

REVISED LEGISLATIVE DIGEST

(Substituted, 10/5/2021)

[Administrative Code - Local Business Enterprise Program]

Ordinance amending the Administrative Code to revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) to: 1) increase the LBE certification size thresholds and authorize an automatic increase to the thresholds every five years based on the consumer price index; 2) change the LBE certification size threshold term of calculation from an average of gross annual receipts in the prior three to the prior five years; 3) increase penalties for violations of Chapter 14B from up to 10% to up to 25% of the contract or subcontract amount; 4) require prime contractors to include LBE subcontractors' approved payment requests in payment applications within 30 days of receipt of an invoice; 5) authorize application of separate LBE subcontract participation requirements for micro, small, and SBA-LBEs; 6) extend the bonding assistance program to certain City-funded construction projects; 7) authorize a pilot Mentor-Protégé expansion program, a pilot micro-LBE set-aside program for certain design-build and construction manager/general contractor projects, and a pilot Neighborhood LBE program; and 8) increase the contracting Threshold Amount from \$706,000 to \$1,000,000 and the Minimum Competitive Amount from \$129,000 to \$200,000; and make various other changes and clarifications to Chapter 14B.

Existing Law

The Local Business Enterprise (“LBE”) and Non-Discrimination in Contracting Ordinance (“Chapter 14B”) is a race-and-gender neutral, small, local business contracting preference program and non-discrimination program. One of the goals of Chapter 14B is to help small local business that are at a competitive disadvantage in competing for work on public contracts because San Francisco small businesses experience higher costs than larger businesses. The preference program, for purposes of bid comparison, adds “points” to contract proposals from qualified small, local businesses where contracts will be awarded based on the highest score or applies “discounts” to bids from qualified small, local businesses for comparison where contracts will be awarded based on lowest costs.

In addition to the preference program, Chapter 14B provides other programs including contracting set asides, subcontracting requirements, prompt payment provisions, and training to assist small, local businesses to increase their ability to compete effectively for the award of City contracts.

Amendments to Current Law

This Ordinance would comprehensively update Chapter 14B. Specifically, this Ordinance would:

Sections 14B.3, 14B.4, and 14B.5 LBE Certification

- **LBE Certification Business Size Thresholds** – Increase the certification size thresholds for Micro-LBEs from \$10 million to \$12 million for public works/construction businesses, from \$5 million to \$6 million for specialty construction contractors and goods, materials, equipment or general services providers, and from \$1.75 million to \$2.5 million for trucking contractors; and increase the thresholds for Small-LBEs from \$20 million to \$24 million for public works/construction businesses, from \$10 million to \$12 million for specialty construction contractors and goods, materials, equipment or general services providers, and from \$3.5 million to \$5 million for trucking contractors; and increase the threshold for SBA-LBEs from \$33.5 million to \$40 million for public works/construction businesses, from \$17 million to \$20 million for specialty construction contractors and goods, materials, equipment or general services providers, and from \$8.5 to \$10 million for trucking contractors. The professional services thresholds would be separated into nine subcategories and would increase from \$1.25 million to \$2.5 million for Micro-LBEs, from \$2.5 million to \$5 million for Small-LBEs, and from \$7 million to \$8.5 million for SBA-LBEs.
- Authorize threshold limits to be recalculated by the Controller every 5 years based on index and on the same schedule as the City contracting Minimum Competitive Amount and Threshold Amount.
- Allow office location certification requirement to be met if work space is provided in exchange for services as opposed to payment of monetary rent.
- Change LBE certification size calculation from an average gross annual receipt in the prior 3 years to the prior 5 years.

Section 14B.7 Prime Accountability:

- Encourage departments to break up or create distinct portions of work, as feasible, to maximize use of LBE preferences when projects are funded by both local and federal and/or State funds that prevent implementation of Chapter 14B.
- Increase the penalty for failure to comply with 14B requirements from up to 10% to up to 25% of the contract or subcontract amount as applicable.
- Add requirement that the prime contractor's failure and penalty if imposed would be included in the contractor's performance evaluation report should such evaluation be collected.
- Require that for contracts subject to an LBE subcontractor participation requirement, prime contractors would include LBE subcontractor's approved payment requests in any payment application to the City within 30 days of receiving an invoice from an LBE subcontractor.

Section 14B.8 LBE Subcontracting Requirements

- Add discretion for the CMD Director to impose separate LBE subcontracting requirements for Micro, Small, and/or SBA-LBEs when the subcontractors are available and have capacity.

Section 14B.16 Bonding and Other Assistance

- Extend bonding assistance program upon approval of Risk Manager and provided funds are available to projects subject to development agreements or other agreements for construction of facilities where the City partially or wholly funds the project.

Pilot Programs

- Mentor-Protégé Expansion Program - Expand the Mentor-Protégé program to provide certain mentors with up to a 1% bid discount, not to exceed \$300,000, when bidding on City projects.
- Micro-LBE Trucking Program - Authorize the CMD Director to develop an LBE set-aside program for Micro-LBE certified trucking firms on public works trade subcontractor procurements on design-build and construction manager/general contractor projects.
- Neighborhood LBE Program - Authorize the CMD Director to implement a hyper-local preference program for certain Administrative Chapter 6 public works projects.

Other/General

- Make various changes to correct and clarify existing provision of Chapter 14B.
- Except for the amendments of Section 14B.3 to the LBE Certification size thresholds, which would become operative on the effective date of the ordinance, the remainder of this ordinance would become operative on July 1, 2022 and would apply to all contracts first advertised for bids or initiated on or after this date.

Background Information

This digest reflects amendments proposed in a substitute ordinance introduced on October 5, 2021.

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