony and other
8 evidence before it of discrimination against African Americans, Asian Americans and women in City
9 contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount
10 program that the City has had in place, African Americans, Asian Americans and women would receive
11 well below the level of prime City professional service contracts that one would expect based on their
12 availability.

13 D: ___ For purchases of goods and services prime contracts for 1998 through early 2003,
14 , even with the race- and gender conscious bid/ratings discount in place, Asian Americans, Iranian
15 Americans and women received fewer contract dollars than expected. Although Asian Americans
16 represent 4.15 percent of the available goods and services firms, those firms received only 1.84 percent
17 of the goods and services contract dollars. Similarly, although Iranian Americans represent .22
18 percent of the available goods and services firms, those firms received only .17 percent of the goods
19 and services contract dollars. Although women represent 6.22 percent of the available goods and
20 services firms, women received only 4.60 of the goods and services contract dollars. Although African
21 Americans, Arab Americans and Latino Americans received slightly more than the number of good and
22 services contracts one would expect based on their availability, the Board finds, based on the studies,
23 statistics, testimony and other evidence before it of discrimination against African Americans, Arab
24 Americans and Latino Americans in City contracting and contracting in other Bay Area markets, that
25 in the absence of the bid/ratings discount program that the City has had in place, African Americans,

1 Arab Americans and Latino American firms would receive well below the level of prime City goods and
2 services contracts that one would expect based on their availability.

3 _____
4 E. For general services prime contracts for 1998 through early 2003, even with the race-
5 and gender conscious bid/ratings discount in place, African Americans, Arab Americans, Asian
6 Americans and Iranian Americans received fewer contract dollars than expected based on their
7 availability. Although African Americans represent 1.28 percent of the available general services
8 firms, those firms received only .64 percent of the general services contract dollars. Similarly,
9 although Arab Americans represent .04 percent of the available general services firms, those firms
10 received only .01 percent of the general services contract dollars. Although Asian Americans represent
11 2.60 percent of the available general service firms, they received only 1.11 percent of the general
12 services contract dollars. Although Iranian Americans represent .09 percent of the general services
13 contract dollars, they received 0.00 percent of the general services contract dollars. The disparities
14 against African Americans and Iranian Americans are statistically significant. Although Latino
15 Americans and women received somewhat more than the number of general services contracts one
16 would expect based on their availability, the Board finds, based on the studies, statistics, testimony and
17 other evidence before it of discrimination against Latino Americans and women in City contracting and
18 contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the
19 City has had in place, Latino Americans and women would receive well below the level of prime City
20 general services contracts that one would expect based on their availability.

21 F. For telecommunications prime contracts entered into between 1998 and early 2003,
22 even with the race- and gender-conscious bid/ratings discounts in place, African Americans, Asian
23 Americans, Iranian Americans and women received fewer contract dollars than expected based on
24 their availability. Although African Americans represent 2.26 percent of the telecommunications firms,
25 they received only .19 percent of the telecommunications contract dollars. Although Asian Americans

1 represent 13.53 percent of the telecommunications firms, they received only 2.93 percent of the
2 telecommunications contract dollars. Although Iranian Americans represent .75 percent of the
3 telecommunications firms, they received .01 percent of the telecommunications contract dollars.
4 Although women represent 14.29 percent of the telecommunications firms, they received only 12.86
5 percent of the telecommunication contract dollars. Even with the bid/ratings discount program in
6 place, although Caucasian men represent 70.68 percent of the available telecommunications firms, they
7 received 77.56 percent of the telecommunication contract dollars. The disparities against African
8 Americans, Asian Americans and Iranian Americans are statistically significant. Although Latino
9 Americans received more than the number of telecommunication contracts one would expect based on
10 their availability, the Board finds, based on the studies, statistics, testimony and other evidence before
11 it of discrimination against Latino Americans in City contracting and contracting in other Bay Area
12 markets, that in the absence of the bid/ratings discount program that the City has had in place, Latino
13 Americans would receive well below the level of prime City telecommunication contracts that one
14 would expect based on their availability.

15 G. For City construction subcontracts entered into between 1998 and early 2003, even with
16 the race-conscious subcontracting program in place, Arab Americans and Asian Americans still
17 received fewer construction subcontracts than expected based on their availability. Although Arab
18 Americans represent .14 percent of the available construction firms, they received only .05 percent of
19 the construction subcontract dollars. Although Asian Americans represent 13.74 percent of the
20 construction firms, they received only 12.99 percent of the construction subcontract dollars. Although
21 African Americans, Latino Americans and women received more than the number of construction
22 subcontracts one would expect based on their availability, the Board finds, based on the studies,
23 statistics, testimony and other evidence before it of discrimination against African Americans, Latino
24 Americans and women in City contracting and contracting in other Bay Area markets, that in the
25 absence of the subcontracting program that the City has had in place, African Americans, Latino

1 Americans and women would receive well below the level of City construction subcontracts that one
2 would expect based on their availability.

3 H. For City architectural and engineering subcontracts entered into between 1998 and
4 early 2003, even with the race- and gender-conscious subcontracting program in place, African
5 Americans, Arab Americans, Latino Americans and women received fewer architectural and
6 engineering subcontracts than expected based on their availability. Although African Americans
7 represent 4.67 percent of the available architectural and engineering firms, they received only 4.48
8 percent of the architectural and engineering subcontract dollars. Although Arab Americans represent
9 .98 percent of the architectural and engineering firms, they received only .40 percent of the
10 architectural and engineering subcontract dollars. Although Latino Americans represent 4.18 of the
11 available architectural and engineering firms, they received only 2.51 percent of the architectural and
12 engineering subcontract dollars. Although women represent 12.53 percent of the available
13 architectural and engineering firms, they received only 9.29 percent of the architectural and
14 engineering subcontract dollars. Although Asian Americans and Iranian Americans received slightly
15 more than the number of architectural and engineering subcontracts one would expect based on their
16 availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of
17 discrimination against Asian Americans and Iranian Americans in City contracting and contracting in
18 other Bay Area markets, that in the absence of the subcontracting program that the City has had in
19 place, Asian Americans and Iranian Americans would receive well below the level of City architectural
20 and engineering subcontracts that one would expect based on their availability.

21 I. For City professional services subcontracts entered into between 1998 and early 2003,
22 even with the race-conscious and gender-conscious subcontracting program in place, Arab Americans,
23 Iranian Americans and Latino Americans received fewer professional services subcontracts than
24 expected based on their availability. Arab Americans and Iranian Americans received no professional
25 services subcontracts at all. Although Latino Americans represent .79 percent of the professional

1 services firms, they received only .46 percent of the professional services subcontract dollars.
2 Although African Americans, Asian Americans and women received more than the number of
3 professional service subcontracts one would expect based on their availability, the Board finds, based
4 on the studies, statistics, testimony and other evidence before it of discrimination against African
5 Americans, Asian Americans and women in City contracting and contracting in other Bay Area
6 markets, that in the absence of the subcontracting program that the City has had in place, African
7 Americans, Asian Americans and women would receive well below the level of City professional
8 services subcontracts that one would expect based on their availability.

9 J. For City telecommunications subcontracts entered into between 1998 and early 2003,
10 even with the race- and gender-conscious subcontracting program in place, African Americans, Asian
11 Americans, Iranian Americans and women received fewer telecommunications subcontracts than
12 expected based on their availability. Iranian Americans received no telecommunications subcontracts
13 at all. Although Asian Americans represent 13.82 percent of the available telecommunications firms,
14 they received only .83 percent of the telecommunications subcontract dollars. Although women
15 represent 13.82 percent of the telecommunications firms, they received only 8.84 percent of the
16 telecommunications subcontract dollars. Although African Americans represent 2.44 percent of the
17 telecommunications firms, they received only 2.22 percent of the telecommunications subcontract
18 dollars. The disparity is statistically significant for Asian Americans. And, even with the
19 subcontracting program in place, although Caucasian men represent less than 70 percent of the
20 telecommunications firms, they received more than 86 percent of the telecommunications subcontracts.
21 Although Latino Americans received somewhat more than the number of telecommunication
22 subcontracts one would expect based on their availability, the Board finds, based on the studies,
23 statistics, testimony and other evidence before it of discrimination against Latino Americans in City
24 contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount
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1 program that the City has had in place, Latino Americans would receive well below the level of City
2 telecommunications subcontracts that one would expect based on their availability.

3 6. In 2002 and 2003, the Human Rights Commission and this Board heard testimony from 134
4 individuals at public hearings about discrimination against minority and women-owned businesses,
5 and received written statements documenting such discrimination. . Additionally, in 2003, Godbe
6 Research conducted a telephone survey of HRC-certified MBEs and WBEs.

7 Based on this evidence, and the findings and evidence supporting the 1984, 1989 and 1998 Ordinances,
8 and amendments to those ordinances, the Board finds that minorities and women continuously face
9 racial prejudice in both the public and private sector markets in San Francisco. The prejudice
10 against minorities takes the form of stereotyping, prejudging, discomfort in working with
11 minorities, an absence of opportunities to prove one's skill and ability, exclusion, networking
12 difficulties, and racial slurs. Women also face prejudging and stereotyping. Women are often
13 made to feel that they are not qualified to be running a company and that they are innately
14 incapable of certain tasks. Women also sometimes face questions as to whether they are
15 really running their firms. Women- and minority-owned firms also face overt hostility from
16 majority-male firms, reporting harassment, intimidation, and undue pressure during the course
17 of doing business with majority- male firms. Women_ and minority-owned businesses also are
18 often subjected to increased and higher standards of review of their work than Caucasian,
19 male- owned firms. Minorities and women also reported difficulties and discrimination in
20 obtaining financing and credit for their firms, difficulty obtaining bonding and insurance, and
21 other forms of business institutional discrimination.

22 Minorities and women also report of discrimination in the award of City prime contracts. Minorities
23 and women report that project managers in many City departments continue to operate under an “old
24 boy network” in awarding City prime contracts. This practice creates a barrier to the entry of women-
25

1 and minority-owned businesses and puts those firms at a competitive disadvantage in their efforts to
2 secure City prime contracts.

3 Minority- and women-owned businesses also reported being discriminated against by prime
4 contractors, by, for example, being given inadequate lead time to bid on projects, being paid
5 late after a bid award, being listed on a bid without permission, and having the scope of their
6 work reduced or canceled after the bid award. Minority- and women-owned businesses report that
7 the only reason they are able to get work from many prime City contractors is because the City
8 requires prime contractors to provide minorities and women with opportunities to compete for City
9 subcontracts. In particular, many minorities and women report that they are frequently refused
10 subcontracting opportunities on contracts that are not subject to a race- or gender-conscious
11 affirmative action program by the same prime contractors that do hire them on contracts that are
12 subject to a race- and gender conscious affirmative action program. And, many minority- and women-
13 owned businesses that succeeded because of the City's remedial program and graduated from the
14 program, report that prime contractors who gave them subcontracts on contracts subject to the City's
15 subcontracting requirements before they graduated, refuse to give them subcontracts now.

16 Finally, minorities and women report of hostility in the industry toward the M/WBE program.

17 7. In February 1998, the Human Rights Commission issued a report that~~report also~~ documents
18 hostility and active resistance to the W/MBE program by various City departments and
19 agencies. The HRC report also found the following discriminatory practices at work in City
20 contracting: (1) listing minority- and women-owned enterprises as subcontractors but never
21 using the listed minority- and women-owned subcontracting firms, (2) the use of additional
22 nonminority, male subcontractors never listed on the relevant HRC forms, and (3) the creation
23 of fraudulent joint ventures involving minority-or women-owned and majority, men-owned
24 firms. In particular, the HRC's investigation found that in at least four out of 86 contracts
25 involving joint ventures, the minority- or women-owned firms listed in the joint venture did not

1 perform any work on the project. A report issued by the HRC in May 2003 reveals that these
2 discriminatory practices continue, and that the HRC has encountered the following additional
3 discriminatory practices in City contracting: (1) attempts by City personnel to improperly influence
4 contract selection panels to ensure that MBEs/WBEs do not obtain City prime contracts; (2) attempts
5 by City personnel to blame MBEs/WBEs unjustifiably for project delays; (3) the imposition of
6 unnecessary minimum requirements on City contracts that act as a barrier to MBEs/WBEs; (4) the
7 failure by City departments to submit draft requests for proposals to HRC with sufficient time to permit
8 the HRC to ensure that adequate MBE/WBE subcontracting goals have been set; (5) attempts by City
9 departments to circumvent the requirements of this ordinance by extending or modifying existing
10 contracts rather than putting new contracts out to bid; (6) the failure by City departments to comply
11 with the prompt payment provisions of this ordinance which ensure that MBEs/WBEs do not suffer
12 unnecessary financial hardships; and (7) resistance by City prime contractors to provide the City with
13 required subcontractor payment information, making it difficult for the City to ensure that MBE/WBE
14 subcontractors receive prompt payment for their work on City contracts.

15 ~~1996-97 study prepared by the HRC evidence concerning historically ineffective enforcement of the~~
16 ~~W/MBE program by the HRC due to resistance from other City departments.~~ — 8. Based on
17 the studies, reports, testimony and other evidence before it, the Board finds that the race- and gender
18 conscious remedial programs authorized by this Ordinance continue to be necessary to remedy
19 discrimination against minority- and women-owned businesses in City prime contracting and
20 subcontracting. The Board finds that the City and County of San Francisco is actively
21 discriminating against women and minority groups in its contracting, and is passively
22 participating in discrimination in the private sector. This Board finds that the evidence before it
23 establishes that the City's current contracting practices are in violation of federal law and that,
24 as a result, this ordinance ~~continues to be required~~ by federal law to bring the City into
25 compliance with federal civil rights laws in its contracting practices.

1 9. ____ In addition, the Board has reviewed numerous studies by San Francisco-based
2 agencies. These studies, although narrower in scope *than San Francisco's study*, support the
3 findings ~~of the study~~ undertaken to assess discrimination against women and minorities in City
4 contracting:

5 • ____ In 1991, the San Francisco Unified School District undertook a disparity study of
6 its contracting in various categories. The study found “substantial evidence of statistically
7 significant disparities between utilization and availability of minority and women contractors.”
8 For prime contracts over \$15,000 in value, the study found statistically significant evidence of
9 discrimination against African Americans, Latino Americans, and other minorities, in the
10 number of contracts willing and able firms owned by these groups were able to obtain. For
11 prime contracts under \$15,000 in total value, the study found statistically significant evidence
12 of discrimination against Asian Americans, Latino Americans, minorities in general, and
13 women, in the number of contracts willing and able firms owned by members of these groups
14 were able to obtain. For subcontracts, the study found statistically significant evidence of
15 discrimination in the number of subcontracts that African American, Asian American, Latino
16 American, and minority firms in general were able to obtain. In a review of contracts under its
17 Earthquake program, the study found statistically significant evidence of discrimination against
18 Asian Americans, minorities in general, and women in the number of contracts businesses
19 owned by members of these groups were able to obtain. In construction- related professional
20 services, the study found statistically significant evidence of discrimination against African
21 Americans, Asian Americans, minorities in general and women. In printing and publishing
22 contracts, the study found statistically significant discrimination against African Americans,
23 Asian Americans, Latino Americans, minorities in general, and women. The study also
24 reviewed testimonial evidence of discrimination that supported its findings of discrimination.

25

1 · In November 1992, the San Francisco Redevelopment Agency (“SFRA”) issued a study of
2 its use of minority- and women-owned business enterprises. The comprehensive study found
3 that women- owned business enterprises received none of the publicly funded prime contract
4 dollars and only 24 percent of the privately funded contract dollars SFRA would have
5 expected given their availability. The study found from a survey of private construction
6 contractors that minority- and women-owned businesses received none of the prime contracts
7 and only 2.32 percent of the subcontract dollars. The study also surveyed 95 local minority-
8 and women-owned construction firms, out of which 75 percent reported that prime contractors
9 who use their firms on public contracts with W/MBE requirements never use their firms on
10 private contracts.

11 • _____ In May 1993, the Regional Transit Association of the San Francisco Bay Area
12 issued a report entitled “The Utilization of Minority and Women-Owned Business Enterprises
13 by Member Agencies of the Regional Transit Association.” The study found significant
14 underutilization of minority- and women-owned enterprises in those jurisdictions in the Bay
15 Area without programs designed to increase minority and women participation. The study also
16 found that for each transit agency, including San Francisco's Municipal Railway, “M/WBEs
17 were used less than we would expect given their availability.” The study also examined
18 anecdotal evidence of discrimination from 502 minority- and women-owned enterprises in the
19 Bay Area.

20 In December 2001, the Human Rights Commission issued a report entitled “Violence in Our City:
21 Research and Recommendations to Empower Our Community,” which addresses the increase in
22 violence against African Americans that began in 2000, and discrimination against African Americans
23 in San Francisco.” This report supports the finding of the Board that an ordinance encouraging
24 minority-owned enterprise participation in City contracting is necessary to remedy race
25 discrimination against African American-owned firms in San Francisco.

1 10. A number of broad disparity studies undertaken by State and other local governments
2 and agencies also support the findings of discrimination in San Francisco's studies, including:
3 • In 1992, the Contra Costa County issued a comprehensive study of the use of
4 women- and minority-owned businesses by that county. The study examined Contra Costa's
5 own contracts, data about subcontractors collected from prime contractors, data on Contra
6 Costa's payments to vendors, data on 7,993 minority- and women-owned vendors in the Bay
7 Area identified from various directories, questionnaires on purchasing practices by Contra
8 Costa officials and census data, testimony Contra Costa solicited in public hearings in
9 Alameda and San Francisco, and Bay Area wide mail surveys of 540 women- and minority-
10 owned businesses. The study found that minorities received a smaller share of Contra Costa
11 County contracts than would be expected given their availability. The study also examined the
12 private sector for construction in San Francisco, Oakland, and San Jose and found that
13 minority- and women-owned businesses received a smaller share of prime and subcontracts
14 than would be expected given their availability. The study also found strong evidence of
15 discrimination against women and minority firms in Contra Costa's professional services
16 contracting and commodity purchases. • -In 1996, the City of Oakland and the Oakland
17 Redevelopment Agency issued a study of the utilization of minorities and women in their contracting
18 programs. The study revealed that even after having programs aimed at increasing contracting
19 opportunities for minority and women-owned businesses, those businesses still get fewer contracts than
20 one would expect based on their availability. The study revealed that a culture of discrimination
21 among prime contractors, lending institutions, and other businesses prevented minority- and women-
22 owned businesses from competing for public contracting opportunities in Oakland. For instance, even
23 though the majority of ready and willing construction contractors in Oakland were African American-
24 owned, Caucasian male contractors received more than twice the contract dollars from 1991-1994 as
25 African American contractors. And although nearly 68 percent of all ready and willing contractors

1 were minority- and women-owned businesses, Caucasian-male owned firms received more than 55
2 percent of the contract dollars during this period. Even those minorities who achieved statistical parity
3 in contract availability during the study period suffered from discrimination. Anecdotal evidence
4 gathered for the study revealed that prime contractors often refuse to allow the minority- and women-
5 owned businesses to perform subcontracting work after the contract has been awarded. Women
6 contractors reported that they must ask male co-workers to present their ideas to prime contractors,
7 since otherwise their ideas are ignored.

8 • In 1994, the City of Richmond, California commissioned a study to determine whether
9 its race- and gender- conscious remedial contracting programs continued to be necessary. The study
10 revealed great disparities between Caucasian male-owned firms, and minority and women-owned
11 businesses. For instance, although Caucasian men represented only 49 percent of the available
12 contracting firms, 85 percent of all contract dollars went to those firms. The disparity was even greater
13 in Richmond's professional services contracts, where Caucasian firms received 95 percent of the
14 contract dollars even though such firms represent only 15 percent of the available firms. The study
15 further revealed that although minority- and women-owned firms represented between 32 and 71
16 percent of the available firms depending on the particular industry (construction, professional services,
17 engineering, and procurement), minority and women-owned businesses never received more than 14.8
18 percent of the contract dollars in any industry. And testimonial evidence revealed that Richmond's
19 MBE/WBE ordinance had done little to address the underlying causes of discrimination. Minorities
20 and women were consistently faced with obstacles not placed before Caucasian male contractors,
21 based solely on their race and gender. In fact, based on their experience, some MBEs and WBEs gave
22 up trying to contract with Richmond in the future.

23 • In 1995 the California Senate Office of Research issued a report entitled "The
24 Status of Affirmative Action in California." The report explained, in part, that "[c]ities and
25 counties have affirmative action programs as a matter of public policy, as a requirement for

1 contracting with the State, or because they receive federal money that requires attention to
2 nondiscrimination hiring.” The report concluded that despite past affirmative action efforts,
3 “salaries remain disparate among racial and ethnic groups and between men and women.”

4 • _____ In April 1996, the California Senate Office of Research issued a report entitled
5 “Exploring the Glass Ceiling and Salary Disparities in California State Government.” The
6 report examined the salary levels of 164,000 state civil service employees and compared
7 compensation according to gender, race and ethnicity. The study found that women of equal
8 educational attainment earn only \$.74 for every dollar earned by their male counterparts.

9 11. Based on the testimony, studies and reports contained in Board File Nos. 98-0612, 99-0266 and
10 99-1326, and the evidence before the Board in support of this Ordinance, the Board finds that Arab and
11 Iranian Americans continue to suffer discrimination in the City’s procurement process. In fact,
12 discrimination against Arab Americans and Iranian Americans has increased dramatically. Based on
13 testimony presented at public hearings before the Human Rights Commission and this Board between
14 2001 and 2003, and the Human Rights Commission Report issued in September 2002, the Board finds
15 that since September 11, 2001, there has been a sharp increase in threats, harassment, violence, and
16 discrimination against individuals perceived as having Middle Eastern origins in both the private
17 sector in San Francisco as well as in the City’s procurement processes. As a direct result of this
18 systemic discrimination, Arab American and Iranian American-owned businesses have been prevented
19 from obtaining City prime contracting and subcontracting.

20 :-
21 12.12. In 1989, based on the significant evidence before it, this Board found that Native Americans
22 who sought prime and subcontracting opportunities have received fewer such contracts than
23 expected based on their availability, and that such underutilization was attributable to
24 discrimination both in the private sector and in the City’s procurement practices. Based on the
25 historical record of discrimination against Native Americans, and the testimonial evidence

1 given at public hearings, the Board found that there was compelling evidence of discrimination to
2 support the addition of Native Americans to the MBE program and to justify remedial
3 measures on their behalf. The HRC's 2003 disparity study reveals that there are no longer any San
4 Francisco-based businesses in any industry that are owned by Native Americans and available to
5 perform City prime contracts or subcontracts. Based on the significant evidence before it, the Board
6 finds that the pervasive discrimination and hostility against Native Americans in the Bay Area and in
7 the City's procurement processes has resulted in the recent disappearance of available San Francisco-
8 based Native American-owned contractors. The Board further finds that this discrimination against
9 Native Americans will prevent Native Americans from re-establishing businesses in San Francisco
10 without the bid/ratings discount program and subcontracting program set forth in this Ordinance. For
11 that reason, the Board finds it necessary to continue to extend its remedial contracting program to
12 businesses owned by Native Americans.

13
14 13. ___ The Board has also reviewed and considered several volumes of collected social
15 science materials concerning discrimination against women and minorities in the Bay Area
16 and in public contracting in California. These social science materials strongly support, and
17 are consistent with, the findings in the statistical and testimonial evidence that discrimination
18 exists against women and minorities in the City's contracting and in the private market for
19 similar contracts.

20 14. ___-The Board has considered a substantial body of evidence in enacting the ordinance.
21 The findings set forth herein represent certain salient portions derived from the evidence and
22 hearings. These findings, however, are intended to be representative and nonexhaustive of
23 the evidence and reasons supporting the enactment herein. The Board will consider relevant
24 evidence that continues to be collected.

25

1 15.—In enacting this ordinance, the Board considered and relied on (a) the fact that a
2 substantial percentage of City agencies receive federal funds, a vast portion of which is
3 expended in City contracts, (b) the federal requirements for eradication of discrimination,
4 including the evidence supporting those requirements, and (c) all applicable constitutional
5 standards including those that apply to federally funded projects.

6 16.—This Board finds that the testimony of minority and women business owners who seek
7 to enter into contracts with the City or are doing business with the City, as presented to this
8 Board and the Human Rights Commission, offer clear and persuasive evidence of
9 discrimination to such an extent that the disparity of contract dollars awarded to minority- and
10 women-owned enterprises can only be explained by discrimination. The statistical evidence,
11 oral *and written* histories, and social science evidence reviewed by this Board also support this
12 finding. Accordingly, this Board adopts this ordinance to remedy the specifically identified City
13 contracting practices and conditions in the Community and industries that cause the exclusion
14 or reduction of contracting opportunities for minority- and women-owned businesses in City
15 prime and subcontracting programs.

16 17. Based on a comparative review of the use of minority- and women-owned businesses
17 in the public and private sectors in the City, oral *and written* histories and additional evidence,
18 this Board finds that there is a substantial reduction in the use of minority- and women-owned
19 firms in private sector contracting in the absence of MBE/WBE requirements such as those
20 found in this ordinance. In the private sector, substantial evidence demonstrates that minority-
21 and women-owned businesses are seldom or never used by prime contractors for projects
22 that do not have MBE/WBE goal requirements. Therefore, this Board finds that if this
23 ordinance were not enacted and the MBE/WBE goal requirements eliminated, the
24 discrimination against and nonutilization of minority- and women-owned businesses now
25 existing in the private sector would occur immediately in the awarding of City contracts.

1 18.—This Board further finds that local businesses that seek prime contracting and
2 subcontracting opportunities in City contracting continue to labor under a competitive
3 disadvantage with businesses from other areas because of the higher administrative costs of
4 doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for
5 labor, higher insurance rates, etc.).

6 19.—This Board finds that public interest is served by encouraging economically
7 disadvantaged businesses to locate and to remain in San Francisco through the provision of
8 bid discounts to such San Francisco businesses in the award of City contracts and by
9 requiring prime contractors to use good faith efforts to use such businesses as subcontractors
10 when there are subcontracting opportunities available on City contracts.

11 20.—Additionally, this Board finds that policies and programs that enhance the
12 opportunities and entrepreneurial skills of local businesses will best serve the public interest
13 because the growth and development of such businesses will have a significant positive
14 impact on the economic health of San Francisco by, among other things, the creation of local
15 jobs and increased tax revenue.

16 21.—The Board finds that affording a five percent bid discount for economically
17 disadvantaged local businesses bidding on City contracts reduces the disadvantages under
18 which these businesses compete.

19 22.—The bid discount mechanism in this ordinance is used to assure equality in the
20 treatment of opportunities to any bidder for City contracts. This Board further finds that the
21 failure to use such a bid discount would result in discrimination against or preferential
22 treatment to certain individuals and/or groups.

23 **SEC. 12D.A.3. DECLARATION OF POLICY.**

24 It is the policy of the City and County of San Francisco to ensure full and equitable
25 opportunities for minority business enterprises, woman business enterprises, and local

1 business enterprises to participate as prime contractors in providing goods and services to the
2 City. This program is intended to correct identified discriminatory practices inherent in the
3 City's procurement process and in the award of prime contracts to MBE/WBEs. Another goal
4 of this ordinance is to offset some of the economic disadvantages local businesses continue
5 to face that are not shared by nonlocal businesses.

6 The City will continue to rely on the relationship between the percentages of MBEs/WBEs in
7 the relevant sector of the San Francisco business community and their respective shares of
8 City contract dollars as a measure of the effectiveness of this ordinance in remedying the
9 effects of the aforementioned discrimination.

10 The City is continuing to use a discount for local business in the award of City contracts in
11 order to encourage businesses to locate and to remain in San Francisco and thereby enhance
12 employment opportunities for persons living in San Francisco. The cost of locating and doing
13 business in San Francisco continues to be as much as 15 percent and greater than the cost of
14 doing business in the surrounding communities. Providing a five-percent bid discount for local
15 businesses bidding on City contracts reduces the disadvantages under which City-located
16 businesses labor when competing for City contracts. For that reason, affording them a five-
17 percent bid discount makes good sense. In effect, the bid discount assists these businesses
18 in contributing to the economic health of the City. The five-percent bid discount does not
19 unduly hamper nonlocal businesses in the contracting process, and parallels the discounts
20 awarded in many other local jurisdictions.

21 **SEC. 12D.A.4. SCOPE.**

22 The race- and gender-conscious bid discounts of this ordinance shall be afforded only to
23 economically disadvantaged minority- and women-owned businesses in all specifically
24 enumerated categories of City contracts for the procurement of goods and services subject to
25 exemptions hereinafter specifically enumerated. The local business bid discount shall be

1 afforded to all economically disadvantaged local businesses in the award of all City contracts
2 for the procurement of goods and services subject to exceptions hereinafter specifically
3 enumerated in Section 12D.A.15.

4
5 **SEC. 12D.A.5. DEFINITIONS.**

6 ~~*“Award of a contract” occurs when a contract is certified by the Controller of the City and County of*~~
7 ~~*San Francisco.*~~

8 *“Architect/Engineering Contracts” shall mean an agreement for architects, engineers, and other*
9 *outside temporary professional design, consultant or construction management services for a public*
10 *work project.*

11 “Back contracting” shall mean any agreement or other arrangement between a prime
12 contractor and its subcontractor that requires the prime contractor to perform or to secure the
13 performance of the subcontract in such a fashion and/or under such terms and conditions that
14 the prime contractor enjoys the financial benefits of the subcontract. Such agreements or
15 other arrangements include, but are not limited to, situations in which either a prime contractor
16 or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor
17 by the subcontract shall be performed by or be the responsibility of the prime contractor.

18 “Best efforts” when required of contract awarding authority shall mean reasonable efforts to
19 include minorities, MBEs, women, or WBEs in City contracting.

20 “Bid” shall mean and include a quotation, proposal, solicitation or offer by a bidder or
21 contractor to perform or provide labor, materials, equipment, supplies or services to the City
22 and County of San Francisco for a price.

23 “Bidder” shall mean any business that submits a quotation, bid or proposal to provide labor,
24 materials, equipment, supplies or services to the City and County of San Francisco.

1 “City” shall mean the City and County of San Francisco.

2 “Commercially useful function” shall mean that the business is directly responsible for
3 providing the materials, equipment, supplies or services to the City as required by the
4 solicitation or request for quotes, bids or proposals. MBEs, WBEs or LBEs that engage in the
5 business of providing brokerage, referral or temporary employment services shall not be
6 deemed to perform a “commercially useful function” unless the brokerage, referral or
7 temporary employment services are those required and sought by the City. When the City
8 requires and seeks specialty products made to order for the City or otherwise seeks products which, by
9 industry practice, are not regularly stocked in warehouse inventory but instead are purchased directly
10 from the manufacturer, the value of the "commercially useful function" provided by a supplier or
11 distributor shall be valued at no more than five percent of the cost of the product. When the City
12 requires and seeks products which are, by industry practice, stocked in warehouse inventory and are in
13 fact, regularly stocked by the listed supplier or distributor, the value of the "commercially useful
14 function" provided by the supplier or distributor shall not exceed sixty percent of the cost of the
15 product. If the listed supplier or distributor does not regularly stock the required product, the value of
16 the "commercially useful function" provided by the supplier or distributor shall be valued at no more
17 than five percent of the cost of the product

18 “Commission” shall mean the Human Rights Commission of the City and County of San
19 Francisco.

20 “Commodity” shall mean products, including materials, equipment and supplies, purchased by the
21 City.

22 “Concession” shall mean any privilege conferred by the City on a person to engage in
23 business on property owned or leased by the City.

24 “Contract” shall mean and include any agreement between the City and a person to provide or
25 procure labor, materials, equipment, supplies or services to, for or on behalf of the City. A

1 “contract” shall include an agreement between the City and a person or nonprofit entity to
2 perform construction-related services or fund the performance of such services. A “contract”
3 does not include: (1) awards made by the City with federal/State grant or City *general fund*
4 *monies funds* to a nonprofit entity where the City offers assistance, guidance, or supervision on
5 a project or program and the recipient of the grant award uses the grant monies to provide
6 services to the community; (2) sales transactions where the City sells its personal or real
7 property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease,
8 franchise, or concession agreements; (5) agreements to use City real property; (6) gifts of
9 materials, equipment, supplies or services to the City; or (7) agreements with a public agency
10 except as provided in Section ~~12D.A.9~~ 12D.A.9(E).

11 “Contract awarding authority” shall mean the City officer, department, commission, employee
12 or board authorized to enter into contracts on behalf of the City. In the case of an agreement
13 with a person or nonprofit entity to perform or fund the performance of construction-related
14 services, the term “contract awarding authority” shall mean the person or nonprofit entity
15 receiving funds from the City to perform or fund the performance of such services.

16 “Contractor” shall mean any person(s), firm, partnership, corporation, or combination thereof,
17 who submits a bid or proposal to perform, performs any part of, agrees with a person to
18 provide services relating to and/or enters into a contract with department heads and officers or
19 contract awarding authorities empowered by law to enter into contracts on the part of the City
20 for public works or improvements to be performed, or for goods or services or supplies to be
21 purchased at the expense of the City or to be paid out of monies deposited in the treasury or
22 out of trust monies under the control of or collected by the City.

23 “Control” of a business shall refer to the possession of the legal authority and power to
24 manage business assets, good will and daily operations of the business, and the active and
25

1 continuous exercise of such authority and power in determining the policies and directing the
2 operations of the business.

3 “Director” shall mean the Director of the Human Rights Commission of San Francisco.

4 “Discount” shall mean an upward or downward price adjustment, according to the context, that
5 is made for the purpose of remedying, in the case of MBEs and WBEs, identified
6 discrimination, and, in the case of LBEs, the competitive disadvantage caused by the higher
7 administrative costs of doing business in the City.

8 “Economically disadvantaged business” shall mean a business whose average gross annual
9 receipts in the three fiscal years immediately preceding its application for certification as a
10 MBE, WBE or LBE do not exceed the following limits: (1) public works/ construction -
11 \$14,000,000; specialty construction contractors - ~~\$5,000,000~~7,000,000; (2) goods/ materials/
12 equipment and general services suppliers - ~~\$5,000,000~~7,000,000; (3) professional services and
13 architect/engineering - ~~\$2,000,000~~2,500,000; (4) trucking - \$3,500,000; and (5)
14 telecommunications - \$5,000,000. Any business under common ownership, in whole or in part, with
15 any other business(s) shall be considered an "economically disadvantaged business" only if the
16 aggregate gross annual receipts of all of the businesses under such common ownership do not exceed
17 the limits specified in this section. All businesses owned by married spouses or domestic partners shall
18 be considered under common ownership unless the businesses are in unrelated industries and no
19 community property or other jointly owned assets were used to establish or are used to operated either
20 business.

21 ~~“Equipment and supplies contract” shall mean a term purchase agreement, contract order, purchase~~
22 ~~order and any other agreement for the purchase of transportation equipment, office supplies, data~~
23 ~~processing and office equipment, hospital and medical equipment and supplies, food, restaurants,~~
24 ~~building supplies, fire/safety equipment and supplies, clothing, miscellaneous and electrical equipment~~

25

1 ~~and supplies. The term “equipment and supplies contract” shall not include contracts for fuels,~~
2 ~~lubricants and illuminants.~~

3 “Franchise” shall mean and include the right or privilege conferred by grant from the City, or
4 any contracting agency thereof, and vested in and authorizing a person to conduct such
5 business or engage in such activity as is specified in the grant. A “franchise” shall not include
6 an agreement to perform construction-related services.

7 “General services contract” shall mean ~~a purchase agreement, contract order, purchase order and~~
8 ~~any other agreement for the procurement of~~ an agreement for those services that are not professional
9 services. Examples of "General Services" include: janitorial, security guard, pest control, parking lot
10 management and landscaping services ~~equipment and computer maintenance, miscellaneous, printing~~
11 ~~and graphics services.~~

12 “Good-faith efforts” when required of a contract awarding authority or department shall mean
13 the actions undertaken by a department to obtain MBE or WBE participation in a contract as
14 prime contractors, and shall include the following efforts: (1) encouraging MBE/WBEs to
15 attend prebid meetings scheduled by a department or the Commission to inform potential
16 contractors of contracting opportunities; (2) advertising in general circulation media, trade
17 association publications and minority/woman business focused media and posting the
18 contacting opportunity on the Office of Contract Administration's website pursuant to Section
19 12.D.A9(A)6;(3) notifying MBE/WBEs that are available to perform the work contemplated in a
20 contract and soliciting their interest in the contract; (4) dividing the contract work into
21 economically feasible units to facilitate MBE/WBE participation in the contract; (5) pursuing
22 solicitations of interest by contacting MBE/WBEs to determine whether these businesses are
23 interested in participating on the contract; (6) providing MBE/WBEs with adequate information
24 about the plan, specifications and requirements of the contract; (7) where applicable,
25 negotiating with MBE/WBEs in good faith and demonstrating that MBE/WBEs were not

1 rejected as unqualified without sound reasons based on a thorough investigation of their
2 capabilities; and (8) using the services of available community and contractors' groups, local,
3 State or federal minority and woman business assistance offices that provide assistance in
4 the recruitment of MBE/WBEs for public sector contracts.

5 “Good-faith efforts” when required of a prime ~~public works/construction~~ city contractor ~~or~~
6 ~~professional services provider~~ shall mean the steps undertaken to comply with the goals and
7 requirements imposed by the City for participation by MBE/WBEs as subcontractors, and shall
8 include the following:

9 (1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders
10 of MBE/WBE program requirements for the project for which the contract will be awarded;

11 (2) Identifying and selecting specific items of the project for which the contract will be awarded
12 to be performed by MBE/WBEs to provide an opportunity for participation by those
13 enterprises;

14 (3) Advertising for MBEs or WBEs that are interested in participating in the project, not less
15 than 10 calendar days before the date the bids can first be submitted, in one or more daily or
16 weekly newspapers, trade association publications, minority or trade-oriented publications,
17 trade journals, or other media, specified by the City. This paragraph applies only if the City
18 gave public notice of the project not less than 15 calendar days prior to the date the bids can
19 first be submitted;

20 (4) Providing, not less than 10 calendar days prior to the date on which bids can first be
21 submitted, written notice of his or her interest in bidding on the contract to the number of
22 MBEs or WBEs required to be notified by the project specifications. The City shall make
23 available to the bidder not less than 15 calendar days prior to the date the bids are opened a
24 list or a source of lists of enterprises that are certified by the Director as MBE/WBEs;

25

- 1 (5) Following up initial solicitations of interest by contacting potential MBE/WBE
2 subcontractors to determine with certainty whether those enterprises were interested in
3 performing specific items of the project;
- 4 (6) Providing interested MBE/WBEs with information about the plans, specifications, and
5 requirements for the selected subcontracting or material supply work;
- 6 (7) Requesting assistance from minority and women community organizations; minority and
7 women contractor or professional groups; local, State or federal minority and women business
8 assistance offices; or other organizations that provide assistance in the recruitment and
9 placement of minority or women business enterprises, if any are available;
- 10 (8) Negotiating in good faith with interested MBEs or WBEs, and not unjustifiably rejecting as
11 unsatisfactory bids or proposals prepared by any MBEs or WBEs, as determined by the City;
- 12 (9) Where applicable, advising and making efforts to assist interested MBE/WBEs in obtaining
13 bonds, lines of credit, or insurance required by the City or contractor;
- 14 (10) Making efforts to obtain MBE/WBE participation that the City could reasonably expect
15 would produce a level of participation sufficient to meet the City's goals and requirements.
- 16 “Human Rights Commission (HRC)” shall mean the Human Rights Commission of San
17 Francisco, hereinafter referred to as the “Commission.”
- 18 “Joint venture” shall mean an association of two or more businesses acting as a contractor
19 and performing or providing services on a contract, in which each joint venture partner
20 combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares
21 in the ownership, control, management responsibilities, risks and profits of the joint venture in
22 proportion to its claimed level of participation .
- 23 “Lease” shall mean and include an agreement by which the City or any contracting agency
24 thereof, grants to a person the temporary possession and use of property for consideration.
25

1 “Local business” or “Local business enterprise (LBE)” shall mean an economically
2 disadvantaged business that is an independent and continuing business for profit, performs a
3 commercially useful function and is a firm that:

4 (1) Has fixed offices or distribution points located within the geographical boundaries of the
5 City where a commercially useful function is performed. Businesses that supply commodities must
6 continuously maintain warehouses stocked with inventory within the geographical boundaries of the
7 City. Truckers must park their registered vehicles and trailers within the geographical boundaries of
8 the City. Post office box numbers or residential addresses shall not suffice to establish status
9 as a “Local Business”;

10 (2) Is listed in the Permits and License Tax Paid File with a San Francisco business street
11 address; and

12 (3) Possesses a current Business Tax Registration Certificate at the time of the application for
13 certification as a local business;

14 (4) Has been located and doing business in the City for at least six months preceding its
15 application for certification as a local business; and

16 (5) Is certified as an LBE pursuant to Section 12D.A.6(B)(1).

17 No business that is owned in part or in whole by a full time City employee or City officer shall be
18 considered a “local business” or “local business enterprise (LBE)” within the meaning of this
19 Ordinance.

20 “Lower-tier subcontracting” shall mean any agreement or other arrangement between a sub-
21 contractor and a ~~prime contractor that requires the prime contractor to~~ person as defined herein
22 where it is agreed that said person shall perform any term, condition or obligation imposed by the
23 subcontract upon the subcontractor.

24 “Minority,” “minorities,” or “minority person” shall mean members of one or more of the
25 following ethnic groups:

1 African Americans: (defined as persons whose ancestry is from any of the Black racial groups of Africa
2 or the Caribbean);

3 Arab Americans: (defined as persons whose ancestry is from an Arabic speaking country that is a
4 current or former member of the League of Arab States);

5 Asian Americans (defined as persons with Chinese, Japanese, Korean ~~Koreans~~, Pacific
6 ~~Islanders~~ Islander, ~~Samoans~~ Samoan, ~~Filipinos~~ Filipino, Asian ~~Indians~~ Indian, and Southeast
7 ~~Asians~~ Asian ancestry);

8 ~~African Americans;~~

9 Iranian Americans (defined as persons whose ancestry is from the country of Iran);

10 ~~Latino Americans (defined as persons with~~ Mexicans Mexican, Puerto ~~Ricans~~ Rican, Cubans
11 Cuban, Central American or South ~~Americans~~ American ancestry ~~origins~~. Persons with European
12 Spanish ancestry are not included as Latino Americans.);

13 ~~Arab Americans (defined as all individuals whose ancestry is from an Arabic speaking country that is~~
14 ~~a member of the League of Arab States as well as all individuals whose ancestry is from a country~~
15 ~~bordering an Arabic speaking country that is a member of the League of Arab States and who are~~
16 ~~regarded as having ancestry from an Arab speaking country that is a member of the League of Arab~~
17 ~~States); and~~

18 Native Americans (defined as any person whose ancestry is from any of the original peoples of North
19 America, and who maintains cultural identification through tribal affiliation or community recognition.

20 “Minority business enterprise (MBE)” shall mean an economically disadvantaged local
21 business that is an independent and continuing business for profit, performs a commercially
22 useful function, is owned and controlled by one or more minority persons residing in the
23 United States or its territories and is certified as an MBE pursuant to Section 12D.A.6(B).

24 ~~“Miscellaneous professional services” shall mean all professional services except legal, architect/~~
25 ~~engineer, computer systems, management consulting and medical services.~~

1 "Office" or "offices" shall mean a fixed and established place where work is performed of a
2 clerical, administrative, professional or production nature directly pertinent to the business
3 being certified. A temporary location or movable property or one that was established to
4 oversee a project such as a construction project office does not qualify as an "office" under
5 the ordinance. Work space provided in exchange for services (in lieu of monetary rent) does not
6 constitute an "office." The office is not required to be the headquarters for the business but it
7 must be capable of providing all the services to operate the business for which LBE certification is
8 sought.

9 "Owned," for purposes of determining whether a business is a MBE or WBE shall mean that
10 minorities or women, as the context requires:

- 11 (1) Possess an ownership interest of at least 51 percent of the business;
- 12 (2) Possess incidents of ownership, such as an interest in profit and loss, equal to at least the
13 required ownership interest percentage; and
- 14 (3) Contribute capital, equipment ~~and expertise~~ to the business equal to at least the required
15 ownership percentage. Promissory notes are not sufficient to constitute capital contributions.
16 (4) Contribute expertise relevant to the business' essential functions at least equivalent to the
17 ownership interest.

18 For an individual seeking MBE or WBE certification, ownership shall be measured as though
19 the applicant's ownership were not subject to the community property interest of a spouse, if
20 both spouses certify that (a) only the woman or minority spouse participates in the
21 management of the business and the nonparticipating spouse relinquishes control over
22 his/her community property interest in the subject business or (b) both spouses have bona
23 fide management and control of the business.

24
25

1 “Participation commitment” shall mean the targeted level of MBE/WBE subcontractor
2 participation that each prime ~~public works/construction~~ city contractor ~~or professional service~~
3 ~~provider~~ has designated in its bid.

4 “Participation goals” shall mean the targeted levels of City-wide MBE/WBE participation in City
5 prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or
6 profession referred to as “percent availability” in the utilization indices contained on file with
7 the Clerk of this Board in File No. 98-0612.

8 “Percent availability” shall mean the relevant share of MBEs or WBEs in a given industry or
9 profession.

10 “Person” includes one or more individuals, partnerships, associations, organizations, trade or
11 professional associations, corporations, cooperatives, legal representatives, trustees, trustees
12 in bankruptcy, receivers, or any group of persons, including any official, agent or employee of
13 the City.

14 “Professional services contract” shall mean an agreement for services which require extended
15 analysis, the exercise of discretion and independent judgment in their performance, and/or the
16 application of an advanced, specialized type of knowledge, expertise, or training customarily acquired
17 either by a prolonged course of study or equivalent experience in the field. Examples of professional
18 service providers include licensed professionals such as accountants, and non-licensed professionals
19 such as software developers and financial and other consultants, except that services of architects,
20 engineers, and other outside temporary professional design, consultant or construction management
21 services for a public work project shall be considered architect/engineering contracts and shall not be
22 considered professional services contracts for the purpose of this Ordinance. ~~the procurement of legal,~~
23 architect/engineer, computer systems, management consulting, medical services and miscellaneous
24 professional services.

25

1 “Public works/construction contract” shall mean an agreement for the erection, construction,
2 renovation, alteration, improvement, demolition, excavation, installation, or repair of any public
3 building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public
4 facility performed by or for the City and County of San Francisco, the cost of which is to be
5 paid wholly or partially out of moneys deposited in the treasury of the City and County.

6 ~~“Set-aside” when referring to a contract or project shall mean a procurement or contract award
7 process where competition for a contract or project is limited to MBEs, WBEs and/or joint
8 ventures with MBE/WBEs.~~

9 “Services” shall mean Professional Services and General Services.

10 “Subcontractor” shall mean any business providing goods or services to a contractor for profit,
11 if such goods or services are procured or used in fulfillment of the contractor's obligations
12 arising from a contract with the City.

13 “Subcontractor participation goals” shall mean the targeted level of MBE/WBE subcontractor
14 participation designated by the Director for prime ~~public works/construction and professional~~
15 ~~services~~ city contracts.

16 “Woman business enterprise (WBE)” shall mean an economically disadvantaged local
17 business that is an independent and continuing business for profit, performs a commercially
18 useful function, is owned and controlled by one or more women residing in the United States
19 or its territories and is certified as a WBE pursuant to Section 12D.A.6(B).

20 ~~“Woman/minority man business enterprise (W/MBE)” shall mean an economically disadvantaged local
21 business that meets the definition of both an MBE and WBE, except that the ownership interest and
22 control by women alone and minorities alone is less than 51 percent of the business, but for which the
23 aggregate ownership interest and control by women and minorities equals or exceeds 51 percent of the
24 business. A MBE/WBE shall qualify and be deemed by a department, either as an MBE or WBE, but not
25 both. Any reference in the ordinance to MBE or WBE includes a W/MBE.~~

1 **SEC. 12D.A.6. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.**

2 (A) In addition to the duties and powers given to the Human Rights Commission elsewhere,
3 the Commission shall:

4 1. Collect, analyze and periodically report to this Board relevant data that will assist this Board
5 in determining whether (a) the scope of this ordinance in terms of race- or gender-conscious
6 remedies shall be expanded to include new contract areas or minority groups and (b) whether
7 the scope of this ordinance should be limited because the City has met its obligation to adopt
8 and to implement necessary measures to remedy both its active discrimination and its passive
9 perpetuation of private discrimination);

10 2. Levy the same sanctions that a contracting awarding authority may levy as specified in
11 Section 12D.A.9(A)(7);

12 3. When necessary, subpoena persons and records, books and documents for a proceeding
13 of the Commission or an investigation by the Director or an audit pursuant to Section 12D.A.6(E)
14 conducted to further the purposes of this ordinance;

15 4. Adopt rules and regulations establishing standards and procedures for effectively carrying
16 out this ordinance. Among other things, the rules and regulations shall provide for
17 administrative procedures that will allow a business to prove and the Commission to
18 recommend to this Board that the ordinance's remedial measures should not be applied to an
19 industry or profession because MBE/WBE participation in City prime contracts has reached
20 parity with MBE/WBE participation in the relevant business community and that MBE/WBEs
21 no longer suffer from a discrimination-induced competitive disadvantage in the applicable
22 industry or profession. The regulations shall also provide a mechanism for contractors to seek
23 a determination by the Director that a MBE or WBE may not be granted a race- or gender-
24 conscious bid discount where it is demonstrated that the MBE's or WBE's bid price is not
25 attributable to the effects of past discrimination;

- 1 5. Issue forms for the Controller or contract awarding departments to collect information from
2 contractors as prescribed by this ordinance;
- 3 6. Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor as
4 specified in Section ~~12D.A.16(c)~~ 12D.A.16(b), (ii) challenging the Director's denial of an
5 application for or revocation of the certification of a business as an MBE, WBE, or LBE, as
6 specified in Section 12D.A.6(B)(2), or (iii) challenging the Director's denial of a request to
7 waive or to reduce subcontractor participation goals as specified in Section 12D.A.17(H);
- 8 7. By regulation require contract awarding authorities, departments and the Controller to
9 provide to the Director such information as will be necessary to enable the Director to keep a
10 database from which discrimination can be identified, to report to the Mayor and the Board of
11 Supervisors at the end of each fiscal year on the progress each City department has made
12 towards the achievement of MBE and WBE participation goals and to perform his/her other
13 duties. The database is a public record available to the public as provided by state and local
14 law;
- 15 8. Adopt rules and regulations as deemed necessary by the Director to ensure that the joint venture
16 bid/ratings discount is applied only to joint ventures where the MBE, WBE or LBE has sufficient skill,
17 experience, and financial capacity to perform the portion of the work identified for the MBE, WBE or
18 LBE.
- 19 9. Consistent with the provisions of the ordinance make such other rules and regulations as
20 are necessary to guide its implementation.
- 21 (B) In addition to the duties and powers given to the Director elsewhere, the Director shall
22 have the following duties and powers:
- 23 1. Through appropriately promulgated procedures, the Director shall certify businesses as
24 bona fide MBEs/WBEs/LBEs. These procedures shall provide that any business seeking
25 certification as an LBE shall meet the definition of an LBE and possess or establish all of the

1 following: (1) business cards for the San Francisco office; (2) business stationery for the San
2 Francisco office; (3) a written agreement for occupancy of a San Francisco office *including*
3 *documentation of payment of monetary rent (receipts and copies of cancelled checks)*; (4) a listing of
4 the business in an appropriate business buyers guide such as a telephone yellow pages
5 listing San Francisco based businesses; (5) a San Francisco office in which business is
6 transacted that is appropriately equipped for the type of business for which the enterprise
7 seeks certification as an LBE; (6) a conspicuously displayed business sign at the San
8 Francisco business premises except where the business operates out of a residence; and (7)
9 licenses issued to the business owner appropriate for the type of business for which the
10 enterprise seeks certification.;

11 2. Except where the Director cannot certify a business because the business has not been
12 established in San Francisco for the requisite six months, whenever the Director denies an
13 application for or revokes the certification of a business as a MBE, WBE, LBE because the
14 business is not *eligible to be certified as* a bona fide MBE, WBE, LBE, the Director shall, within
15 three working days of his/her decision, notify the aggrieved business in writing of the basis for
16 revocation or denial of certification and the date on which the business will be eligible to
17 reapply for certification. The notice shall be transmitted to the business via certified mail or via
18 facsimile. The Director shall require a business to wait at least six months but not more than
19 two years after the denial or revocation before reapplying to the Director for certification as a
20 MBE, WBE or LBE. *The Director shall provide any business whose certification is revoked an*
21 *opportunity to be heard within three business days of the revocation.* ~~The~~ A business may appeal
22 the Director's denial or revocation of certification of a business as an MBE, WBE, or LBE to
23 the Commission. The appeal must be filed with the Commission within three business days
24 following receipt of the Director's decision. Notice by the Director to the business of denial or
25 revocation of certification as an MBE, WBE or LBE shall apprise the business of its right to

1 appeal the decision. ~~The Commission shall resolve any such appeal within a reasonable period of~~
2 ~~time taking into account the contract awarding authority's need for an expedient award of the~~
3 ~~particular contract;~~

4 3. The Director shall have the ultimate responsibility for ensuring that the necessary data is
5 collected and analyzed. Annually, and more often if the Director deems necessary, the
6 Director shall analyze the most recently available data of MBEs and WBEs in the various
7 industries and professions doing business with the City. Applying statistically sound methods
8 of analysis and considering other evidence of discrimination, the Director shall identify areas
9 of contracting where the City or any of its departments (a) is failing to meet the participation
10 goals to such an extent that an inference of discrimination can be made, or (b) is otherwise
11 discriminating in its contracts. In addition, the Director shall identify areas of contracting where
12 the City is meeting and/or exceeding participation goal to such an extent that the MBE or
13 WBE bid discounts can no longer be justified. The results of this study shall be included in the
14 Commission's annual report required by Section 12D.A.18(B);

15 4. Not later than ~~March~~ July 1st of each fiscal year, the Director shall transmit to this Board
16 proposed amendments to this ordinance that the Director deems necessary to ensure that the
17 ordinance provides adequate remedies for identified discrimination while going no further than
18 necessary to remedy the identified discrimination;

19 5. The Director shall work with the Controller and City departments to implement a City-wide
20 prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City, within 30
21 days after the date on which the City receives an invoice from an MBE, WBE or LBE for work
22 performed for the City;

23 6. The Director shall provide information and other assistance to MBEs and WBEs to increase
24 their ability to compete effectively for the award of City contracts;

25

1 7. The Director shall assist the City to increase participation by MBEs and WBEs in City
2 contracts;

3 8. The Director shall continue to develop and to strengthen education and training programs
4 for MBEs and WBEs and City contract awarding personnel;

5 ~~9. Where after determining that a department, despite its good faith efforts and application of the bid~~
6 ~~discounts, has failed to eliminate the exclusion of MBEs and/or WBEs from City contracting, the~~
7 ~~Director, after consulting with the department responsible for the project(s), may request the Review~~
8 ~~Committee established in Section 12D.A.8(3) to review and to approve the proposed project(s) for a~~
9 ~~set-aside;~~

10 ~~10. 9.~~ The Director shall grant waivers as set forth in Sections 12D.A.15 and 12D.A.17(E)
11 through (H), and may disqualify a bidder or contractor as set forth in Section ~~12.D.A.16(e)~~
12 12.D.A.16(b).

13 (C) The requirements of this ordinance are in addition to those imposed by the United States
14 or the State of California as a condition of financial assistance or otherwise. In contracts which
15 involve the use of any funds furnished, given or loaned by the government of the United States or the
16 State of California, all laws, rules and regulations of the government of the United States or the State of
17 California or of any of its departments relative to the performance of such work and the conditions
18 under which the work is to be performed, shall prevail over the requirements of this ordinance when
19 such laws, rules or regulations are in conflict. In addition, the ~~The~~ Director, ~~however,~~ may authorize
20 the substitution of such State or federal minority business enterprise and women business
21 enterprise requirements for the requirements of this ordinance whenever such State or federal
22 requirements are substantially the same as those of this ordinance.

23 (D) The Director, with the approval of the Commission, may enter into cooperative
24 agreements with agencies, public and private, concerned with increasing the use of MBEs
25 and WBEs in government contracting, subject to the approval of this Board.

1 (E) The Director, in cooperation with the Controller, shall ~~conduct random audits~~ randomly audit
2 at least three ~~of~~ prime contractors each fiscal year in order to insure their compliance with the
3 provisions of this ordinance. ~~Further, the~~ The Director, in cooperation with the Controller, shall
4 furthermore randomly audit 10 percent of the joint ventures granted bid discounts in each
5 fiscal year. The Controller shall have the right to audit the books and records of the contractors, joint
6 venture participants, and any and all subcontractors to insure compliance with the provisions of this
7 ordinance.~~The Director shall also establish a joint task force, with representatives from the HRC, the~~
8 ~~City Attorney, the District Attorney, community members, and other interested entities, to explore~~
9 ~~interagency means of enforcing this ordinance more fully.)~~

10 **SEC. 12D.A.7. POWERS AND DUTIES OF THE CONTROLLER.**

11 (A) In addition to the duties given to the Controller elsewhere, the Controller shall work
12 cooperatively with the Director to ~~assemble and to maintain the~~ provide such contractual
13 encumbrance and payment data as the Director advises are necessary to form the basis of the
14 Commission's report to the Mayor, this Board and the public on the participation of MBEs and
15 WBEs in City prime contracts. If any department refuses or fails to provide the required data to
16 the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

17 (B) The Controller shall not certify the award of any contract subject to this ordinance where
18 the Director has notified the Controller that the contract awarding authority has not provided ~~until the~~
19 ~~department requesting certification of the award of the contract has provided the Controller with~~ the
20 information the Director advises is necessary under this ordinance.

21 (C) Each request for payment to a City contractor submitted to the ~~Controller~~ contract awarding
22 authority shall be accompanied by a subcontractor participation form approved by the
23 Commission. That form shall contain information that the Commission has determined is
24 necessary to enable the Commission and the Director (1) to monitor compliance by City
25 departments and their prime contractors with their obligations under this ordinance (2) to

1 determine whether City departments are achieving their prime and subcontracting goals under
2 this ordinance, (3) to determine whether to recommend changes in this ordinance to ensure
3 that the ordinance continues to serve as a remedy for discrimination in contracting while going
4 no further than necessary to remedy that discrimination, and (4) to make such other reports
5 and analyses as are required by this ordinance. ~~The Controller shall furnish to the Director a list~~
6 ~~of contracts newly posted and shall provide a cross check on the City department's reporting.~~

7 In the event that a request for payment fails to include the information required pursuant to
8 this Section, the ~~Controller~~ contract awarding authority shall, within two working days, notify the
9 ~~contract awarding authority, the~~ Director and the affected prime contractor[s] of the failure and
10 afford each affected prime contractor an opportunity to be heard promptly. That notice shall
11 inform the contractor that the ~~Controller~~ contract awarding authority has tentatively determined
12 that the information has not been provided, what information is missing and that if this failure
13 is substantiated, then the Controller will be ~~required~~ notified to withhold 20 percent of the
14 payment until the information is provided. If the Controller finds, after consultation with the
15 Director ~~or the Director's representative~~ and the notice and opportunity to be heard, that the
16 information has not been provided, the Controller shall withhold 20 percent of the payment
17 otherwise due until the information is provided.

18 (D) It is the City's policy that MBEs, WBEs and LBEs should be paid by the City within 30
19 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work
20 performed for the City. The Controller shall work with the Director and representatives of City
21 departments to implement this City-wide prompt-payment policy.

22 (E) The contract awarding authority ~~Controller~~ shall require all prime contractors to submit,
23 within 10 days following payment to the prime contractor of moneys owed for work completed
24 on a project, an affidavit under penalty of perjury, that all subcontractors on the project or job
25 have been paid and the amounts of each of those payments. The name, telephone number

1 and business address of every subcontractor shall be listed on the affidavit. If a prime
2 contractor fails to submit this affidavit, the contract awarding authority ~~Controller~~ shall notify the
3 ~~contract awarding authority and~~ Director who shall take appropriate action as authorized under
4 Section 12D.A.16(B) and (F) ~~12D.A.16(C) and (F)~~.

5 **SEC. 12D.A.8. POWERS AND DUTIES OF THE MAYOR.**

6 In addition to the duties given to the Mayor elsewhere, the Mayor shall:

7 1. By July 1st of each fiscal year, issue notices to all City departments informing them of their
8 duties under this ordinance. The notice shall contain the following information: (1) the City-
9 wide MBE/WBE participation goals that departments are expected to use good-faith efforts to
10 attain during the fiscal year and that a department's failure to use good-faith efforts to attain
11 the MBE/WBE participation goals shall be reported to this Board in the Commission's annual
12 report; and (2) the data each department is required to provide the Controller on each contract
13 award;

14 2. Coordinate and enforce cooperation and compliance by all departments with this ordinance;

15 ~~3. Establish a three-member Review Committee that shall have the authority to review contracts~~
16 ~~proposed by the Director or a department to be set aside. The three-member Review Committee shall~~
17 ~~be composed of an individual appointed by the Commission, an individual appointed by the Mayor, and~~
18 ~~an individual appointed by the contract awarding authority. The Commission, the Mayor, and the~~
19 ~~contract awarding authority shall appoint individuals who are knowledgeable about the City's~~
20 ~~contracting and subcontracting practices, the industry or profession affected by the proposed contract~~
21 ~~to be set aside, and the certification requirements under this ordinance. The Commission, the Mayor,~~
22 ~~and the contract awarding authority may not appoint to the Review Committee the Director or any~~
23 ~~employee of the Commission. Any appeal to the Review Committee shall be heard and decided within~~
24 ~~10 business days of its receipt. (Added by Ord. 296-98, App. 10/5/98)~~

1 **SEC. 12D.A.9. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.**

2 (A) Contract awarding authorities shall:

3 1. Use good-faith efforts for all contracts subject to the bid/ratings discount provisions of this
4 ordinance to solicit and to obtain quotes, bids or proposals from MBEs and WBEs on all
5 solicitations, or document their unavailability;

6 2. Unless otherwise indicated in this ordinance, extend a discount in all bids, proposals and
7 contracts and in the composition of rating scales as follows: (1) a five percent discount to (i) ~~a~~
8 ~~local business~~ an LBE or (ii) a joint venture with ~~local~~ MBE or ~~local~~ WBE participation that
9 equals or exceeds 35 percent but is under 40 percent; or (iii) where a joint venture is
10 composed of only ~~local businesses~~ LBEs with no ~~local~~ MBE or WBE participation or where the
11 ~~local~~ MBE or ~~local~~ WBE participation is less than 35 percent; (2) a seven and one-half percent
12 bid discount to a joint venture with ~~local~~ MBE or WBE participation that equals or exceeds 40
13 percent; (3) a 10 percent discount to (i) a ~~local~~ MBE or ~~local~~ WBE or (ii) a joint venture
14 between or among ~~local~~ MBEs or/and ~~local~~ WBEs.

15 The contracting awarding authority shall apply the aforementioned appropriate bid/ratings
16 discount only to a joint venture (1) that meets the requirements of Section 12D.A.6(A) 7 and (2)
17 when the MBE or WBE is an active partner in the joint venture and performs work, manages
18 the job and takes financial risks in proportion to the required level of participation stated in the
19 bid documents and is responsible for a clearly defined portion of the work to be performed,
20 and shares proportionately in the ownership, control, management responsibilities, risks, and
21 profits of the joint venture. The portion of the MBE or WBE joint venture's work shall be set
22 forth in detail separately from the work to be performed by the nonMBE or nonWBE joint
23 venture partner. The MBE or WBE joint venture's portion of the contract must be assigned a
24 commercially reasonable dollar value;

1 3. Arrange contracting by size and type of work to be performed so as most effectively to
2 enhance the opportunity for participation by MBEs and WBEs to the maximum extent feasible.
3 As soon as practical before soliciting quotes, bids or proposals, all contract awarding
4 authorities or in the case of a professional services contract, the department making the
5 contract award recommendation, shall submit all large proposals to the Director for review.
6 The purpose of the Director's review is to determine whether the proposed project can be
7 divided into smaller projects so as to enhance the opportunity for participation by MBEs and
8 WBEs in the project. For purposes of this subsection, the term "large project" shall mean the
9 following: (1) any public works/construction project estimated to cost more than \$5,000,000;
10 and (2) any professional services contract estimated to cost more than ~~\$50,000~~ \$100,000. If the
11 Director determines, after consulting with the contract awarding authority or department
12 responsible for the project, that the project can be divided into smaller projects, the contract
13 awarding authority or department shall comply with the Director's determination and issue the
14 solicitation for quotes, bids or proposals in accordance with the Director's determination;
15 4. Adjust bid bonding and insurance requirements ~~as recommended by~~ in accordance with the
16 most current version of the City's ~~City Risk Manager in the May 2, 1989~~ "Contract Insurance
17 Manual" or as otherwise authorized by the City Risk Manager, Department of Administrative Services;
18 5. Use the City's Surety Bonding Program set forth in Administrative Code Section 12D.A.10
19 to assist MBEs, WBEs and LBEs bidding on and performing City public works contracts to meet
20 bonding, ~~insurance and other fee-related~~ requirements and/or obtain construction loans;
21 6. Submit to the Office of Contract Administration (OCA) Purchaser of Supplies of the City and
22 County of San Francisco in electronic format or a format specified by the OCA Purchaser of
23 Supplies of the City and County of San Francisco all bid opportunities, requests for proposals and
24 Solicitations for which published notice or advertising is required, no later than 10 calendar
25 days prior to the announcement of the bid opportunity, request for proposal or Solicitation. A

1 contract awarding authority must obtain a waiver from its commission, or in the case of a
2 department that has no commission, from the Board of Supervisors, if it cannot meet the
3 requirements of this Section 12D.A.9(A)6. The OCA Purchaser of Supplies of the City and County
4 ~~of San Francisco~~ shall cause to be posted upon a website the following information concerning
5 current bids, requests for proposals and Solicitations: the title and number; the name of the
6 contract awarding authority; and the name and telephone number of the person to be
7 contacted for further information. Such information shall be posted with sufficient lead time to
8 provide adequate notice and opportunity to potential City contractors and vendors to
9 participate in the bid opportunity, request for proposals or Solicitation, but in no event less
10 than 10 calendar days prior to the due date for such bid opportunity, request for proposals or
11 Solicitation;

12 7. Impose such sanctions or take such other actions as are designed to ensure compliance
13 with the provisions of this ordinance, which shall include, but are not limited to:

- 14 (a) Refuse to ~~grant the~~ award of a contract,
- 15 (b) Order the suspension of a contract,
- 16 (c) Order the withholding of funds,
- 17 (d) Order the revision of a contract based upon a material breach of contract provisions
18 pertaining to MBE or WBE participation,
- 19 (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for
20 providing goods or services to the City for a period not to exceed five years, based on the
21 standards set forth in this ordinance and rules and regulations promulgated by the
22 Commission. Any business disqualified under this subsection shall have a right to review and
23 reconsideration by the Commission after two years upon a showing of corrective action
24 indicating that violations are not likely to recur;

25

- 1 8. Not award any contract to a person or business that is disqualified from doing business with
2 the City under the provisions of this ordinance;
- 3 9. Designate a staff person to be responsible for responding to the Director and Commission
4 regarding the requirements of this ordinance;
- 5 10. Maintain accurate records as required by the Director and the Commission for each
6 contract awarded, its dollar value, the nature of the goods or services to be provided, the
7 name of the contractor awarded the contract, the efforts made by a contractor to solicit bids
8 from and award subcontracts to MBEs and WBEs and LBEs;
- 9 11. Where feasible, provide technical assistance to MBEs and WBEs to increase their ability
10 to compete effectively for the award of City contracts;
- 11 12. Work with the Director and the Controller to implement a City-wide prompt-payment policy
12 requiring that MBEs, WBEs and LBEs be paid by the City within 30 days of the date on which
13 the City receives an invoice from an MBE, WBE or LBE for work performed for the City;
- 14 13. Provide the Director with written notice of all contract amendments, modifications,
15 supplements and change orders that cumulatively result in an increase or decrease of the
16 contract's dollar amount of more than 10 percent. Such notice shall be provided within 10
17 days of each such contract modification;
- 18 14. Whenever contract amendments, modifications, supplements or change orders
19 cumulatively increase the total dollar value of a contract by more than 10 percent, the contract
20 awarding authority shall require compliance with those MBE and WBE provisions of this
21 ordinance that applied to the original contract;
- 22 15. All contract amendments, modifications, supplements or change orders that cumulatively
23 increase by more than 20 percent the total dollar value of all contracts originally valued at
24 \$50,000 or more shall be subject to prior approval of the Director, who shall review the
25

1 proposed amendment, modification, supplement or change order to correct contracting
2 practices that exclude women or minorities from new contracting opportunities.

3 (B) Contract awarding authorities or departments may invite, encourage or request
4 businesses to joint venture on any contract to promote MBE or WBE participation.

5 (C) For the purpose of determining MBE and WBE participation, contracts awarded to joint
6 ventures in which one or more MBEs or WBEs are combined with one or more businesses
7 that are not MBEs or WBEs shall be deemed by the contract awarding authority to be
8 awarded to MBEs or WBEs only to the extent of the MBEs or WBEs participation in the joint
9 venture. MBE and/or WBE participation in the supply of goods shall be included in
10 determining MBE and/or WBE participation in a joint venture if the goods are supplied in
11 accordance with established general industry practice.

12 (D) Contract awarding authorities shall ensure that all contracts subject to this ordinance
13 include the following requirements, in addition to such other requirements as may be set forth
14 elsewhere:

15 1. Each bidder, proposer and contractor ~~on all contracts~~ shall be required to sign ~~before a notary~~ an
16 affidavit ~~prepared by the City Attorney~~, declaring under penalty of perjury, attesting to its intention to
17 comply fully with the provisions of this ordinance and attesting to the truth and accuracy of all
18 information provided regarding such compliance;

19 2. Each contract shall incorporate this ordinance by reference and shall provide that the willful
20 failure of any bidder or contractor to comply with any of its requirements shall be deemed a
21 material breach of contract;

22 3. Contracts shall provide that in the event that the Director finds that any bidder,
23 subcontractor or contractor that willfully fails to comply with any of the provisions of this
24 ordinances, rules and regulations implementing the ordinance or contract provisions
25 pertaining to MBE or WBE participation - the bidder, subcontractor or contractor shall be liable

1 for liquidated damages for each contract in an amount equal to the bidder's or contractor's net
2 profit on the contract, 10 percent of the total amount of the contract or \$1,000, whichever is
3 greatest, as determined by the Director pursuant to Section 12D.A.16(C). All contracts shall
4 also contain a provision in which the bidder, subcontractor or contractor acknowledges and
5 agrees that the liquidated damages assessed shall be payable to the City upon demand and
6 may be set off against any monies due to the bidder, subcontractor or contractor from any
7 contract with the City;

8 4. Contracts shall require ~~all contractors-bidders, contractors and subcontractors~~ to maintain
9 records, including such information requested by the Director or Commission, necessary for
10 monitoring their compliance with this ordinance and shall require prime contractors to include in
11 any subcontract with an MBE or WBE a provision requiring the subcontractor to maintain the same
12 records;

13 5. Contracts shall require prime contractors, during the term of the contract, to fulfill the MBE
14 and WBE participation commitments submitted with their bids;

15 6. Contracts shall require prime contractors to include in any subcontract with an MBE or WBE
16 a provision requiring the prime contractor to compensate any MBE or WBE subcontractor for
17 damages for breach of contract or liquidated damages equal to 5% of the subcontract amount,
18 whichever is greater, -if the prime contractor fails to comply with its commitment to use MBE
19 and WBE subcontractor as specified in the bid/proposal unless the Commission and the contract
20 awarding authority both give advance approval to the prime contractor to substitute subcontractors or
21 otherwise modify the commitments in the bid/proposal documents.. Contracts shall also require
22 prime contractors to compensate any MBE or WBE subcontractor for breach of contract or
23 liquidated damages equal to 5% of the subcontract amount, whichever is greater. if the prime
24 contractor does not fulfill its commitment to use the MBE or WBE subcontractor as specified in
25 the bid/proposal unless the Commission and the contract awarding authority both give advance

1 approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in
2 the bid/proposal documents. This provision shall also state that it is enforceable in a court of
3 competent jurisdiction;

4 7. Contracts shall require prime contractors, whenever amendments, modifications,
5 supplements, or change orders cumulatively increase the total dollar value of a construction
6 contract by more than 10 percent, to comply with those MBE and WBE provisions of this
7 ordinance that applied to the original contract with respect to the amendment, modification,
8 supplement or change order;

9 8. Contracts shall require prime contractors to submit to the Director for approval all contract
10 amendments, modifications, supplements, and change orders that cumulatively increase by
11 more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or
12 more. The Director shall review the proposed amendment, modification, supplement or
13 change order to correct any contracting practices that exclude women and minorities from
14 new contracting opportunities;

15 9. Contracts in which subcontracting is used shall prohibit back contracting to the prime
16 contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this
17 ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions
18 pertaining to MBE and WBE utilization;

19 10. Contracts in which subcontracting is used shall require the prime contractor to pay its
20 subcontractors within three working days after receiving payment from the City unless the
21 prime contractor notifies the Director in writing within 10 working days prior to receiving
22 payment from the City that there is a bona fide dispute between the prime contractor and the
23 subcontractor, in which case the prime contractor may withhold the disputed amount but shall pay the
24 undisputed amount. The Director may, upon making a determination that a bona fide dispute
25 exists between the prime contractor and subcontractor, waive this three day payment

1 requirement. In making the determination as to whether a bona fide dispute exists, the
2 Director shall not consider the merits of the dispute. Contracts in which subcontracting is used
3 shall also require the contractor/consultant, within 10 working days following receipt of
4 payment from the City, to file an affidavit, under penalty of perjury, that he or she has paid all
5 subcontractors. The affidavit shall provide the names and address of all subcontractors and
6 the amount paid to each;

7 11. Contracts shall require *bidders*, contractors and subcontractors to maintain records
8 necessary for monitoring their compliance with this ordinance for three years following
9 completion of the project and shall permit the Commission and Controller to inspect and audit such
10 records.

11 (E) All contracts or other agreements between the City and persons or entities, public or
12 private, in which such persons or entities receive money from or through the City for the
13 purpose of contracting with businesses to perform public improvements, shall require such
14 persons or entities to comply with the provisions of this ordinance in awarding and
15 administering such contracts.

16 ~~(F) Where a department can demonstrate, despite its good faith efforts and application of the bid~~
17 ~~discount(s), that it has failed substantially to eliminate the exclusion of MBEs or WBEs from City~~
18 ~~contracting, the department, after consulting with the Director, may request the Review Committee~~
19 ~~established in Section 12D.8(3) to review and to approve the proposed project(s) selected by the~~
20 ~~department for a set-aside.~~

21 ~~(G) City department heads and commissioners shall attend a mandatory training session on an annual~~
22 ~~basis. The training session shall be organized and conducted by the Director, or his or her designee,~~
23 ~~and shall inform City department heads and commissioners of the requirements of this ordinance.~~

24
25

1 **SEC. 12D.A.10. PUBLIC WORKS CONTRACTS.**

2 (A) In addition to the general findings set forth in Section 12D.A 2, and based upon the record
3 before this Board, the Board hereby finds that the evidence before the Board relating to the
4 award of prime public works contracts for fiscal years 1992-93, 1993-94, 1994-95, 1996-97,
5 ~~and~~ 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by
6 discriminatory practices when competing for City prime public works contracts. Further, the
7 Board finds that race-neutral measures employed by the City have not prevented such
8 discrimination against MBEs and WBEs from occurring.

9 (B) Contract awarding authorities shall apply bid discounts as enumerated in Section
10 12D.A.9(A) to all public work contracts the estimated cost of which exceeds \$10,000.

11 (C) **Bonding and Financial Assistance Program.**

12 1. **Program Description.** The City and County of San Francisco, acting through its Human
13 Rights Commission ("HRC"), intends to provide guarantees to private bonding companies and
14 financial institutions in order to induce those entities to provide required bonding and financing
15 to eligible contractors and subcontractors bidding on and performing City public work contracts.
16 This bonding and financial assistance program is subject to the provisions of this Subsection
17 12D.A.10(C).

18 2. **Eligible Contracts.** The assistance described in this Subsection 12D.A.10(C) shall be
19 available for any City public works contract awarded in accordance with San Francisco
20 Administrative Code Chapter 6.

21 3. **Eligible ~~Contractors~~ Businesses.** ~~Contractors~~ Businesses must meet the following criteria to
22 qualify for assistance under this Subsection 12D.A.10(C):

23 (a) The ~~contractor~~ business may be either a prime contractor or subcontractor ~~construction firm~~;
24 and

1 (b) The *contractor business* must be certified by the HRC as a Minority Business Enterprise
2 ("MBE"), Woman Business Enterprise ("WBE") or Local Business Enterprise ("LBE")
3 according to the requirements of San Francisco Administrative Code Chapter 12D.A;

4 (c) The *contractor business* may be required to participate in a "bonding assistance training
5 program" as offered by the HRC, which is anticipated to provide the following:

- 6 (i) Bond application assistance,
- 7 (ii) Assistance in developing financial statements,
- 8 (iii) Assistance in development of a pre-bond surety profile,
- 9 (iv) Identification of internal financial control systems,
- 10 (v) Development of accurate financial reporting tools, and

11 **4. Agreements Executed by the Human Rights Commission.** The HRC is hereby
12 authorized to enter into the following agreements in order to implement the bonding and
13 financial assistance program described in this Subsection 12D.A.10(C):

14 (a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face
15 amount of the bond or \$750,000, whichever is less;

16 (b) With respect to a construction loan to be made to a contractor or subcontractor, an
17 agreement to guaranty up to 50 percent of the original principal amount of the construction
18 loan or 50 percent of the actual loss suffered by the financial institution as a result of a loan
19 default, whichever is less; provided that in any event the City's obligations with respect to a
20 guaranty shall not exceed \$750,000;

21 (c) Any other documents deemed necessary by the HRC to carry out the objectives of this
22 program, provided that such documents shall be subject to review and approval by the City
23 Attorney's Office.

24 **5. Monitoring and Enforcement.** The HRC shall maintain records on the use and
25 effectiveness of this program, including but not limited to (1) the identities of the *contractors*

1 businesses and bonding companies participating in this program, (2) the types and dollar
2 amounts of public work contracts for which the program is utilized, and (3) the types and dollar
3 amounts of losses which the City is required to fund under this program. The HRC shall
4 submit written reports to the Board of Supervisors every six months beginning January 1,
5 2001, advising the Board of the status of this program and its funding capacity, and an
6 analysis of whether this program is proving to be useful and needed.

7 **6. Funding and Accounts.** As of July 1, 2001, funding for this program may be derived from
8 the following sources:

9 (a) The Board of Supervisors has appropriated or will appropriate funds for the operation of
10 this program.

11 (b) Each Department authorized to contract for public works or improvements pursuant to San
12 Francisco Administrative Code Chapter 6 shall commit to this program up to ten percent
13 (10%), but not less than one percent (1%), of the budget for every public work or improvement
14 undertaken. (A "public work or improvement" is defined in San Francisco Administrative Code
15 Chapter 6.) This subsection is effective for those public works or improvements where the
16 award of the construction contract (as defined and regulated by Administrative Code Chapter
17 6) occurs after July 1, 2001.

18 (c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate a
19 line(s) of credit or any credit enhancement program(s) or financial products(s) with a financial
20 institution(s) to provide funding; the program's guaranty pool may serve as collateral for any
21 such line of credit.

22 In the event the City desires to provide credit enhancement under this Subsection for a period
23 in excess of one fiscal year, the full aggregate amount of the City's obligations under such
24 credit enhancement must be placed in a segregated account encumbered solely by the City's
25 obligations under such credit enhancement.

1 7. **Term of Bonding Assistance Program.** The HRC is authorized to enter into the
2 agreements described in this Subsection for a period ending on the earlier of (1) June 30,
3 ~~2005~~ 2008 or (2) the date on which the Controller is no longer able to certify the availability of
4 funds for any new guarantee agreement.

5 8. **Default on Guarantees.** The Human Rights Commission shall decertify any contractor that
6 defaults on a loan or bond for which the City has provided a guarantee on the contractor's
7 behalf. However, the Human Rights Commission may in its sole discretion refrain from such
8 decertification upon a finding that the City has contributed to such default.

9 **SEC. 12D.A.11. PURCHASING CONTRACTS.**

10 (A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record
11 before this Board, the Board finds that the evidence before the Board relating to the award of
12 prime ~~purchasing~~ contracts for commodities and general services for fiscal years 1992-93, 1993-
13 94, 1994-95, 1996-97, ~~and~~ 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to
14 be disadvantaged by discriminatory practices when competing for ~~prime City purchasing such~~
15 contracts. The Board further finds that race-neutral measures employed by the City have not
16 prevented such discriminatory practices from occurring.

17 (B) Contract awarding authorities shall apply all bid discounts as enumerated in Section
18 12D.A.9(A) to all commodities equipment and supplies contracts the estimated cost of which
19 exceeds \$2,500 ~~or~~ and general services contracts the estimated cost of which exceeds \$10,000.

20 (C) In addition to the duties given the ~~purchaser~~ Office of Contract Administration elsewhere in
21 this Section, the ~~purchaser~~ Office of Contract Administration shall maintain, with the assistance
22 of the Director, a current list of MBEs and WBEs to provide each of those commodities or
23 services subject to this ordinance that the ~~purchaser~~ Office of Contract Administration indicates
24 are required by the City.

25

1 (D) The ~~purchaser~~ Office of Contract Administration shall also maintain a central office where all
2 bids, requests for proposals and solicitations will be listed and kept current.

3 **SEC. 12D.A.12. ARCHITECT/ENGINEERING CONTRACTS.**

4 (A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record
5 before this Board, the Board hereby finds that the evidence before this Board relating to the
6 award of prime architect/engineering contracts for fiscal years 1992-93, 1993-94, 1994-95,
7 1996-97, ~~and~~ 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be
8 disadvantaged by discriminatory practices when competing for City prime
9 architect/engineering contracts. The Board further finds that race-neutral measures employed
10 by the City have not prevented these discriminatory practices from occurring.

11 (B) Contract awarding authorities and architect/engineering selection panels shall apply all
12 bid/rating discounts as enumerated in Section 12D.A.9(A) to all bids and proposals for
13 architect/engineering contracts, the estimated cost of which exceeds \$10,000. Where
14 Architect/Engineering contracts are formally bid, all consultants selection panels and awarding
15 officers shall apply the bid/rating discounts to each stage of the selection process, e.g., qualifications,
16 proposals and interviews. Minorities and women shall be included on consultant selection
17 panels.

18 (C) The Director is empowered to take actions to ensure compliance with the provisions of this
19 ~~Section-ordinance~~, including, without limitation, intervening in the selection process, by
20 modifying the criteria used for selecting selection panelists or prime architect/ engineering
21 contractors to correct any contracting practices that hinder equal business opportunities for
22 MBEs and WBEs.

23 **SEC. 12D.A.13. CONSULTANTS AND PROFESSIONAL SERVICES CONTRACTS.**

24 (A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record
25 before this Board, the Board hereby finds that the evidence before the Board relating to the

1 award of professional services contracts for fiscal years 1993-93, 1993-94, 1994-95, 1996-97,
2 ~~and 1997-98~~ and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by
3 discriminatory practices when competing for City prime professional service contracts.

4 Further, the Board finds that race-neutral measures employed by the City do not prevent such
5 discrimination against MBEs and WBEs from occurring.

6 (B) Contract awarding authorities shall apply bid/rating discounts as enumerated in Section
7 12D.A.9(A) to all bids and proposals as enumerated in Section 12D.A.9(A) to all ~~submitted by MBEs~~
8 ~~and WBEs for the~~ professional service contracts the estimated cost of which exceeds \$10,000.

9 Where professional service contracts are formally bid, all ~~All~~ consultants selection panels and
10 awarding officers shall apply the bid/rating discounts to each stage of the selection process,
11 e.g., qualifications, proposals and interviews. Minorities and women shall be included on
12 consultant selection panels.

13 (C) The Director is empowered to take actions to ensure compliance with the provisions of this
14 ~~Section-ordinance~~, including, without limitation, intervening in the selection process by
15 modifying the criteria used to select selection panelists or prime professional service
16 contractors to correct any contracting practice that hinders equal business opportunities for
17 MBEs and WBEs.

18 **SEC. 12D.A.14. BEST EFFORTS REQUIRED FOR OTHER CONTRACTS.**

19 All City departments, commissions, boards, officers and employees, in the performance of
20 their duties, and in the award of leases, franchises, concessions, and other contracts not
21 subject to the race and gender-conscious ~~bid~~ bid/ratings discounts of this ordinance, shall
22 make best efforts to use the services of MBEs, WBEs and LBEs. ~~Such services shall include, but~~
23 ~~are not limited to, the financial services of banks, savings and loan companies and other commercial~~
24 ~~financial institutions, the arrangement of travel and accommodations for official City travel and such~~
25 ~~other personal and professional services needed by City departments. All City departments,~~

1 ~~commissions and boards shall submit to the Director on an annual basis a written report on the efforts~~
2 ~~made pursuant to this subsection.~~

3 **SEC. 12D.A.15. EXCEPTIONS AND WAIVERS.**

4 (A) The Director shall waive the race- and gender-conscious bid discounts and good faith
5 efforts requirements of this ordinance under the following circumstances:

6 1. Whenever the Director finds, with the advice of the contract awarding authority and the
7 Office of Contract Administration, that needed goods or services are available from a sole
8 source ~~and the prospective contractor~~ that is not currently disqualified from doing business with
9 the City.

10 2. If the contract awarding authority certifies in writing to the Director, prior to the Controller's
11 contract certification, that (a) ~~pursuant to the~~ the contract is being awarded under emergency
12 circumstances as described and defined in Administrative Code Section 6.30 Section 6.60 or
13 Administrative Code Section 21.15 ~~the contract is necessary to respond to an emergency that~~
14 ~~endangers the public health or safety~~ and (b) (i) there is no time to apply bid/ratings discounts or
15 establish subcontracting goals, or (ii) there are no immediately available MBEs and WBEs that
16 are capable of performing the emergency work.

17 (B) The Director shall waive the five-percent LBE bid discount for contracts in excess of
18 \$5,000,000 whenever a contract awarding authority establishes that:

19 1. Sufficient qualified LBEs capable of providing the needed goods and services required by
20 the contract are unavailable and sufficient qualified businesses located outside San Francisco
21 capable of providing the needed goods and services required by the contract are available; or

22 2. The application of the five-percent LBE discount will result in significant additional costs to
23 the City if the waiver of the bid discount is not granted.

24 (C) ~~Pursuant to Administrative Code Section 6.29-2, the bid~~ The bid/ratings discount provisions
25 of this ordinance are not applicable to any contract ~~for the construction, reconstruction or repair~~

1 ~~of public buildings, streets, utilities or other public work or improvement~~ estimated by the contract
2 awarding authority. to cost in excess of \$10,000,000.

3 ~~(D) Pursuant to Administrative Code Section 21.11-2, the bid discount provisions of this ordinance are~~
4 ~~not applicable to any contract for the purchase of materials, supplies or equipment estimated by the~~
5 ~~contract awarding authority to cost in excess of \$10,000,000.~~

7 **SEC. 12D.A.16. MONITORING AND COMPLIANCE.**

8 (A) The Director shall monitor the City's progress toward achievement of the goals stated in
9 Section 12D.A.3. The Director shall issue an exit report for any contract that includes
10 MBE/WBE subcontracting participation or MBE/WBE prime contract participation as a joint
11 venture partner. The purpose of this exit report is to ensure that prime contractors are complying
12 with their commitments to use MBE and WBE subcontractors and MBE/ WBEs are ~~actually~~
13 performing services as set forth in the bid/proposal and contract documents for the ~~on~~ joint
14 ventures.

15 (B) **Noncompliance By Contractors** ~~After Contract Award.~~ In cases in which the Director has
16 cause to believe that a contractor, ~~acting in good faith after a contract award,~~ has failed to
17 comply with any of the ~~race and/or gender conscious~~ requirements of this ordinance, rules and
18 regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or
19 WBE participation, the Director shall notify the contract awarding authority and shall attempt to
20 resolve the noncompliance through conference and conciliation. If the noncompliance cannot be
21 resolved, the Director shall conduct an investigation and, where the Director so finds, issue ~~submit to~~
22 ~~the Commission and the contractor~~ a written finding of noncompliance. The Director's finding shall
23 indicate whether the contractor acted in good faith or whether noncompliance was based on willful or
24 bad faith noncompliance with requirements of this ordinance, rules and regulations adopted pursuant
25 to this ordinance or contract provisions pertaining to MBE or WBE participation. ~~The Commission~~

1 ~~shall give the contractor an opportunity to appeal the finding, and if the Commission concurs with the~~
2 ~~finding of the Director. Where the Director finds that the contractor acted in good faith, after affording~~
3 ~~the contractor notice and an opportunity to be heard, the Director shall recommend that the~~
4 contract awarding authority take appropriate action ~~pursuant to Section 12D.A.9(A)(7). Where the~~
5 ~~Director finds willful or bad faith noncompliance, after affording the contractor notice and an~~
6 ~~opportunity to be heard, the Director shall impose sanctions for each violation of the ordinance, rules~~
7 ~~and regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or WBE~~
8 ~~participation that may include:~~

9 ~~(C) Willful or Bad Faith Noncompliance by Bidders or Contractors.~~

10 ~~1. In cases where the Director has cause to believe that any bidder or contractor has willfully failed to~~
11 ~~comply with any of the race and/or gender-conscious provisions of this ordinance, rules and~~
12 ~~regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or WBE~~
13 ~~participation, the Director shall conduct an investigation. Additionally, after affording the contractor~~
14 ~~notice and an opportunity to be heard, the Director may impose sanctions for each violation of this~~
15 ~~subsection. Such sanctions shall include but are not limited to:~~

16 (a) Declaring the bidder or contractor nonresponsive and ineligible to receive the award of any
17 pending contract;

18 (b) Declaring the bidder or contractor to be an irresponsible bidder and disqualifying the
19 bidder or contractor from eligibility for providing goods or services to the City for a period of up
20 to five years, with a right of review and reconsideration by the Commission after two years
21 upon a showing of corrective action indicating violations are not likely to recur;

22 (c) If the bidder or contractor is a MBE, WBE and/or LBE, revoking that business' certification
23 as a MBE, WBE and/or LBE;

24 (d) Determining that the bidder or contractor has willfully failed to comply with the provisions of
25 this ordinance and, pursuant to the provision in the contract contemplated by Section

1 12D.A.9(D)(3) of this ordinance, calculating the liquidated damages for which the bidder or
2 contractor shall be liable.

3 2. Thereafter the Director shall send a written notice to the Controller, the Mayor and all
4 contract awarding authorities overseeing any contract with the bidder or contractor, that a
5 determination of ~~a~~ willful or bad-faith compliance has been made and that all payments due
6 the bidder or contractor shall be withheld as agreed by the bidder or contractor and the City
7 pursuant to Section 12D.A.9(D)(3).

8 ~~3-(C)~~ The bidder or contractor may appeal the Director's decision to the Commission. The
9 Commission may sustain, reverse or modify the Director's findings and sanctions imposed or
10 take such other action to effectuate the purpose of this ordinance. An appeal by a contractor
11 under this subsection shall not stay the Director's findings.

12 (D) The Director may require such reports, information and documentation from contractors,
13 subcontractors, bidders, contract awarding authorities, and heads of departments, divisions,
14 and offices of the City as are reasonably necessary to determine compliance with the
15 requirements of this ordinance.

16 (E) Willful Noncompliance by Contract Awarding Authority. Whenever the Director finds after
17 investigation that a contract awarding authority has willfully failed to comply with its duties
18 pursuant to Section 12D.A.9, the Director shall transmit a written finding of noncompliance
19 specifying the nature of the noncompliance, to the contract awarding authority, the
20 Commission, the Mayor and this Board.

21 The Director shall attempt to resolve any noncompliance through conference and conciliation.
22 Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of
23 the finding of noncompliance along with a finding that conciliation was attempted and failed to
24 the Commission and this Board.

25

1 The finding of noncompliance shall be communicated to the Mayor for appropriate action to
2 secure compliance pursuant to Section 12D.A.8(2).

3 (F) If the Director has reason to believe that any person has knowingly made, filed, or caused
4 to be filed with the City any materially false or misleading statement or report made in
5 connection with this ordinance, the Director shall report that information to the City Attorney or
6 the District Attorney for appropriate action. The Director shall be empowered to conduct an
7 investigation and for each violation of this Subsection 12D.A.16(F), to impose sanctions as set
8 forth in Subsection ~~12D.A.16(C)~~ 12D.A.16.

9 **SEC. 12D.A.17. SUBCONTRACTOR PARTICIPATION GOALS - ~~PUBLIC WORKS,~~**
10 **~~CONSTRUCTION AND PROFESSIONAL SERVICES;~~ SUBCONTRACTING PROGRAM.**

11 (A) The findings set forth in Section 12D.A.2 that relate to MBEs, WBEs are hereby
12 incorporated by reference. This Board further finds that requiring prime contractors to
13 demonstrate good faith efforts to use MBEs and WBEs as subcontractors on the City's *public*
14 ~~works/construction and professional services~~ contracts would offset some of the disadvantages
15 that such businesses face and would promote competition by requiring prime contractors to
16 solicit the participation of MBEs and WBEs that they might not otherwise solicit.

17 (B) For all public works/construction ~~and, architect/engineering, professional service, and general~~
18 service contracts which the contract awarding authority reasonably anticipates will include
19 subcontractor participation, prior to the solicitation of bids or proposals, the contract awarding
20 authority shall provide the Director with a proposed job scope, and may submit written
21 recommendations to the Director regarding MBE and WBE subcontractor participation goals
22 to be set for the contract.

23 (C) Upon receipt of a proposed job scope and/or a written recommendation from a contracting
24 awarding authority pursuant to Section 12D.A.9 (A)(3), the Director shall set the MBE and
25

1 WBE participation goals for each public works/ construction ~~and~~, architect/engineering,
2 professional service, and general service contract based upon the following factors:

- 3 1. The extent of subcontracting opportunities presented by the contract;
- 4 2. The availability of MBE/WBE subcontractors capable of providing goods and services on
5 the ~~public works/construction or professional services~~ contract.
- 6 3. The Director shall set these goals within 10 working days of the date the Director receives
7 from a contract awarding authority a proposed job scope and/or written recommendation. If
8 the Director fails to act within 10 days, and the contract awarding authority submitted to the
9 Director recommended goals, the recommended goals shall be deemed approved by the
10 Director, provided the goals are based upon the factors identified above.

11 (D) All solicitations for bidders on prime public works/construction ~~and~~, architect/engineering,
12 professional service, and general service contracts shall require each bidder to do the following:

- 13 1. Demonstrate in its bid that it has used good-faith efforts to use MBE and WBE
14 subcontractors; and
- 15 2. Identify the particular MBEs and WBEs subcontractors to be used in performing the
16 contract, specifying for each the dollar value of the participation, the type of work to be
17 performed and such information as may reasonably be required to determine the
18 responsiveness of the bid.

19 Except as provided in Section 12D.A.17, bids not meeting the requirements of Section
20 12D.A.17 shall be declared nonresponsive.

21 (E) A contract awarding authority may request that the Director waive or reduce the MBE and
22 WBE subcontractor participation goals on public works/ construction, architect/engineering
23 and professional services contracts by submitting the reasons therefor in writing to the
24 Director prior to the solicitation of bids.

25

1 (F) A bidder or contractor may request that the Director waive or reduce the amount of MBE
2 or WBE subcontractor participation goals on a public works/construction ~~and,~~
3 architect/engineering, professional service, and general service contract by submitting in writing
4 with its bid to the contract awarding authority the reasons therefor.

5 (G) The Director may grant the request for waiver or reduction made pursuant to Sections
6 12D.A.17(E) and (F) upon a determination that:

- 7 1. The reasonable and necessary requirements of the public works/construction ~~and,~~
8 architect/engineering, professional service, and general service contract render subcontracting or
9 the participation of businesses other than the public works/ bidder unfeasible;
- 10 2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the
11 contract are unavailable, despite the prime contractor's or the department's good-faith efforts
12 to locate MBEs and WBEs to meet the participation goals; or
- 13 3. The available MBEs and WBEs have given price quotes that exceed competitive levels
14 beyond amounts that can be attributed to cover costs inflated by the present effects of
15 discrimination.

16 (H) Whenever the Director denies a contractor's request to waive or reduce the participation
17 goals, the contractor may appeal that denial to the Commission. The Commission's decision
18 on the request shall be final. In reviewing the Director's denial of a contractor's request to
19 waive or to reduce participation goals, the Commission shall consider the extent of
20 subcontracting opportunities presented by the contract and the availability of MBE/WBE
21 subcontractors capable of providing goods and services on the ~~construction~~ contract.
22 The Commission may overrule, sustain or modify the Director's decision by applying the same
23 standards that the Director is required to apply, as set forth in Subsection (G) above.

24 (I) ~~Prior to entering into any prime public works/construction and professional services contract, the~~
25 The contract awarding authority shall require bidders or proposers on the contracts to contact

1 MBEs and WBEs before listing them as subcontractors in the bid or proposal. The contract
2 awarding authority shall declare bids or proposals that fail to satisfy this requirement nonresponsive.

3 (J) During the term of the contract, any failure to comply with the level of MBE and WBE
4 subcontractor participation specified in the contract shall be deemed a material breach of
5 contract.

6 **SEC. 12D.A.18. REPORTING AND REVIEW.**

7 (A) Reporting by the Director. Commencing ~~March 1, 1999~~ November 1, 2003 and no later than
8 the first day of every third month thereafter, the Director shall issue a written report to this
9 Board. That report shall document each City department's performance under the terms of
10 this ordinance, including, among other things, each City department's progress in meeting its
11 MBE/WBE goals and the success of each department's prime contractors complying with its
12 best efforts obligations to meet MBE/WBE subcontracting goals. That report shall also state
13 whether or not each City department has fully reported all data required by this ordinance or
14 requested by HRC or the Controller.

15 1. Whenever the Director's report concludes that a department management's intentional
16 disregard or negligent performance of obligations imposed by this ordinance has contributed
17 to that department's failure to meet its prime contracting goals or the failure of its prime
18 contractors to use their best efforts to meet their subcontracting goals or whenever the
19 Director's report concludes that a City department has failed to provide any data required by
20 this ordinance or requested by the HRC or the Controller, the Clerk of this Board shall
21 schedule before the appropriate committee of the Board a hearing on that report. The Clerk
22 shall also give notice of that hearing to the heads of the departments identified in the report
23 and request the attendance of the heads of those departments at the committee hearing. The
24 Clerk's notice shall inform the department heads that they must be prepared to respond to the
25 Director's finding of intentional disregard and/or negligent performance and to explain what

1 steps they intend to take to forestall repetition of the problems, identified in the Directors'
2 report. The same procedure shall be followed whenever the Director's report identifies any
3 department as having failed to meet its prime or subcontracting goals for three consecutive
4 quarters. If the Director's report indicates that a City department has not met its goals for three
5 consecutive quarters, HRC and the City department shall institute a targeted program to
6 remedy lack of participation by or in any affected ethnic group/gender/industry.

7 2. The Director shall report to the Commission all waivers acted upon pursuant to Section
8 12D.A.15. Such report shall be made ~~at the first Commission meeting~~ on a monthly basis following
9 the granting of the waiver.

10 (B) Reporting by the Commission. By ~~March~~ July 1st of each fiscal year subject to this
11 ordinance, the Commission shall submit an annual report to the Mayor and this Board on the
12 progress of the City toward the goals stated in Section 12D.A.3 of this ordinance, together
13 with an identification of problems and specific recommendations for: (1) discontinuing the race
14 or gender-conscious bid discounts in those cases where the bid discounts have remedied the
15 identified discrimination against MBEs and WBEs; and (2) improving the City's performance in
16 remedying the identified discrimination against MBEs and WBEs.

17 (C) This Board shall act upon the Commission's recommendations by the ~~third~~ first Board
18 meeting of ~~May~~ January in each fiscal year subject to this ordinance.

19 (D) By the last day of each fiscal year, all contract awarding authorities and City departments
20 shall report annually to the Mayor on their progress in the preceding fiscal year toward the
21 achievement of the MBE and WBE participation goals.

22 **SEC. 12D.A.19. SEVERABILITY.**

23 The provisions of this ordinance are declared to be separate and severable. The invalidity of
24 any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the
25 invalidity of the application thereof to any person or circumstances shall not affect the validity

1 of the remainder of this ordinance, or the validity of its application to other persons or
2 circumstances.

3 **SEC. 12D.A.20. GENERAL WELFARE CLAUSE.**

4 *In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote*
5 *the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation*
6 *for breach of which it is liable in money damages to any person who claims that such breach*
7 *proximately caused injury.*

8 **SEC. 12D.A.21. OPERATIVE DATE.**

9 This ordinance shall become operative on ~~November 1, 1998~~ July 1, 2003, and shall govern all
10 contracts for which a bid or proposal has not been solicited by the operative date.

11 **SEC. ~~12D.A.21.~~ 12D.A.22. EXPIRATION.**

12 This ordinance shall expire June 30, ~~2003~~ 2008. If, however, the Commission, after conducting
13 public hearings, finds that the purposes identified in Section 12D.A.3 have not yet been
14 achieved, the Commission shall certify that finding to this Board no later than 120 days prior to
15 the expiration date. Thereafter, upon finding a good cause, this Board may extend the
16 ordinance for additional three-year periods.

17

18 APPROVED AS TO FORM:

19 DENNIS J. HERRERA, City Attorney

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21

22 By: _____
23 BURK E. DELVENTHAL
24 Deputy City Attorney

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