

File No. 121211

Committee Item No. 8  
Board Item No. 1

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee Date 03/06/2013

Board of Supervisors Meeting Date MARCH 19, 2013

**Cmte Board**

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

**OTHER (Use back side if additional space is needed)**

|                          |                          |       |
|--------------------------|--------------------------|-------|
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Victor Young Date March 1, 2013

Completed by: Victor Young Date 3-7-13

1 [Administrative Code - Rescinding Sunset in San Francisco Bonding and Financial Assistance  
2 Program]

3 **Ordinance amending the San Francisco Administrative Code, Section 14B.16, to**  
4 **rescind the sunset clause in the San Francisco Bonding and Financial Assistance**  
5 **Program, make technical amendments, and make environmental findings-and findings**  
6 **of consistency with General Plan.**

7  
8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
10 Board amendment additions are double-underlined;  
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The Planning Department has determined that the actions contemplated in  
14 this ordinance comply with the California Environmental Quality Act (California Public  
15 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
16 Board of Supervisors in File No. 121211 and is incorporated herein by reference.

17 Section 2. The San Francisco Administrative Code is hereby amended by amending  
18 Section 14B.16, to read as follows:

19 (A) **San Francisco Bonding and Financial Assistance Program.**

20 (1) **Program Description.** The City and County of San Francisco, acting through the  
21 City Administrator, or, in his or her discretion, as delegated to the Director of Risk Management, a  
22 division of the Office of the City Administrator ("Risk Manager")~~Commission~~, intends to provide  
23 guarantees to private bonding companies and financial institutions in order to induce those  
24 entities to provide required bonding and financing to eligible contractors and subcontractors  
25

1 bidding on and performing City public works/construction contracts. This bonding and financial  
2 assistance program is subject to the provisions of this Section 14B.16(A).

3 (2) **Eligible Contracts.** The assistance described in this Section 14B.16(A) shall be  
4 available for any City public works/ construction contract to which this Ordinance applies.

5 (3) **Eligible Businesses.** Businesses must meet the following criteria to qualify for  
6 assistance under this Section 14B.16(A).

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

8 (b) The business must be certified by the *Director-Contract Monitoring Division of*  
9 *the Office of the City Administrator ("CMD")* as an LBE according to the requirements of Section  
10 14B.3, 14B.5, or 14B.6;

11 (c) The business may be required to participate in a "bonding assistance  
12 training program" as offered by the *Risk Manager Commission*, which is anticipated to provide  
13 the following:

14 (i) Bond application assistance.

15 (ii) Assistance in developing financial statements,

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

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

18 (v) Development of accurate financial reporting tools.

19 (4) **Agreements Executed by the *Risk Manager Human Rights Commission*.** The *Risk*  
20 *Manager Director* is hereby authorized to enter into the following agreements in order to  
21 implement the bonding and financial assistance program described in this Section 14B.16(A):

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

24 (b) With respect to a construction loan to be made to a contractor or  
25 subcontractor, an agreement to guaranty up to 50 percent of the original principal amount of

1 the construction loan or 50 percent of the actual loss suffered by the financial institution as a  
2 result of a loan default, whichever is less; provided that in any event the City's obligations with  
3 respect to a guaranty shall not exceed \$750,000;

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

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

15 (6) **Contributions to the San Francisco Self-Insurance Surety Bond Fund.** Subject  
16 to the budgetary and fiscal provisions of the San Francisco Charter, each department that  
17 conducts public works or improvements under Chapter 6 of the Administrative Code shall  
18 contribute annually to the San Francisco Self-Insurance Surety Bond Fund ("the Fund") an  
19 amount that is set by multiplying the annual contribution rate set pursuant to Section  
20 10.100-371(c) times its total appropriations for capital construction and improvement.

21 ~~(7) No later than May 1, 2009, the Director in consultation with the City's Risk Manager~~  
22 ~~shall conduct a study of the City's maintenance and facility contracts for the purpose of recommending~~  
23 ~~a process for the annual contribution rate that would enable the City to include such contracts in the~~  
24 ~~City's Bonding and Financial Assistance Program. No later than June 1, 2009, the Director shall~~  
25

1 ~~transmit to the Board of Supervisors appropriate legislation to include maintenance and facility~~  
2 ~~contracts in the program.~~

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

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

11 ~~(9) **Term of Bonding Assistance Program.** The Director is authorized to enter into the~~  
12 ~~agreements described in this Subsection for a period ending on the earlier of (1) June 30, 2013 or (2)~~  
13 ~~the date on which the Controller is no longer able to certify the availability of funds for any new~~  
14 ~~guarantee agreement.~~

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

20 (B) **Education and Training.** The City Administrator ~~Director~~ shall ~~continue to~~ develop  
21 and ~~to~~ strengthen existing education and training programs for LBEs and City contract  
22 awarding personnel.

23 (C) **Cooperative Agreements.** With the approval of the ~~Commission and the~~ Board of  
24 Supervisors, the City Administrator ~~Director~~ may enter into cooperative agreements with  
25

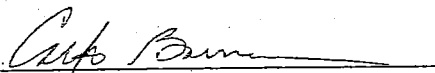
1 agencies, public and private, concerned with increasing the use of LBEs in government  
2 contracting.

3 Section 3. Effective Date. This ordinance shall become effective 30 days from the  
4 date of passage.

5 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to  
6 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
7 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
8 are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
9 and Board amendment deletions in accordance with the "Note" that appears under the official  
10 title of the legislation.

11  
12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By:

  
16 Catharine Barnes  
17 Deputy City Attorney  
18  
19  
20  
21  
22  
23  
24  
25

**LEGISLATIVE DIGEST**

[Administrative Code – Rescinding Sunset in San Francisco Bonding and Financial Assistance Program]

Ordinance amending the San Francisco Administrative code Section 14B.16 to rescind the sunset clause in the San Francisco Bonding and Financial Assistance Program and make technical amendments, and making environmental findings and findings of consistency with General Plan.

**Existing Law**

The San Francisco Bonding and Financial Assistance Program, commonly referred to as the "Surety Bond Program," provides guarantees to private surety bonding companies and financial lending institutions to enable certified LBEs to obtain the bonds and construction loans needed to bid for prime and/or subcontracting opportunities on City public works contracts. The guarantees provided through the Surety Bond Program currently are individually backed by letters of credit issued by a commercial banking institution (currently Union Bank of California) under separate contract with the City.

The Human Rights Commission ("HRC") and the Treasurer's Office administered the Surety Bond Program prior to the Mayor's transfer of HRC functions to the City Administrator. After the transfer of functions, the Treasurer's functions under the Surety Bond Program are unchanged, the HRC Commission's functions are transferred to the City Administrator, and the HRC Director's functions are transferred to the head of the City Administrator's Contract Monitoring Division.

Since its initial adoption in 1998, the ordinance establishing the Surety Bond Program has included a sunset clause. The Board of Supervisors periodically has extended the sunset date so that the ordinance has never expired.

**Amendments to Current Law**

This Ordinance rescinds 14B.16(A)(9), the sunset provision in Surety Bond Program.

This Ordinance also makes two types of technical amendments:

It amends various provisions of 14B.16 to reflect the Mayor's transfer of HRC functions (1) to the City Administrator acting in the capacity of the former HRC Commission, and (2) to the City Administrator as may be delegated to the Director of Risk Management or Contract Monitoring Division, each of whom acting in the capacity of the former HRC Director for the specified functions; and

It deletes Section 14B.16 (A)(7) which sets forth a reporting and legislative drafting requirement that expired in 2009.

**Background Information**

The sunset clause eliminated by this Ordinance adds costs to the Surety Bond program in two ways:

(1) commercial banking institutions that provide letters of credit to back the bond or loan guarantees will not contractually commit to extend credit to the City beyond the ordinance sunset date. The City therefore has been required to renegotiate its bank agreement every 3-5 years as the sunset date looms - even though the Board of Supervisors to date has always extended the sunset date before the ordinance expires; and

(2) the terms of the individual letters of credit themselves cannot exceed the sunset of the authorizing ordinance, and in fact, are by their terms callable by the surety bond issuer 45 days in advance of the sunset date. Accordingly, as the sunset date approaches, the City pays the same issuance fees for letters of credit with progressively shorter terms.

The sunset clause requires the Board of Supervisors to "re-visit" the Surety Bond program at defined intervals. Without the sunset clause, the Board of Supervisors retains the authority to revise or rescind the program by ordinance or to reduce or eliminate its funding through the budget process.



Item 8  
File 12-1211

Department:  
City Administrator

## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed ordinance would (1) amend Section 14B.16 of the Administrative Code to rescind the sunset provision of the Surety Bond Program, which is scheduled to sunset on June 30, 2013, (2) amend Administrative Code Section 14B.16 to reflect the transfer of the Surety Bond Program's administrative functions from the Human Rights Commission to the City Administrator's Office, and (3) delete Section 14B.16(A)(7), which sets forth a reporting and legislative drafting requirement that expired in 2009.

### Key Points

- The San Francisco Bonding and Financial Assistance Program, commonly referred to as the "Surety Bond Program," was established by the Board of Supervisors in April 1994 and is scheduled to sunset on June 30, 2013. The proposed ordinance would rescind the sunset provision, thus making the Surety Bond Program a permanent program.
- The Surety Bond Program encourages surety bond companies to issue surety bonds to certified local business enterprises (LBEs) by guaranteeing up to 40 percent of the surety bond amount, up to a maximum guarantee of \$750,000 per bond. Obtaining surety bonds, which contractors submitting bids for City public works contracts are required to do under Section 6.21 of the Administrative Code and the California Public Contract Code, is a barrier to City contracting opportunities that typically disproportionately affects small, minority-owned, and woman-owned local contractors.
- According to Mr. Matt Hansen, Director of Risk Management in the City Administrator's Office, the Surety Bond Program is no longer temporary in nature and should not be subject to a sunset date that requires subsequent extension by ordinance of the Board of Supervisors. Mr. Hansen advises that extending rather than rescinding the sunset provision would add additional unnecessary costs to the Surety Bond Program in the future.

### Fiscal Impact

- Approval of the proposed ordinance would result in additional ongoing costs to the City to administer the Program after June 30, 2013, projected at \$740,000 for FY 2013-14. Such costs would continue to be funded by each City Department with public works contracting authority. The cost of making the Surety Bond Program permanent may be partially offset by contract savings based on lower bids submitted by participating LBEs. Because of lower contract bids received by the City as a result of providing surety bonds guarantee for LBEs, the average annual contract cost savings to the City between FY 2008-09 and FY 2011-12 was \$326,807.

### Recommendation

- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with Section 2.105 of the City's Charter, any amendments to the Administrative Code must be approved by ordinance of the Board of Supervisors.

### Background

The San Francisco Bonding and Financial Assistance Program, commonly referred to as the "Surety Bond Program," was established by the Board of Supervisors in April 1994, originally as the Bonding Assistance Program, to encourage private surety bond companies to issue surety bonds to certified Local Business Enterprises (LBEs) bidding on construction projects at San Francisco International Airport. A surety bond is a form of insurance that insures the City against losses in the event of a contractor defaulting on its agreement with the City.<sup>1</sup> Section 6.21 of the Administrative Code and the California Public Contract Code require contractors that bid on City construction contracts to obtain such surety bonds. Obtaining surety bonds is a barrier to City contracting opportunities that typically disproportionately affects small, minority-owned, and woman-owned local contractors.

On July 14, 1997, the Board of Supervisors approved an ordinance expanding the Surety Bond Program to provide financial assistance to LBEs in addition to bonding assistance, thus renaming the program the Bonding and Financial Assistance Program, and expanding the program to include all City departments authorized to contract for public works (File 97-97-25). The Surety Bond Program has since been extended three times, as shown in Table 1 below. Most recently, on June 10, 2008, the Board of Supervisors extended the Surety Bond Program to June 30, 2013 (File 08-0591). Without approval of the proposed ordinance, the Surety Bond Program would end on June 30, 2013.

**Table 1: Ordinances Establishing and Extending the Surety Bond Program**

| Date      | File No.            | Sunset Date   |
|-----------|---------------------|---------------|
| Apr. 1994 | 183-94 <sup>2</sup> | N/a           |
| July 1997 | 97-97-25            | June 30, 2000 |
| July 2000 | 00-1105             | None          |
| Oct. 2000 | 00-1353             | June 30, 2005 |
| May 2003  | 03-0347             | June 30, 2008 |
| June 2008 | 08-0591             | June 30, 2013 |

The Surety Bond Program encourages surety bond companies to issue surety bonds to certified LBEs by guaranteeing up to 40 percent of the surety bond amount, up to a maximum guarantee

<sup>1</sup> These surety bonds include (a) Bid Bonds that indemnify the City in case the bidding contractor does not bid in good faith or does not enter into a City awarded contract (a bid bond would cover the City's costs of reissuing a Request for Bids), (b) Performance Bonds that indemnify the City in case a contractor does not execute a contract in accordance with the terms of the contract (a performance bond would cover the full contract amount), and (c) Payment Bonds that indemnify the subcontractors, laborers and material suppliers associated with the project in case the contractor does not pay its subcontractors, laborers and material suppliers.

<sup>2</sup> The file number is unknown. 183-94 is the ordinance number.

of \$750,000 per bond. In the event the surety bond company must pay out the surety bond, the City reimburses the surety bond company up to 40 percent (up to a maximum guarantee of \$750,000) of the surety bond amount, thus partially mitigating the surety bond company's losses.

On November 18, 2008, the Board of Supervisors established the San Francisco Self-Insurance Surety Bond Fund in the amount of \$2,000,000. Each City department with public works contracting authority contributed to the Fund in proportion to its total capital and improvement appropriations. The Self-Insurance Surety Bond Fund allows for up to \$5,000,000 in surety bond guarantees<sup>3</sup> at any time through an agreement with Union Bank, which issues a Letter of Credit to back each surety bond that the City guarantees under the Program. In the event that the surety bond company is required to pay the surety bond to the City, Union Bank would pay the surety bond company the City's guarantee, the City would repay Union Bank the same amount from the Self-Insurance Surety Bond Fund, and the City department that awarded the contract to the defaulting LBE would be responsible for replenishing the Self-Insurance Surety Bond Fund in the amount disbursed from the Fund.

#### Ongoing Program Costs and Funding Sources

The operations of the Surety Bond Program are funded by each City department with public works contracting authority, through work orders to the City Administrator's office proportional to each department's total capital and improvements appropriations. Table 3 below shows the percentages of the total Surety Bond Program costs each department is currently required to pay, and the amount of each department's work order to the City Administrator's Office for fiscal year (FY) 2012-13.

**Table 3: Surety Bond Program FY 2012-13 Funding**

| Department   | Portion | FY 12-13<br>Work Order |
|--|---------|------------------------|
| Airport  | 15%     | \$110,387.48           |
| Port Commission  | 7%      | 47,893.35              |
| SF Municipal Transit Agency (MTA)                                      | 15%     | 110,387.48             |
| Public Utilities Commission (PUC)                                      | 37%     | 275,970.64             |
| Recreation and Parks (RPD)   | 7%      | 55,193.09              |
| Department of Public Works (DPW)                                       | 15%     | 110,388.77             |
| Administrative Services  | 4%      | 27,597.19              |
| <b>Total Costs to the City for Obtaining<br/>Surety Bonds for LBEs</b> |         | <b>\$737,818.00</b>    |

Sources: City Administrator

Table 4 below shows the total annual expenditures of the Surety Bond Program for FY 2008-09 (when the Surety Bond Program was last extended) through FY 2012-13 for each of the Program's three major cost components: (1) City salary and fringe benefit costs, (2) administrative consultant fees, and (3) program-related fees including Letter of Credit issuance fees, Certified Public Accountant fees, and Third Party Funds Administrator fees. The decrease in salary and fringe benefits between FY 2009-10 and FY 2011-12 is due to a decrease from 4 full-time equivalent (FTE) positions in FY 2009-10, to three FTEs in FY 2010-11, to one FTE in FY 2011-12.

<sup>3</sup> The \$2,000,000 Fund can reimburse up to \$5,000,000 (or 40 percent) of surety bond guarantees.

**Table 4: Surety Bond Program Annual Expenditures**

| Year                   | City Salary and Fringe Benefits | Administrative Consultant Fees | Program-related Fees | Total              |
|------------------------|---------------------------------|--------------------------------|----------------------|--------------------|
| FY 08-09               | \$313,248                       | \$260,246                      | \$21,872             | \$595,366          |
| FY 09-10               | 398,687                         | 262,885                        | 46,934               | 708,506            |
| FY 10-11               | 261,342                         | 323,895                        | 59,350               | 644,587            |
| FY 11-12               | 155,702                         | 438,396                        | 83,455               | 677,553            |
| FY 12-13 <sup>4</sup>  | 165,818                         | 420,000                        | 152,000              | 737,818            |
| <b>Five Year Total</b> | <b>\$1,294,797</b>              | <b>\$1,705,422</b>             | <b>\$363,611</b>     | <b>\$3,363,830</b> |

Source: City Administrator, Human Rights Commission, Merriwether & Williams

### Program Results

According to the Surety Bond Program's Administrative Consultant, Merriwether & Williams, retained by the City Administrator's Office, from its inception in 1994 until December 31, 2012, the Surety Bond Program has enabled LBEs to obtain Bid Bonds to cover \$283,488,987 in City contract bids, of which successful LBE low bidders participating in the Program were awarded \$82,408,476 in contracts. According to Mr. Hansen, these LBEs would have been unlikely to obtain surety bonds for these contracts without assistance from the Surety Bond Program.

Since FY 2008-09, the year the Surety Bond Program was last extended and the Self-Insurance Surety Bond Fund was established, the Program has resulted in 89 Bid Bonds covering \$89,894,383 in City contract bids, and 27 Performance Bonds covering \$29,797,011 in awarded contracts.

## **DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would (1) amend Section 14B.16 of the Administrative Code to rescind the sunset provision of the Surety Bond Program, which is scheduled to sunset on June 30, 2013, (2) amend Administrative Code Section 14B.16 to reflect the transfer of the Surety Bond Program's administrative functions from the Human Rights Commission to the City Administrator's Office, and (3) delete Section 14B.16(A)(7), which sets forth a reporting and legislative drafting requirement that expired in 2009. If the Board of Supervisors does not approve the proposed ordinance, the Surety Bond Program would end on June 30, 2013. Approval of the proposed ordinance would rescind the sunset provision, thus making the Surety Bond Program a permanent program.

According to Mr. Hansen, the Surety Bond Program, which was originally implemented in 1994, is no longer temporary in nature and should not be subject to a sunset date that requires subsequent extension by ordinance of the Board of Supervisors. Mr. Hansen advises that extending rather than rescinding the sunset provision would add additional unnecessary costs to the Surety Bond Program in the future. According to Mr. Hansen, the terms of the Letters of Credit, which Union Bank issues to back the City's surety bond guarantees, cannot exceed the Program's sunset date. As a result, as the sunset date approaches, the City pays approximately the same Letter of Credit issuance fee rates for progressively shorter terms, and new Letters of

<sup>4</sup> FY12-13 expenditures are budgeted rather than actual.  
SAN FRANCISCO BOARD OF SUPERVISORS

Credit for ongoing surety bond guarantees have to be reissued after the sunset date is extended. In addition, the terms of the surety bond guarantees also cannot exceed the sunset date, which can make it more difficult for participating LBEs to obtain the surety bonds and requires the issuance of new surety bonds once the program is extended.

## FISCAL IMPACT

Under current Administrative Code provisions, the Surety Bond Program will sunset on June 30, 2013, and the City would no longer incur any costs from administering the Surety Bond Program. If the proposed ordinance is approved, the June 30, 2013 sunset date would be rescinded and the Surety Bond Program would become permanent.

As discussed above, the Surety Bond Program has three major cost components: (1) City salary and fringe benefit costs, (2) administrative consultant fees, and (3) program-related fees including Letter of Credit issuance fees, Certified Public Accountant fees, and Third Party Funds Administrator fees. Table 5 below shows the City Administrator's projected FY 2013-14 budget, which approximates the ongoing cost to the City if the Board of Supervisors approves the proposed ordinance rescinding the sunset provision, thereby making the Surety Bond Program a permanent program. Such costs would continue to be funded by each City Department with public works contracting authority.

**Table 5: Estimated Annual Costs of Surety Bond Program (FY 2013-14)**

|                                |                  |
|--------------------------------|------------------|
| Salary and Fringe Benefits     | \$165,818        |
| Administrative Consultant Fees | 420,000          |
| Program-related Fees           | 154,182          |
| <b>Total</b>                   | <b>\$740,000</b> |

### Salary and Fringe Benefit Costs

The Surety Bond Program has one position, the Contract Compliance Officer II, which transferred from the Human Rights Commission to the City Administrator's Office in the FY 2012-13 budget. According to Mr. Hansen, the responsibility of the Contract Compliance Officer is to conduct outreach to the LBE community in order to explain and encourage participation in the Surety Bond Program.

### Administrative Consultant Fees

The City Administrator has a contract with Merriwether & Williams for administering the Surety Bond Program, which includes program education and outreach to LBEs, assisting LBE contractors in obtaining performance and payment bonds upon award of the bid, identifying issues that could result in bond payments, coordinating closeout of bond documents when a construction project reaches substantial completion, and assisting the City if an LBE contractor defaults, resulting in surety bond payments.

The contract between the City Administrator and Merriwether & Williams has a three-year term from October 1, 2010 through September 30, 2013 and an annual not-to-exceed amount of \$531,555, or \$1,594,665 over the three-year term. The City Administrator can exercise an option to extend the contract with Merriwether & Williams for up to two years until September 30, 2015, for the same annual not-to-exceed amount of \$531,555.

Actual contract payments by the City to Merriwether & Williams were \$323,895 in FY 2010-11 and \$438,396 in FY 2011-12, and projected payments are \$420,000 in FY 2012-13, totaling \$1,182,291 in the three-year period from FY 2010-11 through FY 2012-13.

#### Program-related Fees

The City Administrator's projected annual cost for Letter of Credit issuance fees, Certified Public Accountant fees, and Third Party Funds Administrator fees, as shown in Table 5 above, is \$154,182.

#### **Offsetting Contract Cost Savings**

As shown in Table 6 below, based on information provided by Meriwether & Williams, the Surety Bond Program also generated \$1,307,226 in City awarded contract savings between FY 2008-09 and FY 2011-12, based on the difference between low bids submitted by participating LBEs and the second lowest bids, thus partially offsetting the \$2,626,012 cost to the City of operating the Surety Bond Program between FY 2008-09 and FY 2011-12.

**Table 6: Annual Contract Savings and Net Cost of the Program**

| Year                  | Annual Savings     | Annual Expenditures  | Net Cost of Program  |
|-----------------------|--------------------|----------------------|----------------------|
| FY 2008-09            | \$112,112          | (\$595,366)          | (\$483,254)          |
| FY 2009-10            | 351,382            | (708,506)            | (357,124)            |
| FY 2010-11            | 613,512            | (644,587)            | (31,075)             |
| FY 2011-12            | 230,220            | (677,553)            | (456,333)            |
| <b>Total</b>          | <b>\$1,307,226</b> | <b>(\$2,626,012)</b> | <b>(\$1,318,786)</b> |
| <b>Annual Average</b> | <b>\$326,807</b>   | <b>(\$656,503)</b>   | <b>(\$329,687)</b>   |

Sources: Merriwether & Williams, City Administrator, Human Rights Commission

As shown in Table 6 above, the average annual contract cost savings to the City between FY 2008-09 and FY 2011-12 was \$326,807. Assuming an annual cost of \$740,000 to the City for operating the Surety Bond Program, as estimated in Table 5 above for FY 2013-14, and continued average savings of \$326,807, the annual net cost to the City of operating the Surety Bond Program would be approximately \$413,193.

## **RECOMMENDATIONS**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



# GENERAL SERVICES AGENCY CITY ADMINISTRATOR

EDWIN M. LEE  
MAYOR

NAOMI M. KELLY  
CITY ADMINISTRATOR

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2012 DEC 11 PM 12:41

## MEMORANDUM

TO: Clerk of the Board of Supervisors

FROM: Bill Barnes - 4-6575  
Project Manager  
Office of the City Administrator

RE: Ordinance: Risk Management & Contract Monitoring Divisions  
Administrative Code—Rescinding Sunset in San Francisco Bonding and Financial Assistance Program

DATE: December 11, 2012

On behalf of the City Administrator, please find an ordinance for introduction. This ordinance eliminates the sunset for the San Francisco Bonding and Financial Assistance Program contained in Chapter 14B of the San Francisco Administrative Code and makes technical amendments to reflect the current operation of the program.

Commercial banking institutions will not contractually commit to extend credit to the City beyond the ordinance sunset date, which is currently June 30, 2013. In addition, the terms of individual letters of credit cannot exceed the sunset date and are by their terms callable by the surety bond issuer 45 days in advance of the sunset date. These limitations result in increased issuance costs and uncertainty about the program. This ordinance will reduce City costs associated with securing credit, and provide long-term stability to the program.

Functions of this program were formerly performed by the Human Rights Commission and transferred to the Risk Management and Contract Monitoring Divisions of the City Administrator in 2011-2012 pursuant to transfers of function authorized by the Mayor.

If you have any questions, please contact me at 415-554-4148.

12/11



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

February 20, 2013

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**File No. 121211 [Administrative Code - Rescinding Sunset in the San Francisco Bonding and Financial Assistance Program]**

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On February 11, 2013 the Small Business Commission voted 7-0 to recommend approval of BOS File No. 121211.

The Commission recognizes the success of the Surety Bond & Finance Program and strongly supports efforts to improve and streamline the program. By removing the Sunset provision, redundancies in issuing multiple bonds for individual projects due to expiration dates will decrease costs of projects for the City and will eliminate unnecessary paperwork and time for the City and small business contractors.

The Commission commends the work being done by the Risk Management Division on the City Administrators office and looks forward to future revisions to the program that will lead to additional efficiencies and savings.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

Cc: Jason Elliott, Mayor's Office  
Naomi Kelly, City Administrator

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6408



BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

December 27, 2012

File No. 121211

Bill Wycko  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

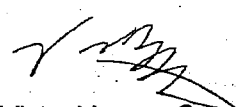
Dear Mr. Wycko:

On December 11, 2012 the City Administrator submitted the following legislation:

**File No. 121211** Administrative Code - Rescinding Sunset in San Francisco  
Bonding and Financial Assistance Program

The legislation is being transmitted to you for environmental review, pursuant to  
Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

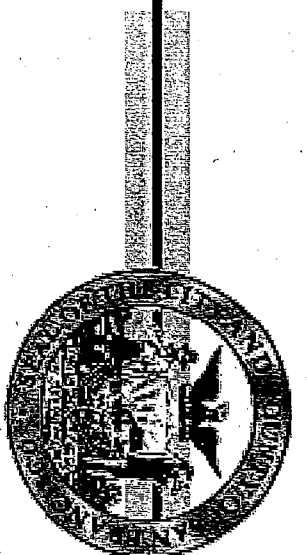
  
By: Victor Young, Committee Clerk  
Budget and Finance Committee

Attachment

c: Monica Pereira, Environmental Planning  
Joy Navarrete, Environmental Planning

*Not a project per CEQA  
Guidelines Section 15060(c)(2)  
Marianne K. Howell  
December 27, 2012*





# City and County of San Francisco Surety Bond & Finance Program

*Presentation To:*

**Budget and Finance Sub-  
Committee**  
March 6, 2013

*Presented by:*

**Matt Hansen, Director**  
Risk Management Division  
City & County of San Francisco

# Discussion Points

---

- Introduction
- History & Goals of the Program
- Overview of the Program structure
- Overview of pending legislation
- Operational affect of the legislation
- Next steps for the Program
- Questions

# History & Goals of the Program

---

- Formally Established in 1997, the Program was designed to help San Francisco construction firms vying for City and County of San Francisco (City) construction-trade contracting opportunities to obtain and/or increase their bonding and financing capacity required to successfully bid on and be awarded City contracts.

# History & Goals of the Program

---

- Program eligibility is based on several factors illustrated in the City's 14B Ordinance. Contractors must be locally domiciled (SF business address) and certified with Local Business Enterprise ("LBE") status by the City Contract Monitoring Division. LBE firms must possess a San Francisco Business License and be in operation continuously from a San Francisco address for a minimum period of six (6) months prior to such certification.

# History & Goals of the Program

---

- City adopted the Self-Insurance Surety Bond Fund Ordinance of 2008 (Ordinance 315-08), whereby the Program maintains a Self-Insurance pool of \$2 Million to eliminate a funding barrier to some projects participation in the program. A Standby Letter of Credit Facility agreement with Union Bank N.A was also increased to \$5 Million to provide more program capacity.

# Overview of the Program Structure

---

- The Program assists LBE contractors to be better prepared for bonding. The Program offers:
  - 1. Contractor Assessments (pre-qualification consulting);
  - 2. Assistance and coordination with Surety Brokers in procuring Bid, Performance and Payment Bonds;
  - 3. Bond Guarantees (collateral): Maximum 40% or \$750,000;
  - 4. Loan Guarantees: Maximum 50% or \$750,000;
  - 5. Referrals to qualified resources: Brokers; Bankers; Certified Public Accountants and Funds Control Agents;
  - 6. Referrals to assist in the development of financial reporting;
  - 7. Assistance with CPA prepared financial statements (i.e. one-time subsidy of \$3,200);
  - 8. The Program monitors all projects with guarantees in place from the inception of the bid phase to completion and close out. Upon close-out, the guarantee/collateral funds are then returned back to the collateral pool.



# Overview of Pending Legislation

---

- Provides technical clean up to 14B as a result of the Program's transfer of function to Risk Management.
- Removes the sunset date for the program

# Operational affect of the legislation

---

- Board of Supervisors retain annual review of the Program through the budget and appropriation process.

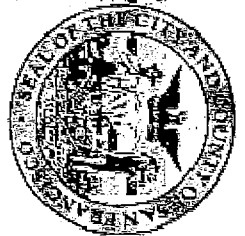
- Program will realize administrative and operational savings by reducing cost, paperwork, and time performing duplicative letter of credit transactions.

# Next steps for the Program

---

- Continue to review options to the LOC arrangement.
- Continue to review processes for efficiency and effectiveness.
- Review and recommend options to increase the types of contracts that may utilize the Program to broaden its reach to other San Francisco small businesses.

# Questions?





I appreciate the opportunity to speak here. I have prepared a written statement to read. My name is Lina Tan, a San Francisco resident, and Vice President of Pilot Construction Management Inc.; A small, woman-owned, construction company. And Supervisor Avalos represents my District, and thank you all for your great work.

5 years ago when the economy started to slow down all bonding companies dropped all small contractors like me claiming that we are too high of a Risk. As you all know, in order for a contractor to bid on government construction projects, we need to have Bonds, and when the bonding companies deny us of bonding, there is only one option left for us, and that is to close our doors and go out of business.

I have known Merriwether and Williams for 4 years and they have worked with us and other small contractors like us to provide business coaching and sustainability. Their services include providing bonding guarantee so that bonding companies and underwriters issue bonds to us. Also bringing in Bankers and CPAs to conduct seminars for us so we can become more business savvy. They also brought in representatives from City Organizations such as Office of

**PILOT CONSTRUCTION MANAGEMENT INC.**

47 LEE AVE., SAN FRANCISCO, CA 94112, TEL: 415-310-8235, FAX: 415-337-8095

EMAIL: PILOTCMINC@GMAIL.COM, LICENSE #935825

March 6, 2013

Labor Standards and Enforcement, and Human Rights Commission to talk to us about the City's regulations and requirements.

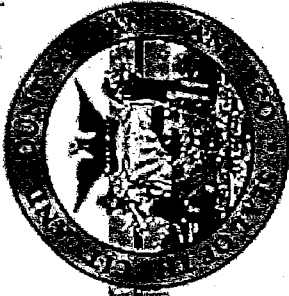
We need Merriwether and Williams to help us grow. Without them my company and many other small contractors would have been closed like many other businesses throughout the United States that closed during the economic downturn.

Because of Merriwether and Williams not only did we not close our business, we expanded and grew from no employee to five employees, who are all local hire, San Francisco residents. We are also working with City Build Program for new hires.

Merriwether and Williams helped us and many others like us by providing the services that are only unique to this great City. We need Merriwether and Williams to stay on board so that other new small construction companies can benefit from their experience and knowledge. I respectfully request this Board to extend the current contract with Merriwether and Williams for another 3 years.

Thank you

79



File No. 121211

3/12/13. Distributed in Board

# City and County of San Francisco Surety Bond & Finance Program

*Presented by:*

**Matt Hansen, Director**  
Risk Management Division  
City & County of San Francisco

*Presentation To:*

**Board of Supervisors**  
**March 12, 2013**

# Discussion Points

11/21/01 11:11 AM  
11/21/01 11:11 AM

- Introduction
- History & Goals of the Program
- Overview of the Program structure
- Overview of pending legislation
- Operational affect of the legislation
- Next steps for the Program
- Questions



# History & Goals of the Program

---

- Formally Established in 1997, the Program was designed to help San Francisco construction firms vying for City and County of San Francisco (City) construction-trade contracting opportunities to obtain and/or increase their bonding and financing capacity required to successfully bid on and be awarded City contracts.

# History & Goals of the Program

---

- Program eligibility is based on several factors illustrated in the City's 14B Ordinance. Contractors must be locally domiciled (SF business address) and certified with Local Business Enterprise ("LBE") status by the City Contract Monitoring Division. LBE firms must possess a San Francisco Business License and be in operation continuously from a San Francisco address for a minimum period of six (6) months prior to such certification.

# History & Goals of the Program

---

- City adopted the Self-Insurance Surety Bond Fund Ordinance of 2008 (Ordinance 315-08), whereby the Program maintains a Self-Insurance pool of \$2 Million to eliminate a funding barrier to some projects participation in the program. A Standby Letter of Credit Facility agreement with Union Bank N.A was also increased to \$5 Million to provide more program capacity.

# Overview of the Program Structure

- The Program assists LBE contractors to be better prepared for bonding. The Program offers:
  - 1. Contractor Assessments (pre-qualification consulting);
  - 2. Assistance and coordination with Surety Brokers in procuring Bid, Performance and Payment Bonds;
  - 3. Bond Guarantees (collateral): Maximum 40% or \$750,000;
  - 4. Loan Guarantees: Maximum 50% or \$750,000;
  - 5. Referrals to qualified resources: Brokers; Bankers; Certified Public Accountants and Funds Control Agents;
  - 6. Referrals to assist in the development of financial reporting;
  - 7. Assistance with CPA prepared financial statements (i.e. one-time subsidy of \$3,200);
  - 8. The Program monitors all projects with guarantees in place from the inception of the bid phase to completion and close out. Upon close-out, the guarantee/collateral funds are then returned back to the collateral pool.

# Overview of Pending Legislation

---

- Provides technical clean up to 14B as a result of the Program's transfer of function to Risk Management.
- Removes the sunset date for the program

# Operational affect of the legislation

---

- Board of Supervisors retain annual review of the Program through the budget and appropriation process.
- Program will realize administrative and operational savings by reducing cost, paperwork, and time performing duplicative letter of credit transactions.

# Next steps for the Program

---

- Continue to review options to the LOC arrangement.
- Continue to review processes for efficiency and effectiveness.
- Review and recommend options to increase the types of contracts that may utilize the Program to broaden its reach to other San Francisco small businesses.

Questions?

