

1 [Local Business Enterprise and Non-Discrimination in Contracting ordinance shall terminate
2 120 days after the injunction in Coral v. Construction, Inc. (S.F. Sup. Ct. No. 421249) is lifted
3 or stayed.]

4 **Ordinance amending the Administrative Code 14B.18 to suspend enforcement of 14.B**
5 **and reinstate Chapter 12D.A. 120 days after the injunction in Coral Construction, Inc. v.**
6 **City and County of San Francisco (S.F. Sup. Ct. No. 421249) is lifted or stayed.**

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

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

11 Section 1. The San Francisco Administrative Code is hereby amended by amending
12 Section 14B.18, to read as follows:

13 **SEC. 14B.18. APPLICABILITY, OPERATIVE DATE AND TRANSITION PROVISIONS.**

14 (A) Suspension of Chapter 12D.A. All provisions of Administrative Code Chapter
15 12D.A that were invalidated by the San Francisco Superior Court orders dated July 26 and
16 August 23, 2004, in Coral Construction, Inc. v. City and County of San Francisco (S.F. Sup.
17 Ct. No. 421249) shall be and are suspended and are of no force and effect; provided,
18 however, ~~the provisions of Chapter 12D.A that were invalidated by the court's orders shall be~~
19 ~~suspended only so long as, and only to the extent that, the City is enjoined by the court from enforcing~~
20 ~~the provisions of Chapter 12D.A. If~~ if the injunction is lifted or stayed in its entirety, Chapter
21 12D.A shall ~~automatically~~ become effective and enforceable 120 days after date of said action
22 and this Chapter 14B shall be suspended.

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

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

1 (1) Any amendment to a contract initiated before July 26, 2004 in which the
2 Contractor agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A;
3 provided, however, that if a competitive solicitation for an agreement to the proposed changes
4 to the contract is required by law, or the law would otherwise require execution of a new
5 contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and
6 not Chapter 12D.A shall apply.

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

14 (2) This Chapter 14B shall govern all contracts initiated on or after September 1,
15 2006, and any amendments thereto.

16 (3) For all contracts described in Section 14B.18(C)(1) and Section 14B.18(C)(2) to
17 which this Chapter 14B applies, when any provision of the San Francisco Municipal Code or
18 other local law refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it
19 shall be read as referring instead to Chapter 14B.

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

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

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

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

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

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

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

5 (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

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

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9 By: _____
10 Alicia Cabrera
11 Deputy City Attorney

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