

File No. 100333

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 3, 2010

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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#### OTHER

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Completed by: Alisa Somera Date April 30, 2010

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

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

1 [Bid Discount For Small and Micro-LBEs That Joint Venture To Bid On Construction  
2 Contracts.]

3 **Ordinance amending Administrative Code Section 14B.7(F) to grant bid discounts to**  
4 **Small and Micro-LBEs that joint venture with other firms to bid on construction**  
5 **contracts.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strike-through italics Times New Roman*~~.  
8 Board amendment additions are double-underlined;  
9 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.2, to read as follows:

13 **SECTION 14B.2. DEFINITIONS.**

14 "Architect/Engineering Contract" means an agreement for architectural, engineering, or  
15 other professional design, consulting or construction management services for a public  
16 work/construction project.

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

24 "Bid" means a quotation, proposal, solicitation or offer by a bidder or contractor to  
25 perform or provide labor, materials, equipment, supplies or services to the City for a price.

"Bidder" means any business that submits a bid or proposal.

1 "City" means the City and County of San Francisco.

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

17 "Commission" means the Human Rights Commission.

18 "Commodity contract" means an agreement to purchase any product, including  
19 materials, equipment and supplies.

20 "Contract" means any agreement between the City and a person to provide or procure  
21 labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to  
22 be paid out of monies deposited in the City Treasury or out of trust monies under the control  
23 of or collected by the City. A "contract" includes an agreement between a non-profit or public  
24 entity and a contractor for the performance of construction or construction-related services,  
25 where the contract is funded by the City. A "contract" does not include: (1) grants, whether

1 funded by the City or by Federal or State grant funds, to a nonprofit entity to provide services  
2 to the community; (2) sales of the City's personal or real property; (3) loan transactions,  
3 whether the City is a debtor or creditor; (4) lease, franchise, or concession agreements; (5)  
4 agreements to use City real property; (6) gifts of materials, equipment, supplies or services to  
5 the City; or (7) agreements with a public agency except for contracts or other agreements  
6 between the City and persons or entities, public or private, in which such persons or entities  
7 receive money from or through the City for the purpose of contracting with businesses to  
8 perform public improvements. Without limitation of the foregoing, "contract" includes any  
9 agreement between the City and a person to provide or procure labor, materials, equipment,  
10 supplies, or services to, for, or on behalf of the City for PUC Regional Projects.

11 "Contract awarding authority" means any City officer, department, commission,  
12 employee or board authorized to enter into contracts on behalf of the City. A non-profit or  
13 public entity that receives funds from the City to pay for construction or construction related  
14 services is a "contract awarding authority" for the purposes of contracting for the performance  
15 of those services.

16 "Contractor" means any person who enters into a contract with the City.

17 "Control" means an individual possesses the legal authority to manage business  
18 assets, good will and the daily operations of a business, and actively and continuously  
19 exercises such authority.

20 "Director" means the Director of the Human Rights Commission, or his or her designee.

21 "Discount" means a downward adjustment in price or upward adjustment in rating of a  
22 proposal, whichever applies, that is made under Section 14B.7.

23 "General Manager" means the General Manager of the San Francisco Public Utilities  
24 Commission, or his or her designee.

1 "General services contract" means an agreement for those services that are not  
2 professional services. Examples of "general services" include: janitorial, security guard, pest  
3 control and landscaping services.

4 ~~"Joint Venture" shall mean an association of two or more professional services, or~~  
5 ~~architecture/engineering, or construction contracting businesses acting as a contractor and~~  
6 ~~performing or providing services on a professional services, or architecture/engineering~~  
7 ~~contract, or public works/construction contract in which each joint venture partner combines~~  
8 ~~property, capital, efforts, skill, and/or knowledge and each joint venture partner shares in the~~  
9 ~~ownership, control, management responsibilities, risks and profits of the joint venture in~~  
10 ~~proportion to its claimed level of participation.~~

11 "Joint venture" shall mean an association or partnership of two or more professional  
12 services businesses, such as architecture/engineering, performing or providing services under  
13 a City contract, in which each joint venture partner combines property, capital, efforts, skill,  
14 and/or knowledge and each joint venture partner shares in the ownership, control,  
15 management responsibilities, risks and profits of the joint venture in proportion to its claimed  
16 level of participation.

17 For projects let under Chapter 6.68, Integrated Project Delivery, a "Joint Venture" shall  
18 mean an partnership or association of two or more licensed general contractors performing or  
19 providing services on a public works/construction project in which each joint venture partner  
20 combines property, capital, efforts, skill, and/or knowledge and each joint venture partner  
21 shares in the ownership, control, management responsibilities, risks and profits of the joint  
22 venture in proportion to its claimed level of participation.

23 "Local Business Enterprise (LBE)" means a business that is certified as an LBE under  
24 Section 14B.3. LBEs are either Small-LBEs, or Micro-LBEs, or SBA-LBEs, and are also either  
25 MBEs, WBEs, or OBEs.

1 "Minimum competitive amount" means for professional services, general services,  
2 architect/engineering and commodities contracts, the "minimum competitive amount" as  
3 defined in Section 6.40(A) of the Administrative Code.

4 "Minority Business Enterprise (MBE)" means a business that is certified as an MBE  
5 under Section 14B.4(B)

6 "Other Business Enterprise (OBE)" means a business that is certified as an OBE under  
7 Section 14B.4(D).

8 "Owns" or "Ownership" means an individual: (a) possesses a record ownership  
9 interest, such as partnership interest or stock interest, of at least 51 percent of the business;  
10 (b) possesses incidents of ownership, including an interest in profit and loss, equal to at least  
11 the required record ownership interest; (c) contributes capital to the business equal to at least  
12 the required record ownership percentage (unsecured promissory notes or notes secured by  
13 the business or business assets are not sufficient to constitute capital contributions); and (d)  
14 contributes expertise relevant to the business "commercially useful function" proportionate to  
15 the stated ownership interest.

16 "Person" means any individual or group of individuals, including but not limited to  
17 partnerships, associations, and corporations.

18 "Professional services contract" means an agreement for services that require  
19 extended analysis, the exercise of discretion and independent judgment, or the application of  
20 an advanced, specialized type of knowledge, expertise, or training customarily acquired either  
21 by a prolonged course of study or equivalent experience in the field. Examples of professional  
22 service providers include licensed professionals such as accountants, and non-licensed  
23 professionals such as parking lot management, software developers and financial consultants.  
24 For the purpose of this Ordinance, a contract for architectural, engineering, or other  
25

1 professional design, consulting or construction management services for a public work project  
2 shall be considered an architect/engineering contract and not a professional services contract.

3 "PUC" or "Public Utilities Commission" means the San Francisco Public Utilities  
4 Commission, the City Department that provides water, wastewater, and municipal power  
5 services to San Francisco and, under contractual agreement with 29 wholesale water  
6 agencies, also supplies water to 1.6 million additional customers within three Bay Area  
7 counties.

8 "Public works/construction contract" means a contract for the erection, construction,  
9 renovation, alteration, improvement, demolition, excavation, installation, or repair of any public  
10 building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public  
11 facility that is performed by or for the City, and the cost of which is to be paid wholly or  
12 partially out of moneys deposited in the City Treasury or out of trust monies under the control  
13 of or collected by the City. For purposes of this Ordinance only, "public works/construction  
14 contract" includes contracts between a person, including a non-profit entity or public agency,  
15 and a contractor for construction or construction-related services, where the contract is funded  
16 by the City.

17 "PUC Regional Projects" means the projects to be performed outside of the geographic  
18 limits of San Francisco that are identified as regional projects and included in the formally  
19 approved Capital Improvement Program of the San Francisco Public Utilities Commission's  
20 approximately \$4.3 billion project to seismically reinforce and otherwise enhance the Hetch  
21 Hetchy water supply system, as it may be amended from time to time, and shall also include  
22 Repair and Replacement work ("R&R") only where such work is to be performed in  
23 association with a regional Capital Improvement Program project.

1 "Subcontractor" means any person providing goods or services to a contractor or  
2 subcontractor in fulfillment of the contractor or subcontractor's obligations arising from a  
3 contract with the City.

4 "Threshold amount" means, for public works/construction projects, the "threshold  
5 amount" as defined in Chapter 6.1 (M) of the Administrative Code.

6 "Woman Business Enterprise (WBE)" means a business that is certified as a WBE  
7 under Section 14B.4(C).

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

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

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

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

18 (a) As soon as practical before soliciting bids or proposals, contract awarding  
19 authorities shall submit large contract proposals to the Director for review. The Director shall  
20 determine whether the proposed contract can be divided into smaller contracts so as to  
21 enhance the opportunity for participation by LBEs. For purposes of this paragraph, "large  
22 project" means any public works/construction contract estimated to cost more than  
23 \$5,000,000, any professional services contract estimated to cost more than \$100,000, and  
24 any multiple year commodities contract with a term greater than one year, including any  
25 options to renew or extend.



1 (b) If the Director determines, after consulting with the contract awarding authority,  
2 that the contract can be divided into smaller contracts, then the Director and the contract  
3 awarding authority shall confer regarding all of the costs and benefits of soliciting the contract  
4 as a single contract or dividing it into smaller contracts, including but not limited to the  
5 potential for enhanced opportunities for LBE participation as prime contractors, the potential  
6 for LBE participation as subcontractors, relative costs, administrative issues, and any other  
7 matters relevant to the accomplishment of the purpose of the subject contract or contracts. If,  
8 after exchanging information and conferring regarding these issues, the contract awarding  
9 authority and the Director are unable to agree on whether or how the contract divided into  
10 smaller contracts, or on the size and number of contracts, the Mayor or the Mayor's designee  
11 shall resolve the matter.

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

14 (3) Advertising in general circulation media, trade association publications and local  
15 business media, and posting the contracting opportunity on the Department's website or other  
16 centralized City website.

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

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

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

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

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

7 (B) Best Efforts on Contracts Not Otherwise Subject to this Ordinance. In the award of  
8 leases, franchises, concessions, and other contracts not subject to the discount provisions of  
9 this Ordinance, contract awarding authorities shall utilize the good faith efforts steps unless  
10 impracticable to do so. At a minimum, contract awarding authorities should notify LBEs that  
11 are certified to perform the work contemplated in a contract and solicit their interest in the  
12 contract.

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

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

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

1 If after the application of the discounts provided for in this Subsection 14B.7(E) or  
2 Subsection 14B.7 (F) to any bid or proposal from a Small or Micro-LBE, the apparent low  
3 bidder or highest ranking proposer is not a Small or Micro-LBE, contract awarding authorities  
4 shall apply a 2% bid discount to any bid or proposal from an SBA-LBE. Contract awarding  
5 authorities shall apply this 2% discount to each stage of the selection process, including  
6 qualifications, proposals and interviews, except that the 2% discount for SBA-LBEs shall not  
7 be applied at any stage if it would adversely affect a Small or Micro-LBE. For contracts  
8 estimated by the contract awarding authority to cost in excess of \$10,000,000 but less than  
9 \$20,000,000, contract awarding authorities shall apply a 2% discount to any bid or proposal  
10 from an SBA-LBE.

11 (F) Joint Ventures For Professional Services, and such as Architecture/ Engineering  
12 services, and Public Works/Construction Contracts. Unless otherwise provided in this Ordinance,  
13 contract awarding authorities shall extend the following bid/rating discount to all bids,  
14 proposals and contracts from Small and Micro-LBEs on professional services services, and  
15 such as architecture/engineering services and public works/construction prime contracts: (1)  
16 five percent to a joint venture with Small and/or Micro-LBE prime contractor participation that  
17 equals or exceeds 35 percent but is under 40 percent; (2) seven and one-half percent to a  
18 joint venture with Small and/or Micro-LBE prime contractor participation that equals or  
19 exceeds 40 percent; (3) ten percent to a Small and/or Micro-LBE prime contractor or a joint  
20 venture among Small and/or Micro-LBEs prime contractors. Contract awarding authorities  
21 shall apply the bid/rating discount to each stage of the selection process, including  
22 qualifications, proposals and interviews.

23 For qualifying public works/construction prime contracts administered under Chapter  
24 6.68 the contract awarding authorities shall extend the following bid/rating discount to all bids,  
25 proposals and contracts from Small and Micro-LBEs as follows: (1) two percent to a joint

1 venture with Small and/or Micro-LBE prime contractor participation that equals or exceeds 20  
2 percent but is under 30 percent; (2) three percent to a joint venture with Small and/or Micro-  
3 LBE prime contractor participation that equals or exceeds 30 percent but is under 40 percent;  
4 (3) four percent to a joint venture with Small and/or Micro-LBE prime contractor participation  
5 that equals or exceeds 40 percent but is under 50 percent; (4) five percent to a joint venture  
6 with Small and/or Micro-LBE prime contractor participation that equals or exceeds 50 percent  
7 but is under 100 percent; and (5)) ten percent to a Small and/or Micro-LBE prime contractor or  
8 a joint venture among Small and/or Micro-LBEs prime contractors. Joint venture partners  
9 requesting a bid/rating discount on qualifying public works/construction contracts administered  
10 under Chapter 6.68 will only be eligible for the bid/ratings discount if they perform at least 25%  
11 of the contract work. Contract awarding authorities shall apply the bid/rating discount to each  
12 stage of the selection process, including qualifications, proposals and interviews.

13           The contract awarding authority shall apply the joint venture bid/ratings discount only to  
14 professional services, ~~and such as~~ architecture/engineering contracts, ~~and public~~  
15 ~~works/construction contracts~~ and qualifying public works/construction contracts administered  
16 under Chapter 6.68, and only to a joint venture (1) that meets the requirements contained in  
17 this Ordinance, and (2) when the Small and/or Micro LBE is an active partner in the joint  
18 venture, performs work, manages the job and takes financial risks in proportion to the required  
19 level of participation stated in the bid documents, is responsible for a clearly defined portion of  
20 the work to be performed, and shares proportionately in the ownership, control, management  
21 responsibilities, risks, and profits of the joint venture. The portion of the Small and/or Micro LBE  
22 joint venture partner's work shall be set forth in detail separately from the work to be performed  
23 by the non-LBE joint venture partner. The Small and/or Micro LBE joint venture partner's portion  
24 of the contract must be assigned a commercially reasonable dollar value.

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

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

10 (1) Each contract shall incorporate this Ordinance by reference, shall require  
11 contractors to comply with its provisions in awarding and administering such contracts, and  
12 shall provide that the willful failure of any bidder or contractor to comply with the requirements  
13 of this Ordinance or rules and regulations implementing this Ordinance shall be deemed a  
14 material breach of contract.

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

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

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

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

21 (6) Contracts shall require prime contractors, whenever amendments, modifications,  
22 supplements, or change orders cumulatively increase the total dollar value of the contract by  
23 more than 10 percent, to comply with those provisions of this Ordinance that applied to the  
24 original contract with respect to the amendment, modification, supplement or change order.  
25

1 (7) Contracts shall require prime contractors to submit to the Director for approval all  
2 contract amendments, modifications, supplements, and change orders that cumulatively  
3 increase by more than 20 percent the total dollar value of all contracts originally valued at  
4 \$50,000 or more. The Director shall review the proposed amendment, modification,  
5 supplement or change order to correct any contracting practices that exclude any category of  
6 LBEs from new contracting opportunities.

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

11 (9) Contracts in which subcontracting is used shall require the prime contractor to pay  
12 its subcontractors within three working days after receiving payment from the City unless the  
13 prime contractor notifies the Director in writing within 10 working days prior to receiving  
14 payment from the City that there is a bona fide dispute between the prime contractor and the  
15 subcontractor, in which case the prime contractor may withhold the disputed amount but shall  
16 pay the undisputed amount. The Director may, upon making a determination that a bona fide  
17 dispute exists between the prime contractor and subcontractor, waive this three-day payment  
18 requirement. In making the determination as to whether a bona fide dispute exists, the  
19 Director shall not consider the merits of the dispute. Contracts in which subcontracting is used  
20 shall also require the contractor, within 10 working days following receipt of payment from the  
21 City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors.  
22 The affidavit shall provide the names and address of all subcontractors and the amount paid  
23 to each.

24 (I) Exceptions.  
25

1 (1) The bid discount provisions of this Ordinance for Small and Micro-LBEs are not  
2 applicable to any contract estimated by the contract awarding authority to cost in excess of  
3 \$10,000,000, and the bid discount provisions of this Ordinance for SBA-LBEs are not  
4 applicable to any contract estimated by the contract awarding authority to cost less than  
5 \$400,000 and in excess of \$20,000,000.

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

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

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

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

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

25 (K) Micro-LBE Set-Aside Program.



1           (1) Each fiscal year, the contract awarding departments in consultation with the  
2 Director shall set aside for award to Micro - LBEs not less than 50% of the public  
3 work/construction contracts where the estimated contract amount is equal to or less than  
4 \$400,000.

5           In order to satisfy the requirement to set aside not less than 50% of the contracts that  
6 fall within this category, contract awarding departments may count Job Order Contracts,  
7 without limitation as to dollar value, that the department has set aside for Micro - LBEs under  
8 Administrative Code Section 6.62(C).

9           (2) Other contracts. Each fiscal year, the contract awarding departments in  
10 consultation with the Director shall set aside for competitive award to Micro - LBEs contracts  
11 other than public work/construction contracts where the estimated contract amount is equal to  
12 or less than \$100,000. The contract awarding departments shall have a goal of setting aside  
13 in each fiscal year 25% of all contracts that fall within this category, but 120 days from the  
14 effective date of this Subsection, the 25% goal shall become a requirement.

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

20           (4) In the year 2010, contract awarding departments must make the following  
21 disclosures to the Board of Supervisors each quarter. Thereafter, beginning in 2011, contract  
22 awarding departments must make the following disclosures to the Board of Supervisors every  
23 year when the contract awarding department makes its annual budget submission to the  
24 Board of Supervisors. These disclosures shall include: (1) the number of contracts and the  
25 amount of each contract awarded under the Micro – LBE set-aside program; and (2) all public

1 work/construction contracts equaling \$400,000 or less not awarded under this program, and  
2 all other contracts equaling \$100,000 or less not awarded under this program, accompanied  
3 by an explanation as to why the contract was not set-aside for award under this program, or, if  
4 set aside, whether it was subsequently not awarded or awarded under any other procedure.

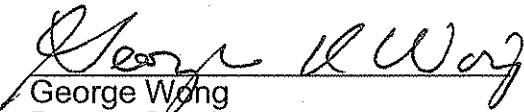
5 (5) Contracts that are set-aside for award to Micro - LBEs shall not be subject to  
6 subcontracting goals under Section 14B.8. Micro - LBEs that subcontract any portion of a set-  
7 aside contract should subcontract to businesses certified as Micro - LBEs, to the maximum  
8 extent possible. Micro - LBEs that subcontract any portion of a set-aside contract must serve  
9 a commercially useful function based on the contract's scope of work, and must perform at  
10 least 25% of the contract work.

11 (L) Prompt payment. The City shall pay LBEs within 30 days of the date on which the  
12 City receives an invoice for work performed for and accepted by the City. The Controller shall  
13 work with the Director and contract awarding authorities to implement this Citywide prompt-  
14 payment policy. The City shall consult with affected community members and relevant City  
15 officials, including the Director, the Controller, and contract awarding authorities, to design  
16 and implement a prompt payment program within six (6) months of the effective date of this  
17 Ordinance. Such program shall include procedures for the payment of late penalties where  
18 prompt payment does not occur.

19 (M) Application of Chapter 14B. Within 60 days of the effective date of this  
20 Subsection, contract awarding departments shall report to the Board of Supervisors on their  
21 implementation, and recommendations for any amendment, of the requirement in Sections  
22 14B.7(E) and (F) that contract awarding authorities shall apply the discounts authorized by  
23  
24  
25

1 those sections "to each stage of the selection process, including qualifications, proposals and  
2 interviews."

3  
4 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

5  
6 By:   
George Wong  
7 Deputy City Attorney

## LEGISLATIVE DIGEST

[Bid Discounts For Small and Micro-LBEs That Joint Venture To Bid On Construction Contracts.]

**Ordinance amending Administrative Code Section 14B.7(F) to grant bid discounts to Small and Micro-LBEs that joint venture with other firms to bid on construction contracts.**

### Existing Law

Section 14B.7 of the Administrative Code requires the application of certain prime bidding discounts to bids and proposals submitted by HRC-certified LBEs.

Section 14B.7(F) requires the application of joint venture bid/ratings discounts to proposals submitted by Small and Micro-LBEs for professional services and architecture/engineering contracts with estimated costs in excess of \$10,000 and less than or equal to \$10,000,000. The joint venture bid/ratings discounts are as follows: (i) five percent for a joint venture with Small and/or Micro-LBE prime contractor participation that equals or exceeds 35 percent but is under 40 percent; (ii) seven and one-half percent for a joint venture with Small and/or Micro-LBE prime contractor participation that equals or exceeds 40 percent; and (iii) ten percent for a Small and/or Micro-LBE prime contractor or a joint venture among Small and/or Micro-LBE prime contractors.

### Amendments to Current Law

The ordinance amends Section 14B.7(F) by requiring the application of joint venture bid/ratings discount to bids submitted by Small and Micro-LBEs for construction contracts administered under Section 6.68 as follows: (1) two percent to a joint venture with Small and/or Micro-LBE prime contractor participation that equals or exceeds 20 percent but is under 30 percent; (2) three percent with participation that equals or exceeds 30 percent but is under 40 percent; (3) four percent with participation that equals or exceeds 40 percent but is under 50 percent , (4) five percent with participation that equals or exceeds 50 percent but is under 100 percent (3) ten percent to a solo Small and/or Micro-LBE prime contractor or a joint venture among Small and/or Micro-LBE prime contractors. Joint venture partners requesting a bid/rating discount on qualifying public works/construction contracts administered under Chapter 6.68(F) will only be eligible for the bid/ratings discount if they perform at least 25% of the contract work. Under the amended Section 14B.7(F), the joint venture bid/ratings discounts will apply to bids and proposals from Small and Micro-LBEs for professional services such as architecture/engineering, and construction contracts.

### Background Information

Expanding the joint venture bid/ratings discounts to construction contracts should increase the utilization of Small and Micro-LBEs on City construction projects.