

1 [Notification of Solicitations.]

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3 **Ordinance amending the San Francisco Administrative Code by amending Section 12**
4 **D.A. 9. to require that all contract awarding authorities submit current bids, requests**
5 **for proposals and solicitations to the Purchaser of Supplies of the City and County of**
6 **San Francisco and cause to be posted on a Purchaser's website certain information**
7 **concerning current bids, requests for proposals and solicitations.**

8 Note: Additions are single-underline italics Times New Roman;
9 deletions are ~~strikethrough italics Times New Roman~~.
10 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

12 Section 1. The San Francisco Administrative Code is hereby amended by amending
13 Section 12 D.A. 9., to read as follows:

14 **SEC. 12D.A.9. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.**

15 (A) Contract awarding authorities shall:

- 16 1. Use good-faith efforts to solicit and to obtain quotes, bids or proposals from
17 MBEs and WBEs on all solicitations, or document their unavailability;
- 18 2. Unless otherwise indicated in this ordinance, extend a discount in all bids and
19 contracts and in the composition of rating scales as follows: (1) a five percent discount to (i) a
20 local business or (ii) a joint venture with local MBE or local WBE participation that equals or
21 exceeds 35 percent but is under 40 percent; or (iii) where a joint venture is composed of only
22 local businesses with no local MBE or WBE participation or where the local MBE or local WBE
23 participation is less than 35 percent; (2) a seven and one-half percent bid discount to a joint
24 venture with local MBE or WBE participation that equals or exceeds 40 percent; (3) a 10
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1 percent discount to (i) a local MBE or local WBE or (ii) a joint venture between or among local
2 MBEs or/and local WBEs.

3 The contracting awarding authority shall apply the aforementioned appropriate bid discount to
4 a joint venture when the MBE or WBE is an active partner in the joint venture and performs
5 work, manages the job and takes financial risks in proportion to the required level of
6 participation stated in the bid documents and is responsible for a clearly defined portion of the
7 work to be performed, and shares in the ownership, control, management responsibilities,
8 risks, and profits of the joint venture. The portion of the MBE or WBE joint venture's work shall
9 be set forth in detail separately from the work to be performed by the nonMBE or nonWBE
10 joint venture partner. The MBE or WBE joint venture's portion of the contract must be
11 assigned a commercially reasonable dollar value;

12 3. Arrange contracting by size and type of work to be performed so as most
13 effectively to enhance the opportunity for participation by MBEs and WBEs to the maximum
14 extent feasible. As soon as practical before soliciting quotes, bids or proposals, all contract
15 awarding authorities or in the case of a professional services contract, the department making
16 the contract award recommendation, shall submit all large proposals to the Director for review.
17 The purpose of the Director's review is to determine whether the proposed project can be
18 divided into smaller projects so as to enhance the opportunity for participation by MBEs and
19 WBEs in the project. For purposes of this subsection, the term "large project" shall mean the
20 following: (1) any public works/construction project estimated to cost more than \$5,000,000;
21 and (2) any professional services contract estimated to cost more than \$50,000. If the Director
22 determines, after consulting with the contract awarding authority or department responsible for
23 the project, that the project can be divided into smaller projects, the contract awarding
24 authority or department shall comply with the Director's determination and issue the
25 solicitation for quotes, bids or proposals in accordance with the Director's determination;

1 4. Adjust bid bonding and insurance requirements as recommended by the City
2 Risk Manager in the May 2, 1989 "Contract Insurance Manual";

3 5. Use the City's Surety Bonding Program set forth in Administrative Code Section
4 12D.A.10 to assist MBEs, WBEs and LBEs to meet bonding, insurance and other fee-related
5 requirements.

6 6. Submit to ~~a central office~~ the Purchaser of Supplies of the City and County of San
7 Francisco all current bids, requests for proposals, and solicitations with sufficient lead time to
8 provide adequate notice and opportunity to MBEs and WBEs to participate; and shall cause to
9 be posted upon a website of the Purchaser of Supplies of the City and County of San Francisco the
10 following information concerning current bids, requests for proposals and solicitations: the title and
11 number; the name of the contract awarding authority; and the name and telephone number of the
12 person to be contacted for further information. Such information shall be posted with sufficient lead
13 time to provide adequate notice and opportunity to MBEs and WBEs to participate in the bid, request
14 for proposals or solicitation.

15 7. Impose such sanctions or take such other actions as are designed to ensure
16 compliance with the provisions of this ordinance, which shall include, but are not limited to:

- 17 (a) Refuse to grant the award of a contract,
18 (b) Order the suspension of a contract,
19 (c) Order the withholding of funds,
20 (d) Order the revision of a contract based upon a material breach of contract
21 provisions pertaining to MBE or WBE participation,
22 (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility
23 for providing goods or services to the City for a period not to exceed five years, based on the
24 standards set forth in this ordinance and rules and regulations promulgated by the
25 Commission. Any business disqualified under this subsection shall have a right to review and

1 reconsideration by the Commission after two years upon a showing of corrective action
2 indicating that violations are not likely to recur;

3 8. Not award any contract to a person or business that is disqualified from doing
4 business with the City under the provisions of this ordinance;

5 9. Designate a staff person to be responsible for responding to the Director and
6 Commission regarding the requirements of this ordinance;

7 10. Maintain accurate records as required by the Director and the Commission for
8 each contract awarded, its dollar value, the nature of the goods or services to be provided, the
9 name of the contractor awarded the contract, the efforts made by a contractor to solicit bids
10 from and award subcontracts to MBEs and WBEs and LBEs;

11 11. Where feasible, provide technical assistance to MBEs and WBEs to increase
12 their ability to compete effectively for the award of City contracts;

13 12. Work with the Director and the Controller to implement a City-wide prompt-
14 payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 30 days of the
15 date on which the City receives an invoice from an MBE, WBE or LBE for work performed for
16 the City;

17 13. Provide the Director with written notice of all contract amendments,
18 modifications, supplements and change orders that cumulatively result in an increase or
19 decrease of the contract's dollar amount of more than 10 percent. Such notice shall be
20 provided within 10 days of each such contract modification;

21 14. Whenever contract amendments, modifications, supplements or change orders
22 cumulatively increase the total dollar value of a contract by more than 10 percent, the contract
23 awarding authority shall require compliance with those MBE and WBE provisions of this
24 ordinance that applied to the original contract;

1 15. All contract amendments, modifications, supplements or change orders that
2 cumulatively increase by more than 20 percent the total dollar value of all contracts originally
3 valued at \$50,000 or more shall be subject to prior approval of the Director, who shall review
4 the proposed amendment, modification, supplement or change order to correct contracting
5 practices that exclude women or minorities from new contracting opportunities. (B) Contract
6 awarding authorities or departments may invite, encourage or request businesses to joint
7 venture on any contract to promote MBE or WBE participation.

8 (C) For the purpose of determining MBE and WBE participation, contracts awarded to joint
9 ventures in which one or more MBEs or WBEs are combined with one or more businesses
10 that are not MBEs or WBEs shall be deemed by the contract awarding authority to be
11 awarded to MBEs or WBEs only to the extent of the MBEs or WBEs participation in the joint
12 venture. MBE and/or WBE participation in the supply of goods shall be included in
13 determining MBE and/or WBE participation in a joint venture if the goods are supplied in
14 accordance with established general industry practice.

15 (D) Contract awarding authorities shall ensure that all contracts subject to this ordinance
16 include the following requirements, in addition to such other requirements as may be set forth
17 elsewhere:

18 1. Each bidder and contractor on all contracts shall be required to sign before a
19 notary an affidavit prepared by the City Attorney, declaring under penalty of perjury, its
20 intention to comply fully with the provisions of this ordinance;

21 2. Each contract shall incorporate this ordinance by reference and shall provide
22 that the wilful failure of any bidder or contractor to comply with any of its requirements shall be
23 deemed a material breach of contract;

24 3. Contracts shall provide that in the event that the Director finds that any bidder,
25 subcontractor or contractor that wilfully fails to comply with any of the provisions of this

ordinances, rules and regulations implementing the ordinance or contract provisions pertaining to MBE or WBE participation - the bidder, subcontractor or contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000, whichever is greatest, as determined by the Director pursuant to Section 12D.A.16(C). All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City;

4. Contracts shall require bidders, contractors and subcontractors to maintain records, including such information requested by the Director or Commission, necessary for monitoring their compliance with this ordinance;

5. Contracts shall require prime contractors, during the term of the contract, to fulfill the MBE and WBE participation commitments submitted with their bids;

6. Contracts shall require prime contractors to include in any subcontract with an MBE or WBE a provision requiring the prime contractor to compensate any MBE or WBE subcontractor if the prime contractor fails to comply with its commitment to use MBE and WBE subcontractors. Contracts shall also require prime contractors to compensate any MBE or WBE subcontractor if the prime contractor does not fulfill its commitment to use the MBE or WBE subcontractor. This provision shall also state that it is enforceable in a court of competent jurisdiction;

7. Contracts shall require prime contractors, whenever amendments, modifications, supplements, or change orders cumulatively increase the total dollar value of a construction contract by more than 10 percent, to comply with those MBE and WBE provisions of this

1 ordinance that applied to the original contract with respect to the amendment, modification,
2 supplement or change order;

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

9 9. Contracts in which subcontracting is used shall prohibit back contracting to the
10 prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions
11 of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract
12 provisions pertaining to MBE and WBE utilization;

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

1 11. Contracts shall require bidders, contractors and subcontractors to maintain
2 records necessary for monitoring their compliance with this ordinance for three years following
3 completion of the project.

4 (E) All contracts or other agreements between the City and persons or entities, public or
5 private, in which such persons or entities receive money from or through the City for the
6 purpose of contracting with businesses to perform public improvements, shall require such
7 persons or entities to comply with the provisions of this ordinance in awarding and
8 administering such contracts.

9 (F) Where a department can demonstrate, despite its good-faith efforts and application of
10 the bid discount(s), that it has failed substantially to eliminate the exclusion of MBEs or WBEs
11 from City contracting, the department, after consulting with the Director, may request the
12 Review Committee established in Section 12D.8(3) to review and to approve the proposed
13 project(s) selected by the department for a set-aside.

14 (G) City department heads and commissioners shall attend a mandatory training session
15 on an annual basis. The training session shall be organized and conducted by the Director, or
16 his or her designee, and shall inform City department heads and commissioners of the
17 requirements of this ordinance. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 174-
18 00, File No. 001105, App. 7/14/2000)

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

23 By: _____
24 Angela Karikas
25 Deputy City Attorney