

File No. 120082

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee

Date: March 14, 2012

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Victor Young

Date: March 9, 2012

Completed by: Victor Young

Date: _____

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

[Administrative Code - Benefit Corporation Discount]

Ordinance amending the San Francisco Administrative Code by adding Chapter 14C, Sections 14C.1 through 14C.3 to provide for a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for a competitively-solicited City contract.

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

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Chapter 14C, Sections 14C.1 through 14C.3, to read as follows:

SEC. 14C.1. SHORT TITLE.

This Chapter shall be entitled "the California Benefit Corporation Discount Ordinance".

SEC. 14C.2. DEFINITIONS.

(a) "B Corporation" is defined as a California Benefit Corporation that is incorporated in California under California Corporations Code §§14600-14631, as amended, or any successor legislation, and is in good standing with the State of California.

(b) "B Corporation Discount" means the downward adjustment in price or upward adjustment in rating of a proposal or bid, whichever applies, that is made under Section 14C.3(c).

(c) "Contract" means any agreement that falls within the scope of Administrative Code Chapter 6 and Chapter 21.

1 (d) "Contractor" means any person or entity who contracts directly with the City.

2 (e) "Contract Awarding Authority" means any City officer, department head, commission, or
3 board authorized to enter into Contracts on behalf of the City.

4
5 **SEC. 14C.3. B CORPORATION DISCOUNTS.**

6 (a) Discount. Notwithstanding any other provision of the Administrative Code, Contract
7 Awarding Authorities shall apply a B Corporation Discount as provided in this Chapter to bids or
8 proposals submitted by a B Corporation for purpose of determining the apparent highest ranked
9 proposal or the apparent low bid.

10 (b) Contracts Subject to Discount. The B Corporation Discount shall apply to all Contracts the
11 estimated cost of which exceeds the Threshold Amount in Chapter 6 or the Minimum Competitive
12 Amount in Chapter 21.

13 (c) Amount of Discount. Contract Awarding Authorities shall apply a B Corporation
14 Discount as follows:

15 (1) For bids and proposals from B Corporations that are ineligible for Administrative
16 Code Chapter 14B LBEs or SBA-LBE Discounts, Contract Awarding Authorities shall apply a Discount
17 in the amount of eight percent (8%), such that bids or proposals shall be increased or reduced, as
18 appropriate, by an amount equal to eight percent (8%) at each stage of the proposal selection process
19 for purposes of determining the apparent highest ranked proposal or the apparent low bid; and

20 (2) For bids and proposals from B Corporations that will receive Administrative Code
21 Chapter 14B LBE or SBA-LBE Discounts, Contract Awarding Authorities shall apply a Discount in the
22 amount of two percent (2%) in addition to the Administrative Code Chapter 14B Discount, such that
23 bids or proposals shall be increased or reduced, as appropriate, by no more than a total of twelve
24 percent (12%) at each stage of the proposal selection process for purposes of determining the apparent
25 highest ranked proposal or the apparent low bid; and

1 (3) The B Corporation Discount shall not apply to bids or proposals submitted by
2 Joint Ventures unless all Joint Venture Members would individually qualify for the B Corporation
3 Discount.

4 (d) Verification of Status. Contract Awarding Authorities shall provide for the B Corporation
5 Discount and shall verify current B Corporation status with the California Secretary of State. In
6 addition, B Corporations shall, when applying for a B Corporation Discount, submit copies of their
7 share certificates required under Division 1, Chapter 4 (beginning with Section 400) of the California
8 Corporations Code .

9 (e) Exceptions. This Chapter shall not apply where the Contracting Awarding Authority finds
10 that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a
11 grant, subvention or agreement with a public agency or other grant awarding entity or the instructions
12 of an authorized representative of any such agency with respect to any such grant, subvention or
13 agreement, provided that the Contracting Awarding Authority has made a good faith attempt to change
14 the terms or conditions of any such grant, subvention or agreement to authorize application of this
15 Chapter.

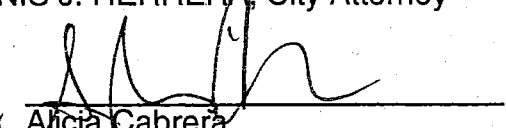
16 (f) Severability. If any section, clause, phrase, or portion of this Chapter is for any reason held
17 invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such
18 portion shall be deemed a separate, distinct and independent provision and such holding shall not
19 affect the validity of the remaining portions thereof. To this end, the provisions of this ordinance shall
20 be deemed severable.

21
22 Section 2. Effective Date. This ordinance shall become effective 30 days from the
23 date of passage.
24
25

1 Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to
2 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
3 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
4 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
5 and Board amendment deletions in accordance with the "Note" that appears under the official
6 title of the legislation.

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

10 By:

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12 Alicia Cabrera
13 Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code – Benefit Corporation Discount]

Ordinance amending the San Francisco Administrative Code by adding Chapter 14C, Sections 14C.1 through 14C.3, to provide for a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for a competitively-solicited City contract.

Existing Law

Currently, the City does not apply an adjustment in price for bids or proposals submitted by a California Benefit Corporation for a competitively-solicited City contract.

Amendments to Current Law

Under the proposal, Contract Awarding Authorities would apply a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for purposes of determining the apparent highest ranked proposal or the apparent low bid. The proposed discount would apply to City contracts that exceeds the Threshold Amount in Chapter 6 or the Minimum Competitive Amount in Chapter 21.

Item 4
File 12-0082

Department:

EXECUTIVE SUMMARY

Legislative Objectives

- Ordinance amending the Administrative Code by adding Chapter 14C to provide for a 4 percent bid discount when bidding on City contracts for companies qualifying under State law as a benefit corporation.

Key Points

- Under the traditional corporate structure, companies must consider profit-making and the financial interests of shareholders above all else. The State Legislature adopted legislation, effective as of January 2012, authorizing a new form of incorporation, known as a "benefit corporation", for companies committed to supporting a general public benefit. The State legislation creates a legal framework for socially-minded companies to consider non-financial interests when making business decisions.
- Since 1984, with the passage of the Minority/Women/Local Business Utilization Ordinance by the Board of Supervisors, the City and County of San Francisco has required bid preferences for disadvantaged businesses. In accordance with City Administrative Code Chapter 14B, businesses collectively categorized as local business enterprises (LBEs) receive 2 percent to 10 percent bid discounts when competing for City contracts.
- The proposed ordinance will extend bid discounts to benefit corporations. Benefit corporations that do not qualify as an LBE will receive a 4 percent bid discount. Benefit corporations that also qualify as an LBE will receive bid discounts up to a cumulative 14 percent.

Fiscal Impacts

- At this time, it is uncertain how many, and what types of, companies will seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco. The Budget and Legislative Analyst cannot quantify the actual fiscal impact of this ordinance at this time. However, as a comparison, based on 2011 construction contract award information provided by the City's Human Rights Commission (HRC), for construction contracts of less than \$10,000,000, in which an LBE was awarded the contract and a bid discount was applied, the total additional cost to the City as a result of granting the bid discount was \$822,172.

Policy Considerations

- Other States' benefit corporation laws include an obligation to report on the company's overall social and environmental performance using a comprehensive, credible, independent and transparent third-party standard. The California law does not include such a mandate. The Board of Supervisors should consider implementing a process to verify that benefit corporations receiving bid discounts for City contracts are meeting their public benefit objectives.
- The proposed ordinance requires an evaluation of the bid discount program in year 2 of its implementation. Given the uncertainty regarding the number and types of companies that may utilize this bid discount, the Board of Supervisors should consider implementing monitoring of the impact of the proposed ordinance every six months after the ordinance is made effective.

- In addition, according to the proposed ordinance, the bid discount will be applied by City departments with contracting authority, with no centralization across City departments. The Budget and Legislative Analyst recommends that the City should consider ways to centralize this process so that data can be tracked and outcomes can be measured more efficiently.

Recommendations

- Amend the proposed ordinance to implement a process to verify that benefit corporations receiving bid discounts for City contracts are meeting their public benefit objectives.
- Amend the proposed ordinance to require that the bid discount program be monitored every six months.
- Amend the proposed ordinance to centralize the bid discount program in order to coordinate data collection and measure outcomes.
- Approval of the ordinance, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT

According to Charter Section 2.105, the Board of Supervisors shall act only by written ordinance or resolution, except that it may act by motion on matters over which the Board of Supervisors has exclusive jurisdiction.

BACKGROUND

Benefit Corporation Status

A benefit corporation is a new form of incorporation that is legally recognized in seven States, including California. Under the traditional corporate structure, companies must consider profit-making and the financial interests of shareholders above all else. Benefit corporation status was developed as a response to the inability of existing legal frameworks to meet the needs of entrepreneurs and investors seeking to use business to solve social and environmental problems so that companies can balance the pursuit of corporate profits with environmental and social goals.

Because traditional corporate law has a narrow definition of fiduciary duty that makes it difficult for business leaders to focus on a mission that is broader than simply maximizing profit, businesses with a social mission need alternatives that allow them to be operate in ways that benefit more stakeholders. Maryland was the first State to allow benefit corporations in April 2010.

California Benefit Corporation Legislation – AB 361

Assembly Bill 361 was adopted by the California State Legislature on October 9, 2011, and became effective on January 1, 2012, making California the sixth of seven States in the United States to recognize benefit corporation status. The legislation states that a benefit corporation may be formed for the purpose of creating a general public benefit, defined as a material positive impact on society and the environment, taken as a whole.

The bill also allows benefit corporations to identify one or more specific public benefits as an additional purpose of the corporation, including but not limited to: providing low-income or underserved communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business; preserving the environment; and improving human health.

AB 361 expands fiduciary duty to create clarity for boards of directors about their obligations and liability protection, as well as for consumers and investors about what to expect from the business. The bill is intended to encourage environmental and social responsibility, as well as greater standards of accountability and transparency for corporations.

Since AB 361 became effective in January of 2012, 18 California companies have filed for incorporation as a benefit corporation.

Existing Bid Discounts for Competitively Solicited Contracts in San Francisco

Since 1984, with the passage of the Minority/Women/Local Business Utilization Ordinance by the Board of Supervisors, the City and County of San Francisco has required bid preferences for disadvantaged businesses. These businesses included minority-owned business enterprises (MBEs), women-owned business enterprises (WBEs), and locally-owned business enterprises (LBEs). Today, in accordance with City Administrative Code Chapter 14B, those businesses are now collectively categorized as LBEs, and receive 2 percent to 10 percent bid discounts when competing for City contracts.

Locally-owned businesses in San Francisco must receive certification of their LBE status from the San Francisco Human Rights Commission (HRC), which administers the bid discount. There are three levels of discounts available to certified LBEs, as follows: (1) a two-percent preference to Small Business Administration firms (SBAs)¹; (2) a seven and one-half percent preference to joint ventures with local MBE or WBE participation; and (3) a 10-percent preference to “micro” and “small” LBEs. Classifications for “micro”, “small” and “SBA” are based upon economic thresholds, as show in Table 1 below.

¹ SBA firms are defined by the U.S. Small Business Administration.

Table 1:
Maximum Economic Thresholds for LBE Certified Firms

	Micro Bid Discount: 10%	Small Bid Discount: 10%	SBA Bid Discount: 2%
Class A and Class B General Contractors	7,000,000	14,000,000	33,500,000
Specialty Construction Contractors	3,500,000	7,000,000	17,000,000
Trucking and Hauling	1,750,000	3,500,000	8,500,000
Goods, Materials and Equipment Suppliers	3,500,000	7,000,000	17,000,000
General Service Providers	3,500,000	7,000,000	17,000,000
Architect/Engineering	1,250,000	2,500,000	7,000,000
Professional Services	1,250,000	2,500,000	7,000,000

DETAILS OF LEGISLATION

This report is based on amendments that will be introduced to the Budget and Finance Committee of the Board of Supervisors on March 14, 2012.

The proposed ordinance seeks to provide a downward adjustment in price or upward adjustment in rating of bid proposals from benefit corporations for competitively solicited City contracts. The intent of the ordinance is to give preference to benefit corporations whose ability to submit the lowest bids for City contracts may be compromised by their commitment to supporting social and environmental justice.

The proposed discount would apply to all contracts whose estimated cost exceeds the threshold amounts established in the City Administrative Code²: \$100,000 for commodities and professional services and \$400,000 for general services, but less than \$10,000,000.

Bid discounts will be administered by contract awarding agencies, who will be required to verify current Benefit Corporation status with the California Secretary of State. Benefit corporations will also be required to submit copies of their share certificates required under Division 1, Chapter 4 of the California Corporations Code.

The proposed ordinance provides for a 4 percent bid discount. For bid proposals from Benefit Corporations that are not eligible for LBE or SBA-LBE bid discounts, as described in Administrative Code Chapter 14B, the contract awarding agency could only apply a 4 percent

² The threshold amounts are established in City Administrative Code Chapters 6 and 21.

discount if the result of the ranked proposal would not result in displacing a 14B³ LBE from being the apparent lowest bidder.

For bids and proposals from benefit corporations that will receive an LBE or SBA-LBE discount, contract awarding agencies should apply a discount of 4 percent in addition to the Administrative Code Chapter 14B discount, such that bids and proposals shall be increased or reduced, as appropriate, by no more than a total of 14 percent at each stage of the proposal selection process. Table 2 below details the proposed bid discount amounts.

Table 2: Bid Discount Amounts

	LBE Bid Discount Amount	Benefit Corporation Bid Discount Amount	Total Bid Discount Amount
SBA	2%	4%	6%
Joint Venture LBE	7.5%	4%	11.5%
Micro/Small LBE	10%	4%	14%
Non-LBE	0%	4%	4%

The proposed ordinance also calls for an evaluation of the impact of the Benefit Corporation Discount to LBEs and City contracting in year 2 of the effective date of this ordinance. The evaluation will analyze Benefit Corporation participation levels by reviewing the number of City contracts awarded by size, type and amount of discount. The evaluations will be prepared by the San Francisco Human Rights Commission, in collaboration with the City Controller's Office.

FISCAL IMPACT

Benefit corporation legislation has only been adopted in the State of California since January of 2012, and to date, there are only 18 companies that have filed for benefit incorporation with the California Secretary of State. At this time, it is uncertain how many, and what types of, companies will seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco.

The Budget and Legislative Analyst cannot quantify the actual fiscal impact of this ordinance at this time. However, as a comparison, based on 2011 construction contract award information provided by HRC⁴, for construction contracts of less than \$10,000,000, in which an LBE was awarded the contract and a bid discount was applied, the total additional cost to the City as a result of granting the bid discount was \$822,172.

³ "14B LBEs" are LBEs that receive a bid discount when competing for City contracts, according to the Administrative Code Chapter 14B.

⁴ The data used in this analysis was provided by HRC for the Recreation and Park Department, PUC, DPW, and the Airport. The total number of construction contracts under \$10,000,000 awarded in 2011 was 69, for a total amount of \$466,495,034, of which the value of the bid discount was less than one percent.

POLICY CONSIDERATIONS

Verifying Public Benefit

The Budget and Legislative Analyst notes that the adoption of this ordinance will make San Francisco the first government entity in the United States to provide bid preferences for benefit corporations. This ordinance allows the bid discount to apply only to California benefit corporations. Other States that have passed benefit corporation legislation have included mandates for third-party assessments and annual benefit reports to ensure that benefit corporations are in fact meeting a specific public benefit. Typically, State benefit corporation laws include an obligation to report on the company's overall social and environmental performance using a comprehensive, credible, independent and transparent third-party standard. The California law does not include such a mandate. The Board of Supervisors should consider implementing a process to verify that benefit corporations receiving bid discounts for City contracts are meeting their public benefit objectives.

Monitoring the Impact of the Ordinance

The proposed ordinance to provide bid discounts to benefit corporations in San Francisco has been modeled on the bid discount policies for LBEs, previously approved by the Board of Supervisors. The bid discount has been established at the 4 percent rate in an attempt to ensure that benefit corporations do not displace LBEs competing for City contracts.

The proposed ordinance establishes an evaluation of the bid discount program in year 2 of its implementation. Given the uncertainty regarding the number and types of companies that may utilize this bid discount, the Board of Supervisors should consider implementing monitoring of the impact of the proposed ordinance every six months.

In addition, according to the ordinance, the bid discount will be applied by City departments with contracting authority, with no centralization across City departments. The Budget and Legislative Analyst recommends that the City centralize this process so that data can be tracked and outcomes can be measured more efficiently, if the Board of Supervisors approves the proposed ordinance.

RECOMMENDATIONS

1. Amend the proposed ordinance to implement a process to verify that benefit corporations receiving bid discounts for City contracts are meeting their public benefit objectives.
2. Amend the proposed ordinance to require that the bid discount program be monitored every six months.
3. Amend the proposed ordinance to centralize the bid discount program in order to coordinate data collection and measure outcomes.
4. Approval of this ordinance, as amended, is policy decision for the Board of Supervisors.

Item 5
File 12-0049

(continued from February 15, 2012)

Department:

Office of Economic and Workforce Development (OEWD),

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would appropriate \$1,000,000 of General Fund prior year fund balance for the Small Business Revolving Loan Fund Program managed by TMC Development Working Solutions (Working Solutions), through the Office of Economic and Workforce Development (OEWD).

Key Points

- The Small Business Revolving Loan Fund Program is a City funded loan program, to generate additional economic activity by providing greater access to capital for small and micro-businesses in San Francisco that have had difficulty accessing regular credit markets. Loans are up to \$25,000 for startup companies and \$50,000 for existing businesses. To qualify, businesses must be (a) in San Francisco, (b) unable to get a bank loan, and (c) able to create or retain at least one full-time job for a low- to moderate-income person.
- In 2009, the City provided Working Solutions, a non-profit organization, \$800,000 of unused Community Development Block Grant and Title IX Economic Development Administration (EDA) funds, of which \$680,000, or 85 percent, was for loan capital and \$120,000, or 15 percent, was for administrative costs to fund staff to process the loans and provide technical assistance.
- Between July 13, 2009 and February 13, 2012, the Small Business Revolving Loan Fund Program, through Working Solutions, provided loans to 29 businesses totaling \$715,585. These businesses pledged to create 52 jobs, and actually resulted in the creation of 73 jobs and the retention of two jobs. To date, two businesses are 30 days late in making their loan payments.

Fiscal Impacts

- The proposed ordinance would be funded with \$1,000,000 from the General Fund prior year fund balance.
- As of February 25, 2012, the Small Business Revolving Loan Fund has an available balance of \$275,420 including \$215,832 in principal repayments, \$45,173 in interest payments, and \$14,415 not yet loaned monies.
- In addition, the City is providing (a) \$77,000 of repayments from previous Economic Development Administration Title IX loans, and (b) \$432,500 of previously approved loan funds from Wells Fargo, for a total of \$509,500, such that together with the proposed \$1,000,000 supplemental appropriation, a total of \$1,509,500 would be provided to the Small Business Revolving Fund. Of the total \$1,509,500, \$226,425 would be for Working Solutions administrative expenses and \$1,283,075 would be available for small and micro business loans.

Policy Issue

- Given that there has not yet been an evaluation of this program, and that there is currently a total of \$784,920 (\$275,420 plus \$509,500) of funds available to continue the Small Business Revolving Loan Program, the Budget and Legislative Analyst considers approval of an additional \$1,000,000 of General Fund revenues at this time, to be a policy decision for the Board of Supervisors.

Recommendation

- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

