

File No. 120082

Committee Item No. 4

Board Item No. 2

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee

Date: April 11, 2012

Board of Supervisors Meeting

Date: 4-24-12

#### Cmte Board

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Completed by: Victor Young

Date: April 6, 2012

Completed by: Victor Young

Date: 4-12-12

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. 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 California business corporations. This new corporation subtype allows entrepreneurs and investors to operate as publicly held stock corporations focused on social and environmental objectives rather than the economic return to investors. organize stock corporations that can pursue both economic and social objectives. California Benefit Corporations also differ from nonprofit corporations because they are for-profit entities and are not restricted to a charitable purpose. 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

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

15 The directors of benefit corporations may pursue the creation of general public benefit  
16 and any identified specific public benefits without exposure to shareholder lawsuits, not run  
17 the risk of being accused of failing to create economic benefits for the shareholders. Each  
18 year, the directors of the benefit corporation must prepare an annual benefit report using a  
19 third-party standard to analyze the ways in which the benefit corporation pursued the general  
20 public benefit during the applicable year, the ways in which the benefit corporation pursued  
21 the specific public benefit, if applicable, and an overall assessment of the benefit corporation's  
22 social and environmental performance. The benefit corporation must post the annual report on  
23 its website.

24 No person may bring an action or claim against a benefit corporation to enforce its  
25 obligations under the benefit corporations laws except through a benefit enforcement

Supervisor Chiu  
BOARD OF SUPERVISORS

1 proceeding either directly or through derivative actions brought by shareholders, directors,  
2 and other beneficial owners.

3 Section 2. The San Francisco Administrative Code is hereby amended by adding  
4 Chapter 14C, Sections 14C.1 through 14C.3, to read as follows:

5 ~~SEC. 14C.1. SHORT TITLE.~~

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

8 SEC. 14C.2. DEFINITIONS.

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

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

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

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

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

19 (f) "HRC" means the Human Rights Commission.

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

1        (h) "Regional Business" means a business that has a principal place of business  
2 located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San  
3 Mateo, Santa Clara, Solano, Sonoma and Sacramento.

4        (i) "S.F. Business" means a business that is physically located at, and registered with  
5 the Office of the Treasurer & Tax Collector's Business Registration records, and maintains an  
6 address located within the geographic limits of the City and County of San Francisco means a  
7 business that has a principal place of business located in the geographic limits of San  
8 Francisco and is registered with the Office of the Treasurer & Tax Collector's Business  
9 Registration records, excluding a certified 14B LBE.

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

14       (k) "14B LBE Discount" means a downward adjustment in price or upward adjustment  
15 in rating of a bid or proposal, whichever applies, that is made under San Francisco  
16 Administrative Code Chapter 14B.

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

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

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

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

5        ~~(ad) Discount. Notwithstanding any other provision of the Administrative Code, HRC~~  
6 Contract Awarding Authorities shall apply a Benefit Corporation Discount as provided in this  
7 Chapter Ordinance to bids or proposals submitted by a Benefit Corporation for purpose of  
8 determining the apparent highest ranked proposal or the apparent low bid, unless application of the  
9 Benefit Corporation Discount would adversely impact the ranking for negotiation or award  
10 process of a bid or proposal submitted by the following:

11        (1) a 14B LBE, or a

12        (2) Nonprofit bidder or proposer, or

13        (3) S.F. Business unless the Benefit Corporation is also a S.F. Business; or

14        (4) Regional Business unless the Benefit Corporation is also a Regional Business.

15        ~~or an S.F. Business. In addition, the application of the Benefit Corporation Discount~~  
16 ~~shall not adversely impact an S.F. Business except unless if the Benefit Corporation seeking~~  
17 ~~the discount is also a either an S.F. Business or an Regional Business.~~

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

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

23        (g) Amount of Discount. Contract Awarding Authorities HRC shall apply a Benefit  
24 Corporation Discount as follows:

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

8 (2) For bids and proposals from B Corporations that will receive Administrative Code  
9 Chapter 14B LBE or SBA LBE Discounts, Contract Awarding Authorities shall apply a  
10 Discount in the amount of four percent (2%) in addition to the Administrative Code Chapter  
11 14B Discount, such that bids or proposals shall be increased or reduced, as appropriate, by  
12 no more than a total of twelve percent (12%) at each stage of the proposal selection process  
13 for purposes of determining the apparent highest ranked proposal or the apparent low bid;  
14 and

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

18 (d) Verification of Status. Contract Awarding Authorities provide for the B Corporation  
19 and shall verify current Benefit Corporation status with the California Secretary of State.

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

23 (e) Eligibility. In addition, To be eligible for the Benefit Corporation Discount, the  
24 corporation must: (1) have been incorporated in California as a Benefit Corporation for at least  
25 six (6) months preceding the application of the Benefit Corporation Discount; (2)

1 B Corporations shall, when applying for a B Corporation Discount, submit with their bid or  
2 proposal copies of their share certificates required under Division 1, Chapter 4 (beginning with  
3 Section 400) of the California Corporations Code, and a copy of their most recent annual  
4 benefit report required under Division 3 of Title 1, Sections 14621 and 14630 of the California  
5 Corporations Code; and (3) provide evidence, as determined by the HRC, of third party  
6 verification of their compliance with and contribution to the community consistent with the  
7 general public benefit and specific public benefit as outlined in their articles of incorporation in  
8 accordance with California Corporations Code §14610.

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

19 (fi) Exceptions. This Ordinance Chapter shall not apply where the Contracting Awarding  
20 Authority finds that the requirements of this Ordinance Chapter would violate or conflict are  
21 inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or  
22 other grant awarding entity or the instructions of an authorized representative of any such agency with  
23 respect to any such grant, subvention or agreement, provided that the Contracting Awarding Authority  
24 shall make a good faith attempt to change the terms or conditions of any such grant, subvention or  
25 agreement to authorize application of this Ordinance Chapter.



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


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

8        Section 4. Operative Date. This Ordinance shall become operative 90 days from the  
9        date of passage effective date of the Ordinance and shall expire three years thereafter unless  
10       extended by ordinance of the Board. Upon the expiration of this Ordinance, the City Attorney  
11       shall cause this Chapter to be removed from the Administrative Code.

12       Section 5: This section is uncoded. In enacting this Ordinance, the Board intends to  
13       amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
14       punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
15       are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
16       and Board amendment deletions in accordance with the "Note" that appears under the official  
17       title of the legislation.

18       APPROVED AS TO FORM:  
19       DENNIS J. HERRERA, City Attorney

20       By:

21         
22       ALICIA CABRERA  
23       Deputy City Attorney

24  
25  
Supervisor Chiu  
BOARD OF SUPERVISORS

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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.**

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Existing Law

Currently, the City does not apply an adjustment in price for bids or proposals submitted by a 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 from a 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 exceed the Threshold Amount in Chapter 6 or the Minimum Competitive Amount in Chapter 21.

Budget and Finance Committee Amendments

On March 14, 2012, Supervisor Chiu proposed the following amendments to this legislation:

1) Limit the application of the Benefit Corporation Discount to apply only if the application of the discount would not adversely impact the ranking for negotiation or award process of a bid or proposal submitted by a Micro-LBE, Small-LBE, SBA-LBE, or a California non-profit; and

2) Limit the Benefit Corporation Discount to all Contracts that exceed the Threshold Amount in Chapter 6 or the Minimum Competitive Amount in Chapter 21, but are less than \$10,000,000; and

3) Reduce the California Benefit Corporation Discount from eight percent (8%) to four percent (4%); and

4) Delete the provision that would have allowed companies receiving a Local Business Enterprise (Administrative Code 14B) bid discount or rating bonus from combining or aggregating discounts; and

5) Require businesses applying for the Benefit Corporation Discount to have been incorporated as a B Corporation for at least six (6) months preceding the application of the discount; and

6) For the first two years of the Ordinance, the Director of the Human Rights Commission in coordination with the Controller, shall conduct a biannual evaluation of the impact of the B

Corporation Discount on 14B LBEs and City contracting. Thereafter, the Director shall conduct an annual evaluation.

During the March 14, 2012 Budget and Finance Committee, Supervisor Chiu asked the City Attorney's Office to include language that would: 1) expand the categories of protected businesses a Benefit Corporation could not displace to also include San Francisco Businesses; and 2) to require a Benefit Corporation to provide evidence, as determined by the Human Rights Commission, of third party verification.

~~On April 4, 2012 Supervisor Chiu revised the Ordinance to include findings and the following amendments:~~

- 1) HRC shall verify current Benefit Corporation status with the California Secretary of State; and
- 2) Prohibit application of the Benefit Corporation Discount to a Benefit Corporation that is a subsidiary of a non Benefit Corporation; and
- 3) Authorize HRC to implement rules and regulations consistent with the Ordinance for third party verification.

On April 11, 2012 Supervisor Chiu revised the Ordinance to include the following amendments:

- 1) To expand the category of protected businesses to include a regional business. A regional business is a business that has a principal place of business located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Sonoma, and Sacramento; and
- 2) To include an operative date of 90 days from the effective date of the Ordinance; and
- 3) To include an expiration date of three years from the effective date unless extended by the ordinance of the Board.

Item 4  
File 12-0082  
(continued from April 4, 2012 meeting)

Departments:  
Human Rights Commission (HRC)  
City Controller's Office

## EXECUTIVE SUMMARY

### Legislative Objectives

- Ordinance amending the City's Administrative Code by adding Chapter 14C to provide for a four percent bid discount for companies qualifying under State law as a benefit corporation.

### Key Points

- Under the traditional corporate structure, corporations must consider profit-making and the financial interests of shareholders above all else. As of January 2012, the California State Legislature authorized a new form of incorporation, known as a benefit corporation, which created a legal framework for socially-minded companies to consider non-financial interests when making business decisions.
- Since 1984, the City has granted bid preferences for several categories of disadvantaged businesses. The proposed ordinance provides a four percent bid discount for bid proposals from benefit corporations, if the result of the ranked proposal would not displace a local business enterprise (LBE), a nonprofit organization or a San Francisco-based business from being the apparent lowest bidder.

### Fiscal Impacts

- It is uncertain as to 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, such that the Budget and Legislative Analyst cannot quantify the fiscal impact of the proposed ordinance at this time. However, as a comparison, the Budget and Legislative Analyst reviewed 2011 construction contract award information for construction contracts of less than \$10,000,000, in which an LBE was awarded the contract and a bid discount was applied, and found that the total additional cost to the City as a result of granting such LBE bid discounts was \$822,172.
- In response to inquiries by the Budget and Finance Committee on March 14, 2012, an analysis was also completed on 2011 commodities purchases, which showed a potential impact only in the vehicle purchasing category, and on 2011 professional services contracts, which was inconclusive due to the subjective nature of the proposal review process for professional services contracts.

### Note

- The proposed ordinance was continued for one week by the Budget and Finance Committee pending additional potential amendments to address: (a) a time limited term, such as three years, for the proposed benefit corporation bid discount program; and (b) how the proposed four percent discount for benefit corporations would not disadvantage other local regional businesses.

### Recommendation

- Approval of the ordinance 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, corporations 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 (AB) 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 corporations. AB 361 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.

AB 361 is intended to encourage environmental and social responsibility, as well as greater standards of accountability and transparency for corporations, and as such allows benefit corporations to identify one or more specific public benefits including but not limited to: (a) providing low-income or underserved communities with beneficial products or services; (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business; (c) preserving the environment; and (d) improving human health. In addition, AB 361 expands the 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.

Since AB 361 became effective in January of 2012, 21 California companies have filed for incorporation as benefit corporations.

### 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 granted bid preferences for disadvantaged businesses. These businesses include 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)<sup>1</sup>; (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" businesses are based on maximum annual gross revenues for each type of business, as shown in Table 1 below.

Table 1:  
Maximum Annual Gross Revenues 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 an Amendment of the Whole that was approved by the Budget and Finance Committee on April 4, 2012.

The proposed amended ordinance would add Chapter 14C, Sections 14C.1 through 14C.3 to the City's Administrative Code in order to provide a four percent bid discount for benefit corporations that submit bids for competitively solicited City contracts. The proposed four percent bid discount is intended to provide a competitive advantage to benefit corporations,

<sup>1</sup> SBA firms are defined by the U.S. Small Business Administration.

whose ability to submit the lowest bids for City contracts may be compromised by their commitment to supporting social and environmental justice. Under the proposed ordinance, the subject discount of four percent would apply to (a) all commodities and professional services contracts between \$100,000 and \$10,000,000, and (b) all general services contracts between \$400,000 and \$10,000,000, as established in Chapters 6 and 21 of the City's Administrative Code.

In accordance with the proposed amended ordinance, to be eligible to receive the four percent bid discount, the benefit corporation must (a) not be a subsidiary of a non-benefit corporation, and (b) have been incorporated in California for at least six months prior to receiving the subject discount. In addition, the four percent bid discounts for benefit corporations would not be applicable until 90 days after final approval of the proposed ordinance.

Under the proposed ordinance, the subject four percent bid discounts for benefit corporations would be centrally administered by the City's Human Rights Commission (HRC), which would be responsible for verifying the benefit corporation's current status with the California Secretary of State, and as part of this verification process, HRC may require benefit corporations to submit additional documentation. Additionally, under the proposed ordinance, HRC would be responsible for adopting rules and regulations to require that benefit corporations have received third-party certification of compliance with public benefit goals.

In accordance with the proposed ordinance, individual City department contracting authorities would be required to cooperate with HRC to apply the four percent discount to the applicable benefit corporations. The proposed four percent discount for benefit corporations would only apply if the results of the ranked proposals would not displace a 14B<sup>2</sup> LBE, a non-profit organization or a San Francisco-based business<sup>3</sup> from being the apparent lowest bidder. In addition, under the proposed ordinance, the four percent bid discount could not be combined with any other bid discount – for example, LBEs that are also benefit corporations would only be eligible for the LBE ten percent bid discount, as opposed to a combined 14 percent bid discount. Table 2 below details the proposed bid discount percentages.

**Table 2: Bid Discount Amounts**

	<b>Current Bid Discount Amount</b>	<b>Benefit Corporation Bid Discount Amount</b>	<b>Total Bid Discount Amount</b>
SBA-LBE	2%	0%	2%
Joint Venture LBE	7.5%	0%	7.5%
Micro/Small LBE	10%	0%	10%
Nonprofit Organization	10%	0%	10%
Non-LBE	0%	4%	4%

<sup>2</sup> "14B LBEs" are LBEs that receive a bid discount when competing for City contracts, according to the Administrative Code Chapter 14B.

<sup>3</sup> "San Francisco business" is defined in the proposed ordinance as a business that is registered with the Office of the Treasurer and Tax Collector's Business Registration records, and maintains an address located within the geographic limits of the City and County of San Francisco.

The proposed ordinance also requires that the HRC, in coordination with the City Controller's Office, conduct biannual evaluations of the impact of the Benefit Corporation Discount on City contracting for the first two years of the effective date of the proposed ordinance. Thereafter, HRC, in coordination with the Controller's Office, would be required to conduct annual evaluations. These evaluations would analyze Benefit Corporation participation levels by reviewing the number of City contracts awarded by size, type and amount of discount, and may provide recommendations to the Board of Supervisors for future amendments.

## FISCAL IMPACTS

As noted above, benefit corporation legislation has only been effective in the State of California since January of 2012, and as of March 26, 2012, there were only 21 companies that have filed for benefit incorporation with the California Secretary of State. At this time, it is uncertain as to how many, and what types of, companies will eventually seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco.

Therefore, the Budget and Legislative Analyst cannot quantify the actual fiscal impact of the proposed ordinance at this time. However, as a comparison, based on 2011 construction contract award information provided by HRC<sup>4</sup>, 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 such LBE bid discounts was \$822,172.

In response to inquiries by the Budget and Finance Committee on March 14, 2012, in addition to construction contracts, the Budget and Legislative Analyst has also reviewed 2011 professional services contract award information provided by HRC and individual contract awarding authorities. Because of the more subjective nature of the proposal review process for professional services contracts, where a low bid is only one factor in determining the contract award, it is impossible to quantify the actual increased cost to the City as a result of granting such LBE bid discounts for professional services contracts. Unlike construction contracts which are awarded to the lowest most qualified bidder, professional services contracts are awarded based upon an evaluation of various criteria, of which the cost of services only represent one factor in the contract award process.

In addition, the Budget and Legislative Analyst reviewed a sample of data provided by the Purchasing Department reflecting the City's 2011 purchases in three categories: (a) vehicles, (b) Information Technology (IT) equipment, and (c) transportation equipment. The Budget and Legislative Analyst found that most of these purchases were under the threshold of \$100,000 for commodities, as defined by the proposed ordinance, and therefore would not be impacted by the proposed four percent bid discount for benefit corporations. From the sample provided

<sup>4</sup> The data used in this analysis was provided by HRC for the Recreation and Park Department, Public Utilities Commission, Department of Public Works, 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.



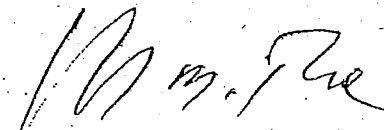
by the Purchasing Department, vehicles were the only category where a bid discount could have had an impact. On the six bids reviewed pertaining to vehicle purchases, three bids, or 50 percent of the bids reviewed, could potentially have gone to a higher bidder, if that bidder had been eligible for a benefit corporation bid discount. Assuming the proposed benefit corporation bid discount of four percent was applied in those three instances, the additional cost to the City from applying these bid discounts would have totaled a maximum amount of \$17,108, or 2.98 percent of the maximum total contract award amount of \$575,170.

**NOTE**

The proposed ordinance was continued for one week by the Budget and Finance Committee pending additional potential amendments to address: (a) a time limited term, such as three years, for the proposed benefit corporation bid discount program; and (b) how the proposed four percent discount for benefit corporations would not disadvantage other local regional businesses.

**RECOMMENDATION**

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



Harvey M. Rose

cc: Supervisor Chu  
Supervisor Avalos  
Supervisor Kim  
President Chiu  
Supervisor Campos  
Supervisor Cohen  
Supervisor Elsbernd  
Supervisor Farrell  
Supervisor Mar  
Supervisor Olague  
Supervisor Wiener  
Clerk of the Board  
Cheryl Adams  
Controller  
Kate Howard



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

February 16, 2012

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

Re: File No. 120082 [Administrative Code - Benefit Corporation Discount]

Small Business Commission Recommendation: **Approval with modification**

Dear Ms. Calvillo:

On February 13, 2012, the Small Business Commission (SBC) voted 6-0 to recommend approval of BOS File No. 120082 with modification.

The Commission supports the intent of this legislation and sees Benefit Corporations as a valuable business structure that will provide material benefits to the environment and society. The Commission however, is committed to the Chapter 14 LBE and SBA-LBE programs and wants to ensure that those discounts are not negated by out of city Benefit Corporations that do not pay the high costs of employment in the City, including payroll tax, health care mandates, sick leave, etc. In order to accomplish this, the SBC recommends that the discount be lowered from the proposed 8 percent, to an amount not less than 2 percent and not more than 6 percent. This will limit the exposure for LBE and SBA-LBE qualified businesses to be out-bid by out of city companies.

Additionally, the Commission recommends simplifying the ordinance in regards to the discount applied to Benefit corporations that are also LBE/SBA-LBE certified. Rather than applying a 2% Benefit Corporation discount in addition to the LBE or SBA-LBE discounts, the commission finds that simply adding the above established Benefit Discount to the LBE or SBA-LBE discounts is an appropriate method of calculating the bid preference. If adding the LBE/ SBA-LBE discounts with the Benefit Corporation Discount leads to a combined amount that is not feasible, the Commission leaves it as a policy matter to the Board of Supervisors to use the calculation criteria originally proposed in the legislation.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

cc. Jason Elliott, Mayors Office  
Supervisors Chiu  
Theresa Sparks, Human Rights Commission

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6408