

FILE NO. 030347

ORDINANCE NO. 134-03

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

1 In its hearings on the MBE/WBE/LBE ordinance ~~since-between~~ 1989 and 1998, this Board ~~has~~
2 ~~gave~~ given close consideration to the need for adding Native Americans and Arab Americans to
3 the list of minority groups covered by the ordinance. As part of this process, the Board and the
4 Human Rights Commission ~~have~~ heard or reviewed testimony from 47 individuals (~~including~~
5 ~~those individuals interviewed in connection with the preparation of the Mason Tillman Disparity Study~~)
6 concerning discrimination against Arab Americans and Native Americans. In addition, ~~as~~
7 ~~discussed in greater detail below, the~~ a Mason Tillman Associates study covering City contracting
8 in the years 1992 through 1995 found statistically significant evidence of discrimination
9 against Native Americans and Arab Americans in several categories of contracting. That
10 study also closely reviewed testimonial evidence of discrimination against these groups.
11 In 1997 and 1998 ~~alone~~, this Board and the Human Rights Commission ~~have~~ held eight public
12 hearings at which testimony was given by 170 individuals concerning discrimination against
13 Minority and Women Business Enterprises, the transcripts of which ~~and~~, the written submittals
14 accompanying same, and other evidence that was before the Board are in file with the Clerk of
15 this Board in Board File No. 98-0612. ~~hereby incorporated by reference. In addition, on January 12,~~
16 ~~1997, the Human Rights Commission hired Mason Tillman Associates to assist in conducting a~~
17 ~~disparity study for the years 1992-1995, including an evaluation of both statistical and testimonial~~
18 ~~evidence of discrimination. In January 1998, Mason Tillman Associates produced its study, which the~~
19 ~~Board has closely reviewed. In addition, in February of 1998, the staff of the Human Rights~~
20 ~~Commission was directed to expand the disparity study to cover the years 1996-1997. The staff of the~~
21 ~~Human Rights Commission has issued its report on those years, which reveals findings consistent with~~
22 ~~those of Mason Tillman, and this Board has reviewed the report closely.~~
23 On January 4, 1999 and June 30, 1999, the Human Rights Commission issued reports
24 regarding discrimination in City contracting against Iranian Americans. ~~That~~ Those reports
25

1 recounted testimony from HRC hearings regarding discrimination against Iranian American
2 contractors.

3 In addition, the Board considered and reviewed oral histories from many persons involved in
4 the bidding and compliance process taken in the summer of 1998. Many of the oral histories
5 have been preserved on videotape. These oral histories recount personal incidents of
6 discrimination as well as compliance difficulties. The oral histories were taken in this manner
7 because many of the individuals were fearful of retaliation and further discrimination if they
8 testified at a public forum. In fact, this fear caused some of the oral histories to be given in a
9 manner in which the identities of those testifying were not identified. An index and a separate
10 synopsis of the oral histories are on file with the Clerk of this Board in File Nos. 98-0612, 99-
11 0266 and 99-1326.

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

15 In 2002 and 2003, this Board and the Human Rights Commission, held additional public hearings to
16 determine the extent to which the remedies provided by this Ordinance continue to be necessary. At
17 these hearings, 134 individuals and organizations testified about the discrimination minorities and
18 women continue to face in City contracting and in obtaining contracts in the Bay Area that are not
19 subject to affirmative action programs. Additionally, in 2002 and 2003, the Human Rights Commission
20 and this Board received written statements by of individuals describing the discrimination minorities
21 and women continue to experience in City contracting and in other contracting- in the Bay Area.

22 In December 2001, the Human Rights Commission issued a report entitled "Violence in Our City:
23 Research and Recommendations to Empower Our Community" regarding increasing violence and
24 discrimination against African Americans in San Francisco.

1 In September 2002, the Human Rights Commission issued a report entitled "Blacklash, Violence,
2 Human Rights Violations & Discrimination in San Francisco in the Wake of September 11, 2001." The
3 report found that the bombing of the World Trade Center and Pentagon on September 11, 2001 have
4 led to a significant increase in San Francisco in discrimination and violence against those who are
5 perceived to have Middle Eastern ancestry.

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

10 But as the Tenth Circuit Court of Appeal recently recognized in upholding the City and County of
11 Denver's remedial contracting program in Concrete Works of Colorado, Inc. v. City and County of
12 Denver (10th Cir. 2003) 321 F.3d 950, a public entity cannot reliably ascertain whether a remedial
13 race- and gender- conscious affirmative action contracting program that has been in place should be
14 continued based on a disparity analysis of the utilization of minority and women- owned businesses in
15 the public entity's contracting programs: That the remedial program in place has given some
16 minorities and women contracting opportunities in certain limited industries provides little evidence of
17 whether minorities and women would be given those opportunities in the absence of the remedial
18 program. Instead, the Tenth Circuit concluded that disparities in private markets in the region provide
19 a strong indicator of the extent to which minorities and women would be used in public entity's
20 contracting programs absent the remedial affirmative action program.

21 Accordingly, the Human Rights Commission retained the National Economic Research Associates
22 (NERA) – the same firm whose studies about discrimination in the Denver metropolitan area the Tenth
23 Circuit found to be so persuasive -- to conduct studies to assess the level of discrimination against
24 minority and women owned businesses in the Bay Area private sector. NERA examined business
25 formation and earnings rates, and NERA found significant disparities in the formation and earnings

1 rates of minorities and women as compared to majority men. These disparities are especially
2 pronounced for African Americans and Latino Americans. NERA also examined the market for credit
3 and capital and found strong evidence of discrimination against minorities, as well as evidence of
4 recent discrimination against women. Consistent with the Tenth Circuit's ruling, NERA concluded that
5 the evidence of discrimination it found in Bay Area private markets is a valid substitute for evidence of
6 actual discrimination in City contracting programs.

7 In April 2003, the Human Rights Commission also retained Godbe Research to conduct a telephone
8 survey of minority and women-owned businesses certified with the HRC. Twenty one percent of the 266
9 firms surveyed reported that since 1998, they have been declined Bay Area subcontracting work that
10 was not subject to affirmative action requirements by prime contractors who typically do award them
11 work on contracts that are subject to the remedial subcontracting requirements of this Ordinance. And
12 each of those firms that experienced such discrimination reported that it had been rejected as a
13 subcontractor by a prime contractor who gave it work on City contracts on average 13 times in the last
14 five years.

15 Additionally, the Board has reviewed studies undertaken by various public entities in the Bay Area, and
16 testimony, articles and studies prepared by academicians. All of these materials are incorporated by
17 reference into the legislative history of this Ordinance. The collection and analysis of relevant
18 information is ongoing.

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

22 ~~1. The Board finds that the decision makers in the City contracting process—the City department heads~~
23 ~~and general and deputy managers—have been and continue to be overwhelmingly Caucasian males.~~

24 ~~Data compiled according to mayoral term show that:~~
25

1 ~~From 1980-1988, there were 68 white male department heads and general and deputy managers,~~
2 ~~constituting 92 percent of the total. During the same period, there were three male minority department~~
3 ~~heads and general and deputy managers, constituting four percent of the total, and three white female~~
4 ~~department heads and general and deputy managers, constituting four percent of the total. There were~~
5 ~~no female minority department heads or managers during this period.~~

6 ~~From 1988 to 1991, there were 66 white male department heads and general and deputy managers,~~
7 ~~constituting 89 percent of the total. During the same period, there were five male minority department~~
8 ~~heads and general and deputy managers, constituting seven percent of the total, and three white female~~
9 ~~department heads and general and deputy managers, constituting four percent of the total. There were~~
10 ~~no female minority department heads or managers during this period.~~

11 ~~From 1992 to 1995, there were 65 white male department heads and general and deputy managers,~~
12 ~~constituting 88 percent of the total. During the same period, there were five male minority department~~
13 ~~heads and general and deputy managers, constituting seven percent of the total, and three white female~~
14 ~~department heads and general and deputy managers, constituting four percent of the total. There was~~
15 ~~one female minority department head or manager, constituting one percent of the total.~~

16 ~~From 1996 to the present, there were 48 white male department heads and general and deputy~~
17 ~~managers, constituting 65 percent of the total. During the same period, there were 14 male minority~~
18 ~~department heads and general and deputy managers, constituting 19 percent of the total, five white~~
19 ~~female department heads and general and deputy managers, constituting four percent of the total, and~~
20 ~~seven female minority department heads or managers, constituting 10 percent of the total.~~

21 ~~Based on these statistics and the evidence presented by numerous witnesses, the Board finds that many~~
22 ~~City departments continue to operate under an "old boy network," dominated by Caucasian males, that~~
23 ~~creates a barrier to the entry of women and minority-owned businesses and puts those firms at a~~
24 ~~competitive disadvantage in their efforts to secure City contracts.~~

1 2. The Board finds that the race and gender conscious remedial programs authorized by this Ordinance
2 continue to be necessary to remedy discrimination against minority and women owned businesses in
3 City prime contracting and subcontracting.

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

7 • NERA reported significant disparities in the formation rates of minority and women-
8 owned business as compared to businesses owned by Caucasian men. In particular, African-
9 Americans, Asian Americans, Latino Americans, and women have statistically significantly lower
10 business formation rates in the Bay Area than do comparable Caucasian men in the construction,
11 architectural and engineering, professional services, general services and goods and services
12 industries. These disparities are especially large in the construction industry, where, for example
13 business formation rates for African Americans are approximately 12 percentage points lower than for
14 comparable Caucasian men. Further, NERA found that the disparities for African Americans and
15 Latino Americans are especially pronounced and have increased in the recent six years over the prior
16 fourteen years.

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

23 • NERA also reported discrimination against minorities and women in the credit markets
24 in all industries, which NERA concluded partially explains the large disparities found in minority and
25 women business formation rates. NERA reported that even when controlling for firm size, credit

1 history and other valid credit worthiness factors, the loan applications of minority-owned firms were
2 substantially more likely to be denied than the loan applications of Caucasian firms. For example, the
3 loan rejection rates for African American and Latino American firms are roughly twice that of
4 Caucasian firms. NERA also found that minority firms are more likely not to apply for loans because
5 of the low loan approval rate for such firms, and that when minority businesses did receive loans, they
6 had to pay higher interest rates, regardless of their credit worthiness or geography. NERA further
7 reported that credit market conditions are a far bigger concern for minority-owned firms than for
8 Caucasian-owned firms, and that a greater share of minority-owned firms than Caucasian-owned firms
9 believe that credit availability is the most important issue likely to confront the firm in the next 12
10 months. NERA also reported that discrimination in the market for credit has increased for minority
11 groups during the 1990s, and re-appeared for women in the late 1990s.
12 Based on NERA's studies, the testimony and all of the other evidence before the Board, the Board finds
13 that minority- and women-owned businesses continue to face systemic race and gender discrimination
14 in public and private markets in the Bay Area.

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

22 3. The Human Rights Commission's 2003-study thoroughly and conclusively documented the fact
23 that – even with the City's remedial contracting programs in place – minority- and women- owned
24 business enterprises continue to receive a smaller share of certain types of contracts for the purchases
25 of goods and services by the City than would be expected based on the number of able and available

1 women- and minority-owned businesses. This poor utilization cannot be attributed to chance. This
2 Board finds, based on these statistical studies, testimony and on all the other evidence of persistent
3 discrimination presented to the Board, that the disproportionately small share of City contracting and
4 subcontracting that goes to women-and minority-owned businesses in certain industries is due to
5 discrimination by the City and discrimination in the private market.

6 4. The Human Rights Commission's April 2003 study also documents that in the last five years, in
7 certain limited industries, some minority groups and women have received City contract dollars close
8 to or above the level that would be expected based on their availability. Based on the studies and
9 reports issued by NERA and Godbe Associates, the testimonial evidence, the history of discrimination
10 against minority and women contractors in City contracting programs and the other materials before
11 the Board, the Board finds that these favorable minority utilization rates are attributable to the fact that
12 the City has remedial contracting programs in place, and that the discrimination the City previously
13 identified in its prime contracting and subcontracting programs has not yet been eradicated. In
14 particular, the Board finds that if the City were to discontinue, at this time, the race- and gender-
15 conscious bid discount program or the subcontracting program authorized by this Ordinance, minority
16 and women utilization rates in City contracting would plummet. Under those circumstances, the Board
17 finds that minority and women utilization rates would likely return to the same judicially-recognized
18 low levels to which they fell in 1989 after the City discontinued its prior race- or gender-conscious
19 remedial contracting programs. In fact, many minorities and women report that they are frequently
20 refused subcontracting opportunities on contracts that are not subject to a race- or gender-conscious
21 affirmative action program by the same prime contractors that do hire them on contracts that are
22 subject to a race- and gender conscious affirmative action program. And, many minority- and women-
23 owned businesses that have benefited from the City's remedial program and have since graduated from
24 the program, report that prime contractors who gave them subcontracts on contracts subject to the

1 City's subcontracting requirements before they graduated, refuse to give them subcontracts now that
2 they are no longer certified under the M/WBE program.

3 ~~3. The City has conducted two comprehensive disparity studies to gauge discrimination against~~
4 ~~women and minority owned businesses in the City's contracting. These two studies, one conducted by~~
5 ~~Mason Tillman Associates and covering the years 1992-1995, and a second conducted by the City's~~
6 ~~Human Rights Commission staff and covering the years 1996-1997, have thoroughly and conclusively~~
7 ~~documented the fact that women and minority owned business enterprises continue to receive a~~
8 ~~smaller share of contracts for the purchases of goods and services by the City than would be expected~~
9 ~~based on the number of able and available women and minority owned businesses. This poor~~
10 ~~utilization cannot be attributed to chance. This Board finds, based on these statistical studies and on all~~
11 ~~of the other evidence of persistent discrimination presented to the Board, that the disproportionately~~
12 ~~small share of City contracting and subcontracting that goes to women and minority owned businesses~~
13 ~~is due to discrimination by the City and discrimination in the private market.~~

14 ~~3. The Human Rights Commission Study Mason Tillman Study analyzed the City contracting data for~~
15 ~~various groups for the years 1998 through early 2003 through 1995. Under a fair and equitable~~
16 ~~system of awarding contracts, the proportion of contract dollars awarded to minority and women~~
17 ~~owned business enterprises would be equal to the proportion of willing and able minority and women~~
18 ~~owned enterprises in the relevant market area. If these proportions are not equal, or if a disparity exists~~
19 ~~between these proportions, the probability that the disparity is due to chance is determined using a~~
20 ~~statistical test. If there is a very low probability that the disparity is due to chance, the Supreme Court~~
21 ~~has stated that an inference of discrimination can be made.~~

22 5. The Mason Tillman Human Rights Commission Study reviewed contracts entered into by
23 the City and County of San Francisco in a variety of areas and categories from 1998 through
24 early 2003, and determined the following:

1 A. For prime construction contracts, even with the race- and gender-conscious
2 bid/ratings discount program in place, African Americans, Arab Americans, Asian Americans and
3 women and all minority groups still received fewer construction prime-contracting dollars than
4 would be expected given their availability. ~~Arab Americans did not receive any contract dollars at~~
5 ~~all.~~ The disparity was statistically significant for African Americans, Asian Americans and Arab
6 Americans. ~~In addition, there was statistically significant evidence of discrimination in favor of~~
7 ~~Caucasian men.~~ Although African Americans represent 10.244.49 percent of the available
8 construction firms, they received only 1.0144 percent of the construction contract dollars.
9 Although Arab Americans represent 0.148 percent of the available construction firms, they
10 received no construction contract dollars at all. Although Asian Americans represent
11 ~~20.71~~13.74 percent of the available construction firms, they received only 4.983.0 percent of the
12 construction contract dollars. ~~Although Latino Americans represent 9.67 percent of the available~~
13 ~~construction firms, they received 5.28 percent of the construction contract dollars.~~ ~~Although Native~~
14 ~~Americans represent 0.8 percent of the available construction firms, they received no construction~~
15 ~~contract dollars at all.~~ Although ~~Caucasian~~ women represent 8.848.08 percent of the available
16 construction firms, they received only 8.231.37 percent of the construction contract dollars.
17 Although ~~Caucasian~~ men represent 67.7449.72 percent of available construction firms, they
18 received 70.7988.92 percent of the construction contract dollars. Although Latino American firms
19 received more construction contracts than expected based on their availability, the Board finds, based
20 on the studies, statistics, testimony and other evidence before it of discrimination against Latino
21 Americans in City contracting and contracting in other Bay Area markets, that in the absence of the
22 bid/ratings discount program that the City has had in place, Latino Americans would receive well
23 below the level of prime City construction contracts that one would expect based on their availability.

24 B. For architecture and engineering prime contracts between 1992 and 1995 1998
25 and early 2003, even with the race- and gender-conscious bid/ratings discount program in place,

1 African Americans, Arab Americans, Asian Americans, Iranian~~Native~~ Americans, Latino
2 Americans and Caucasian women received fewer contracts than would be expected given their
3 availability. Notwithstanding the bid/ratings discount program, m~~More~~ than 8760 percent of the
4 contracts in this area went to Caucasian male-owned businesses, even though those firms
5 represent less than 63 percent of the available architecture and engineering firms. The disparities
6 was statistically significant for against Arab Americans, Asian Americans, Iranian Americans, Latino
7 Americans, Caucasian and women, and the particularly pronounced disparity in favor of Caucasian
8 men, were statistically significant.

9 - C. For professional services prime contracts in the years ~~1992-1995~~ 1998 through
10 early 2003, even with the race-conscious bid/ratings discount program in place, ~~African Americans,~~
11 ~~Arab Americans,~~ ~~Asian Americans,~~ Iranian Americans and Latino Americans ~~Latino Americans,~~
12 ~~Native Americans, and Caucasian women all~~ received fewer contracts than expected based on
13 their availability, and ~~More than 78 percent of the professional service contracts for the years 1992-~~
14 ~~1995 went to Caucasian male-owned businesses.~~ The disparities were ~~is~~ statistically significant for
15 those groups. Caucasian women. In addition, there is a statistically significant disparity in favor of
16 Caucasian men. African Americans, who represent 10.65 percent of the available professional service
17 firms, received only 5.08 percent of the contract dollars. Arab Americans, who represent .114.66
18 percent of the available professional service firms, received only .08 ~~none of the professional~~
19 ~~service dollars.~~ Asian Americans, who represent 16.32 percent of the available professional services
20 firms, received 11.92 percent of the professional services contract dollars. Iranian-Latino
21 Americans, who represent .115.77 percent of the available professional services firms,
22 received 0.0095 percent of the professional services dollars. Latino Americans, who represent
23 .79 percent of the professional services firms, received .22 percent of the professional service dollars.
24 Caucasian women, who represent 21.75 percent of the available professional services firms, received
25 3.22 percent of the professional services dollars. On the other hand, Caucasian men, who represent

1 40.7 percent of the available professional services firms, received 78.83 percent of the professional
2 services dollar. And, although African Americans, Asian Americans and women received more than the
3 number of professional service contracts one would expect based on their availability, the Board finds,
4 based 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 bid/ratings discount program that the City has had in place, African
7 Americans, Asian Americans and women would receive well below the level of prime City professional
8 service contracts that one would expect based on their availability.

9 D. For purchases of goods and services prime contracts for 1998~~92~~ through early
10 2003-1995, all minorities, even with the race- and gender conscious bid/ratings discount in place,
11 Asian Americans, Iranian Americans and women received fewer contract dollars than expected.
12 Although Asian Americans represent 4.15 percent of the available goods and services firms, those firms
13 received only 1.84 percent of the goods and services contract dollars. Similarly, although Iranian
14 Americans represent .22 percent of the available goods and services firms, those firms received only
15 .17 percent of the goods and services contract dollars. Although women represent 6.22 percent of the
16 available goods and services firms, women received only 4.60 of the goods and services contract
17 dollars. Although African Americans, Arab Americans and Latino Americans received slightly more
18 than the number of good and services contracts one would expect based on their availability, the Board
19 finds, based on the studies, statistics, testimony and other evidence before it of discrimination against
20 African Americans, Arab Americans and Latino Americans in City contracting and contracting in other
21 Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in
22 place, African Americans, Arab Americans and Latino American firms would receive well below the
23 level of prime City goods and services contracts that one would expect based on their availability. The
24 disparity is statistically significant for each ethnic group except Native Americans.
25

1 ~~For construction contract dollars below \$500,000 for the years 1992-1995, minorities and~~
2 ~~females received fewer contract dollars than expected, given their availability. The finding was~~
3 ~~statistically significant for African Americans, Arab Americans, Asian Americans and Native~~
4 ~~Americans. Caucasian men received a statistically significant greater number of contract dollars than~~
5 ~~expected.~~

6 ~~For architecture and engineering contract dollars below \$500,000 for the years 1992-1995,~~
7 ~~minorities and women received fewer contract dollars than expected, given their availability. The~~
8 ~~findings are statistically significant for Latino Americans and Caucasian females. Caucasian men~~
9 ~~received a statistically significant greater number of contract dollars than expected.~~

10 ~~For small professional service contract dollars below \$500,000 for the years 1992-1995, all~~
11 ~~minorities and female Caucasians received statistically significantly fewer of the contract dollars than~~
12 ~~expected. Caucasian males received statistically significantly greater contract dollars than expected.~~

13 ~~For purchases of goods and supplies contracts below \$500,000 for the years 1992-1995, all minorities~~
14 ~~and female Caucasians received fewer contract dollars than would be expected based on their~~
15 ~~availability. The figures were statistically significant for all groups except Native Americans.~~

16 E. For general services prime contracts for 1998 through early 2003, even with the race-
17 and gender conscious bid/ratings discount in place, African Americans, Arab Americans, Asian
18 Americans and Iranian Americans received fewer contract dollars than expected based on their
19 availability. Although African Americans represent 1.28 percent of the available general services
20 firms, those firms received only .64 percent of the general services contract dollars. Similarly,
21 although Arab Americans represent .04 percent of the available general services firms, those firms
22 received only .01 percent of the general services contract dollars. Although Asian Americans represent
23 2.60 percent of the available general service firms, they received only 1.11 percent of the general
24 services contract dollars. Although Iranian Americans represent .09 percent of the general services
25 contract dollars, they received 0.00 percent of the general services contract dollars. The disparities

1 against African Americans and Iranian Americans are statistically significant. Although Latino
2 Americans and women received somewhat more than the number of general services contracts one
3 would expect based on their availability, the Board finds, based on the studies, statistics, testimony and
4 other evidence before it of discrimination against Latino Americans and women in City contracting and
5 contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the
6 City has had in place, Latino Americans and women would receive well below the level of prime City
7 general services contracts that one would expect based on their availability.

8 F. For telecommunications prime contracts entered into between 1998 and early 2003,
9 even with the race- and gender-conscious bid/ratings discounts in place, African Americans, Asian
10 Americans, Iranian Americans and women received fewer contract dollars than expected based on
11 their availability. Although African Americans represent 2.26 percent of the telecommunications firms,
12 they received only .19 percent of the telecommunications contract dollars. Although Asian Americans
13 represent 13.53 percent of the telecommunications firms, they received only 2.93 percent of the
14 telecommunications contract dollars. Although Iranian Americans represent .75 percent of the
15 telecommunications firms, they received .01 percent of the telecommunications contract dollars.
16 Although women represent 14.29 percent of the telecommunications firms, they received only 12.86
17 percent of the telecommunication contract dollars. Even with the bid/ratings discount program in
18 place, although Caucasian men represent 70.68 percent of the available telecommunications firms, they
19 received 77.56 percent of the telecommunication contract dollars. The disparities against African
20 Americans, Asian Americans and Iranian Americans are statistically significant. Although Latino
21 Americans received more than the number of telecommunication contracts one would expect based on
22 their availability, the Board finds, based on the studies, statistics, testimony and other evidence before
23 it of discrimination against Latino Americans in City contracting and contracting in other Bay Area
24 markets, that in the absence of the bid/ratings discount program that the City has had in place, Latino
25

1 Americans would receive well below the level of prime City telecommunication contracts that one
2 would expect based on their availability.

3 G. For City construction subcontracts entered into between 1998 and early 2003, even with
4 the race-conscious subcontracting program in place, Arab Americans and Asian Americans still
5 received fewer construction subcontracts than expected based on their availability. Although Arab
6 Americans represent .14 percent of the available construction firms, they received only .05 percent of
7 the construction subcontract dollars. Although Asian Americans represent 13.74 percent of the
8 construction firms, they received only 12.99 percent of the construction subcontract dollars. Although
9 African Americans, Latino Americans and women received more than the number of construction
10 subcontracts one would expect based on their availability, the Board finds, based on the studies,
11 statistics, testimony and other evidence before it of discrimination against African Americans, Latino
12 Americans and women in City contracting and contracting in other Bay Area markets, that in the
13 absence of the subcontracting program that the City has had in place, African Americans, Latino
14 Americans and women would receive well below the level of City construction subcontracts that one
15 would expect based on their availability.

16 H. For City architectural and engineering subcontracts entered into between 1998 and
17 early 2003, even with the race- and gender-conscious subcontracting program in place, African
18 Americans, Arab Americans, Latino Americans and women received fewer architectural and
19 engineering subcontracts than expected based on their availability. Although African Americans
20 represent 4.67 percent of the available architectural and engineering firms, they received only 4.48
21 percent of the architectural and engineering subcontract dollars. Although Arab Americans represent
22 .98 percent of the architectural and engineering firms, they received only .40 percent of the
23 architectural and engineering subcontract dollars. Although Latino Americans represent 4.18 of the
24 available architectural and engineering firms, they received only 2.51 percent of the architectural and
25 engineering subcontract dollars. Although women represent 12.53 percent of the available

1 architectural and engineering firms, they received only 9.29 percent of the architectural and
2 engineering subcontract dollars. Although Asian Americans and Iranian Americans received slightly
3 more than the number of architectural and engineering subcontracts one would expect based on their
4 availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of
5 discrimination against Asian Americans and Iranian Americans in City contracting and contracting in
6 other Bay Area markets, that in the absence of the subcontracting program that the City has had in
7 place, Asian Americans and Iranian Americans would receive well below the level of City architectural
8 and engineering subcontracts that one would expect based on their availability.

9 I. For City professional services subcontracts entered into between 1998 and early 2003,
10 even with the race-conscious and gender-conscious subcontracting program in place, Arab Americans,
11 Iranian Americans and Latino Americans received fewer professional services subcontracts than
12 expected based on their availability. Arab Americans and Iranian Americans received no professional
13 services subcontracts at all. Although Latino Americans represent .79 percent of the professional
14 services firms, they received only .46 percent of the professional services subcontract dollars.
15 Although African Americans, Asian Americans and women received more than the number of
16 professional service subcontracts one would expect based on their availability, the Board finds, based
17 on the studies, statistics, testimony and other evidence before it of discrimination against African
18 Americans, Asian Americans and women in City contracting and contracting in other Bay Area
19 markets, that in the absence of the subcontracting program that the City has had in place, African
20 Americans, Asian Americans and women would receive well below the level of City professional
21 services subcontracts that one would expect based on their availability.

22 J. For City telecommunications subcontracts entered into between 1998 and early 2003,
23 even with the race- and gender-conscious subcontracting program in place, African Americans, Asian
24 Americans, Iranian Americans and women received fewer telecommunications subcontracts than
25 expected based on their availability. Iranian Americans received no telecommunications subcontracts

1 at all. Although Asian Americans represent 13.82 percent of the available telecommunications firms,
2 they received only .83 percent of the telecommunications subcontract dollars. Although women
3 represent 13.82 percent of the telecommunications firms, they received only 8.84 percent of the
4 telecommunications subcontract dollars. Although African Americans represent 2.44 percent of the
5 telecommunications firms, they received only 2.22 percent of the telecommunications subcontract
6 dollars. The disparity is statistically significant for Asian Americans. And, even with the
7 subcontracting program in place, although Caucasian men represent less than 70 percent of the
8 telecommunications firms, they received more than 86 percent of the telecommunications subcontracts.
9 Although Latino Americans received somewhat more than the number of telecommunication
10 subcontracts one would expect based on their availability, the Board finds, based on the studies,
11 statistics, testimony and other evidence before it of discrimination against Latino Americans in City
12 contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount
13 program that the City has had in place, Latino Americans would receive well below the level of City
14 telecommunications subcontracts that one would expect based on their availability.

15 6. ~~4.~~ In 2002 and 2003, the Human Rights Commission and this Board heard testimony from 134
16 individuals at public hearings about discrimination against minority and women-owned businesses,
17 and received written statements documenting such discrimination. In addition to statistical analysis,
18 the Mason Tillman study also reviewed testimonial evidence of discrimination from 35 individuals
19 including five African Americans, seven Asian Americans, three Latino Americans, four Native
20 Americans, eight Arab Americans, and eight Caucasian women. The report also reviewed written
21 testimony of discrimination and testimony from public hearings. Additionally, in 2003, Godbe
22 Research conducted a telephone survey of HRC-certified MBEs and WBEs.
23 Based on this evidence, and the findings and evidence supporting the 1984, 1989 and 1998 Ordinances,
24 and amendments to those ordinances, the Board finds that The report found, based on this testimonial
25 evidence, that minorities and women continuously face racial prejudice in both the public and

1 private sector markets in San Francisco. The prejudice against minorities takes the form of
2 stereotyping, prejudging, discomfort in working with minorities, an absence of opportunities to
3 prove one's skill and ability, exclusion, networking difficulties, and racial slurs. Women also
4 face prejudging and stereotyping. Women are often made to feel that they are not qualified to
5 be running a company and that they are innately incapable of certain tasks. Women also
6 sometimes face questions as to whether they are really running their firms. Women- and
7 minority-owned firms also face overt hostility from majority-male firms, reporting harassment,
8 intimidation, and undue pressure during the course of doing business with majority- male
9 firms. ~~Women interviewed in the study reported sexual harassment.~~ Women- and minority-owned
10 businesses also are often subjected to increased and higher standards of review of their work
11 than Caucasian, male- owned firms. Minorities and women also reported difficulties and
12 discrimination in obtaining financing and credit for their firms, difficulty obtaining bonding and
13 insurance, and other forms of business institutional discrimination.

14 Minorities and women also report of discrimination in the award of City prime contracts. Minorities
15 and women report that project managers in many City departments continue to operate under an "old
16 boy network" in awarding City prime contracts. This practice creates a barrier to the entry of women-
17 and minority-owned businesses and puts those firms at a competitive disadvantage in their efforts to
18 secure City prime contracts.

19 Minority- and women-owned businesses also reported being discriminated against by prime
20 contractors, by, for example, being given inadequate lead time to bid on projects, being paid
21 late after a bid award, being listed on a bid without permission, and having the scope of their
22 work reduced or canceled after the bid award. Minority- and women-owned businesses report that
23 the only reason they are able to get work from many prime City contractors is because the City
24 requires prime contractors to provide minorities and women with opportunities to compete for City
25 subcontracts. In particular, many minorities and women report that they are frequently refused

1 subcontracting opportunities on contracts that are not subject to a race- or gender-conscious
2 affirmative action program by the same prime contractors that do hire them on contracts that are
3 subject to a race- and gender conscious affirmative action program. And, many minority- and women-
4 owned businesses that succeeded because of the City's remedial program and graduated from the
5 program, report that prime contractors who gave them subcontracts on contracts subject to the City's
6 subcontracting requirements before they graduated, refuse to give them subcontracts now.

7 Finally, minorities and women report of

8 ~~The report also documents numerous specific instances of discrimination against minority and women-~~
9 ~~owned businesses and~~ hostility in the industry toward the M/WBE program.

10 7. 5. In February 1998, the Human Rights Commission instructed its staff to review statistical
11 evidence available for the years 1996-1997 to determine if the evidence demonstrates that the
12 discrimination identified in the Mason Tillman study is still present. The HRC study determined that the
13 discrimination identified in the Mason Tillman study was still present in 1996 and 1997, in that women-
14 and minority-owned business enterprises continued to be used at rates substantially below what would
15 be expected based on the availability of such firms. In addition, the HRC report reviewed extensive
16 other evidence, including testimonial evidence, about the presence of discrimination in the City and
17 County's contracting processes. The In February 1998, the Human Rights Commission issued HRC a
18 report that report also documents hostility and active resistance to the W/MBE program by

19 various City departments and agencies. The HRC report also found the following
20 discriminatory practices at work in City contracting: (1) listing minority- and women-owned
21 enterprises as subcontractors but never using the listed minority- and women-owned
22 subcontracting firms, (2) the use of additional nonminority, male subcontractors never listed
23 on the relevant HRC forms, and (3) the creation of fraudulent joint ventures involving minority-
24 or women-owned and majority, men-owned firms. In particular, the HRC's investigation found
25 that in at least four out of 86 contracts involving joint ventures, the minority- or women-owned

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

16 ~~6. The 1996-97 Disparity Study prepared by the HRC also includes evidence concerning historically~~
17 ~~ineffective enforcement of the W/MBE program by the HRC due to resistance from other City~~
18 ~~departments. The annual budget for the HRC has ranged from \$500,000 for fiscal year 1983/84 to~~
19 ~~slightly less than \$4,000,000 for fiscal year 1997/98. These deficiencies have proved especially~~
20 ~~problematic with respect to implementing the 12D ordinance as to subcontractors. The City has~~
21 ~~encountered persistent difficulties in securing information regarding compliance at the subcontracting~~
22 ~~level. For this reason, this ordinance includes additional enforcement measures to assure full and~~
23 ~~appropriate reporting of information pertaining to subcontractors to determine if there is compliance~~
24 ~~at the subcontracting level.~~

1 ~~The City has also found that one method used to circumvent the intent and purpose of this ordinance is~~
2 ~~the change order process. To assure the change order process is not used as a tool to circumvent this~~
3 ~~ordinance, departments and contractors seeking to submit contract amendments, modifications,~~
4 ~~supplements, or change orders shall be required to prove continued compliance with the ordinance.~~
5 ~~7. The 1996-97 disparity study prepared by the HRC also includes the transcript of a public hearing~~
6 ~~held on March 30, 1998 at which 44 individuals testified about their experiences of discrimination in~~
7 ~~City contracting.~~

8 8. Based on the studies, reports, testimony and other evidence before it, the Board finds that the
9 race- and gender conscious remedial programs authorized by this Ordinance continue to be necessary
10 to remedy discrimination against minority- and women-owned businesses in City prime contracting and
11 subcontracting. The Board finds that ~~these two disparity studies demonstrate that~~ the City and
12 County of San Francisco is actively discriminating against women and minority groups in its
13 contracting, and is passively participating in discrimination in the private sector. This Board
14 finds that the evidence before it se studies establishes that the City's current contracting practices
15 are in violation of federal law and that, as a result, this ordinance continues to be required is
16 required by federal law to bring the City into compliance with federal civil rights laws in its
17 contracting practices.

18 9. 9. In addition, ~~to the disparity studies undertaken by the City and County of San Francisco,~~
19 the Board has reviewed numerous studies by San Francisco-based agencies. These studies,
20 although narrower in scope than San Francisco's study, support the findings ~~of the study~~ disparity
21 studies undertaken ~~by the City~~ to assess discrimination against women and minorities in City
22 contracting:

23 • In 1991, the San Francisco Unified School District undertook a disparity study of
24 its contracting in various categories. The study found "substantial evidence of statistically
25 significant disparities between utilization and availability of minority and women contractors."

1 For prime contracts over \$15,000 in value, the study found statistically significant evidence of
2 discrimination against African Americans, Latino Americans, and other minorities, in the
3 number of contracts willing and able firms owned by these groups were able to obtain. For
4 prime contracts under \$15,000 in total value, the study found statistically significant evidence
5 of discrimination against Asian Americans, Latino Americans, minorities in general, and
6 women, in the number of contracts willing and able firms owned by members of these groups
7 were able to obtain. For subcontracts, the study found statistically significant evidence of
8 discrimination in the number of subcontracts that African American, Asian American, Latino
9 American, and minority firms in general were able to obtain. In a review of contracts under its
10 Earthquake program, the study found statistically significant evidence of discrimination against
11 Asian Americans, minorities in general, and women in the number of contracts businesses
12 owned by members of these groups were able to obtain. In construction- related professional
13 services, the study found statistically significant evidence of discrimination against African
14 Americans, Asian Americans, minorities in general and women. In printing and publishing
15 contracts, the study found statistically significant discrimination against African Americans,
16 Asian Americans, Latino Americans, minorities in general, and women. The study also
17 reviewed testimonial evidence of discrimination that supported its findings of discrimination.
18 In November 1992, the San Francisco Redevelopment Agency ("SFRA") issued a study of its
19 use of minority- and women-owned business enterprises. The comprehensive study found
20 that women- owned business enterprises received none of the publicly funded prime contract
21 dollars and only 24 percent of the privately funded contract dollars SFRA would have
22 expected given their availability. The study found from a survey of private construction
23 contractors that minority- and women-owned businesses received none of the prime contracts
24 and only 2.32 percent of the subcontract dollars. The study also surveyed 95 local minority-
25 and women-owned construction firms, out of which 75 percent reported that prime contractors

1 who use their firms on public contracts with W/MBE requirements never use their firms on
2 private contracts.

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

12 ~~In March 1992, the Human Rights Commission issued a study entitled "MBE/WBE Progress Report~~
13 ~~for FY 1990-1991" that documents some improvement over earlier years in the total number of City~~
14 ~~contracts awarded to minority and women owned enterprises, but that found that (1) "departments~~
15 ~~must do more to increase the contracts they award to MBEs/WBEs," (2) that there should be more~~
16 ~~closely focused outreach by City departments to MBE/WBEs, (3) that there needed to be greater~~
17 ~~monitoring and enforcement of the ordinance by the HRC, and (4) there needed to be greater education~~
18 ~~of City contract personnel to combat discrimination. The 1992 Sunset Report on the MBE/WBE~~
19 ~~Ordinance issued by the Human Rights Commission, which includes summaries of testimony from 84~~
20 ~~individuals, supports the Board's finding that there is an ongoing need for a M/WBE Ordinance.~~

21 ~~In 1995, the Human Rights Commission issued a progress report on the M/WBE Program covering~~
22 ~~the years 1994-95. The report supports the finding of a continued need for an M/WBE Ordinance.~~

23 ~~In July 1998, the Human Rights Commission prepared a budget comparison graphing the annual~~
24 ~~budget of the HRC against that of other City departments. That comparison is contained in Tab 10 of~~
25 ~~the evidence, prepared to support this ordinance and contained in the files of this Board.~~

1 ~~In July 1998, contract compliance officer of the Human Rights Commission issued a report on the~~
2 ~~labor force used in City contracted work totaling \$790,000,000 pursuant to the San Francisco~~
3 ~~International Airport Master Plan Expansion Program. The report illustrates the severe~~
4 ~~underrepresentation of women, minorities, and San Francisco residents on the airport expansion~~
5 ~~project.~~

6 ~~On May 13, 1993, the Human Rights Commission issued a report on the Trucking Industry and~~
7 ~~minority and women owned enterprises. The report supports the inclusion of trucking services in the~~
8 ~~current ordinance.~~

9 ~~In December 2001, the Human Rights Commission issued a report~~~~In February 1993, the Human Rights~~
10 ~~Commission issued a report entitled "Violence in Our City: Research and Recommendations to~~
11 ~~Empower Our Community," which addresses the increase in violence against African Americans that~~
12 ~~began in 2000, and discrimination against African Americans in San Francisco. The Unfinished~~
13 ~~Agenda: The Economic Status of African Americans in San Francisco 1964-1990." This report also~~
14 ~~supports the finding of the Board that an ordinance encouraging minority and women-owned~~
15 ~~enterprise participation in City contracting is necessary, and also gives important historical~~
16 ~~information concerning African Americans in San Francisco to remedy race discrimination against~~
17 ~~African American-owned firms in San Francisco.~~

18 ~~1010.~~ A number of broad disparity studies undertaken by State and other local governments
19 and agencies also support the findings of discrimination in San Francisco's studies, including:

20 • ~~_____~~ In ~~May~~ 1992, the ~~Board of Supervisors of~~ Contra Costa County issued a
21 comprehensive study of the use of women- and minority-owned businesses by that county.
22 The study examined Contra Costa's own contracts, data about subcontractors collected from
23 prime contractors, data on Contra Costa's payments to vendors, data on 7,993 minority- and
24 women-owned vendors in the Bay Area identified from various directories, questionnaires on
25 purchasing practices by Contra Costa officials and census data, testimony Contra Costa

1 solicited in public hearings in Alameda and San Francisco, and Bay Area wide mail surveys of
2 540 women- and minority-owned businesses. The study found that minorities received a
3 smaller share of Contra Costa County contracts than would be expected given their
4 availability. The study also examined the private sector for construction in San Francisco,
5 Oakland, and San Jose and found that minority- and women-owned businesses received a
6 smaller share of prime and subcontracts than would be expected given their availability. The
7 study also found strong evidence of discrimination against women and minority firms in Contra
8 Costa's professional services contracting and commodity purchases.

9 • -In 1996, the City of Oakland and the Oakland Redevelopment Agency issued a study of
10 the utilization of minorities and women in their contracting programs. The study revealed that even
11 after having programs aimed at increasing contracting opportunities for minority and women-owned
12 businesses, those businesses still get fewer contracts than one would expect based on their availability.
13 The study revealed that a culture of discrimination among prime contractors, lending institutions, and
14 other businesses prevented minority- and women-owned businesses from competing for public
15 contracting opportunities in Oakland. For instance, even though the majority of ready and willing
16 construction contractors in Oakland were African American-owned, Caucasian male contractors
17 received more than twice the contract dollars from 1991-1994 as African American contractors. And
18 although nearly 68 percent of all ready and willing contractors were minority- and women-owned
19 businesses, Caucasian-male owned firms received more than 55 percent of the contract dollars during
20 this period. Even those minorities who achieved statistical parity in contract availability during the
21 study period suffered from discrimination. Anecdotal evidence gathered for the study revealed that
22 prime contractors often refuse to allow the minority- and women-owned businesses to perform
23 subcontracting work after the contract has been awarded. Women contractors reported that they must
24 ask male co-workers to present their ideas to prime contractors, since otherwise their ideas are
25 ignored.

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

16 • _____ In 1995 the California Senate Office of Research issued a report entitled "The
17 Status of Affirmative Action in California." The report explained, in part, that "[c]ities and
18 counties have affirmative action programs as a matter of public policy, as a requirement for
19 contracting with the State, or because they receive federal money that requires attention to
20 nondiscrimination hiring." The report concluded that despite past affirmative action efforts,
21 "salaries remain disparate among racial and ethnic groups and between men and women."

22 • _____ In April 1996, the California Senate Office of Research issued a report entitled
23 "Exploring the Glass Ceiling and Salary Disparities in California State Government." The
24 report examined the salary levels of 164,000 state civil service employees and compared
25

1 compensation according to gender, race and ethnicity. The study found that women of equal
2 educational attainment earn only \$.74 for every dollar earned by their male counterparts.

3 4-11. Based on the testimony, studies and reports contained in Board File Nos. 98-0612, 99-0266 and
4 99-1326, and the evidence before the Board in support of this Ordinance, the Board finds that Arab and
5 Iranian Americans continue to suffer discrimination in the City's procurement process. In fact,
6 discrimination against Arab Americans and Iranian Americans has increased dramatically. Based on
7 testimony presented at public hearings before the Human Rights Commission and this Board between
8 2001 and 2003, and the Human Rights Commission Report issued in September 2002, the Board finds
9 that since September 11, 2001, there has been a sharp increase in threats, harassment, violence, and
10 discrimination against individuals perceived as having Middle Eastern origins in both the private
11 sector in San Francisco as well as in the City's procurement processes. As a direct result of this
12 systemic discrimination, Arab American and Iranian American-owned businesses have been prevented
13 from obtaining City prime contracting and subcontracting.

14 ~~This Board finds that Arab Americans who seek prime and subcontracting opportunities have been~~
15 ~~underutilized in the award of such contracts by City departments, and that such underutilization is~~
16 ~~attributable to discrimination both in the private sector and in the City's procurement practices. This~~
17 ~~Board finds, based on the historical record of discrimination against Arab Americans, the current~~
18 ~~disparity analysis, and the testimonial evidence given at public hearings, that there is ample evidence~~
19 ~~of discrimination to support the addition of Arab Americans to the MBE program and to justify~~
20 ~~remedial measures on their behalf. The evidence supporting this finding includes:~~

21 ~~-The findings in the Mason Tillman Associates 1992-1995 study that Arab American business~~
22 ~~enterprises continue to be used at rates less than would be expected given their availability. The study~~
23 ~~found the disparity to be statistically significant for purchases of goods and services prime contracts,~~
24 ~~for construction contracts worth less than \$500,000, for professional services contracts worth less than~~
25 ~~\$500,000, and for purchases of goods and supplies contracts worth less than \$500,000.~~

1 ~~Testimonial evidence concerning discrimination against Arab American owned firms in the form of~~
2 ~~testimony from eight Arab Americans interviewed as part of the Mason Tillman disparity study, one~~
3 ~~Arab American business owner who testified at the January 29, 1997 public hearing before the Human~~
4 ~~Rights Commission, one Arab American business representative who testified before the Board of~~
5 ~~Supervisors' Health, Family and Environment Committee on April 24, 1997, and from 14 Arab~~
6 ~~Americans who testified at a public hearing before the Human Rights Commission on April 29, 1997.~~
7 ~~The historical overview of the Arab American experience in San Francisco contained in the Mason~~
8 ~~Tillman study.~~

9 12.12. In 1989, based on the significant evidence before it, this Board finds found that Native
10 Americans who seek ~~sought~~ prime and subcontracting opportunities have ~~been~~ received fewer
11 such contracts than expected based on their availability ~~underutilized in the award of such contracts by~~
12 City departments, and that such underutilization ~~is~~ was attributable to discrimination both in the
13 private sector and in the City's procurement practices. ~~This Board finds,~~ based on the
14 historical record of discrimination against Native Americans, ~~the current disparity analysis,~~ and
15 the testimonial evidence given at public hearings, ~~that there~~ the Board found that there was ~~is~~
16 compelling ~~ample~~ evidence of discrimination to support the addition of Native Americans to the
17 MBE program and to justify remedial measures on their behalf. The HRC's 2003 disparity study
18 reveals that there are no longer any San Francisco-based businesses in any industry that are owned by
19 Native Americans and available to perform City prime contracts or subcontracts. Based on the
20 significant evidence before it, the Board finds that the pervasive discrimination and hostility against
21 Native Americans in the Bay Area and in the City's procurement processes has resulted in the recent
22 disappearance of available San Francisco-based Native American-owned contractors. The Board
23 further finds that this discrimination against Native Americans will prevent Native Americans from re-
24 establishing businesses in San Francisco without the bid/ratings discount program and subcontracting

1 program set forth in this Ordinance. For that reason, the Board finds it necessary to continue to extend
2 its remedial contracting program to businesses owned by Native Americans.

3 *The evidence supporting this finding includes:*

4 ~~•The findings in the Mason Tillman Associates 1992-1995 study that Native American business~~
5 ~~enterprises continue to be used at rates less than would be expected given their availability. The study~~
6 ~~found the disparity to be statistically significant for construction contracts worth less than \$500,000 for~~
7 ~~the years 1992-1995, and professional services contracts below \$500,000.~~

8 ~~•Testimonial evidence concerning discrimination against Native Americans in the form of the testimony~~
9 ~~of five Native Americans at a public hearing in January 1990, the testimony of four Native American~~
10 ~~interviewees in the Mason Tillman study, and the testimony of nine Native Americans at a public~~
11 ~~meeting before the Human Rights Commission on May 7, 1997, and the testimony of a representative of~~
12 ~~Native Americans at the May 8, 1997 hearing of the Board of Supervisors Health, Family and~~
13 ~~Environment Committee.~~

14 ~~•The historical overview of the Native American experience in San Francisco contained in the Mason~~
15 ~~Tillman study.~~

16 ~~13. This Board finds that Iranian Americans who seek prime and subcontracting opportunities have~~
17 ~~been underutilized in the award of such contracts by City Departments and that such underutilization is~~
18 ~~attributable to discrimination both in the private sector and in the City's procurement practices. This~~
19 ~~Board finds, based on the record of discrimination against Iranian Americans and the testimonial~~
20 ~~evidence given at public hearings, that there is ample evidence of discrimination to support the~~
21 ~~addition of Iranian Americans to the MBE program and to justify remedial measures on their behalf.~~

22 *The evidence supporting this finding includes:*

23 ~~•Testimonial evidence concerning discrimination against Iranian American owned firms.~~

24 ~~•The historical overview of the Iranian American experience in San Francisco attached as exhibits to~~
25 ~~the January 4, 1999 and June 30, 1999 Human Rights Commission Reports contained in Board File~~

1 ~~_____.~~ ~~That testimony recounted several experiences of Iranian Americans who were being~~
2 ~~considered for subcontracting with prime City contractors. When the prime contractors learned that~~
3 ~~the Iranian American contractors were not certified MBEs, the prime contractors had no further~~
4 ~~interest in continuing contracting with the Iranian American contractors even though they were fully~~
5 ~~qualified to do the work.~~

6 ~~• The findings indicate that Iranian American firms have been virtually excluded from City contracting.~~
7 ~~Although the availability of Iranian American contractors is 4.2%, their utilization rate on City prime~~
8 ~~contracting was .02% of the total dollars awarded during calendar year 1996-97.~~

9 ~~14. The Board further finds that although Iranian Americans are not Arab Americans and have cultural~~
10 ~~differences from Arab Americans, Iranian Americans nevertheless suffer from the same or similar~~
11 ~~discrimination as Arab Americans in City contracting. The Board finds that this similarity in~~
12 ~~discrimination occurs because those who discriminate against Iranian Americans and Arab Americans~~
13 ~~in City contracting do not distinguish these groups as separate. The Board thus finds it necessary to~~
14 ~~group Iranian Americans with Arab Americans for purposes of remedying the discrimination these two~~
15 ~~groups suffer in City contracting programs.~~

16 ~~13.15.~~ The Board has also reviewed and considered several volumes of collected social
17 science materials concerning discrimination against women and minorities in the Bay Area
18 and in public contracting in California. These social science materials strongly support, and
19 are consistent with, the findings in the statistical and testimonial evidence that discrimination
20 exists against women and minorities in the City's contracting and in the private market for
21 similar contracts.

22 ~~14.~~ ~~16.~~ The Board has considered a substantial body of evidence in enacting the
23 ordinance. The findings set forth herein represent certain salient portions derived from the
24 evidence and hearings. These findings, however, are intended to be representative and
25

1 nonexhaustive of the evidence and reasons supporting the enactment herein. The Board will
2 consider relevant evidence that continues to be collected.

3 ~~15.~~ ~~17.~~ In enacting this ordinance, the Board considered and relied on (a) the fact that a
4 substantial percentage of City agencies receive federal funds, a vast portion of which is
5 expended in City contracts, (b) the federal requirements for eradication of discrimination,
6 including the evidence supporting those requirements, and (c) all applicable constitutional
7 standards including those that apply to federally funded projects.

8 ~~16.~~ ~~18.~~ This Board finds that the testimony of minority and women business owners who
9 seek to enter into contracts with the City or are doing business with the City, as presented to
10 this Board and the Human Rights Commission, offer clear and persuasive evidence of
11 discrimination to such an extent that the disparity of contract dollars awarded to minority- and
12 women-owned enterprises can only be explained by discrimination. The statistical evidence,
13 oral *and written* histories, and social science evidence reviewed by this Board also support this
14 finding. Accordingly, this Board adopts this ordinance to remedy the specifically identified City
15 contracting practices and conditions in the Community and industries that cause the exclusion
16 or reduction of contracting opportunities for minority- and women-owned businesses in City
17 prime and subcontracting programs.

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

1 eliminated, the discrimination against and nonutilization of minority- and women-owned
2 businesses now existing in the private sector would occur immediately in the awarding of City
3 contracts.

4 ~~18.~~ ~~20.~~ This Board further finds that local businesses that seek prime contracting and
5 subcontracting opportunities in City contracting continue to labor under a competitive
6 disadvantage with businesses from other areas because of the higher administrative costs of
7 doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for
8 labor, higher insurance rates, etc.).

9 ~~19.~~ ~~21.~~ This Board finds that public interest is served by encouraging economically
10 disadvantaged businesses to locate and to remain in San Francisco through the provision of
11 bid discounts to such San Francisco businesses in the award of City contracts and by
12 requiring prime contractors to use good faith efforts to use such businesses as subcontractors
13 when there are subcontracting opportunities available on City contracts.

14 ~~20.~~ ~~22.~~ Additionally, this Board finds that policies and programs that enhance the
15 opportunities and entrepreneurial skills of local businesses will best serve the public interest
16 because the growth and development of such businesses will have a significant positive
17 impact on the economic health of San Francisco by, among other things, the creation of local
18 jobs and increased tax revenue.

19 ~~21.~~ ~~23.~~ The Board finds that affording a five percent bid discount for economically
20 disadvantaged local businesses bidding on City contracts reduces the disadvantages under
21 which these businesses compete.

22 ~~22.~~ ~~24.~~ The bid discount mechanism in this ordinance is used to assure equality in the
23 treatment of opportunities to any bidder for City contracts. This Board further finds that the
24 failure to use such a bid discount would result in discrimination against or preferential
25 treatment to certain individuals and/or groups.

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

2 It is the policy of the City and County of San Francisco to ensure full and equitable
3 opportunities for minority business enterprises, woman business enterprises, and local
4 business enterprises to participate as prime contractors in providing goods and services to the
5 City. This program is intended to correct identified discriminatory practices inherent in the
6 City's procurement process and in the award of prime contracts to MBE/WBEs. Another goal
7 of this ordinance is to offset some of the economic disadvantages local businesses continue
8 to face that are not shared by nonlocal businesses.

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

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

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

2 The race- and gender-conscious bid discounts of this ordinance shall be afforded only to
3 economically disadvantaged minority- and women-owned businesses in all specifically
4 enumerated categories of City contracts for the procurement of goods and services subject to
5 exemptions hereinafter specifically enumerated. The local business bid discount shall be
6 afforded to all economically disadvantaged local businesses in the award of all City contracts
7 for the procurement of goods and services subject to exceptions hereinafter specifically
8 enumerated in Section 12D.A.15.

9
10 **SEC. 12D.A.5. DEFINITIONS.**

11 ~~*"Award of a contract" occurs when a contract is certified by the Controller of the City and County of*~~
12 ~~*San Francisco.*~~

13 *"Architect/Engineering Contracts" shall mean an agreement for architects, engineers, and other*
14 *outside temporary professional design, consultant or construction management services for a public*
15 *work project.*

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

23 "Best efforts" when required of contract awarding authority shall mean reasonable efforts to
24 include minorities, MBEs, women, or WBEs in City contracting.

1 "Bid" shall mean and include a quotation, proposal, solicitation or offer by a bidder or
2 contractor to perform or provide labor, materials, equipment, supplies or services to the City
3 and County of San Francisco for a price.

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

6 "City" shall mean the City and County of San Francisco.

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

23 "Commission" shall mean the Human Rights Commission of the City and County of San
24 Francisco.

1 "Commodity" shall mean products, including materials, equipment and supplies, purchased by the
2 City.

3 "Concession" shall mean any privilege conferred by the City on a person to engage in
4 business on property owned or leased by the City.

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

17 "Contract awarding authority" shall mean the City officer, department, commission, employee
18 or board authorized to enter into contracts on behalf of the City. In the case of an agreement
19 with a person or nonprofit entity to perform or fund the performance of construction-related
20 services, the term "contract awarding authority" shall mean the person or nonprofit entity
21 receiving funds from the City to perform or fund the performance of such services.

22 "Contractor" shall mean any person(s), firm, partnership, corporation, or combination thereof,
23 who submits a bid or proposal to perform, performs any part of, agrees with a person to
24 provide services relating to and/or enters into a contract with department heads and officers or
25 contract awarding authorities empowered by law to enter into contracts on the part of the City

1 for public works or improvements to be performed, or for goods or services or supplies to be
2 purchased at the expense of the City or to be paid out of monies deposited in the treasury or
3 out of trust monies under the control of or collected by the City.

4 "Control" of a business shall refer to the possession of the legal authority and power to
5 manage business assets, good will and daily operations of the business, and the active and
6 continuous exercise of such authority and power in determining the policies and directing the
7 operations of the business.

8 "Director" shall mean the Director of the Human Rights Commission of San Francisco.

9 "Discount" shall mean an upward or downward price adjustment, according to the context, that
10 is made for the purpose of remedying, in the case of MBEs and WBEs, identified
11 discrimination, and, in the case of LBEs, the competitive disadvantage caused by the higher
12 administrative costs of doing business in the City.

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

1 ~~“Equipment and supplies contract” shall mean a term purchase agreement, contract order, purchase~~
2 ~~order and any other agreement for the purchase of transportation equipment, office supplies, data~~
3 ~~processing and office equipment, hospital and medical equipment and supplies, food, restaurants,~~
4 ~~building supplies, fire/safety equipment and supplies, clothing, miscellaneous and electrical equipment~~
5 ~~and supplies. The term “equipment and supplies contract” shall not include contracts for fuels,~~
6 ~~lubricants and illuminants.~~

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

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

16 “Good-faith efforts” when required of a contract awarding authority or department shall mean
17 the actions undertaken by a department to obtain MBE or WBE participation in a contract as
18 prime contractors, and shall include the following efforts: (1) encouraging MBE/WBEs to
19 attend prebid meetings scheduled by a department or the Commission to inform potential
20 contractors of contracting opportunities; (2) advertising in general circulation media, trade
21 association publications and minority/woman business focused media and posting the
22 contacting opportunity on the Office of Contract Administration's website pursuant to Section
23 12.D.A9(A)6.; (3) notifying MBE/WBEs that are available to perform the work contemplated in a
24 contract and soliciting their interest in the contract; (4) dividing the contract work into
25 economically feasible units to facilitate MBE/WBE participation in the contract; (5) pursuing

1 solicitations of interest by contacting MBE/WBEs to determine whether these businesses are
2 interested in participating on the contract; (6) providing MBE/WBEs with adequate information
3 about the plan, specifications and requirements of the contract; (7) where applicable,
4 negotiating with MBE/WBEs in good faith and demonstrating that MBE/WBEs were not
5 rejected as unqualified without sound reasons based on a thorough investigation of their
6 capabilities; and (8) using the services of available community and contractors' groups, local,
7 State or federal minority and woman business assistance offices that provide assistance in
8 the recruitment of MBE/WBEs for public sector contracts.

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

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

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

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

24 (4) Providing, not less than 10 calendar days prior to the date on which bids can first be
25 submitted, written notice of his or her interest in bidding on the contract to the number of

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

1 "Lease" shall mean and include an agreement by which the City or any contracting agency
2 thereof, grants to a person the temporary possession and use of property for consideration.

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

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

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

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

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

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

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

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

1 "Minority," "minorities," or "minority person" shall mean members of one or more of the
2 following ethnic groups:

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

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

7 Asian Americans (defined as persons with Chinese, Japanese, Korean Koreans, Pacific
8 Islanders Islander, Samoaans Samoan, Filipinos Filipino, Asian Indians Indian, and Southeast
9 Asians Asian ancestry);

10 ~~African Americans;~~

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

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

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

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

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

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

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

11 “Owned,” for purposes of determining whether a business is a MBE or WBE shall mean that
12 minorities or women, as the context requires:

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

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

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.~~

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(e)~~ 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;

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;

- 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.~~

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
25

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.

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.

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.

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

20
21
22 By:



23 BURK E. DELVENTHAL

24 Deputy City Attorney
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 030347

Date Passed:

Ordinance amending the San Francisco Administrative Code by amending Chapter 12D.A. thereof (1) to extend the Minority/Women/Local Business Utilization Ordinance to June 30, 2008 in order to continue to remedy identified discrimination against certain Prime MBE/WBE Contractors in City Contracting, to continue the City's policy of protecting Prime LBE Contractors from the economic competitive disadvantage of doing business in San Francisco, and to continue to remedy identified discrimination against certain MBE/WBE subcontractors in City Contracting by requiring City Prime Contractors to use good faith efforts to provide MBE/WBEs with opportunities to compete for City subcontracts; (2) to repeal Sections 12D.A.6(B)(9), 12D.A.8(3) and 12D.A.9(F) to eliminate the contract set aside program; (3) to revise section 12D.A.17 to include prime general services contracts in the subcontracting program; (4) to increase the economic thresholds under which disadvantaged professional service, architectural and engineering, specialty construction, and supplier firms can qualify for the remedial programs of this ordinance; (5) to preclude businesses owned by full time City employees and officers from becoming certified as an MBE, WBE or LBE; and (6) to make various technical revisions to the Minority/Women/Local Business Utilization Ordinance to conform it with existing City ordinances and administrative practices.

April 8, 2003 Board of Supervisors — SUBSTITUTED

May 20, 2003 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval

May 28, 2003 Board of Supervisors — FINALLY PASSED


Ayes: 8 - Ammiano, Daly, Dufty, Gonzalez, Maxwell, Newsom, Peskin, Sandoval
Absent: 3 - Hall, Ma, McGoldrick


File No. 030347

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on May 28, 2003 by
the Board of Supervisors of the City and
County of San Francisco.

JUN 01 2003

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.