

File No. 101006

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

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

Board of Supervisors Meeting Date _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Small Business Commission Recommendation Letter</u> |
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Completed by: Alisa Somera Date December 3, 2010

Completed by: _____ Date _____

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

1 [Administrative Code - Revisions to Local Business Enterprise Ordinance]

2
3 **Ordinance amending Administrative Code Chapter 14B to set a separate minimum**
4 **competitive amount applicable to general services contracts; to clarify ownership**
5 **requirements for certification of local businesses with no single majority owner; to limit**
6 **the SBA-LBE program to construction and construction-related contracting; to clarify**
7 **requirements for setting aside contracts under the mandatory Micro-LBE Set-Aside**
8 **program; to revise subcontracting goals for professional services contracts to apply to**
9 **contracts that exceed the minimum competitive amount; to revise good faith efforts**
10 **outreach and documentation requirements to apply to contracts that exceed the**
11 **threshold amount or minimum competitive amount; to simplify reporting requirements;**
12 **and to make technical corrections.**

13 NOTE: Additions are single-underline italics Times New Roman;
14 deletions are ~~strike-through italics Times New Roman~~.
15 Board amendment additions are double-underlined;
16 Board amendment deletions are ~~strikethrough-normal~~.

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

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

19 **SEC. 14B.2 – DEFINITIONS.**

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

23 "Back Contracting" shall mean any agreement or other arrangement between a prime
24 contractor and its Subcontractor that requires the prime contractor to perform or to secure the
25 performance of the subcontract in such a fashion and/or under such terms and conditions that

1 the prime contractor enjoys the financial benefits of the subcontract. Such agreements or
2 other arrangements include, but are not limited to, situations in which either a prime contractor
3 or Subcontractor agrees that any term, condition, or obligation imposed upon the
4 Subcontractor by the subcontract shall be performed by or be the responsibility of the prime
5 contractor.

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

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

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

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

25 "Commission" means the Human Rights Commission.

1 "Commodity Contract" means an agreement to purchase any product, including
2 materials, equipment, and supplies.

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

19 "Contract Awarding Authority" means any City officer, department, commission,
20 employee, or board authorized to enter into Contracts on behalf of the City. A non-profit or
21 public entity that receives funds from the City to pay for construction or construction related
22 services is a "Contract Awarding Authority" for the purposes of contracting for the
23 performance of those services.

24 "Contractor" means any person who enters into a Contract with the City.
25

1 "Control" by an individual means an individual possesses the legal authority to manage
2 business assets, good will, and the daily operations of a business, and actively and
3 continuously exercises such authority.

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

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

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

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

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

18 "General Services Contract" means an agreement for those services that are not
19 professional services. Examples of "general services" include: but are not limited to, janitorial,
20 security guard, pest control, and landscaping services.

21 "Joint Venture" shall mean an association of two or more professional services or
22 architecture/engineering businesses acting as a Contractor and performing or providing
23 services on a Professional Services or Architecture/Engineering Contract, in which each
24 Joint Venture partner combines property, capital, efforts, skill, and/or knowledge and each
25

1 Joint Venture partner shares in the Ownership, Control, management responsibilities,
2 risks, and profits of the Joint Venture in proportion to its claimed level of participation.

3 "License Qualifier" means the Responsible Managing Officer (RMO) or, in the case of a sole
4 proprietorship, the individual who is the qualifying individual listed with the California State License
5 Board (CSLB) for required state license(s). License Qualifier does not include a Responsible
6 Managing Employee (RME), whether or not the RME serves to satisfy CSLB licensing requirements.

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

10 "Minimum Competitive Amount" means (i) for the procurement of commodities,
11 professional services, ~~general services, and~~ architect/engineering ~~services and commodities~~
12 ~~contracts~~, the "Minimum Competitive Amount" as defined in Section 6.40(A) of the
13 Administrative Code, which shall be \$100,000 and (ii) for the procurement of general services, an
14 amount equivalent to the "Threshold Amount" as defined in Chapter 6.1(M) of the Administrative Code
15 which shall be \$400,000, provided that on January 1, 2015, and every five years thereafter, the
16 Controller shall recalculate the applicable Minimum Competitive Amount (and the Threshold Amount
17 from which the Minimum Competitive Amount for general services is calculated) to reflect any
18 proportional increase in the Urban Regional Consumer Price Index from January 1, 2010, rounded to
19 the nearest \$1,000.

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

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

24 "Owns" or "Ownership" of a business by an individual means an individual: (a) possesses
25 a record ownership interest, such as partnership interest or stock interest, of at least ~~51~~ fifty-

1 one percent (51%) of the business or such lesser amount as the HRC determines, under the
2 circumstances of the particular business' overall ownership and control structure, constitutes a
3 significant ability to influence business operations and a strong personal stake in the business's
4 viability; (b) possesses incidents of ownership, including an interest in profit and loss, equal to
5 at least the ~~required~~ record ownership interest; (c) contributes capital to the business equal to
6 at least the ~~required~~ record ownership percentage (unsecured promissory notes or notes
7 secured by the business or business assets are not sufficient to constitute capital
8 contributions); and (d) actively and continuously devotes expertise to the operations of the business
9 ~~contributes expertise~~ relevant to the business's "Ceommercially Uuseful Ffunction" of a quality
10 and quantity proportionate to the ~~stated~~ record ownership interest.

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

16 "Owns" or "Ownership" for purposes of determining whether a business is a WBE means that a
17 woman possesses all of the above indicia of ownership in an LBE, and that either individually, or in
18 combination with the interests of other owners who are women, the ownership by women constitutes at
19 least fifty-one percent (51%) of the overall business ownership.

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

22 "Professional Sservices Ceontract" means an agreement for services that require
23 extended analysis, the exercise of discretion and independent judgment, or the application of
24 an advanced, specialized type of knowledge, expertise, or training customarily acquired either
25 by a prolonged course of study or equivalent experience in the field. Examples of professional

1 service providers include, but are not limited to, licensed professionals such as accountants,
2 and non-licensed professionals such as parking lot management, software developers and
3 financial consultants. For the purpose of this Ordinance, a contract for architectural,
4 engineering, or other professional design, consulting or construction management services for
5 a public work project shall be considered an Architect/Engineering Contract and not a
6 Professional Services Contract.

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

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

21 "PUC Regional Projects" means the projects to be performed outside of the geographic
22 limits of San Francisco that are identified as regional projects and included in the formally
23 approved Capital Improvement Program of the San Francisco Public Utilities Commission's
24 approximately \$4.3 billion project to seismically reinforce and otherwise enhance the Hetch
25 Hetchy water supply system, as it may be amended from time to time, and shall also include

1 Repair and Replacement work ("R&R") only where such work is to be performed in
2 association with a regional Capital Improvement Program project.

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

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

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

13
14 Section 2. The San Francisco Administrative Code is hereby amended by amending
15 Section 14B.3 to read as follows:

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

17 (A) **Criteria for LBE Certification.** Through appropriately promulgated procedures, if
18 any, the Director shall certify as an LBE any business that meets all of the following criteria
19 and also meets the criteria set forth in Section 14.B.3(B), Section 14.B.3(C) or Section
20 14B.3(D):

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

23 (2) The business is continuously in operation.

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

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

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

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

17 To establish a principal place of business in San Francisco, a business must
18 demonstrate that the majority of its principals are based in the San Francisco office, and that it
19 pays San Francisco payroll taxes on at least fifty-one percent (51%) of its total payroll.

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

23 (6) The business possesses a current San Francisco Business Tax Registration
24 Certificate.

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

3 (8) The business ~~owner~~ has valid licenses or other relevant trade or professional
4 certifications, or, where licensing is not required, relevant training and experience that are
5 appropriate for the type of business for which the business seeks certification. The License
6 Qualifier must have and retain a substantial ownership interest in the business as determined by HRC.

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

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

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

13 (B) **Criteria for Small--LBE.** The Director shall certify as a "Small--LBE" any business
14 that meets the requirements of 14B.3(A) and has average gross annual receipts in the prior
15 three (3) fiscal years that do not exceed the following limits: (1) public works/construction -
16 \$14,000,000; (2) specialty construction contractors - \$7,000,000; (3)
17 goods/materials/equipment and general services - \$7,000,000; (4) professional services and
18 architect/engineering - \$2,500,000; and (5) trucking - \$3,500,000. The City shall determine
19 gross receipts, according to recognized accounting methodologies that the City determines
20 most accurately reflect the actual money that the business received during the relevant
21 period. Any business under common ownership, in whole or in part, with any other business
22 meets the requirements of this subparagraph only if the aggregate gross annual receipts of all
23 of the businesses under such common ownership do not exceed these limits. All businesses
24 owned by married spouses or domestic partners are considered under common ownership
25

1 unless the businesses are in unrelated industries and no community property or other jointly
2 owned assets were used to establish or are used to operate either business.

3 (C) **Criteria for Micro--LBE.** The Director shall certify as a "Micro--LBE" any business
4 that meets the requirements ~~of~~ 14B.3(A) and also has average gross annual receipts in the
5 prior three (3) fiscal years that do not exceed the following limits: (1) public works/construction
6 - \$7,000,000; (2) specialty construction contractors - \$3,500,000; (3)
7 goods/materials/equipment and general services - \$3,500,000; (4) professional services and
8 architect/engineering - \$1,250,000; and (5) trucking - \$1,750,000. 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 (D) **Criteria for SBA--LBE.** The Director shall certify as a "SBA--LBE" any business
18 that: (1) meets the requirements ~~of~~ 14B.3(A) and also has average gross annual receipts in
19 the prior three (3) fiscal years that do not exceed the following "Small Business" thresholds
20 based on certain U.S. Small Business Administration benchmarks: (1) public
21 works/construction - \$33.5 million; (2) specialty construction contractors - \$17 million; and (3)
22 ~~goods/materials/equipment and general services - \$17 million; (4) professional services and~~
23 architect/engineering - \$7 million ~~and (5) trucking - \$8.5 million.~~ The City shall determine gross
24 receipts, according to recognized accounting methodologies that the City determines most
25 accurately reflect the actual money that the business received during the relevant period. Any

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

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

10 **SEC. 14B.7 – PRIME CONTRACTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (D) **Contracts Subject to Prime Bidding Discounts.** Unless otherwise provided in
20 this Ordinance, Contract Awarding Authorities shall apply Discounts to all Contracts the
21 estimated cost of which exceeds \$10,000.

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

1 If after the application of the Ddiscounts provided for in this Subsection 14B.7(E) or
2 Subsection 14B.7 (F) to any Bbid ~~or proposal~~ from a Small or Micro-LBE, the apparent low
3 Bbidder or highest ranking proposer is not a Small or Micro-LBE, Contract Awarding
4 Authorities shall apply a 2% Bbid Ddiscount to any Bbid for a Public Works/Construction or
5 Architect/Engineering Contract or proposal from an SBA-LBE. Contract awarding authorities
6 shall apply this two percent (2%) discount to Public Works/Construction and Architect/Engineering
7 Contracts at each stage of the selection process, including qualifications, proposals and
8 interviews, except that the two percent (2%) Ddiscount for SBA-LBEs shall not be applied at
9 any stage if it would adversely affect a Small or Micro-LBE. For contracts estimated by the
10 Contract Awarding Authority to cost in excess of \$10,000,000 but less than \$20,000,000,
11 Contract Awarding Authorities shall apply a two percent (2%) Ddiscount to any Bbid ~~or~~
12 proposal for Public Works/Construction or Architect/Engineering Contracts from an SBA-LBE.

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

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

24 The Contract Awarding Authority shall apply the Joint Venture Bbid/ratings
25 Ddiscount only to Professional Services and Architecture/Engineering Contracts and only

1 to a Joint Venture (1) that meets the requirements contained in this Ordinance, and (2) when
2 the LBE is an active partner in the Joint Venture, performs work, manages the job, ~~and~~ takes
3 financial risks in proportion to the required level of participation stated in the bid documents, is
4 responsible for a clearly defined portion of the work to be performed, and shares
5 proportionately in the Ownership, Control, management responsibilities, risks, and profits of
6 the Joint Venture. The portion of the LBE Joint Venture's work shall be set forth in detail
7 separately from the work to be performed by the non-LBE Joint Venture partner. The LBE
8 Joint Venture's portion of the Contract must be assigned a commercially reasonable dollar
9 value.

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

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

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

24 (2) Contracts shall provide that in the event that the Director finds that any Bidder,
25 Subcontractor or Contractor willfully fails to comply with any of the provisions of this

1 Ordinance, rules and regulations implementing the Ordinance, or contract provisions
2 pertaining to LBE, MBE, WBE, OBE or Micro-LBE participation, outreach, or non-
3 discrimination, the bidder, subcontractor or contractor shall be liable for liquidated damages
4 for each contract in an amount equal to the Bbidder's or Ccontractor's net profit on the
5 Ccontract, ~~10-ten~~ percent (10%) of the total amount of the contract or \$1,000, whichever is
6 greatest, as determined by the Director. All contracts shall also contain a provision in which
7 the Bbidder, Ssubcontractor or Ccontractor acknowledges and agrees that the liquidated
8 damages assessed shall be payable to the City upon demand and may be set off against any
9 monies due to the bidder, subcontractor or contractor from any contract with the City.

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

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

21 (5) Contracts shall require, and shall require prime contractors to include in any
22 subcontract with a LBE a provision requiring, the prime contractor to compensate any LBE
23 Ssubcontractor for damages for breach of contract or liquidated damages equal to 5% of the
24 subcontract amount, whichever is greater, if the prime contractor willfully fails to comply with
25 its commitment to use the LBE subcontractor as specified in the Bbid/proposal unless the

1 Director and the contract awarding authority both give advance approval to the prime
2 contractor to substitute subcontractors or otherwise modify the commitments in the
3 Bbid/proposal documents. This provision shall also state that it is enforceable in a court of
4 competent jurisdiction.

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

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

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

19 (9) Contracts in which subcontracting is used shall require the prime contractor to pay
20 its subcontractors within three working days after receiving payment from the City unless the
21 prime contractor notifies the Director in writing within ten (10) working days prior to receiving
22 payment from the City that there is a bona fide dispute between the prime contractor and the
23 subcontractor, in which case the prime contractor may withhold the disputed amount but shall
24 pay the undisputed amount. The Director may, upon making a determination that a bona fide
25 dispute exists between the prime contractor and subcontractor, waive this three-day payment

1 requirement. In making the determination as to whether a bona fide dispute exists, the
2 Director shall not consider the merits of the dispute. Contracts in which subcontracting is used
3 shall also require the contractor, within 10 working days following receipt of payment from the
4 City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors.
5 The affidavit shall provide the names and address of all subcontractors and the amount paid
6 to each.

7 (I) **Exceptions.**

8 (1) The Bbid Discount provisions of this Ordinance for Small and Micro-LBEs are not
9 applicable to any Contract estimated by the Contract Awarding Authority to cost in excess
10 of \$10,000,000, and the Bbid Discount provisions of this Ordinance for SBA-LBEs are not
11 applicable to any Contract estimated by the Contract Awarding Authority to cost less than
12 \$400,000 and in excess of \$20,000,000.

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

18 (J) **Waivers.** The Director shall waive the LBE Bbid Discounts, and report the waiver
19 to the Commission, if:

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

23 (2) The Contract Awarding Authority certifies in writing to the Director, prior to the
24 Controller's contract certification, that the Contract is being awarded under the emergency
25 provisions of Administrative Code Section 6.60 or Administrative Code Section 21.15 and that

1 there is either (i) no time to apply bid discounts or establish subcontracting goals, or (ii) no
2 immediately available LBEs that are capable of performing the emergency work; or

3 (3) For Contracts in excess of \$5,000,000, a Contract Awarding Authority
4 establishes that sufficient qualified LBEs capable of providing the needed goods and services
5 required by the Contract are not available, or the application of the LBE discount will result in
6 significant additional costs to the City if the waiver of the Bid Discount is not granted.

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

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

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

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

17 ~~Other contracts. Each fiscal year, the contract awarding departments in consultation with the~~
18 ~~Director shall set aside for competitive award to Micro-LBEs contracts other than public~~
19 ~~work/construction contracts where the estimated contract amount is equal to or less than \$400,000~~
20 ~~\$100,000. The contract awarding departments shall have a goal of setting aside in each fiscal year~~
21 ~~25% of all contracts that fall within this category, but 120 days from the effective date of this~~
22 ~~Subsection, the 25% goal shall become a requirement.~~

23 (32) ~~The competitive award requirements of the Municipal Code shall otherwise apply to~~
24 ~~contracts in the Mi set aside program~~ Contracts under the Micro-LBE Set-Aside Program shall be
25 competitively awarded in accordance with the Purchaser's regulations, except that if (a) fewer than

1 two qualified Micro-LBEs submit bids, or (b) the Contract Awarding Authority determines
2 that the Contract would not be awarded at a fair market price, then the Contract Awarding
3 Authority may reject all Bbids and ~~remove~~ rebid the contract ~~from~~ outside the set-aside
4 program.

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

21 (54) Contracts that are set-aside for award to Micro-LBEs shall not be subject to
22 subcontracting goals under Section 14B.8. Micro-LBEs that subcontract any portion of a set-
23 aside contract should subcontract to businesses certified as Micro-LBEs, to the maximum
24 extent possible. Micro-LBEs that subcontract any portion of a set-aside contract must serve a
25

1 commercially useful function based on the contract's scope of work, and must perform at least
2 twenty-five percent (25%) of the contract work.

3 (L) **Prompt payment.** The City shall pay LBEs within thirty (30) days of the date on
4 which the City receives an invoice for work performed for and accepted by the City. The
5 Controller shall work with the Director and Contract Awarding Authorities to implement this
6 Citywide prompt-payment policy. The City shall consult with affected community members and
7 relevant City officials, including the Director, the Controller, and Contract Awarding
8 Authorities, to design and implement a prompt payment program within six (6) months of the
9 effective date of this Ordinance. Such program shall include procedures for the payment of
10 late penalties where prompt payment does not occur.

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

16
17 Section 4. The San Francisco Administrative Code is hereby amended by amending
18 Section 14B.8 to read as follows:

19 **SEC. 14B.8 – SUBCONTRACTING.**

20 (A) **LBE Participation Goals.** Prior to soliciting bids ~~or proposals~~, Contract Awarding
21 Authorities shall provide the Director with a proposed job scope for (1) all Public
22 Work/Construction Contracts that equal or exceed fifty percent (50%) of the Threshold Amount, (2)
23 ~~and for all A~~rchitect/Engineering, ~~professional service and and G~~eneral Services Contracts
24 that equal or exceed fifty percent (50%) of the Minimum Competitive Amount, and (3) all
25 Professional Service Contracts that exceed the Minimum Competitive Amount or threshold amount.

1 The Contract Awarding Authority may ask the Director to waive subcontracting goals where
2 it anticipates that there are no subcontracting opportunities or there are not sufficient LBEs
3 available to perform the subcontracting work available on the Contract.

4 The Director shall set LBE subcontracting participation goals for each such Contract,
5 where appropriate, based on the following factors:

6 (1) The extent of subcontracting opportunities presented by the Contract; and

7 (2) The availability of Small and Micro-LBE Subcontractors *capable of certified to*
8 *providing* goods and services *or required under the scope of the proposed* Contract.

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

15 **(B) Satisfaction of Good Faith Efforts Requirements.** At the time of a Bid *or*
16 *proposal*, all Bidders *bids and proposals* must meet the LBE subcontracting participation goals
17 set by the Director, and also must conduct good faith efforts and file evidence of good faith
18 efforts as required in Sections 14B.(D) and (E) respectively, with the following exception: If
19 upon submission of a Bid *or proposal*, the Bid *or proposal* demonstrates total LBE
20 participation that exceeds by thirty-five percent (35%) the established LBE subcontracting
21 participation goal of the Bid *or proposal*, the Contractor will not be required to conduct good
22 faith efforts or to file evidence of good faith efforts as required in Sections 14B.(D) and (E).
23 For the sole purpose of determining whether a Bid *or proposal* exceeds by thirty-five percent
24 (35%) the established LBE subcontracting participation goal, and therefore exempts the
25 Contractor from the requirement to conduct and file evidence of good faith efforts,

1 participation by the following LBEs shall be counted: Small and Micro- LBE prime contractors,
2 Small and Micro-LBE ~~J~~joint ~~V~~venture partners, and Small and Micro-LBE ~~S~~subcontractors ~~and~~
3 ~~subconsultants~~. Participation by SBA-LBE firms as ~~S~~subcontractors ~~and subconsultants~~ shall be
4 counted if under ~~S~~subsection 14B(8)(A), the Director permitted use of SBA-LBE firms to satisfy
5 subcontracting goals on the ~~C~~contract.

6 (C) Bids ~~or proposals~~ that do not meet the LBE participation goal set under 14B.8(A)
7 will be rejected as non-responsive unless the Director finds that the ~~B~~bidder diligently
8 undertook all the good faith efforts required by this Ordinance and that the failure to meet the
9 goal resulted from an excusable error. The ~~C~~contract ~~A~~awarding ~~A~~authority shall require
10 ~~B~~idders ~~or proposers on the contracts~~ to contact a LBE before listing that LBE as a
11 ~~S~~subcontractor in the ~~B~~bid ~~or proposal~~. A ~~B~~bid ~~or proposal~~ that fails to comply with this
12 requirement will be rejected as non-responsive. In addition only ~~LBE's~~ LBEs that have been
13 contacted and agreed to be listed as ~~S~~subcontractors shall be credited toward meeting the
14 LBE participation goal.

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

1 ~~duly promulgated HRC Rules and Regulations and/or who fail to submit the applicable documentation~~
2 ~~of such good faith outreach in Section 14B.8(E)~~ shall be declared nonresponsive. ~~, unless they meet~~
3 ~~the exception in Section 14B.8(B).~~

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

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

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

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

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

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

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

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

18
19 Section 5. The San Francisco Administrative Code is hereby amended by amending
20 Section 14B.15 to read as follows:

21 **SEC. 14B.15 – REPORTING AND REVIEW.**

22 (A) **Reporting by the Director.** Commencing January 1, 2007, and no later than the
23 first day of every third month thereafter, the Director shall issue a written report to this Board.
24 That report shall document each City department's performance under the terms of this
25 Ordinance, including, among other things, each City department's progress in meeting LBE

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

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

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

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

5 (1) As part of their annual budget submission to the Board of Supervisors, all
6 Contract Awarding Authorities and City departments shall report annually:

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

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

12 (2) All Contract Awarding Authorities and City departments shall cooperate
13 with requests by the Human Rights Commission for information needed by the Human Rights
14 Commission to make the reports to the Board of Supervisors required by Chapter 14B.15(A).

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

22 Each year, after receiving the Commission's annual report, the Board shall hold a
23 hearing to review the City's performance under this Ordinance, the administration of this
24 Ordinance by the HRC, and the progress of City departments towards the purposes of this
25 Ordinance, and other subjects pertaining to the ordinance.

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

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

By: 
CATHARINE S. BARNES
Deputy City Attorney

LEGISLATIVE DIGEST

[Administrative Code - Revisions to Local Business Enterprise Ordinance]

Ordinance amending Administrative Code Chapter 14B to set a separate minimum competitive amount applicable to general services contracts; to clarify ownership requirements for certification of local businesses with no single majority owner; 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 revise good faith efforts outreach and documentation requirements to apply to contracts that exceed the threshold amount or minimum competitive amount; to simplify reporting requirements; and to make technical corrections.

Existing Law

Existing law sets the same minimum competitive amount of \$100,000 for professional services, architect/engineering and general services contracts. Under existing law, general services contracts are generally awarded, like construction contracts, to the bidder with the lowest price, whereas professional services and architect/engineering contracts are awarded to the bidder with the highest qualifications.

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 requires departments to make quarterly reports during 2010, and annual reports thereafter, concerning their compliance with the set-aside requirements.

Existing law allows SBA-LBEs to be certified to provide the same categories of services and goods as LBEs: public works/construction; specialty construction contractors; goods/materials/equipment and general services; professional services and architect/engineering; and trucking.

Existing law requires HRC to set subcontracting goals for professional services contracts valued at \$50,000 or more (50% of the competitive amount).

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.

Amendments to Current Law

This Ordinance amends the minimum competitive amount for general services to equal \$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 clarifies that any required licenses for an LBE must be held by a business owner and not simply a business employee.

This Ordinance amends Chapter 14B.2 (Definitions) 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)(4) and 14B.15(B)(1)(b) to begin 90 days after the Ordinance becomes effective 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 limiting certification and bid discounts and LBE subcontracting participation goals for SBA-LBEs to public/works construction, specialty construction and architect/engineering contractors in Sections 14B.3(D) (Criteria for SBA-LBE) and 14B.7(E) (Amount of Discount).

This Ordinance requires subcontracting goals for construction contracts that equal or exceed 50% of the threshold amount; general services and architect/engineering contracts that equal or exceed 50% of the minimum competitive amount; and professional services contracts that exceed the minimum competitive amount (14B.8(A)).

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 makes a technical correction removing the phrase "or proposal" to conform the term "bid" to its definition and makes other similar minor conforming revisions.

Background Information

This Ordinance makes substantive changes to fine-tune Ord 20-10 and also makes certain 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,

A handwritten signature in cursive script, reading 'Regina Dick-Endrizzi'.

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.