

File No. 101006

Committee Item No. _____

Board Item No. 34³

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 6, 2010

Board of Supervisors Meeting Date December 14, 2010

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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Completed by: Alisa Somera Date December 3, 2010

Completed by: Alisa Somera Date December 9, 2010

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



1 [Administrative Code - Revisions to Local Business Enterprise Ordinance

2
3 Ordinance amending Administrative Code Chapter 14B to increase set a separate
4 minimum competitive amount applicable to for general services contracts to \$400,000;
5 to clarify ownership requirements for certification of local businesses with no single
6 majority owner and make other clarifications to address certification of businesses
7 under common ownership or with multiple locations; to limit the SBA-LBE program to
8 construction and construction-related contracting; to clarify requirements for setting
9 aside contracts under the mandatory Micro-LBE Set-Aside program; to revise
10 subcontracting goals for professional services contracts to apply to contracts that
11 exceed the minimum competitive amount; to exclude contracts under the threshold
12 amount or minimum competitive amount from revise good faith efforts outreach and
13 documentation requirements to apply to contracts that exceed the threshold amount or
14 minimum competitive amount; to simplify and coordinate reporting requirements; to re-
15 authorize the Treasurer to negotiate financial instruments in support of the Surety
16 Bond and Financial Assistance Program after these provisions were inadvertently
17 rescinded; and to make technical corrections.

18 NOTE: Additions are *single-underline italics Times New Roman*;
19 deletions are *strike-through italics Times New Roman*.
20 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

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

24 SEC. 14B.2 - DEFINITIONS.
25

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

4 "Back Contracting" shall mean any agreement or other arrangement between a prime
5 contractor and its Subcontractor that requires the prime contractor to perform or to secure the
6 performance of the subcontract in such a fashion and/or under such terms and conditions that
7 the prime contractor enjoys the financial benefits of the subcontract. Such agreements or
8 other arrangements include, but are not limited to, situations in which either a prime contractor
9 or Subcontractor agrees that any term, condition, or obligation imposed upon the
10 Subcontractor by the subcontract shall be performed by or be the responsibility of the prime
11 contractor.

12 "Bid" means a quotation, proposal, solicitation, or offer by a Bidder or Contractor to
13 perform or provide labor, materials, equipment, supplies, or services to the City for a price.

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

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

16 "Commercially Useful Function" shall mean that the business is directly responsible
17 for providing the materials, equipment, supplies or services to the City as required by the
18 solicitation or request for quotes, bids or proposals. Businesses that engage in the business of
19 providing brokerage, referral or temporary employment services shall not be deemed to
20 perform a "commercially useful function" unless the brokerage, referral or temporary
21 employment services are those required and sought by the City. When the City requires and
22 seeks specialty products made to order for the City or otherwise seeks products which, by
23 industry practice, are not regularly stocked in warehouse inventory but instead are purchased
24 directly from the manufacturer, no more than five percent of the cost of the product shall be
25 credited towards LBE participation goals. When the City requires and seeks products which

1 are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by
2 the listed supplier or distributor, no more than sixty percent of the cost of the product shall be
3 credited towards LBE participation goals. If the listed supplier or distributor does not regularly
4 stock the required product, no more than five percent of the cost of the product shall be
5 credited towards LBE participation goals.

6 "Commission" means the Human Rights Commission.

7 "Commodity Ccontract" means an agreement to purchase any product, including
8 materials, equipment, and supplies, including associated incidental services.

9 "Contract" means any agreement between the City and a person to provide or procure
10 labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to
11 be paid out of monies deposited in the City Treasury or out of trust monies under the control
12 of or collected by the City. A "Ccontract" includes an agreement between a non-profit or public
13 entity and a Ccontractor for the performance of construction or construction-related services,
14 where the contract is funded by the City. A "Ccontract" does not include: (1) grants, whether
15 funded by the City or by Federal or State grant funds, to a nonprofit entity to provide services
16 to the community; (2) sales of the City's personal or real property; (3) loan transactions,
17 whether the City is a debtor or creditor; (4) lease, franchise, or concession agreements; (5)
18 agreements to use City real property; (6) gifts of materials, equipment, supplies or services to
19 the City; or (7) agreements with a public agency except for contracts or other agreements
20 between the City and persons or entities, public or private, in which such persons or entities
21 receive money from or through the City for the purpose of contracting with businesses to
22 perform public improvements. Without limitation of the foregoing, "Ccontract" includes any
23 agreement between the City and a person to provide or procure labor, materials, equipment,
24 supplies, or services to, for, or on behalf of the City for PUC Regional Projects.

1 "Contract ~~A~~awarding ~~A~~authority" means any City officer, department, commission,
2 employee, or board authorized to enter into ~~C~~ontracts on behalf of the City. A non-profit or
3 public entity that receives funds from the City to pay for construction or construction related
4 services is a "~~C~~ontract ~~A~~awarding ~~A~~authority" for the purposes of contracting for the
5 performance of those services.

6 "Contractor" means any person who enters into a ~~C~~ontract with the City.

7 "Control" ~~by an individual~~ means ~~an individual~~ a person possesses the legal authority
8 to manage business assets, good will, and the ~~daily~~ day-to-day operations of a business, and
9 actively and continuously exercises such authority.

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

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

13 "Eligible Public Works/Construction Contract " means a Contract with (1) an estimated cost
14 which exceeds \$10,000 but is less than or equal to the Threshold Amount, and (2) a scope of work
15 which, based on HRC Micro-LBE availability data, would attract bids from at least two qualified
16 Micro-LBEs. Eligible Public Works/Construction Contracts include Job Order Contracts set aside for
17 Micro-LBEs under Administrative Code Section 6.62(C).

18 "Eligible Services/Commodities Contract " means a Professional Services, General Services,
19 Architect/Engineering or Commodities Contract with (1) an estimated cost which exceeds \$10,000 but
20 is less than or equal to the Minimum Competitive Amount , and (2) a scope of work which, based on
21 HRC Micro-LBE availability data, would attract bids from at least two qualified Micro-LBEs.

22 "General Manager" means the General Manager of the San Francisco Public Utilities
23 Commission, or his or her designee.
24
25

1 "General ~~S~~services ~~C~~contract" means an agreement for those services that are not
2 professional services. Examples of "general services" include, *but are not limited to*, janitorial,
3 security guard, pest control, and landscaping services.

4 "Joint ~~V~~venture" shall mean an association of two or more professional services or
5 architecture/engineering businesses acting as a ~~C~~contractor and performing or providing
6 services on a ~~P~~professional ~~S~~services or ~~A~~architecture/~~E~~ngineering ~~C~~contract, in which each
7 ~~J~~joint ~~V~~venture partner combines property, capital, efforts, skill, and/or knowledge and each
8 ~~J~~joint ~~V~~venture partner shares in the ~~O~~ownership, ~~C~~ontrol, management responsibilities,
9 risks, and profits of the ~~J~~joint ~~V~~venture in proportion to its claimed level of participation.

10 "License Qualifier" means the ~~R~~esponsible Managing Officer (RMO) or, in the case of a
11 sole proprietorship, the individual who is the qualifying individual listed with the California
12 State License Board (CSLB) for required state license(s). License Qualifier does not include a
13 Responsible Managing Employee (RME), whether or not the RME serves to satisfy CSLB
14 licensing requirements.

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

18 "Minimum ~~C~~ompetitive ~~A~~amount" means *(i) for the procurement of commodities,*
19 *professional services, general services, and architect/engineering services and commodities*
20 *contracts, the "M*minimum ~~C~~ompetitive ~~A~~amount" as defined in Section 6.40(A) of the
21 *Administrative Code, which shall be \$100,000 and (ii) for the procurement of general services, an*
22 *amount equivalent to the "Threshold Amount" as defined in Chapter 6.1(M) of the Administrative Code*
23 *which shall be \$400,000, provided that on January 1, 2015, and every five years thereafter, the*
24 *Controller shall recalculate the applicable Minimum Competitive Amount (and the Threshold Amount*
25 *from which the Minimum Competitive Amount for general services is calculated) to reflect any*

1 proportional increase in the Urban Regional Consumer Price Index from January 1, 2010, rounded to
2 the nearest \$1,000.

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

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

7 "Owns" or "Ownership" ~~of a business by an individual~~ means an individual a person:
8 (a) possesses a record ownership interest, such as partnership interest or stock interest, of at
9 least ~~51-fifty-one~~ percent (51%) of the business or such lesser amount as the HRC determines,
10 under the circumstances of the particular business' overall ownership and control structure, constitutes
11 a significant ability to influence business operations and a strong personal stake in the business's
12 viability; (b) possesses incidents of ownership, including an interest in profit and loss, equal to
13 at least the ~~required~~ record ownership interest; (c) contributes capital to the business equal to
14 at least the ~~required~~ record ownership percentage (unsecured promissory notes or notes
15 secured by the business or business assets are not sufficient to constitute capital
16 contributions); and (d) actively and continuously devotes expertise to the operations of the business
17 contributes expertise relevant to the business's "Commercially Useful Function" of a quality
18 and quantity proportionate to the stated record ownership interest.

19 "Owns" or "Ownership" for purposes of determining whether a business is an MBE means that
20 a minority person possesses all of the above indicia of ownership in an LBE, and that either
21 individually, or in combination with the interests of other owners who are minority persons, the
22 ownership by minority persons constitutes at least fifty-one percent (51%) of the overall business
23 ownership.

24 "Owns" or "Ownership" for purposes of determining whether a business is a WBE means that a
25 woman possesses all of the above indicia of ownership in an LBE, and that either individually, or in

1 combination with the interests of other owners who are women, the ownership by women constitutes at
2 least fifty-one percent (51%) of the overall business ownership.

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

5 "Professional ~~S~~services ~~C~~contract" means an agreement for services that require
6 extended analysis, the exercise of discretion and independent judgment, or the application of
7 an advanced, specialized type of knowledge, expertise, or training customarily acquired either
8 by a prolonged course of study or equivalent experience in the field. Examples of professional
9 service providers include, but are not limited to, licensed professionals such as accountants,
10 and non-licensed professionals such as parking lot management, software developers and
11 financial consultants. For the purpose of this Ordinance, a contract for architectural,
12 engineering, or other professional design, consulting or construction management services for
13 a public work project shall be considered an Architect/Engineering Ccontract and not a
14 Professional ~~S~~services ~~C~~contract.

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

20 "Public Works/Construction Ccontract" means a Ccontract for the erection,
21 construction, renovation, alteration, improvement, demolition, excavation, installation, or repair
22 of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility,
23 or similar public facility that is performed by or for the City, and the cost of which is to be paid
24 wholly or partially out of moneys deposited in the City Treasury or out of trust monies under
25 the control of or collected by the City. For purposes of this Ordinance only, "Public

1 Works/Construction Contract" includes Contracts between a Person, including a non-
2 profit entity or public agency, and a Contractor for construction or construction-related
3 services, where the Contract is funded by the City.

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

11 "Subcontractor" means any person providing goods or services to a Contractor or
12 subcontractor in fulfillment of the Contractor or subcontractor's obligations arising from a
13 Contract with the City.

14 "Threshold Amount" means, for public works/construction projects, the "Threshold
15 Amount" as defined in Chapter 6.1 (M) of the Administrative Code which shall be \$400,000
16 provided that on January 1, 2015, and every five years thereafter, the Controller shall recalculate the
17 Minimum Competitive Threshold Amount to reflect any proportional increase in the Urban
18 Regional Consumer Price Index from January 1, 2010, rounded to the nearest \$1,000.

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

21 Section 2. The San Francisco Administrative Code is hereby amended by amending
22 Section 14B.3 to read as follows:

23 **SEC. 14B.3 LBE CERTIFICATION.**

24 (A) **Criteria for LBE Certification.** Through appropriately promulgated procedures, if
25 any, the Director shall certify as an LBE any business that meets all of the following criteria

1 and also meets the criteria set forth in Section 14.B.3(B), Section 14.B.3(C) or Section
2 14B.3(D):

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

5 (2) The business is continuously in operation.

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

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

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

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

1 To establish a principal place of business in San Francisco, a business must
2 demonstrate that the majority of its principals are based in the San Francisco office. There
3 shall be a rebuttable presumption that a business that, and that it pays San Francisco payroll
4 taxes on at least fifty-one percent (51%) of its total payroll has its principal place of business in
5 San Francisco. The Director may, based upon the circumstances of a particular business'
6 overall business model, ownership and control structure, find a business paying San
7 Francisco payroll taxes on a lower percentage of its payroll in compliance with the "principle
8 place of business" requirement.

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

12 (6) The business possesses a current San Francisco Business Tax Registration
13 Certificate.

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

16 (8) ~~The~~ At least one business owner has valid licenses or other relevant trade or
17 professional certifications, or, where licensing is not required, the business owners individually
18 and collectively have relevant training and experience that are appropriate for the type of
19 business for which the business seeks certification. ~~The License Qualifier must have and~~
20 ~~retain a substantial ownership interest in the business as determined by HRC.~~

21 (9) The business is Owned and Controlled as defined herein by individuals who
22 reside in the United States or its territories.

23 (10) The business has average gross annual receipts in the prior three (3)-fiscal years
24 that satisfy the criteria set forth in Section 14B.3(B), Section 14B.3(C), or Section 14B.3(D).
25

1 (11) The business is not Owned or Controlled as defined herein in part or in whole by
2 a full time City employee.

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

17 (C) **Criteria for Micro--LBE.** The Director shall certify as a "Micro--LBE" any business
18 that meets the requirements ~~of~~ 14B.3(A) and also has average gross annual receipts in the
19 prior three (3) fiscal years that do not exceed the following limits: (1) public works/construction
20 - \$7,000,000; (2) specialty construction contractors - \$3,500,000; (3)
21 goods/materials/equipment and general services - \$3,500,000; (4) professional services and
22 architect/engineering - \$1,250,000; and (5) trucking - \$1,750,000. The City shall determine
23 gross receipts, according to recognized accounting methodologies that the City determines
24 most accurately reflect the actual money that the business received during the relevant
25 period. Any business under common ownership, in whole or in part, with any other business

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

6 (D) **Criteria for SBA_LBE.** The Director shall certify as a "SBA_LBE" any business
7 that: (1) meets the requirements ~~of~~ 14B.3(A) and also has average gross annual receipts in
8 the prior three (3) fiscal years that do not exceed the following limits "Small Business"
9 ~~thresholds based on certain U.S. Small Business Administration benchmarks:~~ (1) public
10 ~~works/construction - \$33.5 million; (2) specialty construction contractors - \$17 million; and (3)~~
11 goods/materials/equipment and general services - \$17 million; (4) professional services and
12 architect/engineering - \$7 million and (5) trucking - \$8.5 million. The City shall determine gross
13 receipts, according to recognized accounting methodologies that the City determines most
14 accurately reflect the actual money that the business received during the relevant period. Any
15 business under common ownership, in whole or in part, with any other business meets the
16 requirements of this subparagraph only if the aggregate gross annual receipts of all of the
17 businesses under common ownership do not exceed these limits. All businesses owned by
18 married spouses or domestic partners are considered under common ownership unless the
19 businesses are in unrelated industries and no community property or other jointly owned
20 assets were used to establish or are used to operate either business.

21 Section 3. The San Francisco Administrative Code is hereby amended by amending
22 Section 14B.7 to read as follows:

23 **SEC. 14B.7 - PRIME CONTRACTS.**

24 (A) **Good Faith Efforts to Obtain LBE Bids on Contracts Subject to this**
25 **Ordinance.** Contract awarding authorities shall use good-faith efforts for all contracts subject

1 to the Discount provisions of this Ordinance to solicit and to obtain bids from the broadest
2 possible range of LBEs and to ensure that neither MBEs nor WBEs nor OBEs are arbitrarily
3 excluded from participation. Good faith efforts shall include the following:-

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

6 (a) As soon as practical before soliciting Bids ~~or proposals~~, Contract Awarding
7 Authorities shall submit large contract proposals to the Director for review. The Director shall
8 determine whether the proposed contract can be divided into smaller contracts so as to
9 enhance the opportunity for participation by LBEs. For purposes of this paragraph, "large
10 project" means any Public Works/Construction Contract estimated to cost more than
11 \$5,000,000, any Professional Services Contract estimated to cost more than \$100,000, and
12 any ~~multiple-year~~ Commodities Contract with a term greater than one year, including any
13 options to renew or extend.

14 (b) If the Director determines, after consulting with the Contract Awarding
15 Authority, that the Contract can be divided into smaller contracts, then the Director and the
16 Contract Awarding Authority shall confer regarding all of the costs and benefits of soliciting
17 the Contract as a single contract or dividing it into smaller contracts, including but not limited
18 to the potential for enhanced opportunities for LBE participation as prime contractors, the
19 potential for LBE participation as Subcontractors, relative costs, administrative issues, and
20 any other matters relevant to the accomplishment of the purpose of the subject Contract or
21 Contracts. If, after exchanging information and conferring regarding these issues, the
22 Contract Awarding Authority and the Director are unable to agree on whether to divide the
23 Contract into smaller contracts or how to divide the Contractor how the contract divided into smaller
24 contracts, or on the size and number of contracts, the Mayor or the Mayor's designee shall resolve
25 the matter.

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

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

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

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

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

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

14 (8) For Professional Services, General Services, Architectural/Engineering and
15 Commodities Contracts, the estimated cost of which exceeds \$10,000 but is less than the
16 Minimum Competitive Amount or for Public Works/Construction Contracts, the
17 estimated cost of which exceeds \$10,000 but is less than the Threshold Amount, Contract
18 Awarding Authorities are not required to undertake the good faith efforts steps set forth in
19 Sections 14B.7(A)(3) when it is impracticable to do so.

20 (B) **Best Efforts on Contracts Not Otherwise Subject to this Ordinance.** In the
21 award of leases, franchises, concessions, and other Contracts not subject to the Discount
22 provisions of this Ordinance, Contract Awarding Authorities shall utilize the good faith
23 efforts steps unless impracticable to do so. At a minimum, Contract Awarding Authorities
24 should notify LBEs that are certified to perform the work contemplated in a Contract and
25 solicit their interest in the Contract.

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

7 (D) **Contracts Subject to Prime Bidding Discounts.** ~~Unless otherwise provided in~~
8 ~~this Ordinance, C~~contract ~~A~~awarding ~~A~~authorities shall apply ~~D~~discounts to all ~~C~~contracts the
9 estimated cost of which exceeds \$10,000 and is less than \$10,000,000, except that the Bid
10 Discount provisions applicable to SBA-LBEs shall apply only to contracts (other than
11 Commodities Contracts) with an estimated cost no less than \$400,000 and no greater than
12 \$20,000,000, and to Commodities Contracts with an estimated cost no less than \$400,000
13 and no greater than \$10,000,000. Discounts shall apply only to bids where the LBE prime or
14 joint venture bidder will perform a commercially useful function on the Contract. LBE prime or
15 joint venture bidders who fail to perform a commercially useful function under the Contract are
16 subject to sanctions as set forth in Section 14B.17(D).

17 (E) **Amount of Discount.** Unless otherwise provided in this Ordinance, ~~C~~contract
18 ~~A~~awarding ~~A~~authorities shall apply a ten percent (10%) Ddiscount to any ~~B~~bid from a Small-
19 LBE or Micro-LBE. Contract awarding authorities shall apply these ~~D~~discounts to each stage
20 of the selection process, including qualifications, proposals and interviews.

21 If after the application of the ~~D~~discounts provided for in this Subsection 14B.7(E) or
22 Subsection 14B.7 (F) to any ~~B~~bid ~~or proposal~~ from a Small or Micro-LBE, the apparent low
23 ~~B~~bidder or highest ranking proposer is not a Small or Micro-LBE, ~~C~~contract ~~A~~awarding
24 ~~A~~authorities shall apply a 2% ~~B~~bid ~~D~~discount to any ~~B~~bid ~~for a Public Works/Construction or~~
25 ~~Architect/Engineering Contract or proposal~~ from an SBA-LBE. Contract awarding authorities

1 shall apply this two percent (2%) discount to Public Works/Construction and
2 Architect/Engineering Contracts at each stage of the selection process, including qualifications,
3 proposals and interviews, except that the two percent (2%) Discount for SBA-LBEs shall not
4 be applied at any stage if it would adversely affect a Small or Micro-LBE. For contracts
5 estimated by the Contract Awarding Authority to cost in excess of \$10,000,000 but less
6 than \$20,000,000, Contract Awarding Authorities shall apply a two percent (2%) Discount
7 to any Bid or proposal for Public Works/Construction, or Architect/Engineering, Professional
8 Services or General Services Contracts from an SBA-LBE, but not Commodities Contracts.

9 (F) **Joint Ventures For Professional Services and Architecture/Engineering.**

10 Unless otherwise provided in this Ordinance, Contract Awarding Authorities shall extend
11 the following Bid/rating Discount to all Bids, proposals and contracts from Small and Micro-
12 LBEs on Professional Services and Architecture/Engineering prime Contracts: (1) five
13 percent (5%) to a Joint Venture with Small and/or Micro-LBE prime contractor participation
14 that equals or exceeds thirty-five 35-percent (35%) but is under forty 40-percent (40%); (2) seven
15 and one-half percent (7.5%) to a Joint Venture with Small and/or Micro-LBE prime contractor
16 participation that equals or exceeds forty 40-percent (40%); (3) ten percent (10%) to a Small
17 and/or Micro-LBE prime contractor or a Joint Venture among Small and/or Micro-LBE prime
18 contractors. Contract Awarding Authorities shall apply the Bid/rating Discount to each
19 stage of the selection process, including qualifications, proposals and interviews.

20 The Contract Awarding Authority shall apply the Joint Venture Bid/ratings
21 Discount only to Professional Services and Architecture/Engineering Contracts and only
22 to a Joint Venture (1) that meets the requirements contained in this Ordinance, and (2) when
23 the LBE is an active partner in the Joint Venture, performs work, manages the job, and takes
24 financial risks in proportion to the required level of participation stated in the bid documents, is
25 responsible for a clearly defined portion of the work to be performed, and shares

1 proportionately in the Ownership, Control, management responsibilities, risks, and profits of
2 the Joint Venture. The portion of the LBE Joint Venture's work shall be set forth in detail
3 separately from the work to be performed by the non-LBE Joint Venture partner. The LBE
4 Joint Venture's portion of the Contract must be assigned a commercially reasonable dollar
5 value.

6 (G) **Affidavit.** Each Bidder, proposer and Contractor shall be required to sign an
7 affidavit declaring under penalty of perjury its intention to comply fully with the provisions of
8 this Ordinance and attesting to the truth and accuracy of all information provided regarding
9 such compliance.

10 (H) **Additional Requirements and Required Contract Terms.** Contract Awarding
11 Authorities shall include in all Contracts with their Contractors, and all Contractors shall
12 include in their Contracts with Subcontractors the following requirements, in addition to other
13 requirements set forth in the Municipal Code. For the purposes of this SubSection,
14 "contractor" includes all Subcontractors.

15 (1) Each Contract shall incorporate this Ordinance by reference, shall require
16 Contractors to comply with its provisions in awarding and administering such contracts, and
17 shall provide that the willful failure of any Bidder or Contractor to comply with the
18 requirements of this Ordinance or rules and regulations implementing this Ordinance shall be
19 deemed a material breach of contract.

20 (2) Contracts shall provide that in the event that the Director finds that any Bidder,
21 Subcontractor or Contractor willfully fails to comply with any of the provisions of this
22 Ordinance, rules and regulations implementing the Ordinance, or contract provisions
23 pertaining to LBE, MBE, WBE, OBE or Micro-LBE participation, outreach, or non-
24 discrimination, the bidder, subcontractor or contractor shall be liable for liquidated damages
25 for each contract in an amount equal to the Bidder's or Contractor's net profit on the

1 Contract, ~~10-ten~~ percent (10%) of the total amount of the contract or \$1,000, whichever is
2 greatest, as determined by the Director. All contracts shall also contain a provision in which
3 the Bidder, Subcontractor or Contractor acknowledges and agrees that the liquidated
4 damages assessed shall be payable to the City upon demand and may be set off against any
5 monies due to the bidder, subcontractor or contractor from any contract with the City.

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

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

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

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

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

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

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

1 subcontractors. The affidavit shall provide the names and address of all subcontractors and
2 the amount paid to each.

3 (I) Exceptions.

4 (1) ~~The bid discount provisions of this Ordinance for Small and Micro LBEs are not~~
5 ~~applicable to any contract estimated by the Contract Awarding Authority to cost in excess~~
6 ~~of \$10,000,000 and the bid discount provisions of this Ordinance for SBA LBEs are not~~
7 ~~applicable to any contract estimated by the contract awarding authority to cost less than~~
8 ~~\$400,000 or in excess of \$20,000,000.~~

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

14 (J) **Waivers.** The Director shall waive the LBE ~~bid discounts~~, and report the
15 waiver to the Commission, if:

16 (1) The Director finds, with the advice of the ~~Contract Awarding Authority~~ and the
17 Office of Contract Administration, that needed goods or services are available from a sole
18 source that is qualified to do business with the City;

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

24 (3) For ~~Contracts~~ in excess of \$5,000,000, a ~~Contract Awarding Authority~~
25 establishes that sufficient qualified LBEs capable of providing the needed goods and services

1 required by the Contract are not available, or the application of the LBE discount will result in
2 significant additional costs to the City if the waiver of the Bid Discount is not granted.

3 (K) **Micro-LBE Set-Aside Program.**

4 (1) Each fiscal year, ~~the~~ each Contract Awarding developments Authority, in
5 consultation with the Director, shall set aside the following for award to Micro-LBEs:

6 (a) ~~n~~Not less than 50% of eligible ~~the~~ Public Work/Construction Contracts ~~where~~
7 ~~the estimated contract amount is equal to or less than \$400,000; In order to satisfy the requirement to~~
8 ~~set aside not less than 50% of the contracts that fall within this category contract awarding~~
9 ~~departments may count Job Order Contracts, without limitation as to dollar value, that the department~~
10 ~~has set aside for Micro-LBEs under Administrative Code Section 6.62(e). and~~

11 (b) Not less than 25% of Eligible Services/Commodities Contracts (professional services,
12 general services, and architect/ engineering).

13 ~~Other contracts. Each fiscal year, the contract awarding departments in consultation with the~~
14 ~~Director shall set aside for competitive award to Micro-LBEs contracts other than public~~
15 ~~work/construction contracts where the estimated contract amount is equal to or less than \$400,000~~
16 ~~\$100,000. The contract awarding departments shall have a goal of setting aside in each fiscal year~~
17 ~~25% of all contracts that fall within this category, but 120 days from the effective date of this~~
18 ~~Subsection, the 25% goal shall become a requirement.~~

19 (32) The competitive award requirements of the Municipal Code shall otherwise apply to
20 contracts in the Mi set aside program Contracts under the Micro-LBE Set-Aside Program shall be
21 competitively awarded in accordance with the Purchaser's regulations, except that if (a) fewer than
22 two qualified Micro-LBEs submit bids, or (b) the Contract Awarding Authority determines
23 that the Contract would not be awarded at a fair market price, then the Contract Awarding
24 Authority may reject all Bids and ~~remove~~ rebid the contract ~~from~~ outside the set-aside
25 program.

1 (43) Each Contract Awarding Authority shall report its compliance with the Micro-LBE Set-
2 Aside Program to the Board of Supervisors by submitting the following information ninety (90) days
3 after the effective date of this Ordinance quarterly in the year of 2011 and thereafter annually as
4 part of its annual report under Section 14B.15(B): In the year 2010, contract awarding departments
5 must make the following disclosures to the Board of Supervisors each quarter. Thereafter, beginning in
6 2011, contract awarding departments must make the following disclosures to the Board of Supervisors
7 every year when the contract awarding department makes its annual budget submission to the Board of
8 Supervisors. These disclosures shall include: (1)(a) Each Eligible Public Works/Construction Contract
9 and , Professional each Eligible Services, / General Services, Architect/Engineering and
10 Commodities Contract the number of contracts and the amount of each contract awarded under the
11 Micro-LBE sSet-aAside pProgram, and its dollar amount; and (2)(b) Each Eligible Public
12 Works/Construction Contract and each , Professional-Eligible Services/General Services,
13 Architect/Engineering and Commodities Contract all public work/construction contracts equaling
14 \$400,000 or less not awarded under the Micro-LBE Set-Aside Program this program, accompanied
15 by an explanation as to why each such the Ccontract either was not set aside set-aside for award
16 under this program, or, if set aside, whether it was subsequently not awarded under the Micro-LBE
17 Set-Aside Program or awarded under any other procedure.

18 (54) Contracts that are set-aside for award to Micro-LBEs shall not be subject to
19 subcontracting goals under Section 14B.8. Micro-LBEs that subcontract any portion of a set-
20 aside contract should subcontract to businesses certified as Micro-LBEs, to the maximum
21 extent possible. Micro-LBEs that subcontract any portion of a set-aside contract must serve a
22 commercially useful function based on the contract's scope of work, and must perform at least
23 twenty-five percent (25%) of the contract work.

24 (L) **Prompt payment.** The City shall pay LBEs within thirty (30) days of the date on
25 which the City receives an invoice for work performed for and accepted by the City. The

1 Controller shall work with the Director and Contract Awarding Authorities to implement this
2 Citywide prompt-payment policy. The City shall consult with affected community members and
3 relevant City officials, including the Director, the Controller, and Contract Awarding
4 Authorities, to design and implement a prompt payment program within six (6) months of the
5 effective date of this Ordinance. Such program shall include procedures for the payment of
6 late penalties where prompt payment does not occur.

7 ~~(M) Application of Chapter 14B. Within 60 days of the effective date of this Subsection,~~
8 ~~contract awarding departments shall report to the Board of Supervisors on their implementation, and~~
9 ~~recommendations for any amendment, of the requirement in Sections 14B.7(E) and (F) that contract~~
10 ~~awarding authorities shall apply the discounts authorized by those sections "to each stage of the~~
11 ~~selection process, including qualifications, proposals and interviews."~~

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

14 **SEC. 14B.8 - SUBCONTRACTING.**

15 **(A) LBE Participation Goals.** Prior to soliciting bids ~~or proposals~~, Contract Awarding
16 Authorities shall provide the Director with a proposed job scope for each (1) all Public
17 Works/Construction Contracts that equals or exceeds fifty percent (50%) of the Threshold Amount,
18 and (2) and for all each Architect/Engineering, Professional Service ~~and and~~ General
19 Services Contracts that equal or exceed fifty percent (50%) of the Minimum Competitive
20 Amount, ~~and (3) all Professional Service Contracts that exceed the Minimum Competitive~~
21 ~~Amount or threshold amount.~~ The Contract Awarding Authority may ask the Director to
22 waive subcontracting goals where it anticipates that there are no subcontracting opportunities
23 or there are not sufficient LBEs available to perform the subcontracting work available on the
24 Contract.

1 The Director shall set LBE subcontracting participation goals for each such Ccontract,
2 where appropriate, based on the following factors:

3 (1) The extent of subcontracting opportunities presented by the Ccontract; and

4 (2) The availability of Small and Micro-LBE Ssubcontractors ~~capable of certified to~~
5 ~~providing~~ goods and services ~~or required under the scope of the~~ proposed Ccontract.

6 Contractors shall satisfy the LBE subcontracting participation goals by using Small and
7 Micro-LBEs with the following exception: If the Director determines there are not sufficient
8 Small and Micro-LBEs available to perform the subcontracting work on the Ccontract, the
9 Director may set goals based on the availability of all LBEs and permit Ccontractors to satisfy
10 the goals by using Small, Micro or SBA-LBEs, or may set separate goals for Small and Micro-
11 LBEs and for SBA-LBEs.

12 **(B) Satisfaction of Good Faith Efforts Requirements.** At the time of a Bbid or
13 ~~proposal~~, all Bidders bids and proposals must meet the LBE subcontracting participation goals
14 set by the Director, and also must conduct good faith efforts and file evidence of good faith
15 efforts as required in Sections 14B.(D) and (E) respectively, with the following exceptions:

16 (1) If upon submission of a Bbid or proposal, the Bbid or proposal demonstrates total
17 LBE participation that exceeds by thirty-five percent (35%) the established LBE subcontracting
18 participation goal for the Contract of the Bbid or proposal, the contractor Bidder will not be is
19 not required to conduct good faith efforts or to file evidence of good faith efforts as required in
20 Sections 14B.(D) and (E). For the sole purpose of determining whether a Bbid or proposal
21 exceeds by thirty-five percent (35%) the established LBE subcontracting participation goal, and
22 therefore exempts the Ccontractor Bidder from the requirement to conduct and file evidence
23 of good faith efforts, participation by the following LBEs shall be counted: Small and Micro-
24 LBE prime contractors, Small and Micro-LBE Jjoint Vventure partners, and Small and Micro-
25 LBE Ssubcontractors ~~and subconsultants~~. Participation by SBA-LBE firms as Ssubcontractors

1 *and subconsultants* shall be counted if under Subsection 14B(8)(A), the Director permitted use
2 of SBA-LBE firms to satisfy subcontracting goals on the Contract.

3 (2) Bidders on Public Works/Construction Contracts in an amount less than the
4 Threshold Amount or on Architect/Engineering, Professional Services or General Services
5 Contracts in an amount less than the Minimum Competitive Amount are not required to
6 conduct good faith efforts or to file evidence of good faith efforts as required in Sections
7 14B.8(D) and (E) to select Subcontractors to meet LBE goals.

8 (C) *Bids or proposals* that do not meet the LBE participation goal set under 14B.8(A) will
9 be rejected as non-responsive unless the Director finds that the Bidder diligently undertook
10 all the good faith efforts required by this Ordinance and that the failure to meet the goal
11 resulted from an excusable error. The Contract Aawarding Aauthority shall require Bidders
12 *or proposers on the contracts* to contact a LBE before listing that LBE as a Subcontractor in the
13 *Bbid or proposal*. A *Bbid or proposal* that fails to comply with this requirement will be rejected as
14 non-responsive. In addition only LBE's LBEs that have been contacted and agreed to be listed
15 as Subcontractors shall be credited toward meeting the LBE participation goal.

16 **(D) Good Faith Outreach.** In addition to meeting the LBE participation goal, bidders
17 on (1) Public Works/Construction Contracts that equal or exceed the Threshold Amount; and (2)
18 Architect/Engineering, Professional Services or General Services Contracts that equal or exceed the
19 Minimum Competitive Amount shall undertake good faith outreach as set forth in this Section
20 14B.8 (D) to select Subcontractors to meet LBE goals, *except that bidders on public*
21 *works/construction contracts for less than the threshold amount and on professional services, general*
22 *services, and architect/engineering for less than the minimum competitive amount are not required to*
23 *undertake the good faith efforts steps set forth in Sections 14B.8 (D)(3) when it is impracticable to do*
24 *so. Except where a Contract does not include a subcontracting goal or a Bid is exempt from good faith*
25 *outreach under Section 14B.8(B), Bids Bids or proposals* from Bidders who fail to *undertake the*

1 ~~adequate conduct and/or to document~~ good faith outreach steps as required by this Chapter
2 Ordinance and duly promulgated HRC Rules and Regulations and/or who fail to submit the applicable
3 documentation of such good faith outreach in Section 14B.8(E) shall be declared nonresponsive. ;
4 ~~unless they meet the exception in Section 14B.8(B).~~

5 The Human Rights Commission shall by Rule and Regulation assign a numeric value
6 to each of the good faith outreach steps listed below. Adequate good faith outreach shall be a
7 minimum of 80 points with a total of 100 points possible.

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

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

12 (3) Advertising for LBE Subcontractors by posting the opportunity in an accessible
13 location, specified by the City, not less than ten (10) calendar days before the date the Bbids
14 can first be submitted. The advertisement must include information where Bidders may
15 obtain adequate information about the plans, specifications, and requirements for the work.
16 This paragraph applies only if the City gave public notice of the project not less than fifteen
17 (15) calendar days prior to the date the Bbids can first be submitted;

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

21 (5) Performing follow-up contact on the initial solicitation with interested
22 Subcontractors ~~or subconsultants~~ and negotiating in good faith with LBEs, as set forth in the
23 14B Rules and Regulations, and not unjustifiably rejecting their Bbids ~~or proposals~~.

1 (6) Advising and assisting interested LBEs that are bidding on and performing City
2 Public Work and Construction Contracts with the City's bonding and financial assistance
3 programs to obtain bonds, lines of credit, or insurance required by the City or the Bidder.

4 (E) Documentation of Good Faith Outreach. Each Bid that equals or exceeds the
5 Threshold Amount or the Minimum Competitive Amount, as applicable, and proposal shall document
6 good faith outreach and include the documentation with the Bid. Such documentation shall
7 include: (1) the dollar amount of each subcontract and a statement of the scope of work to be
8 performed under the subcontract; (2) the identification of each subcontract awarded to an LBE
9 and, (3) for each subcontract, copies of the Subcontractor Bbids submitted. Such
10 documentation shall contain at least the Bid amount and a description of the scope of work,
11 and separately, for each subcontract, a full and complete statement of the reason(s) for
12 selection of the Subcontractor. If the reason is based on relative qualifications, the statement
13 must address the particular qualifications at issue. If the reason is the Bid's respective dollar
14 amounts, the statement must state the amounts and describe the similarities and/or
15 dissimilarities in the scope of work covered by the Bbids. If no written Bbids were submitted by
16 some or all of the Subcontractors who bid the job, the Bidder shall submit a written
17 statement containing (1) the amount of each oral bid; and (2) separately, for each subcontract,
18 a full and complete statement of the reason(s) for selection of the Subcontractor. Bidders
19 shall maintain the documentation described in this paragraph for three (3) years following
20 submission of the Bid or completion of the Contract, whichever is later.

21 Section 5. The San Francisco Administrative Code is hereby amended by amending
22 Section 14B.15 to read as follows:

23 **SEC. 14B.15 - REPORTING AND REVIEW.**

24 (A) **Reporting by the Director.** Commencing January 1, 2007, and no later than
25 the first day of every third month thereafter, the Director shall issue a written report to this

1 Board. That report shall document each City department's performance under the terms of
2 this Ordinance, including, among other things, each City department's progress in meeting
3 LBE goals and ensuring non-discrimination against MBEs, WBEs, and OBEs, and the
4 success of each department's prime contractors in complying with the LBE subcontracting
5 provisions of this Ordinance and ensuring non-discrimination against MBEs, WBEs, and
6 OBEs. That report shall also state the level of participation of all categories of LBEs and
7 whether or not each City department has fully reported all data required by this Ordinance or
8 requested by HRC or the Controller.

9 (1) Whenever the Director's report concludes that a department management's
10 intentional disregard or negligent performance of obligations imposed by this Ordinance has
11 contributed to that department's failure to meet its prime contracting goals or requirements of
12 this Ordinance, or the failure of its prime contractors to meet their Subcontracting goals or
13 requirements of this Ordinance, or whenever the Director's report concludes that a City
14 department has failed to provide any data required by this Ordinance or requested by the
15 HRC or the Controller, the Clerk of this Board shall schedule before the appropriate
16 Committee of the Board a hearing on that report. The Clerk shall also give notice of that
17 hearing to the heads of the departments identified in the report and request the attendance of
18 the heads of those departments at the committee hearing. The Clerk's notice shall inform the
19 department heads that they must be prepared to respond to the Director's finding of
20 intentional disregard and/or negligent performance and to explain what steps they intend to
21 take to forestall repetition of the problems identified in the Directors' report. The same
22 procedure shall be followed whenever the Director's report identifies any department as
23 having failed to meet its prime or subcontracting goals for three (3) consecutive quarters. If the
24 Director's report indicates that a City department has not meet its goals for three (3)
25

1 consecutive quarters, HRC and the City department shall institute a targeted program to
2 remedy lack of participation by LBEs in any affected industry.

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

6 (B) **Reporting by City Departments.**

7 (1) As part of their annual budget submission to the Board of Supervisors, all
8 Cecontract Aawarding Aauthorities and City departments shall report annually:

9 (a) to the Mayor on their progress in the preceding fiscal year toward the
10 achievement of the LBE goals and their steps to ensure non-discrimination against MBEs,
11 WBEs, and OBEs; and

12 (b) to the Board of Supervisors, on their compliance with the Micro-LBE Set Aside
13 Program in accordance with Section 14B.7(K)(4).

14 (2) All Cecontract Aawarding Aauthorities and City departments shall cooperate
15 with requests by the Human Rights Commission for information needed by the Human Rights
16 Commission to make the reports to the Board of Supervisors required by Chapter 14B.15(A).

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

24 Each year, after receiving the Commission's annual report, the Board shall hold a
25 hearing to review the City's performance under this Ordinance, the administration of this

1 Ordinance by the HRC, and the progress of City departments towards the purposes of this
2 Ordinance, and other subjects pertaining to the ordinance.

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

5 Section 6. The San Francisco Administrative Code is hereby amended by amending
6 Section 14B.16 to read as follows:

7 **SEC. 14B.16 – SAN FRANCISCO BONDING AND OTHER ASSISTANCE.**

8 (A) San Francisco Bonding and Financial Assistance Program.

9 (1) Program Description. The City and County of San Francisco, acting through the
10 Commission, intends to provide guarantees to private bonding companies and financial
11 institutions in order to induce those entities to provide required bonding and financing to
12 eligible contractors and subcontractors bidding on and performing City public work and
13 works/construction contracts. This bonding and financial assistance program is subject to the
14 provisions of this Section 14B.16(A).

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

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

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

20 (b) The business must be certified by the Director as an LBE according to the
21 requirements of Section 14B.3, 14B.5, or 14B.6;

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

24 (i) Bond application assistance,

25 (ii) Assistance in developing financial statements,

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

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

3 (v) Development of accurate financial reporting tools.

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

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

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

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

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

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

7 (7) No later than May 1, 2009, the Director in consultation with the City's Risk Manager
8 shall conduct a study of the City's maintenance and facility contracts for the purpose of
9 recommending a process for the annual contribution rate that would enable the City to include
10 such contracts in the City's Bonding and Financial Assistance Program. No later than June 1,
11 2009, the Director shall transmit to the Board of Supervisors appropriate legislation to include
12 maintenance and facility contracts in the program.

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

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

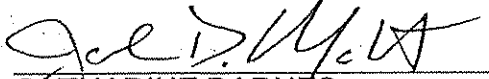
21 (89) Term of Bonding Assistance Program. The Director is authorized to enter into the
22 agreements described in this Subsection for a period ending on the earlier of (1) June 30,
23 2013 or (2) the date on which the Controller is no longer able to certify the availability of funds
24 for any new guarantee agreement.
25

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

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

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

10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: 
13 for CATHARINE BARNES
14 Deputy City Attorney

REVISED LEGISLATIVE DIGEST

(Amendment to the Whole dated December 6, 2010,
as further amended at the Land Use Committee)

[Administrative Code - Revisions to Local Business Enterprise Ordinance]

Ordinance amending Administrative Code Chapter 14B to increase set a separate minimum competitive amount applicable to for general services contracts to \$400,000; to clarify ownership requirements for certification of local businesses with no single majority owner and make other clarifications to address certification of businesses under common ownership or with multiple locations; to limit the SBA-LBE program to construction and construction-related contracting; to clarify requirements for setting aside contracts under the mandatory Micro-LBE Set-Aside program; to revise subcontracting goals for professional services contracts to apply to contracts that exceed the minimum competitive amount; to exclude contracts under the threshold amount or minimum competitive amount from revise good faith efforts outreach and documentation requirements to apply to contracts that exceed the threshold amount or minimum competitive amount; to simplify and coordinate reporting requirements; to re-authorize the Treasurer to negotiate financial instruments in support of the Surety Bond and Financial Assistance Program after these provisions were inadvertently rescinded; and to make technical corrections.

Existing Law

Existing law sets the same minimum competitive amount of \$100,000 for professional services, architect/engineering, general services and commodities contracts.

Existing law requires business to have a single 51% owner to be certified as an LBE. This is an anomaly from prior law which limited certification to businesses that had at least 51% ownership by one or more minority or women owners.

Existing law requires each departments to set aside 25% to 50% of its total contracts under the threshold amount or minimum competitive amount for competition among Micro-LBEs without regard to the overall availability of eligible Micro-LBEs for scope of work contracts to be awarded.

Existing law required departments to make a report 60 days after the effective date of Ordinance 20-10, quarterly during 2010, and annually reports thereafter, concerning their compliance with the set-aside (and other Chapter 14B) requirements.

Existing law requires all bidders to undertake and document good faith outreach for all contracts with subcontracting goals that exceed 50% of the threshold amount or minimum competitive amount, as applicable.

Existing law inadvertently omitted provisions from prior law that authorized the Treasurer to contract for financial products required by the San Francisco Surety Bond and Financial Assistance Program.

Amendments to Current Law

This Ordinance amends the definition of "minimum competitive amount" for general services only by increasing it to \$400,000, which is the same as the "threshold amount" for public works/construction contracts in Administrative Code Chapter 6.1(M).

This Ordinance amends and clarifies the terms "owns" and "ownership" to correct an unintended exclusion of locally owned and controlled businesses with ownership structures that did not include at least one 51% owner from the LBE program. This Ordinance also makes other technical corrections to clarify existing requirements for business certification.

This Ordinance amends Chapter 14B.2 (Definitions, "Eligible Public Works/Construction Contract" and eligible Services/Commodities Contract) and 14B.3(K) (Micro-LBE Set-Aside Program) to clarify that the total number of contracts that a department must set aside for competition among Micro-LBEs is based on the total number of department contracts that both are valued between \$10,000 and the minimum competitive amount (or for construction/public works contracts, the threshold amount) AND that have anticipated Micro-LBE availability as determined by HRC based on HRC's statistics.

This Ordinance revises departmental reports to the Board of Supervisors in Sections 14B.7(K)(3) and 14B.15(B)(1)(b) to be quarterly in 2011 to enable departments to develop useful data. This Ordinance thereafter requires such reports as part of preexisting annual reporting requirements. This Ordinance also removes the expired reporting requirement in Section 14B.7(M).

This Ordinance revises the SBA-LBE program by capping the size of Commodities Contracts to which the bid discount applies at \$10,000,000 (14B.7(D)). This Ordinance does not otherwise change existing law, which caps SBA-LBE discounts for all other contracts at \$20,000,000. This Ordinance removes the duplicative provisions in Section 14B.7(I)(1).

This Ordinance requires bidders on contracts with subcontracting goals to undertake and document good faith outreach ONLY for contracts that equal or exceed the threshold amount or the minimum competitive amount (as applicable).

This Ordinance reinstates provisions inadvertently removed by Ordinance 314-08 (amending Section 14B.16 to add a Self-Insurance Surety Bond Fund to the San Francisco Bonding and Financial Assistance Program) that authorized the Treasurer to contract for financial products required by the San Francisco Surety Bond and Financial Assistance Program.

This Ordinance makes a technical correction removing the phrase "or proposal" to conform the term "bid" to its definition, standardizes the capitalization of defined terms and makes other similar minor conforming revisions.

Background Information

This Ordinance increases the size of General Services Contracts (janitorial, security guard, landscaping, e.g.) eligible for set-aside from \$100,000 to \$400,000 to allow Micro-LBEs a meaningful opportunity to compete for this city work. Because General Services Contracts are so labor intensive, the cost for the scope of services of even small City contracts for general services generally exceeds the minimum competitive amount (\$100,000) applicable to Commodities, Professional Services, and Architect/Engineering Services Contracts.

This Ordinance corrects an error created when Ordinance 314-08 inadvertently removed the Treasurer's authority to enter into agreements required to implement the City's Bonding and Financial Assistance Program. Prior to its removal, the Treasurer has had this necessary authority since the City established the Bonding and Financial Assistance Program.

Summary Comparison to Ordinance Introduced July 27, 2010 (File # 101006)

The Ordinance introduced July 27, 2010 (File # 101006) ("Original Ordinance") included provisions limiting the SBA-LBE program to public works/construction, specialty construction and architect/engineering contracts which are omitted in this Amendment of the Whole dated December 6, 2010 ("Amended Ordinance"). Therefore, under the Amended Ordinance, the SBA-LBE program applies to all types of City contracts. However the Amended Ordinance caps the size of Commodities Contracts for which SBA-LBE discounts are applicable to \$10,000,000 whereas all other contracts are capped at \$20,000,000.

The Original Ordinance required subgoals for Professional Services contracts in excess of the Minimum Competitive amount (\$100,000). This Amended Ordinance requires subgoals for Professional Services contracts in excess of 50% of the Minimum Competitive amount (\$50,000).

The Original Ordinance did not re-authorize the Treasurer to contract for financial products required by the San Francisco Surety Bond and Financial Assistance Program.

The Amended Ordinance makes additional, non-substantive technical corrections.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

September 17, 2010

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

Re: File No. 101006 [Revisions to Local Business Enterprise Ordinance]

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On September 13, 2010, the Small Business Commission heard and recommended approval of Board of Supervisors File No. 101006.

The SBC thanks Supervisors Chu and Chiu, the Office of Contract Administration, and the Human Rights Commission for their continued support of local small businesses.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Supervisors Chu, Chiu
Starr Terrell, Mayor's Office
Alisa Somera, Clerk of the Economic and Land Use Committee.

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

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