

[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 ~~strike through 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 ('Benefit Corporation') Discount Ordinance".

SEC. 14C.2. DEFINITIONS.

(a) "Benefit Corporation" means 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) "Benefit 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 or 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 (f) "HRC" means the Human Rights Commission.

5 (g) "Nonprofit" means a nonprofit corporation that is incorporated in California under
6 California Corporations Code §5000 et seq. as amended, or any successor legislation
7 organized primarily or exclusively for charitable purposes and qualifies for the exemptions
8 provided under California Revenue and Taxation Code Section 23701 and Internal Revenue
9 Code Section 501(c)(3).

10 (h) "S.F. Business" means a business that is physically located at, and registered with
11 the Office of the Treasurer & Tax Collector's Business Registration records, and maintains an
12 address located within the geographic limits of the City and County of San Francisco.

13 (i) "14B LBE" means a Micro-LBE, a Small-LBE, non profit enterprise, PUC-LBE, SBA-
14 LBE as defined in San Francisco Administrative Code Chapter 14B, including Joint Ventures
15 for Professional Services and Architect/Engineering with one or more 14B LBE prime
16 contractor participant.

17 (j) "14B LBE Discount" means a downward adjustment in price or upward adjustment in
18 rating of a proposal, whichever applies, that is made under San Francisco Administrative
19 Code Chapter 14B.

20 **SEC. 14C.3. BENEFIT CORPORATION DISCOUNTS.**

21 (a) **Discount.** Notwithstanding any other provision of the Administrative Code, Contract
22 Awarding Authorities shall apply a Benefit Corporation Discount as provided in this Chapter to bids or
23 proposals submitted by a Benefit Corporation for purpose of determining the apparent highest ranked
24 proposal or the apparent low bid, unless application of the Benefit Corporation Discount would
25

1 adversely impact the ranking for negotiation or award process of a bid or proposal submitted
2 by a 14B LBE, a Nonprofit bidder or proposer, or an S.F. Business.

3 (b) **Contracts Subject to Discount.** The Benefit Corporation Discount shall apply to all
4 Contracts the estimated cost of which exceeds the Threshold Amount in Chapter 6 or the Minimum
5 Competitive Amount in Chapter 21, but is less than \$10,000,000.

6 (c) **Amount of Discount.** Contract Awarding Authorities shall apply a Benefit Corporation
7 Discount as follows:

8 (1) For bids and proposals from Benefit Corporations that are ineligible for Administrative
9 Code Chapter ~~14B LBEs or SBA LBE Discounts~~ 14B LBE Discounts, Contract Awarding
10 Authorities shall apply a Discount in the amount of ~~eight~~ four percent (~~8%~~ 4%), such that bids or
11 proposals shall be ~~reduced~~ increased or ~~increased~~ reduced, as appropriate, by an amount equal to
12 ~~eight~~ four percent (~~8%~~ 4%) at each stage of the proposal selection process for purposes of
13 determining the apparent highest ranked proposal or the apparent low bid. Benefit Corporations that
14 receive a 14B LBE Discount may not also receive a Benefit Corporation Discount.; and

15 ~~-(2) For bids and proposals from B Corporations that will receive Administrative~~
16 ~~Code Chapter 14B LBE or SBA LBE Discounts, Contract Awarding Authorities shall apply a~~
17 ~~Discount in the amount of four percent (2%) in addition to the Administrative Code Chapter~~
18 ~~14B Discount, such that bids or proposals shall be increased or reduced, as appropriate, by~~
19 ~~no more than a total of twelve percent (12%) at each stage of the proposal selection process~~
20 ~~for purposes of determining the apparent highest ranked proposal or the apparent low bid;~~
21 ~~and~~

22 (~~23~~) The Benefit Corporation Discount shall not apply to bids or proposals submitted by
23 Joint Ventures unless all Joint Venture Members for Professional Services and
24 Architect/Engineering would individually qualify for the Benefit Corporation Discount.

1 (d) Verification of Status. Contract Awarding Authorities shall verify current Benefit
2 Corporation status with the California Secretary of State and apply provide for the Benefit
3 Corporation Discount and shall verify current Benefit Corporation status with the California
4 Secretary of State.

5 (e) Eligibility. In addition, To be eligible for the Benefit Corporation Discount, the
6 corporation must: (1) have been incorporated in California as a Benefit Corporation for at least
7 six (6) months preceding the application of the Benefit Corporation Discount; (2)
8 B Corporations shall, when applying for a B Corporation Discount, submit with their bid or
9 proposal copies of their share certificates required under Division 1, Chapter 4 (beginning with
10 Section 400) of the California Corporations Code, and a copy of their most recent annual benefit
11 report required under Division 3 of Title 1, Sections 14621 and 14630 of the California
12 Corporations Code; and (3) provide evidence, as determined by the HRC, of third party
13 verification of their compliance with and contribution to the community consistent with the
14 general public benefit and specific public benefit as outlined in their articles of incorporation in
15 accordance with California Corporations Code §14610.

16 (f) Review by HRC and Controller. For the first two years of the Ordinance, the
17 Director of the HRC in coordination with the Controller, shall conduct a biannual evaluation of
18 the impact of the Benefit Corporation Discount in City contracting. Thereafter, the Director
19 shall conduct an annual evaluation. This report shall analyze Benefit Corporation participation
20 levels by reviewing the number of City contracts awarded to Benefit Corporation bidders or
21 proposers, including the size, type, and dollar amount of the contract; and analyzing the
22 effectiveness of the third party verification mechanism for measuring whether Benefit
23 Corporations awarded City Contracts are contributing to the community. This report may
24 provide recommendations to the Board of Supervisors for amendments to this Ordinance.

1 ~~(gf)~~ **Exceptions.** This Ordinance Chapter shall not apply where the Contracting Awarding
2 Authority finds that the requirements of this Ordinance Chapter would violate or conflict are
3 inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or
4 other grant awarding entity or the instructions of an authorized representative of any such agency with
5 respect to any such grant, subvention or agreement, provided that the Contracting Awarding Authority
6 shall make a good faith attempt to change the terms or conditions of any such grant, subvention or
7 agreement to authorize application of this Ordinance Chapter.

8 **(g) Severability.** If any section, clause, phrase, or portion of this Ordinance Chapter is for
9 any reason held invalid or unconstitutional by any court or Federal or State agency of competent
10 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such
11 holding shall not affect the validity of the remaining portions thereof. To this end, the provisions of this
12 Ordinance ordinance shall be deemed severable.

13 Section 2. Effective Date. This Ordinance shall become effective 30 days from the
14 date of passage.

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

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

24 By: _____
25 Alicia Cabrera
Deputy City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25