

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instruments in support of the Surety Bond and Financial Assistance Program after these provisions were inadvertently rescinded; and to make technical corrections.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.