

File No. 091404

Committee Item No. 4

Board Item No. 09

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development Date January 25, 2010

Board of Supervisors Meeting

Date 02/02/10

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
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#### OTHER

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Completed by: Alisa Somera Date January 22, 2010  
 Completed by: Alisa Somera Date January 25, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
 The complete document can be found in the file and the online version.

1 [Procedures to Attain LBE Subcontracting Goals for Design-Build and Integrated Project  
2 Delivery Contracts.]

3 **Ordinance amending Administrative Code Chapter 14B, Local Business Enterprise and**  
4 **Non-Discrimination In Contracting Ordinance, to add a new Section 14B.19 establishing**  
5 **uniform procedures to attain project LBE goals for design-build and integrated project**  
6 **delivery contracts.**

7 NOTE: Additions are single-underline italics Times New Roman;  
8 deletions are ~~strike-through 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 adding  
12 Section 14B.19, to read as follows:

13 SEC. 14B.19. SUBCONTRACTING; DESIGN-BUILD AND INTEGRATED PROJECT  
14 DELIVERY CONTRACTS.

15 (A) For design-build contracts authorized under Administrative Code Section 6.61 and  
16 integrated project delivery contracts authorized under Administrative Code Section 6.68, the Director  
17 shall establish project-wide subcontracting and subconsulting goals for LBE participation.

18 (B) The procedure to attain the project-wide LBE goals for low bid design-build contracts  
19 awarded under Administrative Code Chapter 6, Section 6.61, shall be in accordance with Section  
20 14B.8.

21 (C) The procedure to attain the project-wide LBE goal for trade package subcontracts  
22 awarded under design-build contracts (Administrative Code Chapter 6, Section 6.61(L)) and integrated  
23 project delivery contracts (Administrative Code Chapter 6, Section 6.68), shall be as follows:

24 (I) Prior to the advertisement of a trade package design-build contract or an integrated  
25 project delivery contract, the Director shall determine the availability of LBEs who could perform the

1 work or supply materials and equipment for each trade package, with reference to the project-wide  
2 LBE subcontracting and subconsulting participation goals.. In the case of a design-build prime  
3 contract, the professional design services such as architectural or engineering performed by LBE firms  
4 will be credited toward the established project-wide goal. In the case of a trade package subcontract  
5 where some or all of the work is design-build, professional design services such as architectural or  
6 engineering performed by LBE firms will be credited toward the established trade package goal.

7 (2) The Design-Builder or Construction Manager/General Contractor (the "Prime  
8 Contractor") shall undertake the good faith outreach required in Section 14B.8(D).

9 (3) The Prime Contractor, with the assistance of the Director, shall set forth the LBE goal  
10 for each trade package. Upon receipt of bids from trade package subcontractors for a specific scope of  
11 work, the Director shall evaluate whether or not the trade package low bidder has met the stated LBE  
12 goal.

13 (4) In the event the trade package low bidder fails to meet the stated goal, the bidder shall  
14 be allowed to make up the goal within two weeks of bid opening, provided the bidder does not violate  
15 the California Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et  
16 seq.). Failure by the bidder to achieve the goal within the two week period, or within some other time  
17 allowed by the Director in writing, shall deem the bidder ineligible for award of the trade package  
18 subcontract. In such an instance, the Director and the Prime Contractor shall evaluate the second low  
19 bidder in the same manner for potential contract award.

20 (5) The Director shall monitor the actual LBE participation being attained as the trade  
21 package bids are received. In the event the Director determines that the actual LBE participation at a  
22 particular time in the bidding of trade packages is less than anticipated, relative to the project LBE  
23 goal, the Prime Contractor shall make all efforts to negotiate and award trade packages to LBEs using  
24 the seven and one half percent (7½%) of total trade package costs available to it for negotiating  
25 subcontracts per Administrative Code Chapter 6, Sections 6.61(L)(3) or 6.68(H)(3), as appropriate.

1 After all the trade packages have been awarded, the Prime Contractor must have met the project-wide  
2 LBE subcontracting/subconsulting goal. Otherwise, the Prime Contractor shall be subject to sanctions  
3 as described herein in Section 14B.17.

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

6 By:   
7 GEORGE K. WONG  
8 Deputy City Attorney

## LEGISLATIVE DIGEST

[Procedures to attain LBE subcontracting goals for design-build and integrated project delivery contracts.]

**Ordinance amending Administrative Code Chapter 14B, Local Business Enterprise and Non-Discrimination In Contracting Ordinance, to add a new Section 14B.19 establishing uniform procedures to attain project LBE goals for design-build and integrated project delivery contracts.**

### Existing Law

Administrative Code Chapter 6, *Public Work Contracting Policies and Procedures*, at Article IV, *Exemptions from and Alternatives to Competitive Bidding*, currently provides for design build contracts (Section 6.61) and integrated project delivery contracts (Section 6.68). Under both types of contracts, the City selects the prime contractor during the design of the project. As the appropriate portions of the design is completed, the prime contractor bids out individual trade packages and awards subcontracts.

Administrative Code 14B currently includes no special procedure for establishing LBE participation goals for design build (Section 6.61) or integrated project delivery (Section 6.68) contracts.

### Amendments to Current Law

The amendment would add a new Section 14B.19 establishing uniform procedures to attain project LBE goals for design-build (Section 6.610) and integrated project delivery (Section 6.68) projects.

Under the amendment, the Director of the Human Rights Commission would set a project-wide goal for LBE subcontractor or subconsultant participation. The prime contractor (whether the Design-Builder (Section 6.61) or the Construction Manager/General Contractor (Section 6.68)) would perform good faith outreach for LBE participation. The HRC Director would establish goals for each subcontractor trade package. If the low bidder does not meet the goal, the low bidder may adjust its LBE subcontractor participation within two weeks of the date of bid, so long as there is no violation of state law concerning subcontractor listing. Failure of the low bidder to meet the goal will result in a rejection of the bid.

### Background Information

The Human Rights Commission Director requested this amendment.