

[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. Findings.

As established by California law, effective January 1, 2012, there is a new subtype of stock corporation in California, called a California Benefit Corporation. A benefit corporation is formed and subject to the California Corporations Code but has additional rights and responsibilities that do not apply to other business corporations. This new corporation subtype allows entrepreneurs and investors to organize stock corporations that can pursue both economic and social objectives. The new stock corporation subtype is different from traditional for profit corporations that are organized to pursue profit and nonprofit corporations that must be used solely to promote social benefits.

A corporation may become a benefit corporation by amending the corporation's articles to include a statement that the corporation is a benefit corporation. A benefit corporation must have the purpose of creating a general public benefit. The California Corporations Code §14601(c) defines a general public benefit as "a material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business

1 and operations of a benefit corporation." In addition to the general public benefit, a benefit
2 corporation may adopt one or more specific public benefits by identifying them in the
3 corporation's articles. California Corporations Code §14601(e) defines specific public benefits
4 as "providing low-income or underserved individuals or communities with beneficial products
5 or services, promoting economic opportunity for individuals or communities beyond the
6 creation of jobs in the ordinary course of business, preserving the environment, improving
7 human health, promoting the arts, sciences, or advancement of knowledge, increasing the
8 flow of capital to entities with a public purpose, and the accomplishment of any other particular
9 benefit for society or the environment." The purpose of creating a general public benefit is in
10 addition to, and may be a limitation upon, the corporation's purpose under the California
11 Corporation Code.

12 The directors of benefit corporations may pursue the creation of general public benefit
13 and any identified specific public benefits and not run the risk of being accused of failing to
14 create economic benefits for the shareholders. Each year, the directors of the benefit
15 corporation must prepare an annual benefit report using a third-party standard to analyze the
16 ways in which the benefit corporation pursued the general public benefit during the applicable
17 year, the ways in which the benefit corporation pursued the specific public benefit, if
18 applicable, and an overall assessment of the benefit corporation's social and environmental
19 performance. The benefit corporation must post the annual report on its website.

20 No person may bring an action or claim against a benefit corporation except through a
21 benefit enforcement proceedings either directly or through derivative actions brought by
22 shareholders, directors, and other beneficial owners.

23 Section 2. The San Francisco Administrative Code is hereby amended by adding
24 Chapter 14C, Sections 14C.1 through 14C.3, to read as follows:
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1 **SEC. 14C.1. SHORT TITLE.**

2 *This Chapter shall be entitled "the California Benefit Corporation (' Benefit Corporation')*
3 *Discount Ordinance".*

4 **SEC. 14C.2. DEFINITIONS.**

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

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

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

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

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

15 *(f) "HRC" means the Human Rights Commission.*

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

21 *(h) "S.F. Business" means a business that is physically located at, and registered with*
22 *the Office of the Treasurer & Tax Collector's Business Registration records, and maintains an*
23 *address located within the geographic limits of the City and County of San Francisco*
24 *means a*
25 *business that has a principal place of business located in the geographic limits of San*

1 Francisco and is registered with the Office of the Treasurer & Tax Collector's Business
2 Registration records, excluding a certified 14B LBE.

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

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

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

11 (a) Eligibility. To be eligible for the Benefit Corporation Discount, the corporation must:
12 (1) not be a subsidiary of a non Benefit Corporation; and (2) have been incorporated in
13 California for at least six (6) months preceding the application of the Benefit Corporation
14 Discount.

15 (b) California Secretary of State Verification. The HRC shall verify current Benefit
16 Corporation status with the California Secretary of State and apply the Benefit Corporation
17 Discount. As part of the verification process, HRC may require a Benefit Corporation to
18 submit additional documentation with the bid or proposal to verify status.

19 (c) Third Party Verification. HRC may not apply the Benefit Corporation Discount until
20 the Benefit Corporation has received third party verification. HRC shall adopt rules and
21 regulations consistent with this Ordinance for determining if a Benefit Corporation has
22 complied with third party verification.

23 (d) ~~Discount.~~ Notwithstanding any other provision of the Administrative Code, HRC

24 ~~Contract Awarding Authorities shall apply a Benefit Corporation Discount as provided in this~~

25 ~~Chapter Ordinance to bids or proposals submitted by a Benefit Corporation for purpose of~~

1 determining the apparent highest ranked proposal or the apparent low bid, unless application of the
2 Benefit Corporation Discount would adversely impact the ranking for negotiation or award
3 process of a bid or proposal submitted by a 14B LBE, or a Nonprofit bidder or proposer, or an
4 S.F. Business. In addition, the application of the Benefit Corporation Discount shall not
5 adversely impact a S.F. Business except if the Benefit Corporation seeking the discount is
6 also a S.F. Business.

7 (e) Contract Awarding Authority. The Contract Awarding Authority is required to
8 cooperate with the HRC in applying the Benefit Corporation Discount.

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

12 (g) Amount of Discount. Contract Awarding AuthoritiesHRC shall apply a Benefit
13 Corporation Discount as follows:

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

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

1 for purposes of determining the apparent highest ranked proposal or the apparent low bid;
2 and

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

6 (d) Verification of Status. — Contract Awarding Authorities provide for the BCorporation
7 and shall verify current Benefit Corporation status with the California Secretary of State.

8 In addition, B Corporations shall, when applying for a B Corporation Discount, submit
9 copies of their share certificates required under Division 1, Chapter 4 (beginning with Section
10 400) of the California Corporations Code

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

22 (hf) Review by HRC and Controller. For the first two years of the Ordinance, the
23 Director of the HRC, in coordination with the Controller, shall conduct a biannual evaluation of
24 the impact of the Benefit Corporation Discount in City contracting. Thereafter, the HRC
25 Director and the Controller shall conduct an annual evaluation. This report shall analyze

1 Benefit Corporation participation levels by reviewing the number of City contracts awarded to
2 Benefit Corporation bidders or proposers, including the size, type, and dollar amount of the
3 contract; and analyzing the effectiveness of the third party verification mechanism for
4 measuring whether Benefit Corporations awarded City Contracts are contributing to the
5 community. This report may provide recommendations to the Board of Supervisors for
6 amendments to this Ordinance.

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

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

19 Section 3. Effective Date. This Ordinance shall become effective 30 days from the
20 date of passage.

21 Section 4. Operative Date. This Ordinance shall be operative until 90 days from the
22 date of passage.

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1 Section 5. 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.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 Alicia Cabrera
12 Deputy City Attorney