

1 [Local Business Enterprise and Non-Discrimination in Contracting Ordinance.]

2

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

4 **14B.3, 14B.7, 14B.8, adding a new Section 14B.9, and renumbering Sections 14B.10,**

5 **14B.11, 14B.12, 14B.13, 14B.14, 14B.15, 14B.16, 14B.17, 14B.18, 14B.19 to (1) require**

6 **departments to set aside contracts worth \$400,000 or less for the Micro-Local Business**

7 **Enterprise Set Aside Program; (2) create a pilot Graduated Local Business Enterprise**

8 **program that will enable graduated firms to receive a 5% bid discount; and (3) allow**

9 **bidders and proposers the flexibility of meeting the participation goal by either**

10 **achieving adequate good faith efforts or by meeting and/or exceeding the participation**

11 **goal based on the availability of MBEs, WBEs, and OBEs.**

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14 NOTE: Additions are *single-underline italics Times New Roman*;

15 deletions are ~~*strike-through italics Times New Roman*~~;

16 Board amendment additions are double-underlined;

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

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

19 Section 1. The San Francisco Administrative Code is hereby amended by amending  
20 Section 14B.3, to read as follows:

21 **SECTION 14B.3. LBE CERTIFICATION.**

22 (A) Criteria for LBE Certification. Through appropriately promulgated procedures, if

23 any, the Director shall certify as an LBE any business that meets all of the following criteria

24 and also meet either the criteria set forth in Section 14.B.3(B), ~~or~~ Section 14.B.3(C) or Section

25 14B.3(D):

1 (1) The business is financially and operationally independent from, and operates at  
2 arm's length to, any other business.

3 (2) The business is continuously in operation.

4 (3) The business is a for-profit enterprise.

5 (4) The business performs a commercially useful function.

6 (5) The business maintains its principal place of business in a fixed office within the  
7 geographic boundaries of the City that provides all of the services for which LBE certification  
8 is sought, other than work required to be performed at a job site; provided, however, that  
9 suppliers are not required to maintain their principal place of business in San Francisco, but  
10 are required to maintain a fixed office in San Francisco that meets all of the requirements of  
11 this Section other than the principal place of business requirement.

12 An office is a fixed and established place of business, including a qualified home office,  
13 where business is conducted on a regular basis of the type for which certification is sought. A  
14 residence qualifies as an office only if none of the persons who own or control the business  
15 also maintains an office outside the residence in the same or related field, and the persons  
16 who own or control the business claimed a business deduction on the prior year's income tax  
17 return, or for, businesses started after the last tax return, would qualify for a deduction on the  
18 next tax return. None of the following constitutes an office: a post office box, a temporary  
19 location, a movable property, a location that was established to oversee a project such as a  
20 construction project office, or work space provided in exchange for services, as opposed to  
21 monetary rent.

22 To establish a principal place of business in San Francisco, a business must  
23 demonstrate that the majority of its principals are based in the San Francisco office, and that it  
24 pays San Francisco payroll taxes on at least 51% of its total payroll.

1 Suppliers must maintain a warehouse in the City that is continuously stocked with  
2 inventory consistent with their certification. Truckers must park their registered vehicles and  
3 trailers within the City.

4 (6) The business possesses a current San Francisco Business Tax Registration  
5 Certificate.

6 (7) The business has been located and doing business in San Francisco for at least six  
7 months preceding the application for certification.

8 (8) The business owner has licenses or other relevant trade or professional  
9 certifications, or, where licensing is not required, relevant training and experience that are  
10 appropriate for the type of business for which the business seeks certification.

11 (9) The business is owned and controlled as defined herein by individuals who reside in  
12 the United States or its territories.

13 (10) The business has average gross annual receipts in the prior three fiscal years that  
14 satisfy the criteria set forth in either Section 14B.3(B), ~~or~~ Section 14B.3(C), or Section 14B.3(D).

15 (11) The business is not owned or controlled as defined herein in part or in whole by a  
16 full time City employee.

17 (B) Criteria for Small - LBE. The Director shall certify as a "Small - LBE" any business  
18 that meets the requirements of 14B.3(A) and has average gross annual receipts in the prior  
19 three fiscal years that do not exceed the following limits: (1) public works/construction -  
20 \$14,000,000; (2) specialty construction contractors - \$7,000,000; (3)  
21 goods/materials/equipment and general services - \$7,000,000; (4) professional services and  
22 architect/engineering - \$2,500,000; and (5) trucking - \$3,500,000. The City shall determine  
23 gross receipts, according to recognized accounting methodologies that the City determines  
24 most accurately reflect the actual money that the business received during the relevant  
25 period. Any business under common ownership, in whole or in part, with any other business

1 meets the requirements of this subparagraph only if the aggregate gross annual receipts of all  
2 of the businesses under such common ownership do not exceed these limits. All businesses  
3 owned by married spouses or domestic partners are considered under common ownership  
4 unless the businesses are in unrelated industries and no community property or other jointly  
5 owned assets were used to establish or are used to operate either business.

6 (C) Criteria for Micro - LBE. The Director shall certify as a "Micro - LBE" any business  
7 that meets the requirements in 14B.3(A) and also has average gross annual receipts in the  
8 prior three fiscal years that do not exceed the following limits: (1) public works/construction -  
9 \$7,000,000; (2) specialty construction contractors - \$3,500,000; (3)  
10 goods/materials/equipment and general services - \$3,500,000; (4) professional services and  
11 architect/engineering - \$1,250,000; and (5) trucking - \$1,750,000. Any business under  
12 common ownership, in whole or in part, with any other business meets the requirements of  
13 this subparagraph only if the aggregate gross annual receipts of all of the businesses under  
14 such common ownership do not exceed these limits. All businesses owned by married  
15 spouses or domestic partners are considered under common ownership unless the  
16 businesses are in unrelated industries and no community property or other jointly owned  
17 assets were used to establish or are used to operate either business.

18 (D) Criteria for Certified Graduated LBE. The Director shall certify as a "Graduated LBE"  
19 any previously certified LBE business that: (1) meets the requirements in 14B.3(A); (2) has average  
20 gross annual receipts in the prior three fiscal years that does not exceed 102% of the limits for a Small  
21 - LBE under 14B.3(B); and (3) is within the same business category as its prior LBE certification.  
22 Provided that the business meets the criteria in Section 14B.3(D), a business may be certified as a  
23 Graduated LBE for no more than five years from the date of graduation.

1 Section 2. The San Francisco Administrative Code is hereby amended by amending  
2 Section 14B.7, to read as follows:

3 **SECTION 14B.7. PRIME CONTRACTS**

4 A) Good Faith Efforts to Obtain LBE Bids on Contracts Subject to this Ordinance.  
5 Contract awarding authorities shall use good-faith efforts for all contracts subject to the  
6 discount provisions of this Ordinance to solicit and to obtain bids from the broadest possible  
7 range of LBEs and to ensure that neither MBEs nor WBEs nor OBEs are arbitrarily excluded  
8 from participation. Good faith efforts shall include the following.

9 (1) Arranging contracts by size and type of work to maximize the opportunities for  
10 LBEs to participate. This includes dividing projects into smaller parts.

11 (a) As soon as practical before soliciting bids or proposals, contract awarding  
12 authorities shall submit large contract proposals to the Director for review. The Director shall  
13 determine whether the proposed contract can be divided into smaller contracts so as to  
14 enhance the opportunity for participation by LBEs. For purposes of this paragraph, "large  
15 project" means any public works/construction contract estimated to cost more than  
16 \$5,000,000, any professional services contract estimated to cost more than \$100,000, and  
17 any multiple year commodities contract with a term greater than one year, including any  
18 options to renew or extend.

19 (b) If the Director determines, after consulting with the contract awarding authority,  
20 that the contract can be divided into smaller contracts, then the Director and the contract  
21 awarding authority shall confer regarding all of the costs and benefits of soliciting the contract  
22 as a single contract or dividing it into smaller contracts, including but not limited to the  
23 potential for enhanced opportunities for LBE participation as prime contractors, the potential  
24 for LBE participation as subcontractors, relative costs, administrative issues, and any other  
25 matters relevant to the accomplishment of the purpose of the subject contract or contracts. If,

1 after exchanging information and conferring regarding these issues, the contract awarding  
2 authority and the Director are unable to agree on whether or how the contract divided into  
3 smaller contracts, or on the size and number of contracts, the Mayor or the Mayor's designee  
4 shall resolve the matter.

5 (2) Encouraging LBEs to attend prebid meetings that are held to inform potential  
6 bidders of contracting opportunities.

7 (3) Advertising in general circulation media, trade association publications and local  
8 business media, and posting the contacting opportunity on the Department's website or other  
9 centralized City website.

10 (4) Notifying LBEs that are certified to perform the work contemplated in a contract  
11 and soliciting their interest in the contract.

12 (5) Providing LBEs with adequate information about the plans, specifications and  
13 requirements of the contract.

14 (6) When allowed by local laws governing City contracting, negotiating with LBEs in  
15 good faith.

16 (7) Using the services of community and contractors' groups to assist in the  
17 recruitment of LBEs.

18 (8) For professional services, general services, architectural/engineering and  
19 commodities contracts, the estimated cost of which exceeds \$10,000 but is less than the  
20 minimum competitive amount or for public works/construction contracts, the estimated cost of  
21 which exceeds \$10,000 but is less than the threshold amount, contract awarding authorities  
22 are not required to undertake the good faith efforts steps set forth in Sections 14B.7(A)(3)  
23 when it is impracticable to do so.

24 (B) Best Efforts on Contracts Not Otherwise Subject to this Ordinance. In the award of  
25 leases, franchises, concessions, and other contracts not subject to the discount provisions of

1 this Ordinance, contract awarding authorities shall utilize the good faith efforts steps unless  
2 impracticable to do so. At a minimum, contract awarding authorities should notify LBEs that  
3 are certified to perform the work contemplated in a contract and solicit their interest in the  
4 contract.

5 (C) Non-Discrimination in Prime Contracting. Contract awarding authorities shall  
6 ensure that all aspects of the contracting process are free from discrimination against any  
7 person on any basis prohibited by law, and ensure broad contracting opportunities for all  
8 categories of LBEs. Contract awarding authorities shall maintain such documentation of their  
9 selection process as required by the Director to monitor and ensure compliance with this  
10 provision.

11 (D) Contracts Subject to Prime Bidding Discounts. Unless otherwise provided in this  
12 Ordinance, contract awarding authorities shall apply discounts to all contracts the estimated  
13 cost of which exceeds \$10,000.

14 (E) Amount of Discount. Unless otherwise provided in this Ordinance, contract  
15 awarding authorities shall apply a 10% discount to any bid from a Small - LBE or Micro - LBE.  
16 Contract awarding authorities shall apply these discounts to each stage of the selection  
17 process, including qualifications, proposals and interviews.

18 (F) Joint Ventures For Professional Services and Architecture/Engineering. Unless  
19 otherwise provided in this Ordinance, contract awarding authorities shall extend the following  
20 bid/rating discount to all bids, proposals and contracts from LBEs on professional services  
21 and architecture/engineering contracts: (1) five percent to a joint venture with LBE  
22 participation that equals or exceeds 35 percent but is under 40 percent; (2) seven and one-  
23 half percent to a joint venture with LBE participation that equals or exceeds 40 percent; (3) ten  
24 percent to a LBE or a joint venture among LBEs. Contract awarding authorities shall apply the  
25

1 bid/rating discount to each stage of the selection process, including qualifications, proposals  
2 and interviews.

3 The contract awarding authority shall apply the joint venture bid/ratings discount only to  
4 professional services and architecture/engineering contracts and only to a joint venture (1)  
5 that meets the requirements contained in this Ordinance, and (2) when the LBE is an active  
6 partner in the joint venture, performs work, manages the job and takes financial risks in  
7 proportion to the required level of participation stated in the bid documents, is responsible for  
8 a clearly defined portion of the work to be performed, and shares proportionately in the  
9 ownership, control, management responsibilities, risks, and profits of the joint venture. The  
10 portion of the LBE joint venture's work shall be set forth in detail separately from the work to  
11 be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the  
12 contract must be assigned a commercially reasonable dollar value.

13 (G) Affidavit. Each bidder, proposer and contractor shall be required to sign an  
14 affidavit declaring under penalty of perjury its intention to comply fully with the provisions of  
15 this Ordinance and attesting to the truth and accuracy of all information provided regarding  
16 such compliance.

17 (H) Additional Requirements and Required Contract Terms. Contract awarding  
18 authorities shall include in all contracts with their contractors, and all contractors shall include  
19 in their contracts with subcontractors the following requirements, in addition to other  
20 requirements set forth in the Municipal Code. For the purposes of this Section, "contractor"  
21 includes all subcontractors.

22 (1) Each contract shall incorporate this Ordinance by reference, shall require  
23 contractors to comply with its provisions in awarding and administering such contracts, and  
24 shall provide that the willful failure of any bidder or contractor to comply with the requirements  
25



1 of this Ordinance or rules and regulations implementing this Ordinance shall be deemed a  
2 material breach of contract.

3 (2) Contracts shall provide that in the event that the Director finds that any bidder,  
4 subcontractor or contractor willfully fails to comply with any of the provisions of this Ordinance,  
5 rules and regulations implementing the Ordinance, or contract provisions pertaining to LBE,  
6 MBE, WBE, OBE or Micro-LBE participation, outreach, or non-discrimination, the bidder,  
7 subcontractor or contractor shall be liable for liquidated damages for each contract in an  
8 amount equal to the bidder's or contractor's net profit on the contract, 10 percent of the total  
9 amount of the contract or \$1,000, whichever is greatest, as determined by the Director. All  
10 contracts shall also contain a provision in which the bidder, subcontractor or contractor  
11 acknowledges and agrees that the liquidated damages assessed shall be payable to the City  
12 upon demand and may be set off against any monies due to the bidder, subcontractor or  
13 contractor from any contract with the City.

14 (3) Contracts shall require all contractors to maintain records, including such  
15 information requested by the Director or Commission, necessary for monitoring their  
16 compliance with this Ordinance. Contracts shall require prime contractors to include in any  
17 subcontract with a LBE a provision requiring the subcontractor to maintain the same records.  
18 Contracts shall require contractors and subcontractors to maintain such records for three  
19 years following completion of the project and shall permit the Director, Commission and  
20 Controller to inspect and audit such records.

21 (4) Contracts shall require prime contractors, during the term of the contract, to fulfill  
22 the LBE participation commitments submitted with their bids. Willful failure to comply with the  
23 level of LBE subcontractor participation specified in the contract shall be deemed a material  
24 breach of contract.

1 (5) Contracts shall require, and shall require prime contractors to include in any  
2 subcontract with a LBE a provision requiring, the prime contractor to compensate any LBE  
3 subcontractor for damages for breach of contract or liquidated damages equal to 5% of the  
4 subcontract amount, whichever is greater, if the prime contractor willfully fails to comply with  
5 its commitment to use the LBE subcontractor as specified in the bid/proposal unless the  
6 Director and the contract awarding authority both give advance approval to the prime  
7 contractor to substitute subcontractors or otherwise modify the commitments in the  
8 bid/proposal documents. This provision shall also state that it is enforceable in a court of  
9 competent jurisdiction.

10 (6) Contracts shall require prime contractors, whenever amendments, modifications,  
11 supplements, or change orders cumulatively increase the total dollar value of the contract by  
12 more than 10 percent, to comply with those provisions of this Ordinance that applied to the  
13 original contract with respect to the amendment, modification, supplement or change order.

14 (7) Contracts shall require prime contractors to submit to the Director for approval all  
15 contract amendments, modifications, supplements, and change orders that cumulatively  
16 increase by more than 20 percent the total dollar value of all contracts originally valued at  
17 \$50,000 or more. The Director shall review the proposed amendment, modification,  
18 supplement or change order to correct any contracting practices that exclude any category of  
19 LBEs from new contracting opportunities.

20 (8) Contracts in which subcontracting is used shall prohibit back contracting to the  
21 prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions  
22 of this Ordinance, rules and regulations adopted pursuant to this Ordinance, or contract  
23 provisions pertaining to LBE utilization.

24 (9) Contracts in which subcontracting is used shall require the prime contractor to pay  
25 its subcontractors within three working days after receiving payment from the City unless the

1 prime contractor notifies the Director in writing within 10 working days prior to receiving  
2 payment from the City that there is a bona fide dispute between the prime contractor and the  
3 subcontractor, in which case the prime contractor may withhold the disputed amount but shall  
4 pay the undisputed amount. The Director may, upon making a determination that a bona fide  
5 dispute exists between the prime contractor and subcontractor, waive this three-day payment  
6 requirement. In making the determination as to whether a bona fide dispute exists, the  
7 Director shall not consider the merits of the dispute. Contracts in which subcontracting is used  
8 shall also require the contractor, within 10 working days following receipt of payment from the  
9 City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors.  
10 The affidavit shall provide the names and address of all subcontractors and the amount paid  
11 to each.

12 (I) Exceptions.

13 (1) The bid discount provisions of this Ordinance are not applicable to any contract  
14 estimated by the contract awarding authority to cost in excess of \$10,000,000.

15 (2) Notwithstanding any other provision of this Section, contract awarding authorities  
16 shall not apply a discount where to do so would result in a contract being awarded to a  
17 business without the capacity to perform it. The Commission may adopt rules and regulations  
18 setting standards for determining that an LBE has sufficient skill, experience, and financial  
19 capacity to perform the contract.

20 (J) Waivers. The Director shall waive the LBE bid discounts, and report the waiver to  
21 the Commission, if:

22 (1) The Director finds, with the advice of the contract awarding authority and the  
23 Office of Contract Administration, that needed goods or services are available from a sole  
24 source that is qualified to do business with the City;

25

1 (2) The contract awarding authority certifies in writing to the Director, prior to the  
2 Controller's contract certification, that the contract is being awarded under the emergency  
3 provisions of Administrative Code Section 6.60 or Administrative Code Section 21.15 and that  
4 there is either (i) no time to apply bid discounts or establish subcontracting goals, or (ii) no  
5 immediately available LBEs that are capable of performing the emergency work; or

6 (3) For contracts in excess of \$5,000,000, a contract awarding authority establishes  
7 that sufficient qualified LBEs capable of providing the needed goods and services required by  
8 the contract are not available, or the application of the LBE discount will result in significant  
9 additional costs to the City if the waiver of the bid discount is not granted.

10 (K) ~~Pilot~~ Micro-LBE Set-Aside Program. ~~The Contract awarding departments in~~  
11 consultation with the Director ~~may~~ shall set aside for competitive award to Micro - LBEs ~~any of~~  
12 the following contracts:

13 (1) Public work/construction contracts where the contract amount is equal to or less  
14 than ~~\$400,000; 250,000; and~~

15 (2) Contracts other than public work/construction contracts where the contract amount  
16 is equal to or less than ~~\$400,000. 100,000.~~

17 (3) The competitive award requirements of the Municipal Code shall otherwise apply to  
18 contracts in the set-aside program, except that if (a) fewer than two Micro - LBEs submit bids,  
19 or (b) the contract awarding authority determines that the contract would not be awarded at a  
20 fair market price, then the contract awarding authority may reject all bids and remove the  
21 contract from the set-aside program.

22 (4) ~~The Director shall have a goal of setting aside in each fiscal year 25% of all contracts that~~  
23 ~~are eligible to be set aside in each fiscal year.~~ Commencing on July 1, 2009, and every quarter  
24 thereafter, each contract awarding department shall report the number of contracts and the amount of  
25 each contract awarded under the Micro – LBE set-aside program to the Board of Supervisors.

1           (5) Each contracting awarding department shall submit an annual report listing (1) all  
2 contracts awarded under this program; and (2) all contracts equaling \$400,000 or less not awarded  
3 under this program, accompanied by an explanation as to why the contracts were not set-aside for  
4 award under this program, or, if set aside, whether it was subsequently not awarded or awarded under  
5 any other procedure, including as-needed and job order contracts. Such report shall be part of each  
6 contract awarding department's annual budget submission to the Board of Supervisors.

7           (6) Contracts that are set-aside for award to Micro - LBEs shall not be subject to  
8 subcontracting goals under Section 14B.8. Micro - LBEs that subcontract any portion of a set-  
9 aside contract should subcontract to businesses certified as Micro - LBEs, to the maximum  
10 extent possible. Micro - LBEs that subcontract any portion of a set-aside contract must serve  
11 a commercially useful function based on the contract's scope of work, and must perform at  
12 least 50% of the contract work.

13           (L) Pilot Graduated LBE Program. For a period of twenty-four months following the effective  
14 date of this Ordinance, the HRC will implement a Pilot Graduated LBE Program.

15           (1) Certified Graduated LBEs who meet the criteria set forth in Section 14B.3(D) shall receive  
16 a 5% bid discount from any public works/construction bid and professional service proposal estimated  
17 to cost \$10,000,000 or more.

18           (2) Bids or proposals for contracts of any size that use Graduated LBEs to meet the  
19 subcontracting goal shall receive credit towards meeting the LBE participation goal.

20           (M) Prompt payment. The City shall pay LBEs within 30 days of the date on which the  
21 City receives an invoice for work performed for and accepted by the City. The Controller shall  
22 work with the Director and contract awarding authorities to implement this Citywide prompt-  
23 payment policy. The City shall consult with affected community members and relevant City  
24 officials, including the Director, the Controller, and contract awarding authorities, to design  
25 and implement a prompt payment program within six (6) months of the effective date of this

1 Ordinance. Such program shall include procedures for the payment of late penalties where  
2 prompt payment does not occur.

3  
4 Section 3. The San Francisco Administrative Code is hereby amended by amending  
5 Section 14B.8, to read as follows:

6 **SECTION 14B.8. SUBCONTRACTING.**

7 (A) LBE Participation Goals. Prior to soliciting bids or proposals, contract awarding  
8 authorities shall provide the Director with a proposed job scope for all public  
9 work/construction, and for all architect/engineering, professional service and general service  
10 contracts that exceed the minimum competitive amount or threshold amount. The contract  
11 awarding authority may ask the Director to waive subcontracting goals where it anticipates  
12 that there are no subcontracting opportunities or there are not sufficient LBEs available to  
13 perform the subcontracting work available on the contract.

14 The Director shall set LBE participation goals for each such contract, where  
15 appropriate, based on the following factors:

- 16 (1) The extent of subcontracting opportunities presented by the contract; and
- 17 (2) The availability of LBE subcontractors capable of providing goods and services on  
18 the contract.

19 (B) Meet and/or Exceed LBE Participation Goal. As set forth under Section 14B.10(B), the  
20 Director shall provide the availability of MBEs, WBEs, and OBEs that comprises the LBE participation  
21 goal. Bids or proposals that meet and/or exceed the LBE participation goal for the contract and meet  
22 and/or exceed the MBE, WBE, and OBE participation goal described in this subsection, shall be  
23 presumed to have met the good faith efforts and outreach requirements and shall not be required to  
24 document compliance with Section 14B.9.

1            (BC) The contract awarding authority shall require bidders or proposers on the contracts to  
2 contact a LBE before listing that LBE as a subcontractor in the bid or proposal. A bid or proposal that  
3 fails to comply with this requirement will be rejected as non-responsive. In addition only LBE's that  
4 have been contacted and agreed to be listed as subcontractors shall be credited toward meeting the  
5 LBE participation goal.

6            (D) Bids or proposals that do not meet the LBE participation goal set under 14B.8(A)  
7 will be rejected as non-responsive unless the Director finds that the bidder diligently undertook  
8 all the adequate good faith efforts required by this Ordinance under 14B.9 and that the failure to  
9 meet the goal resulted from an excusable error. The contract awarding authority shall require  
10 bidders or proposers on the contracts to contact a LBE before listing that LBE as a subcontractor in  
11 the bid or proposal. A bid or proposal that fails to comply with this requirement will be rejected as  
12 non-responsive. In addition only LBE's that have been contacted and agreed to be listed as  
13 subcontractors shall be credited toward meeting the LBE participation goal.

14            ~~(C) Good Faith Outreach. In addition to meeting the LBE participation goal bidders shall~~  
15 ~~undertake good faith outreach as set forth in this Section 14B.8(C) to select subcontractors to meet~~  
16 ~~LBE goals, except that bidders on public works/construction contracts for less than the threshold~~  
17 ~~amount are not required to undertake the good faith efforts steps set forth in Sections 14B.8(C)(3) when~~  
18 ~~it is impracticable to do so. Bids or proposals from bidders who fail to undertake the adequate good~~  
19 ~~faith outreach steps and/or who fail to submit the applicable documentation of such good faith outreach~~  
20 ~~required in Section 14B.8(D) shall be declared nonresponsive. The Human Rights Commission shall by~~  
21 ~~Rule and Regulation assign a numeric value to each of the good faith outreach steps listed below.~~  
22 ~~Adequate good faith outreach shall be a minimum of 80 points with a total of 100 points possible.~~

23            ~~(1) Attending any presolicitation, or prebid, or pre-proposal meetings scheduled by the City to~~  
24 ~~inform all bidders of LBE program requirements for the project for which the contract is awarded;~~

25            ~~(2) Identifying and selecting subcontracting opportunities to meet LBE goals;~~

1           ~~(3) Advertising for LBE subcontractors by posting the opportunity in an accessible location,~~  
2 ~~specified by the City, not less than 10 calendar days before the date the bids can first be submitted. The~~  
3 ~~advertisement must include information where bidders may obtain adequate information about the~~  
4 ~~plans, specifications, requirements for the work. This paragraph applies only if the City gave public~~  
5 ~~notice of the project not less than 15 calendar days prior to the date the bids can first be submitted;~~

6           ~~(4) Not less than 10 calendar days before the date the bids can first be submitted, contacting at~~  
7 ~~least the requisite number of LBEs by trade certified to perform the identified work required by the 14B~~  
8 ~~Rules and Regulations, and~~

9           ~~(5) Performing follow-up contact on the initial solicitation with interested subcontractors or~~  
10 ~~subconsultants and negotiating in good faith with LBEs, as set forth in the 14B Rules and Regulations,~~  
11 ~~and not unjustifiably rejecting their bids or proposals.~~

12           ~~(6) Advising and assisting interested LBEs that are bidding on and performing City public~~  
13 ~~work and construction contracts with the City's bonding and financial assistance programs to obtain~~  
14 ~~bonds, lines of credit, or insurance required by the City or the bidder.~~

15  
16           Section 4. The San Francisco Administrative Code is hereby amended by adding a  
17 new Section 14B.9, to read as follows:

18           **SECTION. 14B.9. ADEQUATE GOOD FAITH EFFORTS IN SUBCONTRACTING.**

19  
20           (A) Adequate Good Faith Efforts. The Human Rights Commission shall by Rule assign a  
21 numeric value to each of the good faith efforts listed below. Adequate good faith efforts shall be a  
22 minimum of 80 points with a total of 100 points possible. Bidders on public works/construction  
23 contracts for less than the threshold amount are not required to undertake adequate good faith efforts  
24 set forth in Section 14B.9(3) when it is impracticable to do so. Documentation of adequate good faith  
25 efforts, as set forth in the 14B Rules and Regulations, shall be included with the bid. Bids or proposals



1 from bidders who fail to undertake adequate good faith efforts and/or who fail to submit documentation  
2 of good faith outreach shall be declared nonresponsive. Except as provided in Section 14B.8(B), all  
3 bidders and proposers shall achieve at least 80 points using the following good faith efforts:

4 (1) Attending any presolicitation, or prebid, or pre-proposal meetings scheduled by the City to  
5 inform all bidders of LBE program requirements for the project for which the contract is awarded;

6 (2) Identifying and selecting subcontracting opportunities to meet LBE goals;

7 (3) Advertising for LBE subcontractors by posting the opportunity in an accessible location,  
8 specified by the City, not less than 10 calendar days before the date the bids can first be submitted. The  
9 advertisement must include information where bidders may obtain adequate information about the  
10 plans, specifications, and requirements for the work. This paragraph applies only if the City gave  
11 public notice of the project not less than 15 calendar days prior to the date the bids can first be  
12 submitted;

13 (4) Not less than 10 calendar days before the date the bids can first be submitted, contacting at  
14 least the requisite number of LBEs by trade certified to perform the identified work required by the 14B  
15 Rules and Regulations;

16 (5) Performing follow-up contact on the initial solicitation with interested subcontractors or  
17 subconsultants and negotiating in good faith with LBEs, as set forth in the 14B Rules and Regulations,  
18 and not unjustifiably rejecting their bids or proposals; and

19 (6) Advising and assisting interested LBEs that are bidding on and performing City public  
20 work and construction contracts with the City's bonding and financial assistance programs to obtain  
21 bonds, lines of credit, or insurance required by the City or the bidder.

22 (B) Good Faith Outreach. Each bid and proposal shall document good faith outreach and  
23 include the documentation with the bid. Such documentation shall include: (1) the dollar amount of  
24 each subcontract and a statement of the scope of work to be performed under the subcontract; (2) the  
25 identification of each subcontract awarded to an LBE and, (3) for each subcontract, copies of the

1 subcontractor bids submitted. Such documentation shall contain at least the bid amount and a  
2 description of the scope of work, and separately, for each subcontract, a full and complete statement of  
3 the reason(s) for selection of the subcontractor. If the reason is based on relative qualifications, the  
4 statement must address the particular qualifications at issue. If the reason is the bid's respective dollar  
5 amounts, the statement must state the amounts and describe the similarities and/or dissimilarities in the  
6 scope of work covered by the bids. If no written bids were submitted by some or all of the  
7 subcontractors who bid the job, the bidder shall submit a written statement containing (1) the amount  
8 of each oral bid; and (2) separately, for each subcontract, a full and complete statement of the  
9 reason(s) for selection of the subcontractor. Bidders shall maintain the documentation described in  
10 this paragraph for three years following submission of the bid or completion of the contract, whichever  
11 is later.

12

13 Section 5. The San Francisco Administrative Code is hereby amended by renumbering  
14 current Section 14B.9 as 14B.10 and amending it to read as follows:

15 **SECTION 14B.910. ENSURING NON-DISCRIMINATION IN SUBCONTRACTING.**

16 (A) Prohibition on Discrimination. A bidder may not discriminate in its selection of  
17 subcontractors against any person on the basis of race, gender, or any other basis prohibited  
18 by law.

19 (B) Availability Data. In order to prevent unlawful discrimination in the selection of  
20 subcontractors, and to identify and correct unlawful practices, the City will monitor the  
21 administration of City contracts, including the selection of subcontractors, as provided in this  
22 Section. For public work/construction, architect/engineering, professional service, and  
23 general service contracts which the contract awarding authority reasonably anticipates will  
24 include subcontractor participation, prior to the solicitation of bids or proposals, the Director  
25 shall assemble data regarding the availability of MBEs, WBEs and OBEs to provide work that

1 is likely to be subcontracted. The Director, in the Director's sole discretion, shall determine  
2 the appropriate methodology.

3 (C) Requirements for Solicitations. In all solicitations of public work/construction,  
4 architect/engineering, professional service, and general service contracts which the contract  
5 awarding authority reasonably anticipates will include subcontractor participation, the contract  
6 awarding authority shall include the availability data described above. Bidders shall undertake  
7 all required good faith efforts outreach steps in such a manner as to ensure that neither MBEs  
8 nor WBEs nor OBEs are unfairly or arbitrarily excluded from the required outreach.

9 (D) Review of Bid. The Director may review or investigate any bid, including the  
10 selection of the bidder's subcontractors, to determine whether discrimination may have  
11 occurred. The Director shall review bids, during the bid protest period, to determine whether:  
12 (1) a potential subcontractor or other person has filed a complaint of discrimination; (2) there  
13 is a significant difference between the percentages of MBEs, WBEs, or OBEs available to  
14 provide goods and services as subcontractors on the contract and the percentages of the  
15 bidder's subcontractors who are MBEs, WBEs, or OBEs; or (3) other facts and circumstances  
16 suggest that further inquiry is warranted. The Director, in the Director's sole discretion, shall  
17 determine whether and when to investigate further the conduct of a bidder or contractor.  
18 Investigations will be conducted under the procedures in Section 14B.~~1817~~.

19  
20 Section 6. The San Francisco Administrative Code is hereby amended by  
21 renumbering current Section 14B.10 as 14B.11 and amending it to read as follows:

22 **SECTION 14B.~~10~~11. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.**

23 (A) Human Rights Commission. In addition to the duties and powers given to the  
24 Human Rights Commission elsewhere, the Commission shall:

1 (1) When necessary, subpoena persons and records, books and documents for a  
2 proceeding of the Commission or an investigation by the Director or an audit pursuant to  
3 Section 14B.~~1011~~(B)(5) conducted to further the purposes of this Ordinance.

4 (2) Adopt rules and regulations establishing standards and procedures for effectively  
5 carrying out this Ordinance.

6 (3) Issue forms for the Controller or contract awarding departments to collect  
7 information from contractors as prescribed by this Ordinance.

8 (4) Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor,  
9 (ii) the Director's denial of an application for or revocation of the certification of a business as  
10 a Small- LBE, Micro-LBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to  
11 waive or to reduce subcontractor participation goals.

12 (5) By regulation require contract awarding authorities, departments and the Controller  
13 to provide to the Director such information as will be necessary to enable the Director to report  
14 to the Mayor and the Board of Supervisors at the end of each fiscal year on the progress each  
15 City department has made towards the achievement of LBE participation goals and towards  
16 the goal of ensuring against discrimination and exclusion of MBEs, WBEs, or OBEs, and to  
17 perform his/her other duties. The database is a public record available to the public as  
18 provided by state and local law.

19 (6) Adopt rules and regulations as deemed necessary by the Director to ensure that the  
20 joint venture bid/rating discount is applied only to joint ventures where the LBE has sufficient  
21 skill, experience, and financial capacity to perform the portion of the work identified for the  
22 LBE.

23 (B) HRC Director. In addition to the duties and powers given to the HRC Director  
24 elsewhere, the Director shall:

1 (1) Levy the same sanctions that a contracting awarding authority may levy as  
2 specified in Section 14B.~~1817~~.

3 (2) Ensure that the necessary data is collected and analyzed. Annually, and more often  
4 if the Director deems necessary, the Director shall identify areas of contracting where the City  
5 or any of its departments are failing to meet LBE participation goals or are contracting with  
6 MBEs, WBEs, or OBEs at rates less than would be expected in the absence of discrimination.  
7 The results of this study shall be included in the Commission's annual report required by  
8 Section 14B.~~1516~~(B).

9 (3) Provide information and other assistance to LBEs to increase their ability to  
10 compete effectively for the award of City contracts.

11 (4) Grant waivers as set forth in Sections 14B.7(J) and 14B.8(A), and disqualify a  
12 bidder or contractor as set forth in Section 14B.~~1817~~.

13 (5) In cooperation with the Controller, randomly audit at least three prime contractors  
14 each fiscal year in order to insure their compliance with the provisions of this Ordinance. The  
15 Director, in cooperation with the Controller, shall furthermore randomly audit 10 percent of the  
16 joint ventures granted bid discounts in each fiscal year. The Controller shall have the right to  
17 audit the books and records of the contractors, joint venture participants, and any and all  
18 subcontractors to insure compliance with the provisions of this Ordinance.

19 (6) Take actions to ensure compliance with the provisions of this Ordinance, including,  
20 without limitation, intervening in the selection process, by modifying the criteria used for  
21 selecting selection panelists or contractors to correct any practices that hinder equal business  
22 opportunities for LBEs or Micro-LBEs, and for MBEs, WBEs, and OBEs.

23  
24 Section 7. The San Francisco Administrative Code is hereby amended by amended by  
25 renumbering current Section 14B.11 as 14B.12 and amending it to read as follows:

1           **SECTION 14B.~~H12~~. POWERS AND DUTIES OF THE CONTROLLER.**

2           (A) In addition to the duties given to the Controller elsewhere, the Controller shall work  
3 cooperatively with the Director to provide such contractual encumbrance and payment data as  
4 the Director advises are necessary to monitor the participation of Small - LBEs, Micro - LBEs,  
5 MBEs, WBEs, and OBEs in City prime contracts. If any department refuses or fails to provide  
6 the required data to the Controller, the Controller shall immediately notify the Mayor, this  
7 Board and the Director.

8           (B) The Controller shall not certify the award of any contract subject to this Ordinance  
9 where the Director has notified the Controller that the contract awarding authority has not  
10 provided the information the Director advises is necessary under this Ordinance.

11           (C) Each request for payment to a City contractor submitted to the contract awarding  
12 authority shall be accompanied by a subcontractor participation form approved by the  
13 Commission. That form shall contain information that the Commission has determined is  
14 necessary to enable the Commission and the Director (1) to monitor compliance by City  
15 departments and their prime contractors with their obligations under this Ordinance (2) to  
16 determine whether City departments are achieving their prime and subcontracting goals under  
17 this Ordinance, and (3) to make such other reports and analyses as are required by this  
18 Ordinance.

19           In the event that a request for payment fails to include the information required  
20 pursuant to this Section, the contract awarding authority shall, within two working days, notify  
21 the Director and the affected prime contractor[s] of the failure and afford each affected prime  
22 contractor an opportunity to be heard promptly. That notice shall inform the contractor that the  
23 contract awarding authority has tentatively determined that the information has not been  
24 provided, what information is missing and that if this failure is substantiated, then the  
25 Controller will be notified to withhold 20 percent of the requested payment until the information

1 is provided. If the Controller finds, after consultation with the Director and notice and  
2 opportunity to be heard, that the information has not been provided, the Controller shall  
3 withhold 20 percent of the payment otherwise due until the information is provided.

4 (D) The contract awarding authority shall require all prime contractors to submit, within  
5 10 days following payment to the prime contractor of moneys owed for work completed on a  
6 project, an affidavit under penalty of perjury, that all subcontractors on the project or job have  
7 been paid and the amounts of each of those payments. The name, telephone number and  
8 business address of every subcontractor shall be listed on the affidavit. If a prime contractor  
9 fails to submit this affidavit, the contract awarding authority shall notify the Director who shall  
10 take appropriate action as authorized under Section 14B.~~18~~<sup>17</sup>.

11  
12 Section 8. The San Francisco Administrative Code is hereby amended by renumbering  
13 current Section 14B.12 as 14B.13 and amending it to read as follows:

14 **SECTION 14B.~~12~~<sup>13</sup>. POWERS AND DUTIES OF THE MAYOR.**

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

16 (A) By July 1st of each fiscal year, issue notices to all City departments informing them  
17 of their duties under this Ordinance. The notice shall contain the following information: (1) the  
18 City-wide LBE goals that departments are expected to use good-faith efforts to attain during  
19 the fiscal year and that a department's failure to use good-faith efforts to attain the  
20 participation goals shall be reported to this Board in the Commission's annual report; (2) the  
21 availability of MBEs, WBEs, and OBEs to perform City contracting and that departments are  
22 expected to take all steps necessary to ensure against illegal or arbitrary discrimination or  
23 exclusion of any certified business; and (3) the data each department is required to provide  
24 the Controller on each contract award.

1 (B) Coordinate and enforce cooperation and compliance by all Departments with this  
2 Ordinance.

3 (C) Designate a liaison to the Human Rights Commission to facilitate communication  
4 and compliance with this Ordinance.

5  
6 Section 9. The San Francisco Administrative Code is hereby amended by renumbering  
7 current Section 14B.13 as 14B.14 and amending it to read as follows:

8 **SECTION 14B.~~13~~14. POWERS AND DUTIES OF CONTRACT AWARDING**  
9 **AUTHORITIES.**

10 (A) In addition to the powers and duties given to contract awarding authorities  
11 elsewhere, contract awarding authorities shall:

12 (1) Adjust bid bonding and insurance requirements in accordance with the most current  
13 version of the City's "Contract Insurance Manual" or as otherwise authorized by the City Risk  
14 Manager, Department of Administrative Services.

15 (2) Use the City's Surety Bonding Program set forth in Section 14B.17 to assist LBEs  
16 bidding on and performing City public works/construction contracts to meet bonding  
17 requirements and/or obtain construction loans.

18 (3) Submit to the Office of Contract Administration (OCA) in electronic format or a  
19 format specified by the OCA, all bid opportunities, requests for proposals and solicitations for  
20 which published notice or advertising is required, no later than 10 calendar days prior to the  
21 due date of the bid opportunity, request for proposals or solicitation. A contract awarding  
22 authority must obtain a waiver from its commission, or in the case of a department that has no  
23 commission, from the Board of Supervisors, if it cannot meet the requirements of this Section.

24 (4) Impose such sanctions or take such other actions as are designed to ensure  
25 compliance with the provisions of this Ordinance, which shall include, but are not limited to:



1 (a) Refuse to award a contract.

2 (b) Order the suspension of a contract.

3 (c) Order the withholding of funds.

4 (d) Order the revision of a contract based upon a material breach of contract provisions  
5 pertaining to LBE participation or outreach to MBEs, WBEs, or OBEs.

6 (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for  
7 providing goods or services to the City for a period not to exceed five years, based on the  
8 standards set forth in this Ordinance and rules and regulations promulgated by the  
9 Commission. Any business disqualified under this subsection shall have a right to review and  
10 reconsideration by the Commission after two years upon a showing of corrective action  
11 indicating that violations are not likely to recur.

12 (5) Not award any contract to a person or business that is disqualified from doing  
13 business with the City under the provisions of this Ordinance.

14 (6) Designate a staff person to be responsible for responding to the Director and  
15 Commission regarding the requirements of this Ordinance.

16 (7) Maintain accurate records as required by the Director and the Commission for each  
17 contract awarded, its dollar value, the nature of the goods or services to be provided, the  
18 name of the contractor awarded the contract, its identity as a Small-LBE, Micro - LBE, MBE,  
19 WBE or OBE, the efforts made by the contract awarding authority to solicit bids from LBEs,  
20 including Micro - LBEs, MBEs, WBEs and OBEs, responses received from such businesses,  
21 and a full and complete statement of the reason(s) for selection of the contractor addressing  
22 the particular qualifications at issue.

23 (8) Where feasible, provide technical assistance to LBEs to increase their ability to  
24 compete effectively for the award of City contracts.

25

1 (9) Work with the Director and the Controller to implement a City-wide prompt-payment  
2 policy requiring that LBEs be paid by the City within 30 days of the date on which the City  
3 receives an invoice from a LBE for work performed for the City.

4 (10) Provide the Director with written notice of all contract amendments, modifications,  
5 supplements and change orders that cumulatively result in an increase or decrease of the  
6 contract's dollar amount of more than 10 percent. Such notice shall be provided within 10  
7 days of each such contract modification.

8 (11) Whenever contract amendments, modifications, supplements or change orders  
9 cumulatively increase the total dollar value of a contract by more than 10 percent, the contract  
10 awarding authority shall require compliance with those provisions of this Ordinance that  
11 applied to the original contract.

12 (12) All contract amendments, modifications, supplements or change orders that  
13 cumulatively increase by more than 20 percent the total dollar value of all contracts originally  
14 valued at \$50,000 or more shall be subject to prior approval of the Director, who shall review  
15 the proposed amendment, modification, supplement or change order to correct contracting  
16 practices that exclude Small-LBEs or Micro - LBEs from new contracting opportunities or  
17 discriminate against MBEs, WBEs or OBEs.

18 (B) Contract awarding authorities or departments may invite, encourage or request  
19 businesses to joint venture on any professional services or architecture/engineering contact to  
20 promote LBE participation.

21 (C) For the purpose of determining LBE participation, contracts awarded to joint  
22 ventures in which one or more LBEs are combined with one or more business that are not  
23 LBEs shall be deemed by the contract awarding authority to be awarded to LBEs only to the  
24 extent of the LBE participation in the joint venture.

1 (D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and to  
2 any limitations or requirements associated with the issuance of municipal financings, including  
3 but not limited to the use of tax-exempt financing and other long-term obligations, contract  
4 awarding authorities shall set aside the following percentage of the value of each contract, as  
5 defined in Section 14B.2, to fund the administration and enforcement of this Chapter 14B by  
6 the HRC. Such funds shall be used solely for the actual costs of administering and enforcing  
7 this Chapter. The HRC shall provide monthly statements to contract awarding authorities and  
8 the Controller's Office that account for all expenditures related to administering and enforcing  
9 this Chapter, broken down by staff member, project, and activity. Any funds that are not  
10 expended on the actual costs of administration and enforcement relating to the subject  
11 contract shall be returned to the source fund as soon as practicable. This Section 14B.~~13~~14(D)  
12 shall not apply to contracts that are funded by bonds that were authorized prior to the effective  
13 date of this Ordinance.

14 (1) For contracts having an estimated value under \$1 million, the contract awarding  
15 authority shall set aside 2% of the value of the contract for the purpose described in this  
16 Section.

17 (2) For contracts having an estimated value of at least \$1 million but less than \$10  
18 million, the contract awarding authority shall set aside 1% of the value of the contract for the  
19 purpose described in this Section.

20 (3) For contracts having an estimated value of at least \$10 million but less than \$50  
21 million, the contract awarding authority shall set aside .5% of the value of the contract for the  
22 purpose described in this Section.

23 (4) For contracts having an estimated value of \$50 million or more, the HRC Director, in  
24 consultation with the contract awarding authority, shall determine the level of funding  
25 necessary to administer and enforce this Ordinance with respect to the subject contract,

1 provided that the funding shall not exceed .5% of the value of the contract. The contract  
2 awarding authority shall set aside the designated funds to be used solely for the purpose  
3 described in this Section.

4 (5) Notwithstanding Sections 14B.~~1413~~(D)(1), (2), (3) and (4), for the Port of San  
5 Francisco, the San Francisco Public Utilities Commission, the San Francisco Department of  
6 Public Works and the San Francisco International Airport, each such contract awarding  
7 authority and the HRC Director shall confer and jointly shall estimate the costs of  
8 administering and enforcing this Chapter with respect to each contract to be issued by each  
9 such contract awarding authority. The contract awarding authority shall set aside the agreed-  
10 upon funds to be used solely for the purpose described in this Section.

11 If, after exchanging information regarding the nature of the contract and the  
12 administrative activities required, the contract awarding authority and the Director do not  
13 agree on the cost of administering and enforcing this Chapter, the Mayor or the Mayor's  
14 designee shall determine the appropriate amount to be set aside for the purpose described in  
15 this Section.

16 The Human Rights Commission shall report on compliance by contract awarding  
17 authorities with set-asides determined under this Section 14B.~~1314~~(D)(5) and on the agreed  
18 upon funds for contract awarding authorities under 14B.~~1314~~(D)(5) in the Commission's  
19 annual report under Section 14B.~~1516~~(B).

20 The Board of Supervisors shall assess the operation of this Section 14B.~~1314~~(D)(5) in  
21 its three-year review under Section 14B.~~1819~~(H).

22  
23 Section 10. The San Francisco Administrative Code is hereby amended by  
24 renumbering current Section 14B.14 as 14B.15 and amending it to read as follows:  
25

1           **SECTION 14B.~~1415~~. POWERS AND DUTIES OF THE OFFICE OF CONTRACT**

2 **ADMINISTRATION.**

3           In addition to the duties given the Office of Contract Administration elsewhere, the  
4 Office of Contract Administration shall:

5           (A) Maintain, with the assistance of the Director, a current list of Small-LBEs, Micro-  
6 LBEs, MBEs, WBEs, and OBEs to provide each of those commodities or services subject to  
7 this Ordinance that the Office of Contract Administration indicates are required by the City.

8           (B) Maintain a central office where all bids, requests for proposals and solicitations will  
9 be listed and kept current.

10           (C) Cause to be posted upon a website the following information concerning current  
11 bids, requests for proposals and solicitations: the title and number; the name of the contract  
12 awarding authority; and the name and telephone number of the person to be contacted for  
13 further information. Such information shall be posted with sufficient lead time to provide  
14 adequate notice and opportunity to potential City contractors and vendors to participate in the  
15 bid opportunity, request for proposals or solicitation, but in no event less than 10 calendar  
16 days prior to the due date for such bid opportunity, request for proposals or solicitation.

17  
18           Section 11. The San Francisco Administrative Code is hereby amended by  
19 renumbering current Section 14B.15 as 14B.16 and amending it to read as follows::

20 **SECTION 14B.~~15~~16. REPORTING AND REVIEW.**

21           (A) Reporting by the Director. Commencing January 1, 2007, and no later than the first  
22 day of every third month thereafter, the Director shall issue a written report to this Board. That  
23 report shall document each City department's performance under the terms of this Ordinance,  
24 including, among other things, each City department's progress in meeting LBE goals and  
25 ensuring non-discrimination against MBEs, WBEs, and OBEs, and the success of each

1 department's prime contractors in complying with the LBE subcontracting provisions of this  
2 Ordinance and ensuring non-discrimination against MBEs, WBEs, and OBEs. That report  
3 shall also state the level of participation of all categories of LBEs and whether or not each City  
4 department has fully reported all data required by this Ordinance or requested by HRC or the  
5 Controller.

6 (1) Whenever the Director's report concludes that a department management's  
7 intentional disregard or negligent performance of obligations imposed by this Ordinance has  
8 contributed to that department's failure to meet its prime contracting goals or requirements of  
9 this Ordinance, or the failure of its prime contractors to meet their subcontracting goals or  
10 requirements of this Ordinance, or whenever the Director's report concludes that a City  
11 department has failed to provide any data required by this Ordinance or requested by the  
12 HRC or the Controller, the Clerk of this Board shall schedule before the appropriate  
13 Committee of the Board a hearing on that report. The Clerk shall also give notice of that  
14 hearing to the heads of the departments identified in the report and request the attendance of  
15 the heads of those departments at the committee hearing. The Clerk's notice shall inform the  
16 department heads that they must be prepared to respond to the Director's finding of  
17 intentional disregard and/or negligent performance and to explain what steps they intend to  
18 take to forestall repetition of the problems identified in the Directors' report. The same  
19 procedure shall be followed whenever the Director's report identifies any department as  
20 having failed to meet its prime or subcontracting goals for three consecutive quarters. If the  
21 Director's report indicates that a City department has not met its goals for three consecutive  
22 quarters, HRC and the City department shall institute a targeted program to remedy lack of  
23 participation by LBEs in any affected industry.

1 (2) The Director shall report to the Commission all waivers acted upon pursuant to  
2 Section 14B.7(J) and 14B.8(A). Such report shall be made on a monthly basis following the  
3 granting of the waiver.

4 (B) Reporting by City Departments. By the last day of each fiscal year, all contract  
5 awarding authorities and City departments shall report annually to the Mayor on their progress  
6 in the preceding fiscal year toward the achievement of the LBE goals and their steps to  
7 ensure non-discrimination against MBEs, WBEs, and OBEs.

8 (C) Reporting by the Commission. By July 1st of each fiscal year, the Commission shall  
9 submit an annual report to the Mayor and this Board on the progress of the City toward the  
10 goals of this Ordinance, together with an identification of problems and specific  
11 recommendations for: (1) improving the City's performance in fostering LBE participation in  
12 City contracting, and (2) ensuring non-discrimination against MBEs, WBEs, and OBEs. The  
13 Commission's report shall include an analysis of the bidding environment in the various  
14 industries that participate in City contracts.

15 Each year, after receiving the Commission's annual report, the Board shall hold a  
16 hearing to review the City's performance under this Ordinance, the administration of this  
17 Ordinance by the HRC, and the progress of City departments towards the purposes of this  
18 Ordinance, and other subjects pertaining to the ordinance.

19 The Board shall act upon the Commission's recommendations by the first Board  
20 meeting of January in each fiscal year.

21  
22 Section 12. The San Francisco Administrative Code is hereby amended by  
23 renumbering current Section 14B.16 as 14B.17 and amending it to read as follows:

24 **SECTION 14B.~~16~~17. BONDING AND OTHER ASSISTANCE.**

25 (A) Bonding and Financial Assistance Program.

1 (1) Program Description. The City and County of San Francisco, acting through the  
2 Commission, intends to provide guarantees to private bonding companies and financial  
3 institutions in order to induce those entities to provide required bonding and financing to  
4 eligible contractors and subcontractors bidding on and performing City public work and  
5 construction contracts. This bonding and financial assistance program is subject to the  
6 provisions of this Section 14B.~~1617~~(A).

7 (2) Eligible Contracts. The assistance described in this Section 14B.~~1617~~(A) shall be  
8 available for any City public works or construction contract to which this Ordinance applies.

9 (3) Eligible Businesses. Businesses must meet the following criteria to qualify for  
10 assistance under this Section 14B.~~1617~~(A).

11 (a) The business may be either a prime contractor or subcontractor; and

12 (b) The business must be certified by the Director as an LBE according to the  
13 requirements of Section 14B.3;

14 (c) The business may be required to participate in a "bonding assistance training  
15 program" as offered by the Commission, which is anticipated to provide the following:

16 (i) Bond application assistance,

17 (ii) Assistance in developing financial statements,

18 (iii) Assistance in development of a pre-bond surety profile,

19 (iv) Identification of internal financial control systems, and

20 (v) Development of accurate financial reporting tools.

21 (4) Agreements Executed by the Human Rights Commission. The Director is hereby  
22 authorized to enter into the following agreements in order to implement the bonding and  
23 financial assistance program described in this Section 14B.~~1617~~(A):

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



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

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

9 (5) Monitoring and Enforcement. The Director shall maintain records on the use and  
10 effectiveness of this program, including but not limited to (1) the identities of the businesses  
11 and bonding companies participating in this program, (2) the types and dollar amounts of  
12 public work contracts for which the program is utilized, and (3) the types and dollar amounts of  
13 losses which the City is required to fund under this program. The Director shall submit written  
14 reports to the Board of Supervisors every six months beginning January 1, 2007, advising the  
15 Board of the status of this program and its funding capacity, and an analysis of whether this  
16 program is providing to be useful and needed.

17 (6) Funding and Accounts. As of September 1, 2006, funding for this program may be  
18 derived from the following sources:

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

21 (b) Each Department authorized to contract for public works or improvements pursuant  
22 to San Francisco Administrative Code Chapter 6 may commit to this program up to ten  
23 percent (10%), but not less than one percent (1%), of the budget for every public work or  
24 improvement undertaken. (A "public work or improvement" is defined in San Francisco  
25 Administrative Code Chapter 6.).

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

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

9 (7) Term of Bonding Assistance Program. The Director is authorized to enter into the  
10 agreements described in this Subsection for a period ending on the earlier of (1) June 30,  
11 2008 or (2) the date on which the Controller is no longer able to certify the availability of funds  
12 for any new guarantee agreement.

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

17 (B) Education and Training. The Director shall continue to develop and to strengthen  
18 education and training programs for LBEs and City contract awarding personnel.

19 (C) Cooperative Agreements. With the approval of the Commission and the Board of  
20 Supervisors, the Director may enter into cooperative agreements with agencies, public and  
21 private, concerned with increasing the use of LBEs in government contracting.

22  
23 Section 13. The San Francisco Administrative Code is hereby amended by  
24 renumbering current Section 14B.17 as 14B.18 and amending it to read as follows:

25 **SECTION 14B.~~17~~18. ENFORCEMENT.**

1 (A) The Director shall monitor the City's utilization of Small-MBEs, Micro-LBEs, MBEs,  
2 WBEs, and OBEs in City contracting. The Director shall issue an exit report for any contract  
3 that includes LBE subcontracting participation and/or LBE prime contract participation as a  
4 joint venture partner. The purpose of this exit report is to ensure that prime contractors are  
5 complying with their commitments to use LBE subcontractors and LBEs are performing  
6 services as set forth in the bid/proposal and contract documents for the joint ventures.

7 (B) Investigations. The Director shall investigate potential violations of this Ordinance.

8 Bidders, contractors, subcontractors and applicants for certification shall provide to the  
9 City any information that the City deems relevant, and shall cooperate in all other respects  
10 with such an investigation. A request for information from a bidder, contractor, subcontractor  
11 or applicant shall identify the records required and the time for response. If the bidder,  
12 contractor, subcontractor or applicant fails to respond to the request for information, or  
13 otherwise fails to cooperate in the investigation, appropriate sanctions, as provided in Section  
14 14B.~~1718~~(C), may be imposed. In an investigation of potential discrimination by a prime bidder  
15 prior to contract award, if the bidder fails to respond to the request for information, or  
16 otherwise fails to cooperate in the investigation, the bid will be rejected as non-responsive,  
17 and additional sanctions may be imposed.

18 (C) Conference and Conciliation. In the Director's sole discretion, the Director may  
19 attempt to resolve noncompliance with this Ordinance by any bidder, contractor, subcontractor  
20 or applicant for certification through informal processes, including conference and conciliation.

21 (D) Sanctions. The City, including the Director and contract awarding authorities, as  
22 appropriate, may impose any of the following sanctions on a bidder, contractor, subcontractor  
23 or applicant for certification who fails to comply with this Ordinance, provided that, any  
24 violation related to certification must be based on a finding by the Director:

25 (1) Reject all bids;

- 1 (2) Declare a bid non-responsive;
- 2 (3) Suspend a contract;
- 3 (4) Withhold funds;
- 4 (5) Assess penalties;
- 5 (6) Debar a bidder;
- 6 (7) Deny certification;
- 7 (8) Revoke certification.

8 (E) Procedures for Denials or Revocation of Certification. Whenever the Director  
9 proposes to deny an application for or revoke the certification of a business, the Director shall  
10 notify the applicant or certified business in writing of the basis for the denial or revocation, and  
11 the date on which the business will be eligible to reapply for certification. The Director shall  
12 provide the applicant or certified business with an opportunity to be heard before a final  
13 determination is made. The Director shall require a business to wait at least six months but  
14 not more than two years after the denial or revocation before reapplying for certification in the  
15 same category.

16 (F) Procedures for Director Findings of Discrimination. In determining whether a bidder,  
17 contractor or subcontractor has engaged in discrimination in violation of this Ordinance, the  
18 Director may consider: (1) direct evidence of discrimination, (2) procedures used to select  
19 subcontractors, including relative qualifications, (3) significant differences not attributable to  
20 any legitimate non-discriminatory business reason between the available percentages of  
21 MBEs, WBEs, or OBEs capable of providing goods and services as subcontractors on a  
22 contract or a series of contracts and the percentages of the bidder's subcontractors who are  
23 MBEs, WBEs, or OBEs, or (4) any other relevant evidence.

24 Whenever the Director proposes to issue a finding of discrimination against any bidder,  
25 contractor or subcontractor, the Director shall notify the bidder, contractor or subcontractor in

1 writing of the basis for the finding, provided that any proposal to debar a business shall be  
2 governed by Section 14B.~~1718~~(G) The Director shall provide the bidder, contractor or  
3 subcontractor with an opportunity to be heard before a final determination is made.

4 (G) Procedures for Debarment. The Director shall have the authority to act as a  
5 charging official under San Francisco Administrative Code Chapter 28 to debar a bidder or  
6 contractor for violations of this Chapter. The debarment procedures of Chapter 28 shall  
7 govern.

8 (H) Commission to Hear Appeals. Except as provided in Section 14B.~~1718~~(G), the  
9 Commission shall hear appeals challenging any determination of the Director under this  
10 Section. The Commission may sustain, reverse or modify the Director's findings and sanctions  
11 imposed, or take such other action to effectuate the purpose of this Ordinance. Unless the  
12 Commission so orders, an appeal shall not stay the Director's findings and the imposition of  
13 sanctions.

14 (I) Referral to Other Agencies. No person shall knowingly make, file or cause to be filed  
15 with the City any materially false or misleading statement or report in connection with this  
16 Ordinance. If the Director has reason to believe that any person has knowingly made, filed, or  
17 caused to be filed with the City any materially false or misleading statement or report made in  
18 connection with this Ordinance, the Director shall report that information may impose any  
19 sanction described in this Section 14B.~~1718~~, or may refer the matter to the City Attorney or the  
20 District Attorney for appropriate action.

21 (J) Willful Noncompliance by Contract Awarding Authority. Whenever the Director finds  
22 after investigation that a contract awarding authority has willfully failed to comply with its  
23 duties under this Ordinance, the Director shall transmit a written finding of noncompliance  
24 specifying the nature of the noncompliance, to the contract awarding authority, the  
25 Commission, the Mayor and this Board.

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

5 The finding of noncompliance shall be communicated to the Mayor for appropriate  
6 action to secure compliance.

7  
8 Section 14. The San Francisco Administrative Code is hereby amended by  
9 renumbering current Section 14B.18 as 14B.19 and amending it to read as follows:

10 **SECTION 14B.~~18~~19. APPLICABILITY, OPERATIVE DATE AND TRANSITION**  
11 **PROVISIONS.**

12 (A) Suspension of Chapter 12D.A. All provisions of Administrative Code Chapter 12D.A  
13 that were invalidated by the San Francisco Superior Court orders dated July 26 and August  
14 23, 2004, in Coral Construction, Inc. v. City and County of San Francisco (S.F. Sup. Ct. No.  
15 421249) shall be and are suspended and are of no force and effect; provided, however, if the  
16 injunction is lifted or stayed in its entirety, Chapter 12D.A shall become effective and  
17 enforceable 120 days after date of said action and this Chapter 14B shall be suspended.

18 (B) Operative date of this Chapter. Chapter 14B shall become operative on September  
19 1, 2006, and shall govern all contracts initiated on or after that date.

20 (C) Applicability. Chapters 12D.A, 14A and 14B shall apply as follows:

21 (1) Any amendment to a contract initiated before July 26, 2004 in which the Contractor  
22 agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided,  
23 however, that if a competitive solicitation for an agreement to the proposed changes to the  
24 contract is required by law, or the law would otherwise require execution of a new contract,  
25

1 rather than an amendment to an existing contract, the provisions of Chapter 14B and not  
2 Chapter 12D.A shall apply.

3 Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply  
4 with Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or  
5 after July 26, 2004 and before September 1, 2006 and any amendment to such contracts;  
6 provided, however, that if a competitive solicitation for an agreement to the proposed changes  
7 to the contract is required by law, or the law would otherwise require execution of a new  
8 contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and  
9 not Chapter 14A shall apply.

10 (2) This Chapter 14B shall govern all contracts initiated on or after September 1, 2006,  
11 and any amendments thereto.

12 (3) For all contracts described in Section 14B.~~19~~(C)(1) and Section 14B.~~19~~(C)(2) to  
13 which this Chapter 14B applies, when any provision of the San Francisco Municipal Code or  
14 other local law refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it  
15 shall be read as referring instead to Chapter 14B.

16 (D) Transition Provisions. In order to effect an orderly transition from Chapter 14A to  
17 this Ordinance, any business certified as an LBE under Chapter 12D.A or a DBE under  
18 Chapter 14A shall be deemed an LBE under this Chapter 14B until the earlier of (1) the  
19 expiration of the business' certification under 12D.A or 14A, (2) the business' failure to  
20 maintain the certification criteria under which it was certified, or (3) January 1, 2007. The  
21 Director may, by appropriate rules and regulations, establish procedures to allow such  
22 businesses certified as LBEs or DBEs under 12D.A or 14A to demonstrate their eligibility for  
23 certification under Section 14B.3 of this Ordinance on an expedited basis, prior to the  
24 expiration of their existing certification.  
25

1           The Director shall deem any application for DBE certification under Chapter 14A that is  
2 pending on the effective date of this Ordinance to be an application for certification under  
3 Chapter 14B.

4           (E) State or Federal Provisions. In contracts which involve the use of any funds  
5 furnished, given or loaned by the Government of the United States or the State of California,  
6 all laws, rules and regulations of the Government of the United States or the State of  
7 California or of any of its departments relative to the performance of such work and the  
8 conditions under which the work is to be performed, shall prevail over the requirements of this  
9 Ordinance when such laws, rules or regulations are in conflict.

10          (F) Severability. The provisions of this Ordinance are declared to be separate and  
11 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of  
12 this Ordinance, or the invalidity of the application thereof to any person or circumstances shall  
13 not affect the validity of the remainder of this Ordinance, or the validity of its application to  
14 other persons or circumstances.

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

19          (H) Three-year review. No later than three years from the effective date of this  
20 Ordinance, the Board of Supervisors shall hold a hearing for the purpose of conducting a  
21 comprehensive review of this Ordinance. The Board shall take testimony from all affected  
22 parties, and shall enact any changes that it deems appropriate.

23          (I) Municipal Transportation Agency. Consistent with Charter Section 8A.101(g), the  
24 Municipal Transportation Agency shall comply with the provisions of this Chapter 14B.



1 (1) Any contract may provide for progressive payments, if the Advertisement For Bids  
2 shall so specify. Each progress payment shall constitute full compensation for the value of  
3 work performed and materials furnished for a specified period, less amounts withheld as a  
4 result of dispute or as required by law.

5 (2) From every progress payment, the City shall hold 10 percent in retention.

6 (3) If the department head responsible for the public work or his/her designee  
7 determines that the contract is 50 percent or more complete, that the contractor is making  
8 satisfactory progress, and that there is no specific cause for greater withholding, the  
9 department head or his/her designee, upon the written request of contractor, may authorize  
10 one of the following two options: (a) the City shall release part of the retention to the  
11 contractor so that the amount held in retention by the City, after release to the contractor, is  
12 reduced to an amount not less than 5 percent of the total value of the labor and materials  
13 furnished, and the City shall proceed to retain 5 percent of any subsequent progress payment  
14 under the contract; or (b) the City shall continue to hold the already withheld retention amount,  
15 up to 5 percent of the total contract price, and shall not deduct further retention from progress  
16 payments.

17 (4) Retention shall be withheld solely for the benefit and protection of the City.

18 (5) The City shall release retention to the contractor upon the following conditions: (a)  
19 the contractor has reached final completion under the contract terms and conditions and (b)  
20 the contract is free of offsets by the City for liquidated damages, defective work and the like,  
21 and is free of stop notices, forfeitures, and other charges. When the department head  
22 responsible for the public work or his/her designee determines that the contract is 98 percent  
23 or more complete, the department head or his/her designee may reduce retention funds to an  
24 amount equal to 200 percent of the estimated value of work yet to be completed, provided that  
25

1 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other  
2 charges.

3 (6) In no event shall the City be liable for interest or charges arising out of or relating to  
4 the date the City issues any progress payment or the date the City releases all or part of the  
5 retention, except that the City will pay interest at the legal rate, as set forth in section  
6 685.010(a) of the California Code of Civil Procedure as that section may be amended from  
7 time to time, on any improperly withheld amounts commencing no earlier than 90 days after  
8 the date the City should have made any progress payment or released all or part of the  
9 retention. Under no circumstances shall the legal rate of interest paid by the City under this  
10 provision exceed 10 percent per annum. The payment of interest under this provision is the  
11 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

12

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

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17 By: \_\_\_\_\_  
18 Alicia Cabrera  
19 Deputy City Attorney

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