

BOARD of SUPERVISORS



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MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor London Breed, Chair
Government Audit and Oversight Committee

FROM: Erica Major, Assistant Committee Clerk

DATE: November 25, 2014

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, November 25, 2014

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, November 25, 2014. This item was acted upon at the Government Audit and Oversight Committee Meeting on November 24, 2014, at 1:15 p.m., by the votes indicated.

Item No. 45 **File No. 140999**

Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; 5) require Administrative Code, Chapter 56, development agreements to include an LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for a LBE contractor advance program to fund loans to subcontractors; 7) require the City to make good faith efforts to obtain at least three bids from micro or small LBEs for contracts under the threshold or minimum competitive amounts; 8) establish a Mentor-Protégé Program between established successful contractors and LBEs; 9) require separate LBE participation on design and construction portions of design-build construction contracts; 10) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 11) make various other changes in Chapter 14B.

AMENDED, AMENDMENT OF THE WHOLE BEARING THE SAME TITLE

Vote: Supervisor London Breed - Aye
Supervisor Katy Tang - Absent
Supervisor David Chiu - Aye

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor London Breed - Aye
Supervisor Katy Tang - Absent
Supervisor David Chiu - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Rick Caldeira, Legislative Deputy Director
Jon Givner, Deputy City Attorney

File No. 140999

Committee Item No. 1

Board Item No. 45

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date November 24, 2014

Board of Supervisors Meeting Date NOVEMBER 25, 2014

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | MEMO TO SMALL BUSINESS COMMISSION FROM COB |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | COMMITTEE REPORT REQUEST DATED 11/7/2014 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | BUDGET + LEGISLATIVE ANALYST REPORT |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | COMMITTEE REPORT REQUEST DATED 11/14/2014 |
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Completed by: Erica Major Date November 20, 2014

Completed by: ERICA MAJOR Date NOVEMBER 25, 2014

1 [Administrative Code - 14B Local Business Enterprise Program]

2
3 **Ordinance amending the Administrative Code to comprehensively revise the Local**
4 **Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter**
5 **14B) to: 1) codify the transfer of implementation and enforcement of Chapter 14B from**
6 **the Human Rights Commission to the City Administrator and Contract Monitoring**
7 **Division; 2) require the Mayor to annually set an overall City-wide Local Business**
8 **Enterprise (LBE) participation goal of not less than 40% of the value of upcoming**
9 **contracts; 3) increase the LBE certification size thresholds for small and micro LBEs;**
10 **4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and**
11 **~~\$10,000,000~~ Million; 5) require Administrative Code, Chapter 56, development**
12 **agreements to include an LBE utilization plan and be subject to certain Chapter 14B**
13 **provisions; 6) authorize preparation of an implementation plan for a LBE contractor**
14 **advance program to fund loans to subcontractors; 7) increase the Surety Bond Program**
15 **limit from ~~\$750,000~~ to ~~\$1,000,000~~; 8) require the City to make good faith efforts to obtain**
16 **at least three bids from micro or small LBEs for contracts under the threshold or**
17 **minimum competitive amounts; 9) to establish a Mentor-Protégé Program between**
18 **established successful contractors and LBEs; 10) require separate LBE participation**
19 **on design and construction portions of design-build construction contracts; 11)**
20 **repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library**
21 **Construction Project; and 12) make various other changes in Chapter 14B.**
22
23
24
25

1 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
4 **Board amendment additions** are in double-underlined Arial font.
5 **Board amendment deletions** are in ~~strikethrough Arial font~~.
6 **Asterisks (* * * *)** indicate the omission of unchanged Code
7 subsections or parts of tables.

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

9 Section 1. The Administrative Code is hereby amended by revising Chapter 14B, to
10 read as follows:

11 **SEC. 14B.1. PURPOSE AND FINDINGS.**

12 **(A) Short Title.** This ~~Chapter ordinance~~ shall be entitled "Local Business Enterprise
13 Utilization and Non-Discrimination in Contracting Ordinance ~~Chapter Ordinance~~."

14 **(B) Findings.**

15 (1) The Board of Supervisors finds that San Francisco's small businesses are
16 a significant sector of the local economy and form the backbone of our neighborhoods. Small
17 businesses contribute hundreds of millions of dollars to San Francisco's economy each year.
18 Through payroll taxes alone, small businesses make a significant investment in the economic
19 health of our City and the quality of life of its citizens and visitors.

20 (2) Because San Francisco's small businesses experience higher costs than
21 large businesses or businesses located outside the City, they suffer disadvantage in any
22 competition with those businesses. The Board finds that small local businesses are at a
23 competitive disadvantage in competing for work on public contracts. Because of their size,
24 very small, or "micro," local businesses are at an even greater competitive disadvantage in
25 competing for work on public contracts.

(3) The public has an interest in fostering a strong and vibrant network of
small and very small micro businesses in San Francisco. In part, San Francisco can

1 accomplish this goal by ensuring that small and micro local businesses can compete for public
2 contracts on a level playing field.

3 (4) The Board finds that the disadvantages suffered by very small and micro
4 local businesses in competing as prime contractors on public contracts can be reduced by
5 discounting their bids and ratings by ten percent. Granting a ten percent discount does not
6 unduly burden businesses not eligible for such discounts, and is similar to the corrective
7 adjustments given to small and very small micro businesses in other jurisdictions. The Board
8 finds that the additional disadvantages suffered by micro local businesses can be reduced by
9 setting aside appropriate small contracts for competition only among micro businesses.

10 (5) San Francisco has a long history of working to end discrimination in all
11 aspects of public contracting. The City must continue to award and administer its public
12 contracts in a manner that is fair and provides equal opportunity to all local businesses,
13 regardless of race, gender, or other category protected by law. San Francisco must ensure
14 that it does not discriminate and does not contract with any business that discriminates on the
15 basis of race, gender, or other protected category.

16 Specifically, this Board initially passed Ordinance No. 139-84 on April 2,
17 1984 to combat the City and County of San Francisco's own active and passive participation
18 in discrimination against minority- and women-owned businesses, both in its own contracting
19 for goods and services, and in the private market for such goods and services. At the time of
20 passage, women- and minority-owned businesses were virtually excluded as contractors on
21 prime City contracts.

22 Since that time, this Board and the City's Human Rights Commission
23 have actively and extensively documented and studied discrimination against and
24 disadvantages faced by these groups to gauge the effectiveness of the prior Minority, Women
25 and Local Business Enterprise Ordinances (the M/W/LBE Ordinances) and to assess the

1 need for further and continuing action. The earlier studies are documented in the legislative
2 history of the previous amendments and re-enactments of the ordinance, including Ordinance
3 Nos. 175-89, 155-92, 210-97, 457-97, 82-98, 296-98, 210-99, 283-99, and 134-03. The
4 findings underlying these ordinances have been reviewed and analyzed in the preparation of
5 this Chapter Ordinance and are hereby incorporated by reference into the legislative history of
6 this Chapter Ordinance. These materials include disparity studies, transcripts of live testimony
7 by dozens of witnesses, case studies of discrimination, and voluminous other materials. An
8 index and a separate synopsis of this material are on file with the Clerk of this Board in File
9 No. 98-0612. These materials are all incorporated by reference into the legislative history of
10 this Chapter Ordinance. The collection and analysis of relevant information is ongoing.

11 On July 26, 2004, in *Coral Construction, Inc. v. City and County of San*
12 *Francisco* (Sup. Ct. No. 421249), the San Francisco Superior Court enjoined the City from
13 enforcing certain provisions of the M/W/LBE Ordinance. In a subsequent order, the court
14 clarified that the injunction applied to Sections 12D.A.6, 12D.A.7, 12D.A.8, 12D.A.9,
15 12D.A.10, 12D.A.14, and 12D.A.17 of the Administrative Code, for all contracts for which bids
16 or proposals are advertised or solicited on or after July 26, 2004. The injunction became
17 effective immediately.

18 In issuing its injunction, the Superior Court did not dispute the accuracy of
19 the City's disparity studies or otherwise take issue with the City's underlying findings of
20 discrimination and disparity. However, the Court ruled that California's Proposition 209 does
21 not allow the City to address the identified problem through its prior methods. The Board finds
22 and declares that the need for the City to identify, rectify, and prevent discrimination in its
23 public contracting still exists, and the City is committed to ensuring that neither MBEs nor
24 WBEs nor any other business is arbitrarily or unfairly excluded from contracting opportunities.
25 The City remains committed to addressing discrimination in public contracting to the fullest

1 extent allowed by law, in a manner that is consistent with all requirements of Federal and
2 State law.

3 (6) The Board further finds that the public interest is served well if the City is self-
4 sustaining. Stimulating the expansion of small firms or development of new enterprises fosters
5 economic growth and independence for San Francisco and its taxpayers. This expansion of local small
6 businesses advances the public interest, contributes to the economic well-being of all San Franciscans,
7 and tends to minimize the burden on the General Fund to provide for general welfare.

8 **(C) Purpose.**

9 (1) Assistance to Small Local Businesses. ~~The City shall assist small and micro~~
10 ~~local businesses to increase their ability~~ This Chapter is intended to improve the ability of certified
11 ~~local business enterprises~~ Local Business Enterprises (LBE) to compete effectively for the
12 award of City contracts. The Mayor shall establish Citywide goals for participation by small
13 and micro local businesses in contracting. The City shall ~~provide the bid use D~~ discounts, set
14 asides, and LBE subcontracting ~~participation requirements~~ opportunities set forth in this
15 ~~Ordinance~~ Chapter, information and training, and other assistance ~~to small and micro local~~
16 ~~businesses~~ in order to reach these goals. The ~~Human Rights Commission~~ City Administrator and
17 Director of the Contract Monitoring Division shall oversee and assist other City departments ~~to~~
18 ~~implement in implementing this Chapter and otherwise promoting~~ the goal of increasing LBE
19 participation in City contracts ~~by small and micro local businesses.~~

20 (2) The City, as a municipal corporation, shall strive to be economically self-
21 sustaining.

22 (3.2) Nondiscrimination. Neither the City nor any of its officers or employees
23 shall discriminate against any person or business on any basis prohibited by law in the award
24 or administration of City contracts. Persons or businesses that are awarded City contracts
25 shall not discriminate against any person or business on any basis prohibited by law in the

1 performance or administration of any City contract, including in the selection of
2 subcontractors.

3 ~~(3) Human Rights Commission. The Human Rights Commission shall adopt rules~~
4 ~~and regulations necessary to carry out this Ordinance.~~

5 (D) Rules and Regulations. The City Administrator shall adopt rules, regulations,
6 guidelines, and forms and take any and all other actions reasonable and necessary to implement and
7 enforce this Chapter.

8
9 **SEC. 14B.2. DEFINITIONS.**

10 "Architect/Engineering Contract" means an agreement for architectural, engineering, or
11 other professional design, consulting, or construction management services for a public
12 work/construction project.

13 "Back Contracting" shall mean any agreement or other arrangement between a prime
14 Contractor and its Subcontractor that requires the prime Contractor to perform or to secure
15 the performance of the subcontract in such a fashion and/or under such terms and conditions
16 that the prime Contractor enjoys the financial benefits of the subcontract. Such agreements
17 or other arrangements include, but are not limited to, situations in which either a prime
18 contractor or Subcontractor agrees that any term, condition, or obligation imposed upon the
19 Subcontractor by the subcontract shall be performed by or be the responsibility of the prime
20 contractor.

21 "Bid" means a quotation, proposal, solicitation, or offer by a Bidder or Contractor to
22 perform or provide labor, materials, equipment, supplies, or services to the City for a price.

23 "Bidder" means any business that submits a Bid or proposal.

24 "City" means the City and County of San Francisco.

1 "City-wide LBE Participation Goal" means the overall, aspirational City-wide LBE
2 participation goal set by the Mayor each fiscal year as a percentage of the overall dollar value of
3 Contracts anticipated to be awarded in the upcoming fiscal year subject to this Chapter.

4 "CMD" means Contract Monitoring Division.

5 "Commercially Useful Function" shall mean that the business is directly responsible for
6 providing the materials, equipment, supplies or services to the City as required by the
7 solicitation or request for quotes, Bbids or proposals. Businesses that engage in the business
8 of providing brokerage, referral or temporary employment services shall not be deemed to
9 perform a "Cecommercially Useful Ffunction" unless the brokerage, referral or temporary
10 employment services are those required and sought by the City. When the City requires and
11 seeks specialty products made to order for the City or otherwise seeks products which, by
12 industry practice, are not regularly stocked in warehouse inventory but instead are purchased
13 directly from the manufacturer, no more than five percent of the cost of the product shall be
14 credited towards LBE subcontracting participation requirementsgoals. When the City requires
15 and seeks products which are, by industry practice, stocked in warehouse inventory and are,
16 in fact, regularly stocked by the listed supplier or distributor, no more than sixty percent of the
17 cost of the product shall be credited towards LBE subcontracting participation
18 requirementsgoals. If the listed supplier or distributor does not regularly stock the required
19 product, no more than five percent of the cost of the product shall be credited towards LBE
20 subcontracting participation requirementsgoals.

21 "Commission" means the Human Rights Commission.

22 "CommoditiesCommodity Contract" means an agreement to purchase any product,
23 including materials, equipment, and supplies, including associated incidental services.

24 "Contract" means any agreement between the City and a person to provide or procure
25 labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to

1 be paid out of monies deposited in the City Treasury or out of trust monies under the control
2 of or collected by the City. "Trust monies" include, without limitation, all monies to which the City is
3 entitled to receive or deposit in the City Treasury. A "Contract" includes an agreement between a
4 non-profit or public entity and a Contractor for the performance of construction or construction-
5 related services, where the contract is funded by the City. ~~For purposes of this Chapter, a~~
6 "Contract" includes any agreement between the City and a person to provide or procure labor,
7 materials, equipment, supplies, or services to, for, or on behalf of the City for PUC Regional Projects.
8 A "Contract" does not include: (1) grants, whether funded by the City or by Federal or State
9 grant funds, to a nonprofit entity to provide services to the community; (2) sales of the City's
10 personal or real property; (3) loan transactions, whether the City is a debtor or creditor; (4)
11 lease, franchise, or concession agreements; (5) agreements to use City real property; (6) gifts
12 of materials, equipment, supplies, or services to the City; ~~or~~ (7) agreements with a public
13 agency except for contracts or other agreements between the City and persons or entities,
14 public or private, in which such persons or entities receive money from or through the City for
15 the purpose of contracting with businesses to perform public improvements; ~~or~~ (8) agreements
16 awarded under the emergency provisions of Administrative Code Sections 6.60 or 21.15 where there is
17 either (a) no time to apply Discounts or establish subcontracting participation requirements, or (b) no
18 immediately available LBEs are certified for the needed emergency work. Without limitation of the
19 foregoing, "Contract" includes any agreement between the City and a person to provide or procure
20 labor, materials, equipment, supplies, or services to, for, or on behalf of the City for PUC Regional
21 Projects.

22 "Contract Awarding Authority" means any City officer, department, commission,
23 employee, or board authorized to enter into Contracts on behalf of the City. A non-profit or
24 public entity that receives funds from the City to pay for construction or construction related
25

1 services is a "Contract Awarding Authority" for the purposes of contracting for the
2 performance of those services.

3 "Contract Monitoring Division (CMD)" means the Contract Monitoring Division of the Office
4 of the City Administrator to which the City Administrator has delegated responsibility to implement this
5 Chapter, and shall also mean and include any department or division of the Office of the City
6 Administrator that the City Administrator may in the future designate as successor to the Contract
7 Monitoring Division to assume the duties of the Contract Monitoring Division set forth in this Chapter.

8 "Contractor" means any person who enters into a Contract with the City.

9 "Control" means a person possesses the legal authority to manage business assets,
10 good will, and the day-to-day operations of a business and actively and continuously
11 exercises such authority.

12 "Design-Build Contracts" means Public Works/Construction Contracts authorized under
13 Administrative Code Section 6.61.

14 "Director" means the Director of the ~~Human Rights Commission~~ Contract Monitoring
15 Division, or his or her designee.

16 "Discount" means a downward adjustment in price or upward adjustment in rating of a
17 proposal, whichever applies, that is made under Section 14B.7.

18 "Eligible Public Works/Construction Contract" means a Contract with (1) an estimated
19 cost which exceeds \$10,000 but is less than or equal to the Threshold Amount, and (2) a
20 scope of work which, based on ~~HRC~~ CMD Micro-LBE availability data, would attract bids from
21 at least two qualified Micro-LBEs. Eligible Public Works/Construction Contracts include Job
22 Order Contracts set aside for Micro-LBEs under Administrative Code Section 6.62(C).

23 "Eligible Services/Commodities Contract" means a Professional Services, General
24 Services, Architect/Engineering or Commodities Contract with (1) an estimated cost which
25 exceeds \$10,000 but is less than or equal to the Minimum Competitive Amount, and (2) a

1 scope of work which, based on HRCMD Micro-LBE availability data, would attract bids from
2 at least two qualified Micro-LBEs.

3 "General Manager" means the General Manager of the San Francisco Public Utilities
4 Commission, or his or her designee.

5 "General Services Contract" means an agreement for those services that are not
6 professional services. Examples of "general services" include, but are not limited to, janitorial,
7 security guard, pest control, and landscaping services.

8 "Integrated Project Delivery Contracts" means Public Works/Construction Contracts
9 authorized under Administrative Code Section 6.68.

10 "Joint Venture" ~~shall~~ means an association of two or more professional services or
11 architect/engineering businesses acting as a Contractor and performing or providing services
12 on a Professional Services or Architect/Engineering Contract, in which each Joint Venture
13 partner combines property, capital, efforts, skill, and/or knowledge and each Joint Venture
14 partner shares in the Ownership, Control, management responsibilities, risks, and profits of
15 the Joint Venture in proportion to its claimed level of participation. Joint Venture partners may be
16 in different industries provided that each joint venture partner meets the minimum qualifications in the
17 Bid, and each are is acting as a prime contractor and otherwise meets the definition of a Joint Venture.

18 "LBE" means Local Business Enterprise.

19 "Local Business Enterprise (LBE)" means a business that is certified as an LBE under
20 Section 14B.3.

21 "MBE" means Minority Business Enterprise.

22 "Minimum Competitive Amount" means (i) for the procurement of commodities,
23 professional services, and architect/engineering services, the "Minimum Competitive Amount"
24 as defined in Section 6.40(A) of the Administrative Code, which shall be \$100,000 and (ii) for
25 the procurement of general services, an amount equivalent to the "Threshold Amount" as

1 defined in Chapter 6.1(M) of the Administrative Code which shall be \$400,000, provided that
2 on January 1, 2015, and every five years thereafter, the Controller shall recalculate the
3 applicable Minimum Competitive Amount (and the Threshold Amount from which the Minimum
4 Competitive Amount for general services is calculated) to reflect any proportional increase in
5 the Urban Regional Consumer Price Index from January 1, 2010, rounded to the nearest
6 \$1,000.

7 "Minority Business Enterprise (MBE)" means a business that is certified as an MBE
8 under Section 14B.3(E)(1)~~14B.4(B)~~.

9 "OBE" means Other Business Enterprise.

10 "Other Business Enterprise (OBE)" means a business that is certified as an OBE under
11 Section 14B.3(E)(3)~~14B.4(D)~~.

12 "Owns" or "Ownership" means a person who:

13 (a) possesses a record ownership interest, such as partnership interest or
14 stock interest, of at least fifty-one percent (51%) of the business or such lesser amount as the
15 HRCMD determines, under the circumstances of the particular business' overall ownership
16 and control structure, constitutes a significant ability to influence business operations and a
17 strong personal stake in the business's viability;

18 (b) possesses incidents of ownership, including an interest in profit and loss,
19 equal to at least the record ownership interest;

20 (c) contributes capital to the business equal to at least the record ownership
21 percentage (unsecured promissory notes or notes secured by the business or business
22 assets are not sufficient to constitute capital contributions); and

23 (d) actively and continuously devotes expertise to the operations of the
24 business relevant to the business's "Commercially Useful Function" of a quality and quantity
25 proportionate to the record ownership interest.

1 "Owns" or "Ownership" for purposes of determining whether a business is an MBE
2 means that a minority Person possesses all of the above indicia of ownership, and either
3 individually, or in combination with the interests of other owners who are minority Persons,
4 the ownership by minority Persons constitutes at least fifty-one percent (51%) of the overall
5 business ownership.

6 "Owns" or "Ownership" for purposes of determining whether a business is a WBE
7 means that a woman possesses all of the above indicia of ownership, and that either
8 individually, or in combination with the interests of other owners who are women, the
9 ownership by women constitutes at least fifty-one percent (51%) of the overall business
10 ownership.

11 "Person" means any individual or group of individuals, including but not limited to
12 partnerships, associations, and corporations.

13 "Professional Services Contract" means an agreement for services that require
14 extended analysis, the exercise of discretion and independent judgment, or the application of
15 an advanced, specialized type of knowledge, expertise, or training customarily acquired either
16 by a prolonged course of study or equivalent experience in the field. Examples of professional
17 service providers include, but are not limited to, licensed professionals such as accountants,
18 and non-licensed professionals such as parking lot management, software developers and
19 financial consultants. For the purpose of this Ordinance Chapter, a Contract for architectural,
20 engineering, or other professional design, consulting or construction management services for
21 a public work project shall be considered an Architect/Engineering Contract and not a
22 Professional Services Contract.

23 "Public Works/Construction Contract" means a Contract for the erection, construction,
24 renovation, alteration, improvement, demolition, excavation, installation, or repair of any public
25 building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility, or similar

1 public facility that is performed by or for the City, and the cost of which is to be paid wholly or
2 partially out of moneys deposited in the City Treasury or out of trust monies under the control
3 of or collected by the City. For purposes of this ~~Ordinance~~Chapter only, "Public
4 Works/Construction Contract" includes Contracts between a Person, including a non-profit
5 entity or public agency, and a Contractor for construction or construction-related services,
6 where the Contract is funded by the City.

7 "PUC" or "Public Utilities Commission" means the San Francisco Public Utilities
8 Commission (SFPUC), the City Department that provides water, wastewater, and municipal
9 power services to San Francisco and, under contractual agreement with 29 wholesale water
10 agencies, also supplies water to 1.6 million additional customers within three Bay Area
11 counties.

12 "PUC Regional Projects" means (1) projects to be performed outside of the
13 jurisdictional boundaries of San Francisco that are identified as regional projects and included
14 in the formally approved Capital Improvement Program of the San Francisco Public Utilities
15 Commission's (~~SFPUC~~) approximately \$4.6 billion project to seismically reinforce and
16 otherwise enhance the Hetch Hetchy water supply system, also known as the Water System
17 Improvement Program (WSIP), as it may be amended from time to time; (2) projects to be
18 performed exclusively outside of the jurisdictional boundaries of San Francisco for which
19 some or all of the cost will be shared by members of the Bay Area Water Supply and
20 Conservation Agency (BAWSCA); or (3) projects under Contracts with the SFPUC to be
21 performed exclusively 70 miles or more beyond the jurisdictional boundaries of San
22 Francisco. "PUC Regional Projects" shall include, but are not limited to, Repair and
23 Replacement work (R&R) to be performed in association with a regional Capital Improvement
24 Program or other BAWSCA cost sharing project, or to be performed exclusively 70 miles or
25 more beyond the jurisdictional boundaries of San Francisco.

1 "Risk Manager" means the Director of Risk Management, a division of the Office of the City
2 Administrator.

3 "Subcontractor" means any ~~person~~LBE providing goods or services to a Contractor or a
4 lower tier Ssubcontractor in fulfillment of the Contractor or Ssubcontractor's LBE utilization
5 obligations arising from a Contract ~~with the City~~.

6 "Threshold Amount" means, for public works/construction projects, the "Threshold
7 Amount" as defined in ~~Chapter~~Section 6.1-(M) of the Administrative Code which shall be
8 \$400,000 provided that on January 1, 2015, and every five years thereafter, the Controller
9 shall recalculate the Threshold Amount to reflect any proportional increase in the Urban
10 Regional Consumer Price Index from January 1, 2010, rounded to the nearest \$1,000.

11 "Woman Business Enterprise (WBE)" means a business that is certified as a WBE
12 under Section 14B.~~4(C)~~3(E)(2).

13
14 **SEC. 14B.3. LBE CERTIFICATION.**

15 **(A) Criteria for LBE Certification.** ~~Through appropriately promulgated procedures, if~~
16 ~~any, the~~The Director shall certify as an LBE any business that meets all of the following criteria
17 and also meets the criteria set forth in Section 14-B.3(B), Section 14-B.3(C) or Section
18 14B.3(D):

19 (1) The business is financially and operationally independent from, and
20 operates at arm's length to, any other business.

21 (2) The business is continuously in operation.

22 (3) The business is a for-profit enterprise.

23 (4) The business performs a ~~e~~Commercially ~~u~~function.

24 (5) The business maintains its principal place of business in a fixed office
25 within the geographic boundaries of the City that provides all of the services for which LBE

1 certification is sought, other than work required to be performed at a job site; provided,
2 however, that suppliers are not required to maintain their principal place of business in San
3 Francisco, but are required to maintain a fixed office in San Francisco that meets all of the
4 requirements of this Section other than the principal place of business requirement.

5 An office is a fixed and established place of business, as determined by
6 the Director, including a qualified home office, where business is conducted on a regular basis
7 of the type for which certification is sought. A residence qualifies as an office only if *the*
8 *residence is situated within the geographic boundaries of the City, and* none of the business owners
9 also maintain an office outside the residence in the same or related field, and a business
10 owner claimed the home office as a business deduction on the prior year's income tax return,
11 or for businesses started after the last tax return, would qualify for a deduction on the next tax
12 return. None of the following constitutes an office: a post office box, a temporary location, a
13 movable property, a location that was established to oversee a project such as a construction
14 project office, or a work space provided in exchange for services as opposed to monetary
15 rent.

16 To establish a principal place of business in San Francisco, a business
17 must demonstrate that the majority of its principals are based in the San Francisco office.
18 ~~*There shall be a rebuttable presumption that a business that pays San Francisco payroll taxes on at*~~
19 ~~*least fifty-one percent (51%) of its total payroll has its principal place of business in San Francisco.*~~
20 ~~*The Director may, based upon the circumstances of a particular business' overall business model,*~~
21 ~~*ownership and control structure, find a business paying San Francisco payroll taxes on a lower*~~
22 ~~*percentage of its payroll in compliance with the "principal place of business" requirement.*~~

23 Suppliers must maintain a warehouse in the City that is continuously
24 stocked with inventory consistent with their certification. Truckers must park their registered
25 vehicles and trailers within the City.

1 (6) The business possesses a current San Francisco Business Tax
2 Registration Certificate.

3 (7) The business has been located and doing business in San Francisco for
4 at least six (6) months preceding the application for certification.

5 (8) At least one business owner has valid licenses or other relevant trade or
6 professional certifications or, where licensing is not required, the business owners individually
7 and collectively have relevant training and experience that are appropriate for the type of
8 business for which the business seeks certification.

9 (9) The business is Owned and Controlled as defined herein by individuals
10 who reside in the United States or its territories.

11 (10) The business has average gross annual receipts in the prior three (3)
12 fiscal years that satisfy the criteria set forth in Section 14B.3(B), Section 14B.3(C), or Section
13 14B.3(D).

14 (11) The business is not Owned or Controlled as defined herein in part or in
15 whole by a full time City employee.

16 **(B) Criteria for Small-LBE.** The Director shall certify as a "Small-LBE" any
17 business that meets the requirements of 14B.3(A) and has average gross annual receipts in
18 the prior three (3) fiscal years that do not exceed the following limits: (1) public
19 works/construction - ~~\$1420~~,000,000; (2) specialty construction contractors - ~~\$710~~,000,000; (3)
20 goods/materials/equipment and general services - ~~\$710~~,000,000; (4) professional services
21 and architect/engineering - \$2,500,000; and (5) trucking - \$3,500,000. The *CityDirector* shall
22 determine gross receipts according to recognized accounting methodologies that the
23 *CityDirector* determines most accurately reflect the actual money that the business received
24 during the relevant period.

1 Any business under common ownership, in whole or in part, with any other business *in*
2 *a related industry* meets the requirements of this subparagraph only if the aggregate gross
3 annual receipts of *their percentage of ownership added together of* all of the businesses under
4 such common ownership do not exceed these limits. All businesses owned by married
5 spouses or domestic partners are considered under common ownership unless the
6 businesses are in unrelated industries and no community property or other jointly owned
7 assets were used to establish or are used to operate either business.

8 **(C) Criteria for Micro-LBE.** The Director shall certify as a "Micro-LBE" any
9 business that meets the requirements of 14B.3(A) and also has average gross annual receipts
10 in the prior three (3) fiscal years that do not exceed the following limits: (1) public
11 works/construction - ~~\$710,000,000~~; (2) specialty construction contractors -
12 ~~\$5,000,000~~~~3,500,000~~; (3) goods/materials/equipment and general services -
13 ~~\$5,000,000~~~~3,500,000~~; (4) professional services and architect/engineering - \$1,250,000; and
14 (5) trucking - \$1,750,000. The *City Director* shall determine gross receipts according to
15 recognized accounting methodologies that the *City Director* determines most accurately reflect
16 the actual money that the business received during the relevant period.

17 Any business under common ownership, in whole or in part, with any other business *in*
18 *a related industry* meets the requirements of this subparagraph only if the aggregate gross
19 annual receipts of *their percentage of ownership added together of* all of the businesses under
20 such common ownership do not exceed these limits. All businesses owned by married
21 spouses or domestic partners are considered under common ownership unless the
22 businesses are in unrelated industries and no community property or other jointly owned
23 assets were used to establish or are used to operate either business.

24 **(D) Criteria for SBA-LBE.** The Director shall certify as a "SBA-LBE" any business
25 that: (1) meets the requirements of 14B.3(A) and also has average gross annual receipts in

1 the prior three (3) fiscal years that do not exceed the following limits: (1) public
2 works/construction - \$33.5 million; (2) specialty construction contractors - \$17 million; (3)
3 goods/materials/equipment and general services - \$17 million; (4) professional services and
4 architect/engineering - \$7 million and (5) trucking - \$8.5 million. The City Director shall
5 determine gross receipts according to recognized accounting methodologies that the
6 City Director determines most accurately reflect the actual money that the business received
7 during the relevant period.

8 Any business under common ownership, in whole or in part, with any other business in
9 a related industry meets the requirements of this subparagraph only if the aggregate gross
10 annual receipts of their percentage of ownership added together of all of the businesses under
11 such common ownership do not exceed these limits. All businesses owned by married
12 spouses or domestic partners are considered under common ownership unless the
13 businesses are in unrelated industries and no community property or other jointly owned
14 assets were used to establish or are used to operate either business.

15 ~~SEC. 14B.4. NON-DISCRIMINATION CERTIFICATION.~~

16 (EA) For purposes of ensuring nondiscrimination in City contracting and
17 subcontracting, the ~~For purposes of ensuring non-discrimination in City contracting and~~
18 ~~subcontracting, and subject to appropriately promulgated procedures, if any, the~~ The Director shall
19 further certify all Small-LBEs and Micro-LBEs as MBEs, WBEs and OBEs according to the
20 Ownership and Control of the LBE and shall maintain data on the availability and utilization of
21 MBEs, WBEs, and OBEs in City Contracting.

22 _____ (1B) MBE Certification. The Director shall certify as an MBE any business that
23 is certified as an LBE and is Owned and Controlled by ~~one or more minority persons. A~~
24 ~~minority~~ a Person or Persons who is a member of one or more of the following ethnic groups:
25

1 _____(a1) African Americans, defined as persons whose ancestry is from any
2 of the Black racial groups of Africa or the Caribbean;

3 _____(b2) Arab Americans, defined as persons whose ancestry is from an
4 Arabic speaking country that is a current or former member of the League of Arab States;

5 _____(c3) Asian Americans, defined as persons with Chinese, Japanese,
6 Korean, Pacific Islander, Samoan, Filipino, Asian Indian, and Southeast Asian ancestry;

7 _____(d4) Iranian Americans, defined as persons whose ancestry is from the
8 country of Iran;

9 _____(e5) Latino Americans, defined as persons with Mexican, Puerto Rican,
10 Cuban, Central American or South American ancestry. Persons with European Spanish
11 ancestry are not included as Latino Americans; and

12 _____(f6) Native Americans, defined as any person whose ancestry is from
13 any of the original peoples of North America, and who maintains cultural identification through
14 tribal affiliation or community recognition.

15 _____(2e) WBE Certification. The Director shall certify as a WBE any business that
16 is certified as an LBE and is Oowned and Ccontrolled by one or more women.

17 _____(3D) OBE Certification. The Director shall certify as an OBE any business that
18 is certified as an LBE and (i) does not demonstrate to the satisfaction of the Director that it is
19 Oowned and Ccontrolled by one or more women or one or more minority Ppersons or (ii) is not
20 certified as an MBE or a WBE.

21
22 **SEC. 14B.4. TERM OF CERTIFICATION, CERTIFICATION DENIAL PROTESTS AND**
23 **APPEALS**

24 **(A) Period of Certification.** *The Director may certify LBEs as small-LBEs or Micro-*
25 *LBEs, and as MBEs, WBEs or OBEs for a period not to exceed three years provided that businesses*

1 must at all times throughout the certification period meet the criteria in Section 14B.3 and Section
2 14B.4 as applicable. Certification for all categories of LBE shall be effective for a three (3) year period
3 provided that (1) businesses must at all times throughout the certification period meet the criteria in
4 Section 14B.3 and Section 14B.4 as applicable; and (2) the Director may, in his or her discretion,
5 certify a business for a shorter period based on the unique attributes of any applicant or renewal
6 applicant that relate to such business' eligibility or continued eligibility for certification. The Director
7 may require certified businesses annually to submit copies of their federal income tax returns and
8 other documentation for the purpose of verifying continuing eligibility for any certification status
9 hereunder. The Director may suspend or revoke the certification of any LBE that fails to submit
10 requested tax returns or other documentation in a timely fashion or otherwise fails to cooperate with
11 the Director in any investigation of that business' continued eligibility for certification.

12 (B) Certification or Re-Certification Denial. Whenever the Director determines that an
13 applicant or a certified business whose certification period is expiring (renewal applicant) is not
14 eligible for any requested certification, the Director shall notify the applicant or renewal applicant in
15 writing of the basis for such decision, and the date on which the business will be eligible to reapply for
16 the same certification; provided, however, that in all cases, the applicant or renewal applicant has the
17 right to notice of the Director's determination and a full and adequate opportunity to be heard before
18 the Director's decision is final. The Director shall require a business to wait at least six months but
19 not more than two years after the denial before reapplying for certification in the same category.

20 (C) Appeals. Applicants and renewal applicants may appeal a Director's denial or refusal
21 to renew certification, or length of waiting period for reapplication imposed hereunder to the City
22 Administrator, or Hearing Officer appointed by the City Administrator, for a de novo determination of
23 the matter appealed. After affording the applicant a full and adequate opportunity to be heard, the City
24 Administrator's or Hearing Officer's decision shall be the City's final administrative decision on the

1 matter. Unless the City Administrator or Hearing Officer issues an order to the contrary, the
2 Director's determination shall not be stayed during the appeal process.

3 **SEC. 14B.5. PUC-LBE CERTIFICATION.**

4 **(A) PUC-LBE Certification.** In order to increase the ability of small businesses that
5 are located within the PUC water system service area but outside of the jurisdictional
6 boundaries of San Francisco to compete for *regional* PUC Regional eContracts, the Director
7 shall certify businesses as PUC-LBEs, including as either Small-PUC-LBEs or Micro-PUC-
8 LBEs, and as either PUC-MBEs, PUC-WBEs, or PUC-OBEs, that meet all of the following
9 criteria:

10 (1) ~~Only established small public works/construction, construction material~~
11 ~~supplies, construction equipment rental, and trucking firms may be certified as PUC-LBEs or any~~
12 ~~subcategory of PUC-LBE.~~ Only established small public works/construction, construction
13 material supplies, construction equipment rental, trucking, and professional services firms
14 including architecture or engineering firms may be certified as PUC-LBEs or any subcategory
15 of PUC-LBE.

16 ~~(2)~~ Only firms located within the PUC water system service area may be
17 certified as PUC-LBEs or any subcategory of PUC-LBE.

18 ~~(23)~~ Only firms with average gross annual receipts in the prior three fiscal
19 years that meet the requirements of Section 14B.3(B) or Section 14B.3(C) for Small-LBEs or
20 Micro-LBEs, respectively may be certified as PUC-Small-LBEs or PUC-Micro-LBEs.

21 ~~(34)~~ PUC-LBEs owned and controlled by one or more minority persons or
22 women according to all of the criteria set forth in Section 14B.3(B) or 14B.3(C), respectively,
23 shall be certified as PUC-MBEs or PUC-WBEs. PUC-LBEs that do not demonstrate qualifying
24 ownership and control by minority persons or women shall be certified as PUC-OBEs.

1 (45) Firms shall meet all criteria that the City Administrator shall by rule adopt
2 to the end that firms certified as PUC-LBEs shall be similarly situated to LBEs to the extent
3 practicable, taking into account the special circumstances of their location and the needs of
4 the PUC Regional PP projects.

5 **(B) PUC Small Firm Advisory Committee.** There is hereby established a PUC
6 Small Firm Advisory Committee as follows:

7 (1) The PUC Small Firm Advisory Committee shall have five (5) members
8 who shall be appointed by the PUC General Manager to represent the interest of individuals
9 and businesses that are or may be eligible for PUC-LBE certification. Members shall serve at
10 the pleasure of the PUC General Manager. Members of the PUC Small Firm Advisory
11 Committee shall not be compensated, but shall be reimbursed for expenses in accordance
12 with the Controller's published policies.

13 (2) The purposes and duties of the PUC Small Firm Advisory Committee are:

14 (a) To adopt rules and procedures within the Advisory Committee's
15 responsibilities;

16 (b) To assist the Director in verifying the eligibility for certification of
17 PUC-LBE applicants by conducting site visits or undertaking other local or regional fact
18 gathering to ensure that applications for PUC-LBE certification undergo substantially the same
19 scrutiny as applications for other LBE certification;

20 (c) To outreach to the business community about PUC-LBE
21 certification and contracting opportunities and to provide information to the Director regarding
22 the availability of potential PUC-LBEs;

23 (d) To receive reports from the City, to publicly discuss, and make
24 recommendations for rules and procedures regarding the implementation of this

25 Chapter Ordinance for PUC regional projects to the Director and the PUC;

1 (e) To make recommendations to ~~the SFPUC's General Manager HRC~~ to
2 study the feasibility of additional programs that will increase the participation of eligible firms
3 for the regional program;

4 (f) To provide status reports on the Advisory Committee's activities to
5 ~~the Commission and~~ the SFPUC General Manager and the Director.

6 (34) The PUC Small Firm Advisory Committee shall establish bylaws, rules
7 and/or regulations for the conduct of its business. Administrative assistance and staffing for
8 the PUC Small Firm Advisory Committee shall be provided ~~in~~at the discretion of the PUC.

9 (45) Except for the PUC Small Firm Advisory Committee's authority as
10 provided in Section 14B.5(B)(2), the Director shall have the authority over the implementation
11 of this ~~Chapter Ordinance~~ for PUC Regional Projects to the same extent as all other Bbids,
12 proposals, and Ccontracts subject to the ~~Chapter Ordinance~~. ~~The Director shall consult fully with~~
13 ~~the PUC to the extent required in the Ordinance~~.

14 (C) **PUC-LBE Status**. Except as provided in Subsection 14B.5(D), PUC-LBEs shall
15 have the status of LBEs for all purposes of this ~~Chapter Ordinance only for construction, specialty~~
16 ~~construction, construction material suppliers, construction equipment rental firms, and trucking~~
17 ~~services for PUC Regional Projects~~ for construction, specialty construction, construction material
18 suppliers, construction equipment rental firms, trucking, and professional services including
19 architectural and engineering for PUC Regional Projects. PUC-LBEs shall not have the status
20 of LBEs for PUC Regional Ccontracts for ~~architectural and engineering services, professional~~
21 ~~services or general services or for any other Bbid, proposal, or Ccontract~~ subject to this
22 ~~Chapter Ordinance~~.

23 (D) **Bid Discounts**. Contract Awarding Authorities shall only apply Discounts to
24 Bids from PUC-LBEs for the purpose of determining the apparent highest ranked proposal or
25 the apparent lowest bid, for PUC Regional Projects that will be performed exclusively 70 miles

1 or more beyond the jurisdictional boundaries of San Francisco, or and for which some or all of
2 the ~~no~~ cost will be directly-shared by members of the BAWSCA, where application of the
3 Discount will not adversely impact the ranking for negotiation or award process of a Bid
4 submitted by any Micro-LBE, Small-LBE, or SBA-LBE certified under Section 14B.3.

5
6 **SEC. 14B.6. NON-PROFIT LBE CERTIFICATION.**

7 (A) Notwithstanding any other provisions of this Chapter Ordinance, in order to
8 increase the ability of small, local non-profit enterprises to compete for City contracts on an
9 equal basis with small, local for-profit enterprises, the Director shall certify as Non-profit LBEs,
10 ~~non-profit~~ enterprises that meet all of the following criteria:

11 (1) The non-profit ~~enterprise~~ is financially and operationally independent from,
12 and operates at arm's length to, any other non-profit or for-profit enterprise.

13 (2) The non-profit ~~enterprise~~ is continuously in operation.

14 (3) The ~~business non-profit~~ is a California Nonprofit Organization that is both

15 (a) regulated as either a Nonprofit Public Benefit Corporation under
16 California Corporations Code Sections 5110-6815 or a Nonprofit Religious Corporation under
17 California Corporations Code Sections 9110-9690, and

18 (b) tax-exempt under section 501(c)(3) of the Internal Revenue Code.

19 (4) The non-profit ~~enterprise~~ performs a ~~e~~Commercially ~~u~~Useful ~~f~~Function. In
20 the case of non-profits, the ~~e~~Commercially ~~u~~Useful ~~f~~Function may be related or unrelated to its
21 stated charitable mission. The tax, or other implications, including forfeiture of tax-exempt
22 status, that a certified non-profit may incur for engaging in substantial business operations
23 unrelated to its charitable mission are solely the responsibility of the non-profit and not a
24 criteria for certification hereunder.

1 (5) The non-profit *enterprise* maintains its principal place of business in a
2 fixed office within the geographic boundaries of the City.

3 An office is a fixed and established place of business, including a
4 qualified home office, where business is conducted on a regular basis of the type for which
5 certification is sought. A residence qualifies as an office only if none of the persons who own
6 or control the business also maintains an office related to a for-profit or non-profit enterprise
7 outside the residence in the same or related field, and the persons who own or control the
8 business claimed a business deduction on the prior year's income tax return, or for
9 businesses started after the last tax return, would qualify for a deduction on the next tax
10 return. None of the following constitutes an office: a post office box, a temporary location, a
11 movable property, a location that was established to oversee a project such as a construction
12 project office, or work space provided in exchange for services, as opposed to monetary rent.

13 To establish a principal place of business in San Francisco, a non-profit
14 *enterprise* must demonstrate that the majority of its paid and volunteer staff are based in the
15 San Francisco office.

16 Suppliers must maintain a warehouse in the City that is continuously
17 stocked with inventory consistent with their certification. Truckers must park their registered
18 vehicles and trailers within the City.

19 (6) The non-profit *enterprise* has applicable current filings with State and
20 Federal agencies, including the California Attorney General (Form RRF-1), the California
21 Franchise Tax Board (Forms 199 and 109), the California Secretary of State (Form S1-100)
22 and the Internal Revenue Service (Form 990).

23 (7) The non-profit *enterprise* has been located and doing the same type of
24 business activity as the type(s) for which certification is sought in San Francisco for at least
25 six months preceding the application for certification.

1 (8) The non-profit has staff under continuous contractual commitment with
2 licenses or other relevant trade or professional certifications, or, where licensing is not
3 required, relevant training and experience that are appropriate for the type of business for
4 which the non-profit seeks certification.

5 (9) The Board of Directors or other governing body of the non-profit *enterprise*
6 consists exclusively of individuals who reside in the United States or its territories.

7 (10) The non-profit *enterprise* has average gross annual receipts in the prior
8 three fiscal years that satisfy the criteria set forth in either Section 14B.3(B) or 14B.3(C).

9 (11) (a) Full-time City employees, if any, ~~that~~who serve on the Board of
10 Directors or other governing body of the non-profit *enterprise* shall not constitute a majority of
11 the membership of such body or be capable of exercising a controlling number of votes for
12 such body, and

13 (b) any non-profit that includes any full time City employees on its
14 Board of Directors or other governing body shall be ineligible for award, as a prime
15 eContractor or subcontractor, of any eContract to be awarded by, and/or overseen by, the
16 City Department or entity that employs such Board or other governing body member.

17 (B) Only firms with average gross annual receipts in the prior three fiscal years that meet
18 the requirements of Section 14B.3(B) or Section 14B.3(C) for Small-LBEs or Micro-LBEs, respectively,
19 may be certified as Non-profit Small-LBEs or Non-profit Micro-LBEs. Criteria for Small-LBE. The
20 Director shall certify as a "Small-LBE" any non-profit enterprise that meets the requirements of
21 14B.6(A) and has average gross annual receipts in the prior three fiscal years that do not exceed the
22 following limits: (1) public works/construction—\$14,000,000; (2) specialty construction contractors—
23 \$7,000,000; (3) goods/materials/equipment and general services—\$7,000,000; (4) professional
24 services and architect/engineering—\$2,500,000; and (5) trucking—\$3,500,000. The CityDirector shall
25 determine gross receipts according to recognized accounting methodologies that the

1 City Director determines most accurately reflect the actual money that the non-profit *enterprise*
2 received or was entitled to receive during the relevant period. ~~Any non-profit enterprise under~~
3 ~~common ownership, in whole or in part, with any other for-profit or non-profit enterprise meets the~~
4 ~~requirements of this subparagraph only if the aggregate gross annual receipts of all of the for-profit~~
5 ~~and non-profit enterprises under such common ownership do not exceed these limits. All for-profit and~~
6 ~~non-profit enterprises owned by married spouses or domestic partners are considered under common~~
7 ~~ownership unless all such enterprises are in unrelated industries and no community property or other~~
8 ~~jointly owned assets were used to establish or are used to operate any such enterprise.~~

9 (C) ~~Criteria for Micro-LBE. The Director shall certify as a "Micro-LBE" any non-profit~~
10 ~~enterprise that meets the requirements of 14B.6(A) and has average gross annual receipts in the prior~~
11 ~~three fiscal years that do not exceed the following limits: (1) public works/construction—\$7,000,000;~~
12 ~~(2) specialty construction contractors—\$3,500,000; (3) goods/materials/equipment and general~~
13 ~~services—\$3,500,000; (4) professional services and architect/engineering—\$1,250,000; and (5)~~
14 ~~trucking—\$1,750,000. The City shall determine gross receipts according to recognized accounting~~
15 ~~methodologies that the City determines most accurately reflect the actual money that the non-profit~~
16 ~~enterprise received or was entitled to receive during the relevant period. Gross receipts for non-profits~~
17 ~~shall include all gifts, grants and other revenues from business activities and investments, according to~~
18 ~~methodologies that the City determines most accurately reflect the available resources of the non-~~
19 ~~profit. Any non-profit enterprise under common ownership, in whole or in part, with any other for-~~
20 ~~profit or non-profit enterprise meets the requirements of this subparagraph only if the aggregate gross~~
21 ~~annual receipts of all of the for-profit and non-profit enterprises under such common ownership do not~~
22 ~~exceed these limits. All for-profit and non-profit enterprises owned by married spouses or domestic~~
23 ~~partners are considered under common ownership unless all such enterprises are in unrelated~~
24 ~~industries and no community property or other jointly owned assets were used to establish or are used~~
25 ~~to operate any such enterprise. A non-profit shall be considered affiliated with a for-profit if the parent~~

1 ~~non-profit seeking certification has an ownership interest in the for-profit subsidiary, whether or not~~
2 ~~the for-profit subsidiary is engaged in the same charitable mission or business activities as the parent~~
3 ~~non-profit. A non-profit shall be considered affiliated with another non-profit if the parent non-profit~~
4 ~~seeking certification has legal control in whole or in part of the non-profit subsidiary whether or not~~
5 ~~the non-profit subsidiary is engaged in the same charitable mission or business activities as the parent~~
6 ~~non-profit.~~

7 **(CD) Certification as OBE.** All ~~Non~~non-profit LBEs shall be certified as OBEs. Non-
8 profits shall not be eligible for certification as MBEs or WBEs. Non-profit LBEs shall have the
9 status of LBEs for all purposes of this ~~Chapter~~Ordinance, including but not limited to
10 ~~Bid~~bid/ratings ~~Dis~~counts and subcontracting participation credit.

11 **(DE) Additional Requirements.** Certification of ~~Non~~non-profit LBEs shall be subject
12 to such requirements, if any, that the ~~Director~~ City Administrator shall by rule adopt, to the end
13 that eligibility requirements for certification for ~~Non~~non-profit LBEs shall conform to eligibility
14 requirements for certification for-profit LBEs to the extent practicable taking into consideration
15 the differences in their ownership and operational structures.

16
17 **SEC. 14B.7. PRIME CONTRACTS**

18 **(A) Good Faith Efforts by Awarding Authorities to Obtain LBE Bids on Prime**
19 **Contracts** ~~Subject to this Ordinance.~~ Contract ~~A~~awarding ~~A~~authorities shall use good-faith
20 efforts for all ~~e~~Contracts subject to the Discount provisions of this ~~Chapter~~Ordinance to solicit
21 and ~~to~~ obtain ~~B~~ bids from the broadest possible ~~diversity~~range of LBEs and to ensure that
22 ~~neither~~ MBEs, ~~nor~~ WBEs, ~~and~~ ~~nor~~ OBEs are not arbitrarily excluded from participation. Good
23 faith efforts shall include the following:

24 (1) Arranging ~~e~~Contracts by size and type of work to maximize the
25 opportunities for LBEs to participate. This includes dividing projects into smaller parts.

1 (a) As soon as practical before soliciting Bids, Contract Awarding
2 Authorities shall submit ~~L~~large ~~e~~Contract ~~p~~Proposals to the Director for review. The Director
3 shall determine whether the proposed ~~e~~Contract can be divided into smaller ~~e~~Contracts so as
4 to enhance the opportunity for participation by LBEs. For purposes of this paragraph, "~~Large~~
5 ~~Contract Proposals~~~~large project~~" means any Public Works/Construction Contract estimated to
6 cost more than \$5,000,000, any Professional Services Contract estimated to cost more than
7 \$100,000,000~~1,000,000~~, and any Commodities Contract with a term greater than one year,
8 including any options to renew or extend.

9 (b) If the Director determines, after consulting with the Contract
10 Awarding Authority, that the Contract can be divided into smaller ~~e~~Contracts, then the Director
11 and the Contract Awarding Authority shall confer regarding all of the costs and benefits of
12 soliciting the Contract as a single ~~e~~Contract or dividing it into smaller ~~e~~Contracts, including but
13 not limited to the potential for enhanced opportunities for LBE participation as ~~P~~prime
14 ~~e~~Contractors, the potential for LBE participation as Subcontractors, suitability of procuring the
15 work through Micro-LBE Set-Aside under 14B.7(K), relative costs, administrative issues, and any
16 other matters relevant to the accomplishment of the purpose of the subject Contract or
17 Contracts. If, after exchanging information and conferring regarding these issues, the Contract
18 Awarding Authority and the Director are unable to agree on whether to divide the Contract into
19 smaller ~~e~~Contracts or how to divide the Contract, the ~~City Administrator~~~~Mayor~~Mayor or the
20 Mayor's~~City Administrator~~~~Mayor's~~ designee shall resolve the matter.

21 (2) Outreaching to all LBEs with appropriate certifications for the work or services
22 to be performed to solicit their interest in specific contracting opportunities when not impracticable
23 to do so, and eEncouraging LBEs to attend prebid meetings ~~that are held to inform potential~~
24 ~~bidders of contracting opportunities.~~

1 (3) Posting contracting opportunities on the Department, Office of Contract
2 Administration, and/or other centralized City website, as applicable, with adequate lead time for LBEs
3 to effectively to respond to the opportunity Advertising in general circulation media, trade association
4 publications and local business media, and posting the contracting opportunity on the Department's
5 website or other centralized City website.

6 (4) ~~Notifying LBEs that are certified to perform the work contemplated in a contract~~
7 ~~and soliciting their interest in the contract.~~

8 ~~—(5)—~~ Providing all Bidders, including LBEs ~~access to~~ with adequate information
9 about the plans, specifications, and requirements of the proposed eContract.

10 ~~(6)—~~ ~~When allowed by local laws governing City contracting, negotiating with LBEs~~
11 ~~in good faith.~~

12 ~~(57)~~ Using the services of community and contractors' groups to assist in the
13 recruitment of LBEs.

14 ~~(68)~~ For Professional Services, General Services, Architect/Engineering and
15 Commodities Contracts, the estimated cost of which exceeds \$10,000 but is less than the
16 Minimum Competitive Amount or for Public Works/Construction Contracts, the estimated cost
17 of which exceeds \$10,000 but is less than the Threshold Amount, Contract Awarding
18 Authorities are not required to undertake the good faith efforts steps set forth in Sections
19 14B.7(A)(3) when it is impracticable to do so.

20 **(B) Best Efforts on Contracts Not Otherwise Subject to this Chapter Ordinance.**
21 Contract Awarding Authorities shall should adopt the same good faith efforts set forth in Section
22 14B.7(A) for ~~In~~ the award of leases, franchises, concessions, and other Ccontracts not subject
23 to the Discount provisions of this Chapter Ordinance, ~~Contract Awarding Authorities shall utilize the~~
24 good faith efforts steps unless impracticable to do so. At a minimum, Contract Awarding
25

1 Authorities ~~shall~~should notify LBEs that are certified to perform the work contemplated in a
2 Contract and solicit their interest in the Contract.

3 (C) ~~Non-Discrimination~~Equal Opportunity in Prime Contracting. Contract Awarding
4 Authorities shall ensure that all aspects of their contracting process are transparent, fair, and do
5 not arbitrarily disadvantage or free from discriminate discrimination against LBEs or any other
6 business or Pperson on any basis prohibited by law, ~~and ensure broad contracting opportunities for~~
7 ~~all categories of LBEs~~. Contract Awarding Authorities shall document maintain such documentation
8 of their selection processes as required by the Director to monitor and ensure compliance with
9 this provision. The Director shall report any contracting process by a Contract Awarding Authority
10 that the Director believes may be discriminatory in nature to the Human Rights Commission.

11 (D) **Contracts Subject to Prime Bidding Discounts.** Contract Awarding Authorities
12 shall apply Discounts to all Contracts the estimated cost of which exceeds \$10,000 and is less
13 than \$10,000,000, except that the Bid Discount provisions applicable to SBA-LBEs shall apply
14 only to ~~e~~Contracts (other than Commodities Contracts) with an estimated cost no less than
15 \$400,000 and no greater than \$20,000,000, and to Commodities Contracts with an estimated
16 cost no less than \$400,000 and no greater than \$10,000,000. Discounts shall apply to Bids
17 from LBE Prime or Joint Ventures only ~~to bids~~ where the LBE ~~p~~Prime or ~~j~~Joint ~~v~~Venture ~~bidder~~
18 ~~partner~~ will perform a ~~e~~Commercially ~~u~~Useful ~~f~~Function on the Contract. A LBE ~~p~~Prime or
19 ~~j~~Joint ~~v~~Venture ~~bidders~~ whose Bid receives a Discount and who thereafter fails to perform a
20 ~~e~~Commercially ~~u~~Useful ~~f~~Function under the Contract at least equivalent in scope and value to the
21 role represented in its Bid documents may be ~~e~~subject to sanctions as set forth in Section
22 14B.17(D) for noncompliance with this Chapter.

23 (E) **Amount of Discount.** Unless otherwise provided in this ~~Chapter~~Ordinance,
24 Contract Awarding Authorities shall apply the following Discounts to each evaluation stage of the
25 selection process, including qualifications, proposals, and interviews:

1 (1) For Contracts estimated by the Contract Awarding Authority to cost in excess of
2 \$10,000 but less than \$10,000,000, a ten percent (10%) Discount to any Bid from a Small or
3 Micro-LBE. Contract awarding authorities shall apply these Discounts to each stage of the selection
4 process, including qualifications, proposals and interviews. If after the application of the Discounts
5 provided for in this Subsection 14B.7(E)(1) or Subsection 14B.7(F) to any Bid from a Small or
6 Micro-LBE, the apparent low Bidder or highest ranking ~~p~~Proposer is not a Small or Micro-LBE,
7 Contract Awarding Authorities shall apply a 52% Bid Discount to any Bid from an SBA-LBE.
8 Contract ~~A~~awarding ~~A~~authorities shall apply this 52% ~~D~~discount to Contracts
9 ~~at each stage of the selection process, including qualifications, proposals and interviews,~~ except that
10 the 52% Discount for SBA-LBEs shall not be applied at any stage if it would
11 adversely affect a Small or Micro-LBE.

12 (2) For eContracts estimated by the Contract Awarding Authority to cost in
13 excess of \$10,000,000 but less than \$20,000,000, Contract Awarding Authorities shall apply a
14 two percent (2%) Discount to any Bid from a Small, Micro, or SBA LBE for Public
15 Works/Construction, Architect/Engineering, Professional Services, or General Services
16 Contracts, from an SBA-LBE, but not Bids from Small, Micro, or SBA LBEs for Commodities
17 Contracts in excess of \$10,000,000 are not eligible for the Discount.

18 **(F) Joint Ventures For Professional Services and Architect/Engineering.**

19 Unless otherwise provided in this Chapter Ordinance, for Contracts estimated by the Contract
20 Awarding Authority to cost in excess of \$10,000 but less than \$10,000,000, Contract Awarding
21 Authorities shall extend apply the following Bid/rating Discount to all Bids from Joint Ventures with
22 a Small and/or Micro-LBEs Joint Venture partner participation on Professional Services and
23 Architect/Engineering prime Contracts:

1 _____(1) five percent (5%) to a Joint Venture with Small and/or Micro-LBE ~~p~~Prime
2 eContractor participation that equals or exceeds thirty-five percent (35%) but is under forty
3 percent (40%);

4 _____(2) seven and one-half percent (7.5%) to a Joint Venture with Small and/or
5 Micro-LBE ~~p~~Prime eContractor participation that equals or exceeds forty percent (40%); and

6 _____(3) ten percent (10%) to a Joint Venture exclusively among Small and/or Micro-LBE
7 ~~p~~Prime eContractors ~~or a Joint Venture among Small and/or Micro-LBE prime contractors.~~

8 _____(4) Contract Awarding Authorities shall apply the ~~Bid/rating~~ Discount to each
9 stage of the selection process, including qualifications, proposals, and interviews.

10 _____(5) The Contract Awarding Authority shall apply the ~~Joint Venture Bid/ratings~~
11 Discount described in this Section-subsection (F) only to Bids from Joint Ventures, as defined in
12 this Chapter and its duly promulgated Rules and Regulations, on Professional Services and
13 Architect/Engineering Contracts, and only to at those Joint Venture Bids where the Director finds
14 that the Small and/or Micro LBE Joint Venture partner (a) will be responsible for, and has sufficient
15 skill, experience, and financial capacity to perform (1) that meets the requirements contained in this
16 Ordinance and (2) when the LBE is an active partner in the Joint Venture, performs work, manages the
17 job, takes financial risks in proportion to the required level of participation stated in the bid
18 documents, is responsible for a clearly defined portion of the work to be performed, and (b) shares
19 proportionately in the Ownership, Control, management responsibilities, risks, and profits of
20 the Joint Venture at least in proportion to the value of its assigned Joint Venture work. The Joint
21 Venture's Bid must portion of the LBE Joint Venture's work shall be set forth in detail the Small
22 and/or Micro-LBE Joint Venture partner's portion of the work separately from the work to be
23 performed by the non-LBE Joint Venture partner, and such work The LBE Joint Venture's portion
24 of the Contract must be assigned a commercially reasonable dollar value.

1 **(G) Affidavit.**

2 (1) Each Bidder, ~~proposer~~ and Contractor shall be required to sign an affidavit
3 declaring under penalty of perjury its intention to comply fully with the provisions of this
4 Chapter Ordinance and attesting to the truth and accuracy of all information provided regarding
5 such compliance.

6 (2) Any Bidder that fails to comply with the provisions of Chapter 14B in connection
7 with the submission of a Bid may be subject to appropriate sanctions under Section 14B.17(D) whether
8 or not such Bidder is awarded a Contract.

9 (3) No person shall knowingly make, file or cause to be filed with the City any
10 materially false or misleading statement or report in connection with this Chapter. If the Director has
11 reason to believe that any person has done so, the Director may conduct an investigation, and after
12 notice and a full and adequate opportunity to be heard, may impose appropriate sanctions under
13 Section 14B.17(D), or the Director may refer the matter to an appropriate governmental law
14 enforcement agency.

15 **(H) Additional Requirements ~~and Required Contract Terms.~~ Contract Awarding**
16 ~~Authorities shall include in all Contracts with their Contractors, and all Contractors shall include in~~
17 ~~their Contracts with Subcontractors the following requirements, in addition to other requirements set~~
18 ~~forth in the Municipal Code. For the purposes of this Subsection, "contractor" includes all~~
19 ~~Subcontractors.~~

20 (1) Each Contract subject to this Chapter 14B shall incorporate ~~this Ordinance~~
21 by reference, shall and require the Contractors to comply with the requirements imposed on
22 Contractors therein. In addition, all Contractors shall incorporate by reference in all subcontracts
23 entered into in fulfillment of a Contract's subcontracting participation requirement, and require
24 Subcontractors to comply with, all requirements applicable to Subcontractors under Chapter 14B.
25 Contractor's compliance with Chapter 14B and Contractor's duty to impose specified requirements in

1 ~~specified Subcontracts is a~~ are ~~material elements of the City's agreement to enter into the Contract~~
2 ~~and failure to comply shall constitute its provisions in awarding and administering such contracts, and~~
3 ~~shall provide that the willful failure of any Bidder or Contractor to comply with the requirements of this~~
4 ~~Ordinance or rules and regulations implementing this Ordinance shall be deemed a material breach~~
5 of contract.

6 (2) ~~Contracts shall provide that in the event that~~ If the Director finds that any
7 Bidder, Subcontractor or Contractor ~~willfully~~ fails to comply with any of the provisions of this
8 ~~Chapter Ordinance~~, rules and regulations implementing the ~~Chapter Ordinance~~, or ~~C~~contract
9 provisions pertaining to ~~any~~ LBE, ~~MBE, WBE, OBE or Micro~~-LBE participation, ~~or~~ outreach, ~~or~~
10 ~~non-discrimination, the~~ such Bidder, Subcontractor, or Contractor shall be liable for liquidated
11 damages for each ~~e~~Contract in an amount equal to the Bidder's or Contractor's net profit on
12 the Contract, ten percent (10%) of the total amount of the Contract or \$1,000, whichever is
13 greatest, as determined by the Director. ~~All Contracts shall also contain a provision in which the~~
14 ~~Bidder, Subcontractor or Contractor acknowledges and agrees that~~ The liquidated damages
15 assessed shall be payable to the City upon demand and may be set off against any monies
16 due to the Bidder, Subcontractor, or Contractor from any Contract with the City.

17 (3) ~~Contracts shall require all eContractors and Subcontractors shall~~ to maintain
18 all records, including but not limited to such information specified by the Director, requested by the
19 ~~Director or Commission~~, necessary for monitoring their compliance with the duties imposed on
20 Contractors under this Chapter, for this Ordinance. ~~Contracts shall require prime contractors to~~
21 ~~include in any subcontract with a LBE a provision requiring the subcontractor to maintain the same~~
22 ~~records. Contracts shall require contractors and subcontractors to maintain such records for three~~ five
23 (5) years following expiration of the Contract, or, as applicable, Subcontract, completion of the
24 ~~project~~ and shall permit the ~~Director, Commission and Controller~~ City to inspect and audit such
25 records.

1 (4) ~~Contracts shall require prime contractors, D~~during the term of the eContract,
2 Prime Contractors shall fulfill the LBE participation commitments ~~submitted with~~ stated in their
3 ~~b~~Bids and memorialized in their Contracts. ~~Willful~~ A Contractor's failure to ~~comply with~~ achieve the
4 level of LBE subcontractor participation specified in the eContract shall be deemed a material
5 breach of contract.

6 (5) ~~Contracts shall require, and shall require p~~Prime eContractors ~~shall~~to include
7 in ~~all any s~~Subcontracts with a LBE a provision requiring; the ~~p~~Prime eContractor to compensate
8 ~~any the~~ LBE Subcontractor for damages for breach of contract or liquidated damages equal to
9 5% of the ~~s~~Subcontract amount, whichever is greater, if the ~~p~~Prime eContractor ~~willfully~~ fails to
10 ~~comply with its commitment to~~ use the LBE ~~s~~Subcontractor as specified in the Bid and Contract
11 unless the Director and the eContract ~~a~~Awarding ~~a~~Authority both give advance approval to the
12 ~~p~~Prime eContractor to substitute the LBE sSubcontractors or otherwise modify the LBE
13 commitments in the Bid and Contract documents. It shall be a material breach of contract for a
14 Prime Contractor to fail to include such clause in all Subcontracts with LBEs. This provision shall
15 also state that it is enforceable in a court of competent jurisdiction.

16 (6) ~~Contracts shall require prime contractors, W~~whenever amendments,
17 modifications, supplements, or change orders ~~cumulatively~~increase the total dollar value of
18 the eContract by ~~more than 10 percent,~~ the Prime Contractor mustto comply with those
19 provisions of this Chapter Ordinance that applied to the original Cecontract with respect to the
20 amendment, modification, supplement, or change order.

21 (7) ~~Contracts shall require prime contractors to~~Contract Awarding Authorities shall
22 submit to the Director for approval all proposed eContract amendments, modifications,
23 supplements, and change orders that cumulatively increase by more than twenty percent
24 (20%) the total dollar value of all eContracts originally valued at \$50,000 or more. The Director
25 shall ~~review~~impose or increase the Subcontracting participation requirement as necessary to reflect

1 additional opportunities for LBE participation from the proposed amendment, modification,
2 supplement, or change order as appropriate to correct any contracting practices that exclude any
3 category of LBEs from new contracting opportunities.

4 (8) Prime Contractors and Subcontractors may not engage in any Back Contracting
5 or other work shifting to a Contracts in which subcontracting is used shall prohibit back contracting to
6 the prime contractor or lower-tier sSubcontracting to evade using LBE Subcontractors to perform
7 work or for any other purpose inconsistent with the provisions of this Chapter Ordinance, or rules
8 and regulations adopted pursuant to this Chapter Ordinance, or contract provisions pertaining to
9 LBE utilization.

10 (9) For the duration of any Contract subject to LBE participation requirements,
11 Contracts in which subcontracting is used shall require the pPrime eContractor shall to pay its
12 sSubcontractors within three working days after receiving payment from the City unless the
13 pPrime eContractor notifies the Director in writing within ten (10) working days prior to
14 receiving payment from the City that there is a bona fide dispute between the pPrime
15 eContractor and the sSubcontractor, in which case the pPrime eContractor may withhold the
16 disputed amount but shall pay the undisputed amount. The Director may, upon making a
17 determination that a bona fide dispute exists between the pPrime eContractor and
18 sSubcontractor, waive this three-day payment requirement. In making the determination as to
19 whether a bona fide dispute exists, the Director shall not consider the merits of the dispute.
20 Contracts in which subcontracting is used shall also require the contractor, The Prime Contractor
21 shall submit within 10 working days following receipt of payment from the City, to file an affidavit
22 a statement, in a form specified by the Director, attesting under penalty of perjury, that he or she has
23 paid all sSubcontractors all undisputed amounts from previous City payments. The affidavit shall
24 provide the names and address of all subcontractors and the amount paid to each.

1 (I) ~~Reserved. Exceptions. Notwithstanding any other provision of this Section, Contract~~
2 ~~Awarding Authorities shall not apply a Discount where to do so would result in a Contract being~~
3 ~~awarded to a business without the capacity to perform it. The Commission may adopt rules and~~
4 ~~regulations setting standards for determining that an LBE has sufficient skill, experience, and financial~~
5 ~~capacity to perform the Contract.~~

6 (J) **Waivers.** The Director shall waive the LBE Bid Discounts provided in Section
7 14B.7(D), and post all approved waivers online on a CMD website, and report the waiver to the
8 Commission, if:

9 (1) The Director finds, with the advice of the Contract Awarding Authority and
10 the Office of Contract Administration, that needed goods or services are available from a sole
11 source that is not currently disqualified to do from doing business with the City; or

12 (2) ~~The Contract Awarding Authority certifies in writing to the Director, prior to the~~
13 ~~Controller's contract certification, that the Contract is being awarded under the emergency provisions~~
14 ~~of Administrative Code Section 6.60 or Administrative Code Section 21.15 and that there is either (i) no~~
15 ~~time to apply bid discounts or establish subcontracting goals, or (ii) no immediately available LBEs~~
16 ~~that are capable of performing the emergency work; or~~

17 (3) — For Contracts in excess of \$5,000,000, a Contract Awarding Authority
18 establishes that sufficient qualified LBEs capable of providing the needed goods and services
19 required by the Contract are not available, or the application of the LBE Discount will result in
20 significant additional costs to the City if the waiver of the Bid Discount is not granted.

21 (K) **Micro-LBE Set-Aside Program.**

22 (1) Each fiscal year, each Contract Awarding Authority, in consultation with
23 the Director, shall set aside the following for award to Micro-LBEs:

24 (a) Not less than 50% of eligible Public Work/Construction Contracts
25 and

1 (b) Not less than 25% of Eligible Services/Commodities Contracts.

2 (2) Contracts under the Micro-LBE Set-Aside Program shall be competitively
3 awarded in accordance with the ~~Municipal Administrative Code~~ *Purchaser's regulations*, except
4 that if (a) fewer than two qualified Micro-LBEs submit *B*bids, or (b) the Contract Awarding
5 Authority determines that the Contract would not be awarded at a fair market price, then the
6 Contract Awarding Authority may reject all Bids and rebid the *e*Contract outside the set-aside
7 program.

8 (3) Each Contract Awarding Authority shall *include the following information*
9 ~~concerning~~ *report* its compliance with the Micro-LBE Set-Aside Program to the Board of
10 Supervisors *by submitting the following information quarterly in the year of 2011 and thereafter*
11 *annually* as part of its annual report under Section 14B.15(B):

12 (a) Each Eligible Public Works/Construction Contract and, each
13 Eligible Services, /-Commodities Contract awarded under the Micro-LBE Set-Aside Program,
14 and its dollar amount; and

15 (b) Each Eligible Public Works/Construction Contract and each
16 Eligible Services / Commodities Contract not awarded under the Micro-LBE Set-Aside
17 Program, accompanied by an explanation as to why each such Contract either was not set
18 aside, or, if set aside, was not awarded under the Micro-LBE Set-Aside Program.

19 (4) Contracts that are set-aside for award to Micro-LBEs shall not be subject
20 to *the subcontracting goals participation requirement* under Section 14B.8. Micro-LBEs that
21 subcontract any portion of a set-aside contract should subcontract to businesses certified as
22 Micro-LBEs, to the maximum extent possible. Micro-LBEs that subcontract any portion of a
23 set-aside *e*Contract must serve a *e*Commercially *u*Useful *f*Function based on the *C*econtract's
24 scope of work, and must perform *work directly with a value of* at least twenty-five percent (25%)
25 of the *total eContract amount* ~~work~~.

1 **(L) San Francisco First Program.**

2 (1) Unless otherwise provided in this Chapter, Contract Awarding Authorities shall use the
3 good faith efforts set forth in Section 14B.7(A) to attempt to obtain at least three Bids from Micro or
4 Small LBEs for all Public Works/Construction Contracts estimated to cost in excess of \$10,000 but less
5 than the Threshold Amount and all Commodities, Architect/Engineering, Professional Services, and
6 General Services Contracts estimated to cost in excess of \$10,000 but less than the Minimum
7 Competitive Amount.

8 (2) If the Contract Awarding Authority is unable to obtain at least three Bids from Micro or
9 Small LBEs, the Contract Awarding Authority shall prepare a written finding explaining why at least
10 three Bids from LBEs were not obtained.

11 **(LM) Prompt payment.** The City shall pay LBEs Prime Contractors within thirty (30)
12 days of the date on which the City receives an invoice for work performed for and accepted by
13 the City. ~~The Controller shall work with the Director and Contract Awarding Authorities to implement~~
14 ~~this Citywide prompt payment policy. The City shall consult with affected community members and~~
15 ~~relevant City officials, including the Director, the Controller, and Contract Awarding Authorities, to~~
16 ~~design and implement a prompt payment program within six (6) months of the effective date of this~~
17 ~~Ordinance. Such program shall include procedures for the payment of late penalties where prompt~~
18 ~~payment does not occur.~~

19
20 **SEC. 14B.8. SUBCONTRACTING.**

21 **(A) LBE Subcontracting Participation RequirementsGoals.** Prior to soliciting ~~b~~Bids,
22 Contract Awarding Authorities shall provide the Director with a proposed job scope for each
23 (1) Public Works/Construction Contract that equals or exceeds fifty percent (50%) of the
24 Threshold Amount, and (2) each Architect/Engineering, Professional Service, and General
25 Services Contracts that equalsl or exceedsl fifty percent (50%) of the Minimum Competitive

1 Amount. The Contract Awarding Authority may ask the Director to waive LBE subcontracting
2 participation requirements where it anticipates that there are no subcontracting
3 opportunities or there are not sufficient LBEs available to perform the subcontracting work
4 available on the Contract.

5 The Director shall set LBE subcontracting participation requirements for
6 each such Contract, where appropriate, based on the following factors:

7 (1) The extent of subcontracting opportunities presented by the scope of the
8 proposed Contract; and

9 (2) The availability of ~~Small and Micro~~-LBE Subcontractors certified to provide
10 goods and services required under the scope of the proposed Contract.

11 Except where the Director determines there are not sufficient Small and Micro-LBEs
12 available to perform the subcontracting opportunities presented by the scope of the proposed Contract,
13 Bidders must list and use only Small and Micro-LBEs to satisfy the LBE subcontracting participation
14 requirement set by the Director. Where the Director determines that there are not sufficient Small and
15 Micro-LBEs available, the Director may authorize Contractors to satisfy the LBE subcontractor
16 participation requirement by using Small, Micro or SBA-LBEs, or may set separate subcontractor
17 participation requirements for Small and Micro-LBEs, and for SBA-LBEs. For each Contract where
18 the Director sets a LBE subcontracting requirement at less than twenty percent, the Director shall
19 prepare a written explanation of the details justifying the LBE subcontracting requirement set. The
20 written explanation shall be posted online as soon practicable. Contractors shall satisfy the LBE
21 subcontracting participation goals by using Small and Micro-LBEs with the following exception: If the
22 Director determines there are not sufficient Small and Micro-LBEs available to perform the
23 subcontracting work on the Contract, the Director may set goals based on the availability of all LBEs
24 and permit Contractors to satisfy the goals by using Small, Micro or SBA-LBEs, or may set separate
25 goals for Small and Micro-LBEs and for SBA-LBEs.

1 (B) Satisfaction of Good Faith Efforts Requirements. At the time of a Bid, all
2 Bidders must meet the LBE subcontracting participation ~~requirementgoals~~ set by the Director,
3 and also must conduct good faith efforts and file evidence of good faith efforts as required in
4 Sections 14B.8(D) and (E) respectively, with the following exceptions:

5 (1) ~~If upon submission of a Bid, LBE subcontracting participation in the submitted~~
6 ~~the Bid demonstrates total LBE participation that exceeds by thirty-five percent (35%) the~~
7 ~~established LBE subcontracting participation requirementgoal set by the Director for the Contract~~
8 ~~by at least thirty-five percent (35%)the Bid, the Bidder is not required excused from to conducting or~~
9 ~~documenting its good faith efforts or to file evidence of good faith efforts as otherwise required in~~
10 Sections 14B.8(D) and (E). ~~For the sole purpose of determining whether a Bid exceeds by thirty-five~~
11 ~~percent (35%) the established LBE subcontracting participation shall be determined in this Section.~~
12 ~~14B.8(B)(1) only, as the sum of all participation by goal, and therefore exempts the Bidder from the~~
13 ~~requirement to conduct and file evidence of good faith efforts, participation by the following LBEs shall~~
14 ~~be counted:~~ Small and Micro-LBE ~~p~~Prime ~~e~~Contractors, Small and Micro-LBE Joint Venture
15 partners, and Small and Micro-LBE Subcontractors. Participation by SBA-LBE Subcontractors
16 shall ~~be counted toward LBE subcontracting participation for purposes of determining whether the~~
17 ~~Bidder is excused from conducting and documenting good faith efforts only if, under Subsection~~
18 14B(8)(A), the Director permitted ~~Bidders to listuse of~~ SBA-LBE firms to satisfy subcontracting
19 ~~participation requirementsgoals~~ on the Contract.

20 (2) ~~Where the Director has set LBE subcontracting participation requirements for~~
21 ~~Bidders on~~ Public Works/Construction Contracts in an amount less than the Threshold Amount
22 or on Architect/Engineering, Professional Services, or General Services Contracts in an
23 amount less than the Minimum Competitive Amount, ~~Bidders~~ are not required to conduct good
24 faith efforts or to file evidence of good faith efforts as required in Sections 14B.8(D) and (E), ~~to~~
25 ~~select Subcontractors to meet LBE goals.~~

1 **(C) Non-responsive Bids.** Bids that do not meet the LBE subcontracting participation
2 requirementsgoal set under 14B.8(A) will be rejected as non-responsive unless the Director
3 finds that the Bidder diligently undertook all the good faith efforts required by this Chapter (or
4 that the Bidder is exempt from good faith efforts requirements under Section 14B.8(B)) Ordinance and
5 that the failure to meet the good faith efforts requirements and/or the subcontracting participation
6 requirementsgoal resulted from an excusable error. ~~The Contract Awarding Authority shall require~~
7 Bidders ~~must~~ contact a LBE before listing that LBE as a Subcontractor in the Bid. Unless
8 otherwise an excusable error is found excused by the Director, a Bid that fails to document
9 compliancecomply with this requirement will be rejected as non-responsive. In addition only
10 LBEs that have been contacted and agreed to be listed as Subcontractors shall be credited
11 toward meeting the LBE subcontracting participation requirementsgoal.

12 **(D) Good Faith Outreach.** In addition to meeting the LBE subcontracting
13 participation requirementsgoal, Bidders on (1) Public Works/Construction Contracts that equal
14 or exceed the Threshold Amount; and (2) Architect/Engineering, Professional Services, or
15 General Services Contracts that equal or exceed the Minimum Competitive Amount shall
16 undertake good faith outreach as set forth in this Section 14B.8 (D) and duly promulgated Rules
17 and Regulations to select Subcontractors to meet LBE subcontracting participation
18 requirementsgoals. Except where a Contract does not include a LBE subcontracting participation
19 requirements subcontracting goal or a Bid is exempt from good faith outreach under Section
20 14B.8(B), Bids from Bidders who fail to conduct and/or to document adequate good faith
21 outreach steps as required by this ChapterOrdinance and its duly promulgated HRC-Rules and
22 Regulations shall be declared nonresponsive.

23 ~~The Human Rights Commission shall by Rule and Regulation assign a numeric value to~~
24 ~~each of the good faith outreach steps listed below. Adequate good faith outreach shall be a minimum of~~
25 ~~80 points with a total of 100 points possible.~~

1 ~~—— (1) —— Attending any presolicitation, or prebid, meetings scheduled by the City to~~
2 ~~inform all bidders of LBE program requirements for the project for which the Contract is awarded;~~

3 ~~—— (2) —— Identifying and selecting subcontracting opportunities to meet LBE goals;~~

4 ~~—— (3) —— Advertising for LBE Subcontractors by posting the opportunity in an accessible~~
5 ~~location, specified by the City, not less than ten (10) calendar days before the date the Bids can first be~~
6 ~~submitted. The advertisement must include information where Bidders may obtain adequate~~
7 ~~information about the plans, specifications, and requirements for the work. This paragraph applies~~
8 ~~only if the City gave public notice of the project not less than fifteen (15) calendar days prior to the~~
9 ~~date the Bids can first be submitted;~~

10 ~~—— (4) —— Not less than ten (10) calendar days before the date the bids can first be~~
11 ~~submitted, contacting at least the requisite number of LBEs by trade certified to perform the identified~~
12 ~~work required by the 14B Rules and Regulations; and~~

13 ~~—— (5) —— Performing follow-up contact on the initial solicitation with interested~~
14 ~~Subcontractors and negotiating in good faith with LBEs, as set forth in the 14B Rules and Regulations,~~
15 ~~and not unjustifiably rejecting their Bids.;~~

16 ~~—— (6) —— Advising and assisting interested LBEs that are bidding on and performing City~~
17 ~~Public Work and Construction Contracts with the City's bonding and financial assistance programs to~~
18 ~~obtain bonds, lines of credit, or insurance required by the City or the Bidder.~~

19 **(E) Documentation of Good Faith Outreach.** Each Bid that equals or exceeds the
20 Threshold Amount or the Minimum Competitive Amount, as applicable, shall document good
21 faith outreach and include the documentation with the Bid. Unless otherwise excused by this
22 Chapter, sSuch documentation shall include: (1) the dollar amount of each subcontract and a
23 statement of the scope of work to be performed under the subcontract; (2) the identification of
24 each subcontract awarded to an LBE and, (3) for each subcontract, copies of the
25 Subcontractor Bids submitted. Such documentation shall contain at least the Bid amount and

1 a description of the scope of work, and separately, for each subcontract, a full and complete
2 statement of the reason(s) for selection of the Subcontractor. If the reason is based on relative
3 qualifications, the statement must address the particular qualifications at issue. If the reason is
4 the Bid's respective dollar amounts, the statement must state the amounts and describe the
5 similarities and/or dissimilarities in the scope of work covered by the Bids. If no written Bids
6 were submitted by some or all of the Subcontractors who bid the job, the Bidder shall submit a
7 written statement containing (1) the amount of each oral bid; and (2) separately, for each
8 subcontract, a full and complete statement of the reason(s) for selection of the Subcontractor.
9 Successful Bidders shall maintain the documentation described in this paragraph for three (3)
10 years following *submission of the Bid or* completion of the Contract, ~~whichever is later.~~

11 12 **SEC. 14B.9. ENSURING NON-DISCRIMINATION IN SUBCONTRACTING.**

13 (A) **Prohibition on Discrimination.** A ~~b~~Bidder may not discriminate in its selection
14 of ~~s~~Subcontractors against any person on the basis of race, gender, or any other basis
15 prohibited by law. The City Administrator shall work the Human Rights Commission to ensure
16 that this provision is effected to the fullest extent allowed by law. Contract Awarding Authorities
17 and the City Administrator shall refer all formal complaints of discrimination and all other instances
18 where discrimination may have occurred of which they become aware to the Human Rights
19 Commission for investigation and resolution pursuant to Administrative Code Chapter 12A and Section
20 14B.9(D).

21 (B) **Availability Data.** ~~In order to prevent unlawful discrimination in the selection of~~
22 ~~subcontractors, and to~~In order to prevent unlawful discrimination in the selection of
23 subcontractors, and to identify and correct unlawful practices, the City will monitor the
24 administration of City ~~C~~Contracts, including the selection of ~~s~~Subcontractors, as provided in this
25 Section 14B.9. For Public Work/Construction, Architect/Engineering, Professional Services, and

1 ~~General Services Contracts public work/construction, architect/engineering, professional service, and~~
2 ~~general service contracts~~ which the eContract aAwarding aAuthority reasonably anticipates will
3 include sSubcontractor participation, prior to the solicitation of ~~Bids/bids or proposals~~, the
4 Director shall assemble eertification data regarding the availability of MBEs, WBEs, and OBEs
5 to provide work that is likely to be subcontracted. The Director, in the Director's sole
6 discretion, shall determine the appropriate methodology.

7 **(C) Requirements for Solicitations.** In all solicitations of Public Work/Construction,
8 Architect/Engineering, Professional Services, and General Services Contracts for public
9 ~~work/construction, architect/engineering, professional service, and general service contracts~~ which
10 the eContract aAwarding aAuthority reasonably anticipates will include sSubcontractor
11 participation, the eContract aAwarding aAuthority shall include the availability data described
12 above. Bidders shall undertake all required good faith efforts outreach steps in such a manner
13 as to ensure that neither MBEs nor WBEs nor OBEs are unfairly or arbitrarily excluded from
14 the required outreach.

15 **(D) Review and Investigation by the Human Right Commission of Bid.** The Director of f
16 the Human Rights Commission may review or investigate any bBid, including the selection of the
17 Bbidder's sSubcontractors, to determine whether discrimination may have occurred. The
18 Director of the Human Rights Commission shall review bBids, during the bid protest period, to
19 determine whether: (1) a potential Ssubcontractor or other person has filed a complaint of
20 discrimination; (2) there is a significant difference between the percentages of MBEs, WBEs,
21 or OBEs available to provide goods and services as Ssubcontractors on the contract and the
22 percentages of the bBidder's Ssubcontractors who are MBEs, WBEs, or OBEs; or (3) other
23 facts and circumstances suggest that further inquiry is warranted. The Director of the Human
24 Rights Commission, in the Director of the Human Rights Commission's sole discretion, shall

1 determine whether and when to investigate further the conduct of a ~~b~~Bidder or ~~e~~Contractor.

2 ~~Investigations will be conducted under the procedures in Section 14B.17.~~

3
4 **SEC. 14B.10. POWERS AND DUTIES OF THE CITY**

5 **ADMINISTRATOR~~COMMISSION~~ AND THE CONTRACT MONITORING DIVISION**

6 **(CMD)~~DIRECTOR~~.**

7 **(A) City Administrator~~Human Rights Commission~~.** In addition to the duties and powers
8 given to the City Administrator~~Human Rights Commission~~ elsewhere, the City Administrator or
9 designee ~~Commission~~ shall:

10 (1) When necessary, subpoena persons and records, books and documents
11 for ~~a proceeding of the Commission or any hearing or~~ investigation by the City Administrator or
12 Director or ~~an~~ audit pursuant to Section 14B.10(B)(5) concerning certification under, or
13 compliance with this Chapter~~conducted to further the purposes of this Ordinance~~.

14 (2) Adopt rules and regulations establishing standards and procedures for
15 effectively carrying out this Chapter~~Ordinance~~.

16 (3) Issue forms for the Controller or ~~e~~Contract ~~a~~Awarding Authorities
17 departments to collect information from ~~e~~Contractors as ~~that~~the City Administrator deems
18 necessary to perform its duties under this Chapter~~prescribed by this Ordinance~~.

19 (4) Hear appeals challenging certification denial decisions by ~~:(i) the Director's~~
20 or the imposition of any sanction specified in Section 14B.17(D) against a Bidder, Contractor,
21 Subcontractor, certified LBE, or applicant for certification. ~~disqualification of a bidder or Contractor,~~
22 ~~(ii) the Director's denial of an application for or revocation of the certification of a business as a~~
23 Small-LBE, Micro-LBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to waive or to
24 reduce subcontractor participation goals.

1 (5) ~~By regulation require Direct eContract aAwarding aAuthorities, departments~~
2 and the Controller to provide to the Director such information as will be necessary to enable
3 the Director to issue reports required by this Chapter to the Mayor and the Board of Supervisors
4 ~~at the end of each fiscal year on the progress each City department has made towards the achievement~~
5 ~~of LBE participation goals and towards the goal of ensuring against discrimination and exclusion of~~
6 ~~MBEs, WBEs, or OBEs, and otherwise to perform his/her other duties imposed hereunder. The~~
7 ~~database is a public record available to the public as provided by state and local law.~~

8 (6) ~~— Adopt rules and regulations as deemed necessary by the Director to ensure that~~
9 ~~the joint venture Bidbid/rating dDiscount is applied only to joint ventures where the LBE has sufficient~~
10 ~~skill, experience, and financial capacity to perform the portion of the work identified for the LBE.~~

11 **(B) ~~CMDHRC~~ Director.** In addition to the duties and powers given to the ~~CMDHRC~~
12 Director elsewhere, the Director shall:

13 (1) Levy the same sanctions that a ~~eContract aAwarding aAuthority~~ may levy
14 as specified in Section 14B.17(D).

15 (2) Ensure that the necessary data concerning LBE, MBE, WBE, and OBE
16 availability and participation in City Contracting is collected, ~~and~~ analyzed, ~~and included in CMD's-~~
17 ~~Annually, and more often if the Director deems necessary, the Director shall identify areas of~~
18 ~~contracting where the City or any of its departments are failing to meet LBE participation goals or are~~
19 ~~contracting with MBEs, WBEs, or OBEs at rates less than would be expected in the absence of~~
20 ~~discrimination. The results of this study shall be included in the Commission's annual report required~~
21 ~~by Section 14B.15(B). The Director shall identify areas of contracting where the City or any of~~
22 ~~its departments are failing to meet LBE subcontracting requirements or are contracting with~~
23 ~~MBEs, WBEs, or OBEs at rates less than would be anticipated by the availability data.~~

24 (3) Provide information and other assistance to LBEs to increase their ability
25 to compete effectively for the award of City ~~Ce~~contracts.

1 (4) Grant waivers as set forth in Sections 14B.7(J) and 14B.8(A), and
2 disqualify a Bbidder or Contractor as set forth in Section 14B.17.

3 (5) In cooperation with the Controller, randomly audit at least three prime
4 eContractors each fiscal year in order to insure their compliance with the provisions of this
5 Chapter Ordinance. The Director, in cooperation with the Controller, shall furthermore randomly
6 audit 10 percent (10%) of the Joint Ventures granted Bbid Discounts in each fiscal year. *The*
7 *Controller shall have the right to audit the books and records of the contractors, joint venture*
8 *participants, and any and all subcontractors to insure compliance with the provisions of this*
9 *Ordinance.*

10 (6) Take actions to ensure compliance with the provisions of this
11 Chapter Ordinance, including, without limitation, intervening in the selection process in the event
12 of actual discrimination or harm, or issuing recommendations guidelines for selection processes
13 administered directly by Contract Awarding Authorities to ensure that the minimum qualifications,
14 evaluation criteria, or scoring methodologies set forth in the requests for bids, qualifications, or
15 Proposals, or the selection panel deliberations do not inadvertently disadvantage qualified Small- by
16 modifying the criteria used for selecting selection panelists or contractors to correct any practices that
17 hinder equal business opportunities for LBEs, or Micro-LBEs, and for MBEs, WBEs, and OBEs, in
18 competing for opportunities in City contracting.

19
20 **SEC. 14B.11. POWERS AND DUTIES OF THE CONTROLLER.**

21 (A) In addition to the duties given to the Controller elsewhere, the Controller shall
22 work cooperatively with the Director to provide such contractual encumbrance and payment
23 data as the Director advises are necessary to monitor the participation of Small-LBEs, Micro-
24 LBEs, MBEs, WBEs, and OBEs in City *prime*-contracts. If any department refuses or fails to
25

1 provide the required data to the Controller, the Controller shall immediately notify the Mayor,
2 ~~this~~the Board of Supervisors, and the Director.

3 (B) The Controller shall not certify the award of any ~~e~~Contract subject to this
4 ~~Chapter Ordinance~~ where the Director has notified the Controller that the ~~e~~Contract ~~a~~Awarding
5 ~~a~~Authority has not provided the information the Director advises is necessary under this
6 ~~Chapter Ordinance~~.

7 (C) The Controller shall have the right to audit the books and records of Contractors, Joint
8 Venture participants, and Subcontractors to ensure compliance with the provisions of this Chapter.

9 ~~Each request for payment to a City contractor submitted to the contract awarding authority~~
10 ~~shall be accompanied by a subcontractor participation form approved by the Commission. That form~~
11 ~~shall contain information that the Commission has determined is necessary to enable the Commission~~
12 ~~and the Director (1) to monitor compliance by City departments and their prime contractors with their~~
13 ~~obligations under this Ordinance (2) to determine whether City departments are achieving their prime~~
14 ~~and subcontracting goals under this Ordinance, and (3) to make such other reports and analyses as are~~
15 ~~required by this Ordinance.~~

16 ~~————— In the event that a request for payment fails to include the information required pursuant~~
17 ~~to this Section, the contract awarding authority shall, within two working days, notify the Director and~~
18 ~~the affected prime contractor[s] of the failure and afford each affected prime contractor an opportunity~~
19 ~~to be heard promptly. That notice shall inform the contractor that the contract awarding authority has~~
20 ~~tentatively determined that the information has not been provided, what information is missing and that~~
21 ~~if this failure is substantiated, then the Controller will be notified to withhold 20 percent of the~~
22 ~~requested payment until the information is provided. If the Controller finds, after consultation with the~~
23 ~~Director and notice and opportunity to be heard, that the information has not been provided, the~~
24 ~~Controller shall withhold 20 percent of the payment otherwise due until the information is provided.~~

1 ~~(D) The contract awarding authority shall require all prime contractors to submit, within 10~~
2 ~~days following payment to the prime contractor of moneys owed for work completed on a project, an~~
3 ~~affidavit under penalty of perjury, that all subcontractors on the project or job have been paid and the~~
4 ~~amounts of each of those payments. The name, telephone number and business address of every~~
5 ~~subcontractor shall be listed on the affidavit. If a prime contractor fails to submit this affidavit, the~~
6 ~~contract awarding authority shall notify the Director who shall take appropriate action as authorized~~
7 ~~under Section 14B.17.~~

8 **SEC. 14B.12. POWERS AND DUTIES OF THE MAYOR.**

9 In addition to the duties given to the Mayor elsewhere, the Mayor shall:

10 (A) By July 1st of each fiscal year, set and report to the Board of Supervisors a City-wide
11 LBE Participation Goal on the overall dollar value of all Contracts projected to be awarded in the
12 upcoming fiscal year that will be subject to this Chapter. The City-wide LBE Participation Goal shall
13 be based on prior fiscal year LBE utilization data and current LBE availability, but shall not be less
14 than forty percent (40%). The City-wide LBE Participation Goal shall include a sub-Goal of at
15 least twenty percent (20%) participation by Micro-LBEs. Contract Awarding Authorities shall use,
16 among other methods, the good faith efforts in Section 14B.7(A) to attain the City-wide LBE
17 Participation Goal. The City-wide LBE Participation Goal may be achieved by Small, and Micro, and
18 SBA LBE participation as a prime Contractor, Joint Venture partner, or Subcontractor.

19 (B) Issue notices to all City departments informing them of their duties under this
20 Chapter Ordinance. The notice shall contain the following information: (1) the City-wide LBE
21 Participation Goals set in Section 14B.12(A) that all City departments are encouraged expected to
22 use good faith efforts to attain during the fiscal year, and that a department's failure to use good-
23 faith efforts to attain the City-wide LBE Participation Goals shall be reported to this Board in
24 CMDthe Commission's annual report; (2) the availability of MBEs, WBEs, and OBEs to perform
25 City contracting and that departments are expected to take all steps necessary to ensure

1 against illegal or arbitrary discrimination or exclusion of any certified business; and (3) the
2 data each department is required to provide the Controller on each contract award.

3 (BC) Coordinate and enforce cooperation and compliance by all City dDepartments
4 with this ChapterOrdinance.

5 ~~(C) Designate a liaison to the Human Rights Commission to facilitate communication and~~
6 ~~compliance with this Ordinance.~~

7
8 **SEC. 14B.13. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.**

9 (A) In addition to the powers and duties given to eContract aAwarding aAuthorities
10 elsewhere, eContract aAwarding aAuthorities shall:

11 (1) Adjust bid bonding and insurance requirements in accordance with the
12 requirements set by most current version of the City's "Contract Insurance Manual" or as otherwise
13 authorized by the City Risk Manager, or as allowed by law, Department of Administrative Services.

14 (2) Use Make information available about the City's Surety Bonding and Financial
15 Assistance Program set forth in Section 14B.16 to assist LBEs bidding on and performing City
16 public works/construction contracts to meet bonding requirements and/or obtain construction
17 loans.

18 (3) AdvertiseSubmit to the Office of Contract Administration (OCA) in electronic
19 format or a format specified by the OCA, all Bbid opportunities, requests for Pproposals, and
20 solicitations for which published notice or advertising is required, no later than at least 10
21 calendar days prior to the Bid due date of the bid opportunity, request for proposals or solicitation.
22 A contract awarding authority must obtain a waiver from its commission, or in the case of a
23 department that has no commission, from the Board of Supervisors, if it cannot meet the requirements
24 of this Section.

1 (4) Require each request for payment submitted by a Contractor to the Contract
2 Awarding Authority to include Subcontractor participation data in a form approved by the Director,
3 verifying the Contractor's payments to its LBE Subcontractors and the Contractor's progress toward
4 meeting its LBE participation requirements.

5 _____ If a request for payment fails to include the required information in the form
6 approved by the Director, the Contract Awarding Authority in consultation with the Director, after
7 notice and an opportunity to be heard, may notify the Controller to withhold twenty percent (20%) of
8 the requested payment until the information is provided. Such notice shall be made within two working
9 days of the request for payment, and must inform the Contractor that the Contract Awarding Authority
10 has tentatively determined that the Contractor has not submitted required information, list what
11 information is missing, and provide that if the failure is substantiated, twenty percent (20%) of the
12 requested payment will be withheld until the information is provided.

13 (5) _____ Require all Contractors to submit, within 10 days following payment by the City
14 to the Contractor for work completed or services performed on a Contract, in a form approved by the
15 Director, a statement signed under penalty of perjury, attesting that the Contractor has paid all
16 Subcontractors, less any contractually provided retention, for the Subcontractor's portions of the work
17 invoiced and included in the City's payment. Contract Awarding Authorities shall notify the Director
18 of any failure to provide the required information or statement. The Director shall investigate and, as
19 necessary, take appropriate enforcement action against any noncomplying Contractor as authorized
20 under Section 14B.17.

21 (6) _____ Impose, in consultation with the Director, such sanctions or take such other
22 actions as are designed in Section 14B.17(D) to ensure compliance with the provisions of this
23 Chapter Ordinance, which shall include, but are not limited to:

24 (a) _____ Refuse to award a contract.

25 (b) _____ Order the suspension of a contract.

1 ~~_____ (c) _____ Order the withholding of funds.~~

2 ~~_____ (d) _____ Order the revision of a contract based upon a material breach of contract~~
3 ~~provisions pertaining to LBE participation or outreach to MBEs, WBEs, or OBEs.~~

4 ~~_____ (e) _____ Disqualify a bidder, contractor, subcontractor, or other business from~~
5 ~~eligibility for providing goods or services to the City for a period not to exceed five years, based on the~~
6 ~~standards set forth in this Ordinance and rules and regulations promulgated by the Commission. Any~~
7 ~~business disqualified under this subsection shall have a right to review and reconsideration by the~~
8 ~~Commission after two years upon a showing of corrective action indicating that violations are not~~
9 ~~likely to recur.~~

10 (75) Not award any eContract to a Pperson or business that is disqualified from
11 doing business with the City under the provisions of this Chapter Ordinance.

12 (86) Designate a staff person to be responsible for responding to the Director
13 and City Administrator Commission regarding the requirements of this Chapter Ordinance.

14 (97) Maintain accurate records as required by the this Chapter Director and the
15 Commission for each eContract awarded, its dollar value, the nature of the goods or services to be
16 provided, the name of the contractor awarded the contract, its identity as a Small LBE, Micro LBE,
17 MBE, WBE or OBE, the efforts made by the contract awarding authority to solicit bids from LBEs,
18 including Micro LBEs, MBEs, WBEs and OBEs, responses received from such businesses, and a full
19 and complete statement of the reason(s) for selection of the contractor addressing the particular
20 qualifications at issue.

21 (108) Where feasible, pProvide technical assistance to LBEs to increase their
22 ability to compete effectively for the award of City Ccontracts.

23 _____ (9) _____ Work with the Director and the Controller to implement a City-wide prompt-
24 payment policy requiring that LBEs be paid by the City within 30 days of the date on which the City
25 receives an invoice from a LBE for work performed for the City.

1 ~~(1110) Provide Notify~~ the Director in writing within 10 days whenever the cumulative
2 value of with written notice of all contract amendments, modifications, supplements, and change
3 orders to a Contract subject to this Chapter that cumulatively result in an increase or decrease of
4 the eContract's dollar amount of by more than ~~10ten~~ percent (10%). ~~Such notice shall be provided~~
5 ~~within 10 days of each such contract modification.~~

6 ~~(1211)~~ Whenever ~~contract~~ amendments, modifications, supplements, or change
7 orders to a Contract subject to this Chapter ~~cumulatively~~ increase the total dollar value of a
8 eContract by ~~more than 10ten~~ percent (10%), the eContract ~~aA~~ awarding ~~aA~~ authority shall require
9 compliance with those provisions of this ~~Chapter Ordinance~~ that applied to the original
10 eContract.

11 ~~(1312)~~ Obtain prior approval of the Director for ~~aAll~~ eContract amendments,
12 modifications, supplements, or change orders ~~that cumulatively increase by more than 20 percent~~
13 ~~the total dollar value of all to a Ceontracts~~ originally valued at or above \$50,000 fifty percent (50%)
14 of the Minimum Competitive Amount, or more that cumulatively increase the contract's total value by
15 more than 20twenty percent (20%) of its original or last CMD approved value. Theshall be subject to
16 ~~prior approval of the~~ Director, ~~who shall reviewensure that~~ the proposed amendment,
17 modification, supplement, or change order does not adversely impact contracting opportunities that
18 would have been present for LBEs had the Contract been initially awarded at the proposed increased
19 value to correct contracting practices that exclude Small-LBEs or Micro-LBEs from new contracting
20 opportunities or discriminate against MBEs, WBEs or OBEs.

21 (B) Contract ~~aA~~ awarding ~~aA~~ authorities or departments may issue Bids for Professional
22 Services or Architect/Engineering Services that invite, encourage, or request businesses to form
23 Joint Ventures on any professional services or architecture/engineering contract to promote LBE
24 participation.
25

1 (C) For the purpose of determining LBE participation, contracts awarded to joint
2 ventures in which one or more LBEs are combined with one or more businesses that are not
3 LBEs shall be deemed by the Contract Awarding Authority~~contract awarding authority~~ to be
4 awarded to LBEs only to the extent of the LBE participation in the joint venture.

5 (D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and
6 to any limitations or requirements associated with the issuance of municipal financings,
7 including but not limited to the use of tax-exempt financing and other long-term obligations,
8 ~~eContract aAwarding aAuthorities shall set aside the following percentage of the value of each~~
9 ~~eContract, as defined in Section 14B.2, to be used solely to fund the CMD's actual costs of~~
10 ~~administering and enforcing administration and enforcement of this Chapter for that specific~~
11 ~~Contract 14B by the HRC. Such funds shall be used solely for the actual costs of administering and~~
12 ~~enforcing this Chapter. The HRC shall provide monthly statements to contract awarding authorities~~
13 ~~and the Controller's Office that account for all expenditures related to administering and enforcing this~~
14 ~~Chapter, broken down by staff member, project, and activity. Any funds that are not expended on the~~
15 ~~actual costs of administration and enforcement relating to the subject contract shall be returned to the~~
16 ~~source fund as soon as practicable.~~ This Section 14B.13(DGD) shall not apply to eContracts that
17 are funded by bonds that were authorized prior to June 10, 2006~~the effective date of this~~
18 ~~Ordinance.~~

19 (1) For eContracts having an estimated value under \$1 million, the eContract
20 aAwarding aAuthority shall set aside two percent (2%) of the value of the eContract for the
21 purpose described in this Section.

22 (2) For eContracts having an estimated value of at least \$1 million but less
23 than \$10 million, the eContract aAwarding aAuthority shall set aside one percent (1%) of the
24 value of the eContract for the purpose described in this Section.

1 (3) For eContracts having an estimated value of at least \$10 million but less
2 than \$50 million, the eContract aAwarding aAuthority shall set aside one half of one percent
3 (0.5%) of the value of the eContract for the purpose described in this Section.

4 (4) For eContracts having an estimated value of \$50 million or more, the HRC
5 Director, in consultation with the eContract aAwarding aAuthority, shall determine the level of
6 funding necessary to administer and enforce this Chapter Ordinance with respect to the subject
7 eContract, provided that the funding shall not exceed one half of one percent (0.5%) of the
8 value of the eContract. The eContract aAwarding aAuthority shall set aside the designated
9 funds to be used solely for the purpose described in this Section.

10 (5) Notwithstanding Sections 14B.13(DGD)(1), (2), (3) and (4), with respect to
11 each Contract to be issued byfor the Port of San Francisco, the San Francisco Public Utilities
12 Commission, the San Francisco Department of Public Works, and the San Francisco
13 International Airport, each such eContract aAwarding aAuthority and the HRC Director shall
14 confer with the Director and jointly shall estimate the costs of administering and enforcing this
15 Chapter with respect to each eContract to be issued by each such contract awarding authority. The
16 eContract aAwarding aAuthority shall set aside the agreed-upon funds to be used solely for the
17 purpose described in this Section.

18 If, after exchanging information regarding the nature of the eContract and
19 the administrative activities required, the eContract aAwarding aAuthority and the Director do
20 not agree on the cost of administering and enforcing this Chapter, the Mayor or the Mayor's
21 designee shall determine the appropriate amount to be set aside for the purpose described in
22 this Section.

23 The Human Rights Commission Director shall report on compliance by
24 eContract aAwarding aAuthorities with set-asides determined under this Section

1 14B.13(~~DGD~~)(5) and on the agreed upon funds for contract awarding authorities under
2 14B.13(~~DGD~~)(5) in ~~CMD~~*the Commission's* annual report under Section 14B.15(~~AB~~).

3 *The Board of Supervisors shall assess the operation of this Section 14B.13(D)(5)*
4 *in its three-year review under Section 14B.18(G).*

5
6 **SEC. 14B.14. POWERS AND DUTIES OF THE OFFICE OF CONTRACT**
7 **ADMINISTRATION.**

8 In addition to the duties given the Office of Contract Administration elsewhere, the
9 Office of Contract Administration shall:

10 (A) Maintain, with the assistance of the Director, a current list of Small-LBEs, Micro-
11 LBEs, MBEs, WBEs, and OBEs to provide each of those commodities or services subject to
12 this ~~Chapter Ordinance~~ that the Office of Contract Administration indicates are required by the
13 City.

14 (B) Maintain a central ~~website~~*office* where *the following information for all formal* bids,
15 requests for proposals and solicitations *for Commodities and Services* will be *posted*~~listed~~ and
16 kept current; ~~(C) — Cause to be posted upon a website the following information concerning current~~
17 ~~bids, requests for proposals and solicitations~~ the title and number; the name of the ~~e~~Contract
18 ~~a~~Awarding ~~a~~Authority; and the name and telephone number of the person to be contacted for
19 further information. Such information shall be posted with sufficient lead time to provide
20 adequate notice and opportunity to potential City contractors and vendors to participate in the
21 bid opportunity, request for proposals or solicitation, but in no event less than 10 calendar
22 days prior to the due date for such bid opportunity, request for proposals, or solicitation.

23 **SEC. 14B.15. REPORTING AND REVIEW.**

24 (A) ~~Quarterly Reports~~*Reporting by CMD*~~the Director. Commencing January 1, 2007, and~~
25 ~~no later than the first day of every third month thereafter, the~~ By July 1, October 1, January 1, and

1 April 1 of each fiscal year, CMD Director shall issue quarterly a written reports for the prior fiscal
2 quarter to the Mayor and the to this Board of Supervisors. ThatThe -report shall document:

3 (1) Each Contract Awarding Authority's progress towards achieving the goals of
4 this Chapter each City department's performance under the terms of this Ordinance, including,
5 among other things, each City department's Contract Awarding Authority's progress in meeting
6 the City-wide LBE Participation Goal, and individual Contract LBE participation requirements, and
7 ensuring non-discrimination against MBEs, WBEs, and OBEs. goals and ensuring non-
8 discrimination against MBEs, WBEs, and OBEs, and the success of each department's prime
9 contractors in complying with the LBE subcontracting provisions of this Ordinance and ensuring non-
10 discrimination against MBEs, WBEs, and OBEs. Theat report shall also documentstate the level of
11 participation of all categories of LBEs, and whether or not each Contract Awarding Authority
12 City department has fully reported all data required by this ChapterOrdinance or requested by
13 CMD, the City Administrator, HRC or the Controller.

14 (a) Whenever CMDthe Director's report concludes that a Contract
15 Awarding Authority has department management's intentionally disregarded or negligently
16 performance performed any of obligations imposed by this ChapterOrdinance has contributed to that
17 department's failure to meet its prime contracting goals or requirements of this Ordinance, or finds
18 consistent non-compliance with this Chapter by a Contract Awarding Authority's Prime Contractors,
19 the failure of its prime contractors to meet their Subcontracting goals or requirements of this
20 Ordinance, or whenever the Director's report concludes that a Contract Awarding Authority City
21 department has failed to provide any data required by this ChapterOrdinance or requested by the
22 HRC CMD, the City Administrator, or the Controller, a member of the Clerk of this Board
23 mayshall schedule before the appropriate Committee of the Board a hearing on that report.
24 The Clerk shall also give notice of that hearing to the heads of the Departments identified in
25 the report and request the attendance of the heads of those Departments at the Committee

1 hearing. ~~At the hearing, The Clerk's notice shall inform the Department heads that they must~~
2 be prepared to respond to the Director's finding of intentional disregard and/or negligent
3 performance and to explain what steps they intend to take to forestall repetition of the
4 problems identified in CMD's/the Directors' report. ~~The same procedure shall be followed whenever~~
5 ~~the Director's report identifies any department as having failed to meet its prime or subcontracting~~
6 ~~goals for three (3) consecutive quarters. If the Director's report indicates that a City department has~~
7 ~~not meet its goals for three (3) consecutive quarters, HRC and the City department shall institute a~~
8 ~~targeted program to remedy lack of participation by LBEs in any affected industry.~~

9 (2) ~~The Director shall report to the Commission all All waivers of LBE Bid~~
10 ~~Discounts granted by the Director under acted upon pursuant to Section 14B.7(J) and all waivers of~~
11 ~~LBE Subcontracting Participation requirements granted by the Director under 14B.8(A). Such report~~
12 ~~shall be made on a monthly basis following the granting of the waiver.~~

13 (B) Annual Reporting by City Departments.

14 (1) — As part of their annual budget submission report to the Board of
15 Supervisors, ~~all Contract Awarding Authorities and~~ City departments shall report annually:

16 (1a) ~~to the Mayor on~~ On their progress ~~in the preceding fiscal year~~ toward the
17 achievement of the City-wide LBE Participation Goal and Contract-specific LBE subcontracting
18 participating requirements and steps to ensure non-discrimination against MBEs, WBEs, and
19 OBEs in the preceding year goals and their steps to ensure non-discrimination against MBEs, WBEs,
20 and OBEs; and

21 (2b) ~~to the Board of Supervisors, on~~ On their compliance with the Micro-LBE Set
22 Aside Program in accordance with Section 14B.7(K)(3).

23 (2) — ~~All Contract Awarding Authorities and City departments shall cooperate with~~
24 ~~requests by the Human Rights Commission for information needed by the Human Rights Commission to~~
25 ~~make the reports to the Board of Supervisors required by Chapter 14B.15(A).~~

1 (C) Annual Reporting by the City Administrator Commission. By July 1st of each fiscal
2 year, the City Administrator Commission shall submit an annual report to the Mayor and ~~this~~
3 Board of Supervisors on the progress of the City toward achieving the goals of this
4 Chapter Ordinance, together with an identification of problems and specific recommendations
5 for: ~~(1) improving the City's performance in fostering LBE participation by all categories of LBEs in~~
6 ~~City contracting and (2) ensuring non-discrimination against MBEs, WBEs, and OBEs.~~ The
7 Commission's report shall include an analysis of the availability of MBEs, WBEs, and OBEs and the
8 bidding environment in the various industries that participate in City contracts.

9 (D) Board of Supervisors Public Hearing. Each year, after receiving ~~the~~
10 Commission's CMD's quarterly reports and the annual reports of CMD and City departments, the
11 Board ~~may~~ shall hold a hearing to review the City's performance under this Chapter Ordinance,
12 the administration of this Chapter Ordinance by ~~CMD the HRC~~, and the progress of City
13 departments towards achieving the purposes of this Chapter Ordinance, and other subjects
14 pertaining to the Chapter Ordinance.

15 ~~———— The Board shall act upon the Commission's recommendations by the first Board meeting~~
16 ~~of January in each fiscal year.~~

17
18 **SEC. 14B.16. SAN FRANCISCO BONDING AND OTHER ASSISTANCE.**

19 **(A) San Francisco Bonding and Financial Assistance Program.**

20 **(1) Program Description.** The City and County of San Francisco, acting
21 through the City Administrator, or, in his or her discretion, as delegated to ~~the the Director of~~
22 ~~Risk Management, a division of the Office of the City Administrator~~ (Risk Manager), intends to
23 provide guarantees to private bonding companies and financial institutions in order to induce
24 those entities to provide required bonding and financing to eligible Contractors and
25 Subcontractors bidding on and performing City Public Works / Construction Contracts.

1 This bonding and financial assistance program is subject to the provisions of this Section
2 14B.16(A).

3 **(2) Eligible Contracts.** The assistance described in this Section 14B.16(A)
4 shall be available for any City ~~P~~ublic ~~W~~orks / ~~C~~onstruction ~~C~~ontract to which this
5 ~~Chapter Ordinance~~ applies.

6 **(3) Eligible Businesses.** Businesses must meet the following criteria to
7 qualify for assistance under this Section 14B.16(A).

8 (a) The business may be either a prime ~~C~~ontractor or ~~S~~ubcontractor;
9 and

10 (b) The business must be certified by the ~~Contract Monitoring Division~~
11 ~~of the Office of the City Administrator (CMD)~~ as an LBE according to the requirements of Section
12 14B.3, 14B.5, or 14B.6;

13 (c) The business may be required to participate in a "bonding
14 assistance training program" as offered by the Risk Manager, which is anticipated to provide
15 the following:

- 16 (i) Bond application assistance-~~z~~
- 17 (ii) Assistance in developing financial statements,
- 18 (iii) Assistance in development of a pre-bond surety profile,
- 19 (iv) Identification of internal financial control systems, and
- 20 (v) Development of accurate financial reporting tools.

21 **(4) Agreements Executed by the Risk Manager.** The Risk Manager is
22 hereby authorized to enter into the following agreements in order to implement the bonding
23 and financial assistance program described in this Section 14B.16(A):
24
25

1 (a) With respect to a surety bond, the agreement to guaranty up to
2 ~~40forty~~ percent (40%) of the face amount of the bond or \$1,000,000~~750,000~~ 750,000,
3 whichever is less;

4 (b) With respect to a construction loan to be made to a contractor or
5 subcontractor, an agreement to guaranty up to ~~50fifty~~ percent (50%) of the original principal
6 amount of the construction loan or ~~50fifty~~ percent (50%) of the actual loss suffered by the
7 financial institution as a result of a loan default, whichever is less; provided that in any event
8 the City's obligations with respect to a guaranty shall not exceed \$1,000,000~~750,000~~;

9 (c) Any other documents deemed necessary by the Risk Manager to
10 carry out the objectives of this program, provided that such documents shall be subject to
11 review and approval by the City Attorney's Office.

12 (5) **Monitoring and Enforcement.** The Risk Manager shall maintain records
13 on the use and effectiveness of this program, including but not limited to (1) the identities of
14 the businesses and bonding companies participating in this program, (2) the types and dollar
15 amounts of public work contracts for which the program is utilized, and (3) the types and dollar
16 amounts of losses which the City is required to fund under this program. The Risk Manager
17 shall submit written reports to the Board of Supervisors every six months beginning January 1,
18 ~~2015~~2007, advising the Board of the status of this program and its funding capacity, and an
19 analysis of whether this program is ~~providing~~proving to be useful and needed.

20 (6) **Contributions to the San Francisco Self-Insurance Surety Bond**
21 **Fund.** Subject to the budgetary and fiscal provisions of the San Francisco Charter, each
22 department that conducts public works or improvements under Chapter 6 of the Administrative
23 Code shall contribute annually to the San Francisco Self-Insurance Surety Bond Fund (the
24 Fund) an amount that is set by multiplying the annual contribution rate set pursuant to
25

1 Administrative Code Section 10.100-~~317371~~(c) times its total appropriations for capital
2 construction and improvement.

3 (7) Annual Certification of Funds. *The Risk Manager shall seek annual*
4 *certification of funds from the Self-Insurance Bond Fund and approval as to form of such certification*
5 *from the Controller and City Attorney. Such certification shall be monitored by the Risk Manager to*
6 *ensure the program operates within the transactional bounds of the Self-Insurance Bond Fund and the*
7 *appropriated budget for its administration. The Risk Manager will review the amount certified each*
8 *fiscal year with the Controller and City Attorney, should there be a call on any bond funded through*
9 *the program.*

10 (78) Line of Credit; Credit Enhancement Program. *The Risk*
11 *Manager/Treasurer of the City and County of San Francisco* is hereby authorized to negotiate a
12 line(s) of credit or any credit enhancement program(s) or financial product(s) with a financial
13 institution(s) to provide funding; the program's guaranty pool may serve as collateral for any
14 such line of credit.

15 In the event the City desires to provide credit enhancement under this
16 Subsection for a period in excess of one fiscal year, the full aggregate amount of the City's
17 obligations under such credit enhancement must be placed in a segregated account
18 encumbered solely by the City's obligations under such credit enhancement.

19 (98) Default on Guarantees. *The Director/City Administrator* shall decertify any
20 *C*ontractor that defaults on a loan or bond for which the City has provided a guarantee on the
21 *C*ontractor's behalf. However, the *Director/City Administrator* may in *his or her*s sole discretion
22 refrain from such decertification upon a finding that the City has contributed to such default.

23 **(B) Education and Training.** The City Administrator *and Director* shall *continue to*
24 develop and strengthen existing education and training programs for LBEs and City contract
25 awarding personnel.

1 **(C) Cooperative Agreements.** With the approval of the Board of Supervisors, the
2 City Administrator may enter into cooperative agreements with agencies or entities, public and
3 private, concerned with increasing the use of LBEs in government contracting or in private
4 developments within San Francisco.

5 **(D) Mentor-Protégé Program.** The Director shall establish a Mentor-Protégé Program
6 (MPP) to foster partnerships between established, successful contractors and LBEs to provide training,
7 networking, and mentoring opportunities with the goal to improve LBE MPP participants' ability to
8 compete effectively for City contracts. As a benefit to participating in the MPP, the Director may
9 pursuant to duly promulgated rules and regulations, exempt mentor Contractors from the good
10 faith outreach requirements in Section 14B.8.

11 **(E) LBE Contractor Advance Payment Program.** The City Administrator, in consultation
12 with the Controller, shall investigate and develop a LBE advance payment program to fund
13 temporary loans to LBE Subcontractors for approved invoices on City-funded contracts subject to the
14 budgetary and fiscal provisions of the Charter. The City Administrator shall prepare an
15 implementation plan, including a feasibility study, and shall submit the implementation plan to the
16 Mayor by June 1, 2015.

17 **(F) City Lease and Concession Agreements.** The Office of Economic and
18 Workforce Development shall convene a working group with members including but not
19 limited to representatives from the Real Estate Department, Port, Municipal Transportation
20 Agency, Airport, Recreation and Park Department and the LBE community, to investigate a
21 local business enterprise preference program for City leases and concession agreements.
22 The working group shall submit its program recommendations to the Mayor and Board by
23 June 1, 2015.

1 (G) The City Administrator shall convene a working group to investigate whether
2 there are barriers to participation by LBE firms in specific industries such as architecture. The
3 working group shall report any findings to the Mayor and Board by September 1, 2015.

4
5 **SEC. 14B.17. ENFORCEMENT.**

6 (A) The Director shall monitor the City's utilization of Small-MBEs, Micro-LBEs,
7 MBEs, WBEs, and OBEs in City contracting. The Director shall issue Contract an exit reports
8 for any any eContract that withincludes LBE subcontracting participation requirements and/or
9 LBE prime contract participation as a Joint v Venture partner. The purpose of this exit report is
10 to ensure verify that prime eContractors satisfied their LBE Subcontractor participation requirements
11 are complying with their commitments to use LBE subcontractors and LBEs Joint Venture partner
12 commitments, if applicable are performing services as set forth in the bid/proposal and contract
13 documents for the joint ventures.

14 (B) **Investigations.** The Director shall, at his or her discretion, investigate instances of
15 potential noncompliance with violations of this Chapter Ordinance.

16 Bidders, eContractors, and sSubcontractors and applicants for certification shall
17 provide to the City any information that the City deems relevant, and shall cooperate in all other
18 respects with such an investigation. The Director may issue a written A request for information
19 to from a Bbidder, eContractor, or sSubcontractor or applicant shall identify that identifies the
20 records and any other information CMD requiresd and impose a reasonable deadline for
21 respondingthe time for response. If the A Bbidder, eContractor, or sSubcontractor or applicant that
22 fails to respond to the Director's request for information, or otherwise fails to cooperate in the
23 investigation, or any such party who the Director determines, after investigation, has not complied
24 with the Chapter, shall be subject, after notice and a full and adequate opportunity to be heard, to
25 appropriate sanctions, including but not limited to the sanctions set forth as provided in Section

1 14B.17(~~DC~~), may be imposed. In an investigation of potential discrimination by a prime bidder prior
2 to contract award, if the bidder fails to respond to the request for information, or otherwise fails to
3 cooperate in the investigation, the bid will be rejected as non-responsive, and additional sanctions may
4 be imposed.

5 **(C) Conference and Conciliation.** In the Director's sole discretion, the Director
6 may attempt to resolve noncompliance with this Chapter Ordinance by any Bbidder, eContractor,
7 or sSubcontractor or applicant for certification through informal processes, including conference
8 and conciliation.

9 **(D) Sanctions.** The City, including the Director and eContract aAwarding
10 aAuthorities, as appropriate, may after affording notice of the alleged noncompliance and full and
11 adequate due process, impose any of the following sanctions on a Bbidder, eContractor, or
12 sSubcontractor or applicant for certification who fails to comply with this Chapter Ordinance,
13 provided that, any violation related to certification must be based on a finding by the Director:

14 (1) ~~Reject all bids;~~

15 ~~(2) Declare a Bidbid non-responsive;~~

16 (23) Suspend a eContract;

17 (34) Withhold Contract paymentsfunds;

18 (45) Assess contractual or statutory penalties;

19 (56) Debar a Bbidder under Chapter 28;

20 (67) ~~Deny certification;~~

21 ~~(8) Revoke certification.~~

22 **(E) Referral to Human Rights Commission.** The City, including the Director and Contract
23 Awarding Authorities, as appropriate, shall refer instances of alleged discrimination in contracting to
24 the Human Rights Commission for investigation as set forth in 14B.9 and, as appropriate, imposition
25 of sanctions under Administrative Code Chapter 12A.

1 (F) Notwithstanding any other provision of this Chapter, a Bidder, Contractor, or
2 Subcontractor who demonstrates by clear and convincing evidence that such person or entity made
3 reasonable efforts to comply with, and monitor its compliance with, the provisions of this Chapter, that
4 its failure to fully comply occurred in spite of such measures, that such party or entity acted at all times
5 in good faith and without knowledge of its noncompliance, and that it has taken corrective steps to
6 remedy future noncompliance, shall not be subject to Sanctions.

7 **(GE) Procedures for Denials or Revocation of Certification and Appeals Thereof.** The
8 procedures for appealing the Director's denial of an application for certification or nonrenewal upon
9 expiration of the Certification term, shall be governed by Section 14B.4(C). The procedures for
10 appealing the revocation or suspension of Certification during the Certification term shall be governed
11 by Section 14B.17(I). Whenever the Director proposes to deny an application for or revoke the
12 certification of a business, the Director shall notify the applicant or certified business in writing of the
13 basis for the denial or revocation, and the date on which the business will be eligible to reapply for
14 certification. The Director shall provide the applicant or certified business with an opportunity to be
15 heard before a final determination is made. The Director shall require a business to wait at least six
16 months but not more than two years after the denial or revocation before reapplying for certification in
17 the same category.

18 ~~(F) Procedures for Director Findings of Discrimination. In determining whether a bidder,~~
19 ~~contractor or subcontractor has engaged in discrimination in violation of this Ordinance, the Director~~
20 ~~may consider: (1) direct evidence of discrimination, (2) procedures used to select subcontractors,~~
21 ~~including relative qualifications, (3) significant differences not attributable to any legitimate non-~~
22 ~~discriminatory business reason between the available percentages of MBEs, WBEs, or OBEs capable of~~
23 ~~providing goods and services as subcontractors on a contract or a series of contracts and the~~
24 ~~percentages of the bidder's subcontractors who are MBEs, WBEs, or OBEs, or (4) any other relevant~~
25 ~~evidence.~~

1 ~~Whenever the Director proposes to issue a finding of discrimination against any bidder,~~
2 ~~contractor or subcontractor, the Director shall notify the bidder, contractor or subcontractor in writing~~
3 ~~of the basis for the finding, provided that any proposal to debar a business shall be governed by Section~~
4 ~~14B.17(G) The Director shall provide the bidder, contractor or subcontractor with an opportunity to be~~
5 ~~heard before a final determination is made.~~

6 **(HG) Procedures for Debarment.** The Director shall have the authority to act as a
7 charging official under San Francisco Administrative Code Chapter 28 to debar a Bbidder, ~~or~~
8 eContractor, or certified LBE for violations of this Chapter. The debarment procedures of
9 Chapter 28 shall govern.

10 **(IH) City Administrator Commission to Hear Appeals.** Except as provided in Section g
11 14B.4(C) and 14B.17(HG), the City Administrator or Hearing Officer appointed by the City
12 Administrator ~~City Administrator's Designee~~ Commission shall hear appeals challenging any
13 determination of the Director under this Section 14B.17. The City Administrator or Hearing
14 Officer appointed by the City Administrator ~~City Administrator's Designee~~ Commission may
15 sustain, reverse or modify the Director's findings and sanctions imposed, or take such other
16 action to effectuate the purpose of this Chapter Ordinance. Unless the City Administrator or
17 Hearing Officer appointed by the City Administrator ~~City Administrator's Designee~~ Commission
18 so orders, an appeal shall not stay the Director's determination findings and the imposition of
19 sanctions.

20 ~~(I) Referral to Other Agencies. No person shall knowingly make, file or cause to be filed~~
21 ~~with the City any materially false or misleading statement or report in connection with this Ordinance.~~
22 ~~If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed~~
23 ~~with the City any materially false or misleading statement or report made in connection with this~~
24 ~~Ordinance, the Director shall report that information may impose any sanction described in this~~
25

1 ~~Section 14B.17, or may refer the matter to the City Attorney or the District Attorney for appropriate~~
2 ~~action.~~

3 **(J) Willful Noncompliance by Contract Awarding Authority.** Whenever the
4 Director ~~finds after investigation~~ determines that a ~~Contract Awarding Authority~~ contract awarding
5 ~~authority~~ has willfully failed to comply with its duties under this ~~Chapter Ordinance~~, the Director
6 shall attempt to resolve the matter informally with the Contract Awarding Authority. Should such
7 attempt fail to resolve the issue, the Director shall inform the City Administrator of the Director's
8 determination and the impasse in resolving the matter. If the City Administrator confirms the
9 noncompliance and also is unable to resolve the matter informally, the City Administrator shall issue
10 transmit a written finding of noncompliance specifying the nature of the noncompliance, to the
11 ~~Contract Awarding Authority~~ contract awarding authority, the Commission, the Mayor and this the
12 Board of Supervisors.

13 ~~The Director shall attempt to resolve any noncompliance through conference and~~
14 ~~conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy~~
15 ~~of the finding of noncompliance along with a finding that conciliation was attempted and failed to the~~
16 ~~Commission and this Board.~~

17 ~~— The finding of noncompliance shall be communicated to the Mayor for appropriate~~
18 ~~action to secure compliance.~~

19 **(K) Reporting Improper Government Activity; Protection of Whistleblowers.** Complaints
20 that a City officer or employee has engaged in improper government activity, including acts of reprisal,
21 retaliation, threats, coercion, or similar acts, shall be made in accordance with the provisions of
22 Article IV of the Campaign and Governmental Conduct Code.

23
24 **SEC. 14B.18. APPLICABILITY; AND EXCEPTIONS; ~~OPERATIVE DATE AND~~**
25 **~~TRANSITION PROVISIONS.~~**

1 (A) — ~~Operative date of this Chapter. Chapter 14B shall become operative on September 1,~~
2 ~~2006, and shall govern all contracts initiated on or after that date.~~

3 (B) — ~~Applicability. Chapters 12D.A, 14A and 14B shall apply as follows:~~

4 —— (1) — ~~Any amendment to a contract initiated before July 26, 2004 in which the~~
5 ~~Contractor agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided,~~
6 ~~however, that if a competitive solicitation for an agreement to the proposed changes to the contract is~~
7 ~~required by law, or the law would otherwise require execution of a new contract, rather than an~~
8 ~~amendment to an existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.~~

9 —— Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to
10 ~~comply with Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or~~
11 ~~after July 26, 2004 and before September 1, 2006 and any amendment to such contracts; provided,~~
12 ~~however, that if a competitive solicitation for an agreement to the proposed changes to the contract is~~
13 ~~required by law, or the law would otherwise require execution of a new contract, rather than an~~
14 ~~amendment to an existing contract, the provisions of Chapter 14B and not Chapter 14A shall apply.~~

15 —— (2) — ~~This Chapter 14B shall govern all contracts initiated on or after September 1,~~
16 ~~2006, and any amendments thereto.~~

17 —— (3) — ~~For all contracts described in Section 14B.18(B)(1) and Section 14B.18(B)(2) to~~
18 ~~which this Chapter 14B applies, when any provision of the San Francisco Municipal Code or other~~
19 ~~local law refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it shall be read as~~
20 ~~referring instead to Chapter 14B.~~

21 (C) — ~~Transition Provisions. In order to effect an orderly transition from Chapter 14A to this~~
22 ~~Ordinance, any business certified as an LBE under Chapter 12D.A or a DBE under Chapter 14A shall~~
23 ~~be deemed an LBE under this Chapter 14B until the earlier of (1) the expiration of the business'~~
24 ~~certification under 12D.A or 14A, (2) the business' failure to maintain the certification criteria under~~
25 ~~which it was certified, or (3) January 1, 2007. The Director may, by appropriate rules and regulations,~~

1 *establish procedures to allow such businesses certified as LBEs or DBEs under 12D.A or 14A to*
2 *demonstrate their eligibility for certification under Section 14B.3 of this Ordinance on an expedited*
3 *basis, prior to the expiration of their existing certification.*

4 ~~—————The Director shall deem any application for DBE certification under Chapter 14A that~~
5 ~~is pending on the effective date of this Ordinance to be an application for certification under Chapter~~
6 ~~14B.~~

7 **(AD) State or Federal Provisions.** In contracts which involve the use of any funds
8 furnished, given or loaned by the Government of the United States or the State of California,
9 all laws, rules and regulations of the Government of the United States or the State of
10 California or of any of its departments relative to the performance of such work and the
11 conditions under which the work is to be performed, shall prevail over the requirements of this
12 Ordinance ~~Chapter~~ when such laws, rules or regulations are in conflict.

13 **(BE) Severability.** The provisions of this ~~Chapter Ordinance~~ are declared to be
14 separate and severable. The invalidity of any clause, sentence, paragraph, subdivision,
15 section, or portion of this ~~Chapter Ordinance~~, or the invalidity of the application thereof to any
16 ~~P~~person or circumstances shall not affect the validity of the remainder of this
17 ~~Chapter Ordinance~~, or the validity of its application to other persons or circumstances.

18 **(CF) General Welfare Clause.** In undertaking the enforcement of this
19 ~~Chapter Ordinance~~, the City is assuming an undertaking only to promote the general welfare. It
20 is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
21 which it is liable in money damages to any person who claims that such breach proximately
22 caused injury.

23 ~~(G) ———Three year Review. No later than three years from the effective date of this Ordinance,~~
24 ~~the Board of Supervisors shall hold a hearing for the purpose of conducting a comprehensive review of~~
25

1 ~~this Ordinance. The Board shall take testimony from all affected parties, and shall enact any changes~~
2 ~~that it deems appropriate.~~

3 **(DH) Municipal Transportation Agency.** Consistent with Charter Section
4 8A.101(~~gd~~), the Municipal Transportation Agency shall comply with the provisions of this
5 Chapter ~~14B~~ and shall be solely responsible for its administration and enforcement with respect to
6 matters within the Municipal Transportation Agency's jurisdiction.

7
8 **SEC. 14B.19. SUBCONTRACTING PARTICIPATION REQUIREMENTS: DESIGN-**
9 **BUILD AND INTEGRATED PROJECT DELIVERY CONTRACTS.**

10 LBE Subcontracting participation requirements shall be implemented for Design-Build and
11 Integrated Project Delivery Contracts as follows:

12 (A) Design-Build Contracts.

13 (1) The Director shall establish separate LBE participation requirements for the
14 design and construction portions of the Design-Build Contract.

15 (2) Except as provided in Section 14B.19(C), LBE subcontracting participation
16 requirements for Design-Build Contracts shall be governed by Section 14B.8.

17 (B) Integrated Project Delivery Contracts. ~~The For design-build contracts authorized under~~
18 Administrative Code Section 6.61 and integrated project delivery contracts authorized under
19 Administrative Code Section 6.68, the Director shall establish a project-wide ~~subcontracting and~~
20 subconsulting goals for LBE subcontracting participation requirement.

21 ~~(B) The procedure to attain the project-wide LBE goals for low bid design-build contracts~~
22 ~~awarded under Administrative Code Chapter 6, Section 6.61, shall be in accordance with Section~~
23 ~~14B.8.~~

24 (C) LBE Subcontracting Participation Requirements for Trade Subcontractors. LBE
25 Subcontracting participation requirements for ~~The procedure to attain the project-wide LBE goal for~~

1 trade package subcontracts awarded under ~~a~~Design-~~b~~Build ~~C~~contracts ~~under (Administrative~~
2 ~~Code Chapter 6, Administrative Code Section 6.61(L))~~ and ~~i~~Integrated ~~p~~Project ~~d~~Delivery
3 contracts under Administrative Code Section 6.68~~(Administrative Code Chapter 6, Section 6.68);~~
4 shall be as follows:

5 (1) Prior to the advertisement of any trade packages, the Design-Builder or
6 Construction Manager/General Contractor (Prime Contractor), in consultation with the Director, shall
7 establish a written plan for achieving the LBE subcontracting participation requirement. The plan shall
8 be based on design-build contract or an integrated project delivery contract, the Director shall
9 determine the availability of LBEs who could perform the work or supply materials and
10 equipment for each trade package, ~~with reference to the project-wide LBE subcontracting and~~
11 ~~subconsulting participation goals~~. In the case of a ~~d~~Design-~~b~~Build ~~prime~~ ~~C~~contract, the
12 professional design services such as architectural or engineering performed by LBE firms will
13 be credited toward the established LBE participation requirement on the design portion of the
14 Contract project-wide goal. In the case of a trade package subcontract where some or all of the
15 work is design-build, the plan should credit professional design services such as architectural or
16 engineering performed by LBE firms ~~will be credited~~ toward the established trade package LBE
17 participation requirement goal.

18 (2) ~~The Design-Builder or Construction Manager/General Contractor (the Prime~~
19 ~~Contractor)~~ shall set forth the applicable LBE subcontracting participation requirements in the bid
20 specifications for each trade package. The Prime Contractor shall undertake the good faith
21 outreach required in Section 14B.8(D) for each trade package until the cumulative trade package
22 LBE utilization commitments meet the project-wide subcontracting participation requirements.

23 (3) ~~The Prime Contractor, with the assistance of the Director, shall set forth the LBE~~
24 ~~goal for each trade package. Upon receipt of bids from trade package subcontractors for a specific~~
25 ~~scope of work, the~~ The Director shall have sole authority for determining evaluate whether or not

1 ~~each~~ the trade package low bidder has met the ~~applicable~~~~stated~~ LBE subcontracting participation
2 requirement~~goal~~.

3 (4) In the event ~~at~~ the trade package apparent low bidder fails to ~~bBid does not~~
4 meet the LBE subcontracting participation requirement~~stated goal~~, the Prime Contractor shall allow
5 the bBidder up to ten business days after bid opening to amend the bBid shall be allowed to make up
6 the shortfall, ~~goal within two weeks of bid opening~~, provided that the amendment conforms with CMD
7 Rules and Regulations and the bidder does not violate the California Subletting and
8 Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.). The Prime
9 Contractor shall deem an apparent low bBid that does not make up a shortfall in LBE subcontracting
10 participation requirements within the ten day extension, or such additional time as the Director may, in
11 writing, allow, non-responsive and ineligible for award of the trade package subcontract. Failure by
12 the bidder to achieve the goal within the two week period, or within some other time allowed by the
13 Director in writing, shall deem the bidder ineligible for award of the trade package subcontract. In
14 such an instance, the Director and the Prime Contractor shall proceed to evaluate the second
15 low bidder in the same manner, and so on for potential contract award.

16 (5) The Director shall monitor the Prime Contractor's actual LBE subcontracting
17 participation ~~being attained~~ as the trade package bids are received. In the event the Director
18 determines that ~~the actual~~ LBE subcontracting participation commitments at a particular time in
19 the bidding of trade packages is are materially lower than stated in the Prime Contractor's plan
20 prepared under Section (C)(1) above, less than anticipated, relative to the project LBE goal, the
21 Director shall encourage the Prime Contractor shall make all efforts~~shall make all efforts~~ to take
22 immediate corrective steps, including to negotiate and award trade packages to LBEs using the
23 seven and one half percent (7½%) of total trade package costs available to it for negotiating
24 subcontracts under~~per~~ Administrative Code ~~Chapter 6~~, Sections 6.61(L)(3) or 6.68(H)(3), as
25 applicable~~appropriate~~. ~~After all the trade packages have been awarded, the~~ The Prime Contractor

1 ~~must have met~~ shall be solely responsible for complying with the LBE subcontracting participation
2 requirements and may the project-wide LBE subcontracting/subconsulting goal. Otherwise, the Prime
3 Contractor shall be subject to sanctions as described herein in Section 14B.17 for failure to do
4 so.

6 **SEC. 14B.20. DEVELOPMENT AGREEMENTS.**

7 In addition to any requirement in Section 56.7 of the Administrative Code, a development
8 agreement entered into by the City under Chapter 56 of the Administrative Code shall require a
9 detailed LBE utilization plan. The plan shall require compliance with the Good Faith Outreach
10 requirements in Section 14B.8(D), the nondiscrimination provisions in Section 14B.9, and shall include
11 a LBE utilization requirement set by the Director in conformance with the City-wide LBE Participation
12 Goal, a reporting and monitoring program as approved by the Director, and an enforcement plan that
13 allows the Director to assess penalties or other sanctions as provided in Section 14B.17.

15 Section 2. **Repeal of Ordinance No. 97-10.** Ordinance No. 97-10 granted bid
16 discounts to joint venture partnerships with LBE firms for public works construction projects
17 procured under the integrated project delivery provision of Section 6.68 of the Administrative
18 Code. The Board of Supervisors finds that the purpose of Ordinance No. 97-10 was to
19 facilitate completion of the Bayview Branch Library Construction Project. The Board of
20 Supervisors further finds that the purpose of Bayview Branch Library Construction Project is
21 complete. In addition, the Board of Supervisors finds that the provisions of Ordinance No. 97-
22 10 purporting to amend the Administrative Code are not presently codified. Ordinance No.
23 97-10 is hereby repealed.

1 Section 3. **Effective and Operative Dates.** This ordinance shall become effective 30
2 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
3 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
4 or the Board of Supervisors overrides the Mayor's veto of the ordinance. Except for Sections
5 14B.16(E) and 14B.16(F) of the Administrative Code which shall become operative on the
6 effective date, this This ordinance shall become operative on July 1, 2015, and shall apply to
7 all Contracts first advertised for Bids or initiated on or after this date.

8 Section 4. **Scope of Ordinance.** In enacting this ordinance, the Board of Supervisors
9 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
10 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
11 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
12 additions, and Board amendment deletions in accordance with the "Note" that appears under
13 the official title of the ordinance.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:


18 Yadira Taylor
19 Deputy City Attorney

20 n:\legana\as2014\1500091\00973596.doc

LEGISLATIVE DIGEST

[Administrative Code - 14B Local Business Enterprise Program]

Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide Local Business Enterprise (LBE) participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000 Million; 5) require Administrative Code, Chapter 56, development agreements to include an LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for a LBE contractor advance program to fund loans to subcontractors; ~~7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000;~~ ~~87)~~ **require the City to make good faith efforts to obtain at least three bids from micro or small LBEs for contracts under the threshold or minimum competitive amounts; ~~98)~~ **to establish a Mentor-Protégé Program between established successful contractors and LBEs; ~~409)~~ **require separate LBE participation on design and construction portions of design-build construction contracts; ~~410)~~ **repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and ~~4211)~~ **make various other changes in Chapter 14B.**********

Existing Law

The Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) is a race-and-gender neutral, small, local business contracting preference program and non-discrimination program. One of the goals of Chapter 14B is to help small local business that are at a competitive disadvantage in competing for work on public contracts because San Francisco small businesses experience higher costs than larger businesses. The preference program, for purposes of bid comparison, adds “points” to contract proposals from qualified small, local businesses where contracts will be awarded based on the highest score or applies “discounts” to bids from qualified small, local businesses for comparison where contracts will be awarded based on lowest costs.

In addition to the preference program, Chapter 14B provides other programs including contracting set asides, subcontracting requirements, prompt payment provisions, and training to assist small, local businesses to increase their ability to compete effectively for the award of City contracts.

Amendments to Current Law

This Ordinance would comprehensively revise Chapter 14B. Specifically, the Ordinance would:

General/Definitions

- **Codify transfer of functions** - Update all relevant provisions in 14B to codify the transfer of functions from the HRC to the City Administrator/CMD, and clarify jurisdiction over discrimination-related complaints/investigations remains with HRC.
- Allow joint venture partners to be in different industries as long as both partners are acting in the capacity as a Prime contractor.
- Make various changes to correct and clarify existing provisions of Chapter 14B.

Sections 14B.3, 14B.4, and 14B.5 LBE Certification/Term/Denials and Appeals

- **LBE Certification Business Size Thresholds** - Increase the certification thresholds for Small-LBEs from \$14 Million to \$20 Million for public works/construction businesses, and from \$7 Million to \$10 Million for specialty construction contractors and goods, materials, equipment or general services providers; and increase the thresholds for micro-LBEs from \$7 Million to \$10 million for public works/construction businesses, and from \$3.5 Million to \$ 5 Million for specialty construction contractors and goods, materials, equipment or general services providers. The certification size thresholds would remain the same for professional services and trucking businesses and all SBA-LBEs.
- Remove rebuttable presumption provision concerning San Francisco payroll taxes from criteria needed to establish a principal place of business in San Francisco.
- Clarify that for purposes of LBE certification, any business under common ownership must be in a related industry.
- Provide Director with discretion to certify or renew a certification of a business for a shorter period based on the unique attributes of the particular business.
- Allow Director to suspend or revoke the certification of any LBE that fails to submit requested documentation in a timely fashion or otherwise fails to cooperate in any investigation of that business' continued eligibility for certification.
- Extend PUC-LBE certification to professional services firms.
- Change the category of projects where PUC-LBEs receive bid discounts from PUC Regional Projects performed 70 miles or more outside of San Francisco and where there is no cost shared by members of BAWSCA to PUC Regional Projects: i) performed 70 miles or more outside of San Francisco, or ii) for which some or all of the costs will be shared by members of BAWSCA.

- Move Director's powers over investigations related to applications or renewal applications for LBE certification from Section 14B.17 Enforcement to Section 14B.4.

Section 14B.7 Prime Contracts

- **Bid Discount** - Increase the bid discount or rating bonus allowed to SBA LBEs from 2% to 5% on contracts between \$10,000 and \$10 Million, so long as no micro- or small-LBE is adversely affected. Allow a 2% discount or rating bonus for micro- or small-LBEs on contracts between \$10 Million and \$20 Million.
- **San Francisco First** – Require departments to use the Section 14B.7(A) good faith efforts to attempt to obtain at least three quotes or proposals from Small or Micro LBEs for public works contracts under the threshold amount (\$400,000) or for professional or general services, or commodities contracts under the minimum competitive amount (\$100,000). If three quotes or proposals are not obtained from at least three LBEs, the department shall make a finding justifying why the three quotes or proposals were not obtained.
- Modify Section 14B.7(A) to require departments to outreach to all LBEs with appropriate certifications for the work or services to be performed to solicit their interest in specific contracting opportunities when not impracticable to do so.
- Increase "Large Contract Proposal" threshold for professional services contracts from \$100,000 to \$1,000,000 for purposes of good faith requirement imposed on Contract Awarding Authorities.
- Move Section 14B.17(I) concerning referral to other agencies for the making of materially false or misleading statements in connection with Chapter 14B to Section 14B.7 for clarity.
- Increase period Contractors and Subcontractors are required to maintain all records necessary for monitoring compliance with Chapter 14B from three years to five years.
- Remove Section 14B.7(I) that provided Contract Awarding Authorities with authority to not apply a discount where to do so would result in a contract being awarded to a business without the capacity to perform it.
- Require the Director to post online any waivers granted under 14B.7(J).

Section 14B.8 Subcontracting

- Require CMD to make a finding justifying, and posting online, the LBE subcontracting requirement set for each Contract subject to 14B.8(A) [the LBE subcontracting requirement] where the LBE subcontracting requirement is set at less than 20%.
- Remove specific good faith outreach steps listed in 14B.8(D) and provides that the good faith outreach will be set forth in the 14B Rules and Regulations, to allow for

greater flexibility in developing innovative programs to foster LBE business development.

Section 14B.9 Ensuring Non-Discrimination in Subcontracting

- Require that the City Administrator or Contract Awarding Authorities refer all formal complaints of discrimination and all other instances where discrimination may have occurred of which they become aware to the Human Rights Commission for investigation; and clarifies that the power and duty to review and investigate a Bid or selection of Subcontractors to determine whether discrimination may have occurred is vested with the Human Rights Commission.

Section 14B.10 -14B.14 Powers and Duties of City Administrator, CMD, Controller, Mayor, and Contract Awarding Authorities

- **City-wide Overall LBE Participation Goal** - Require the Mayor, with reports to the Board of Supervisors, to annually set an overall City-wide LBE aspirational participation goal of not less than 40%, with a subgoal of at least 20% for micro-LBE participation, of the value of all upcoming contracts to be awarded the next fiscal year subject to Chapter 14B.
- Move a portion of Section 14B.10(B)(5) related to the audit power of the Controller to a new Section 14B.11(C).
- Move Sections 14B.11(C) and (D) related to subcontractor participation information to be submitted with each request for payment to the City to Section 14B.13.
- Clarify Section 14B.13(A)(4) to consolidate sanctions available to the City in Section 14B.17 Enforcement.

Section 14B.15 Reporting and Review

- Clarify reporting provisions in Section 14B.15, including removing duplicative provisions.

Section 14B.16 San Francisco Bonding and Other Assistance

- **Subcontractor Advance Program** - Authorize City Administrator, in consultation with the Controller, to investigate a LBE contractor advance payment program to fund loans to subcontractors for approved invoices on City-funded contracts subject to the budgetary and fiscal provisions of the Charter. City Administrator to prepare implementation plan, including feasibility study, with report to Mayor by June 1, 2015.
- **Mentor-Protégé Program** - Allow implementation of new Mentor-Protégé program to foster partnerships between established successful contractors and LBEs by providing the Mentor contractors exemption of good faith outreach requirements.

Section 14B.17 Enforcement

- **Hearings/Appeals** – Require that the City Administrator or City Administrator’s Designee would hear appeals challenging any determination of the Director, including denials of certification.
- **Anti-Retaliation/Whistleblower Provision** - Provide that complaints that a City officer or employee has engaged in improper government activity, including acts of reprisal or retaliation, shall be made in accordance with the Whistleblower provisions of Article IV of the Campaign and Government Code.
- Add provision to Section 14B.17 that specifies that Director and contract awarding authorities shall refer instances of alleged discrimination in contracting to the HRC for investigation and imposition of sanctions as appropriate under Administrative Code Chapter 12A.

Section 14B.19 Design-Build Construction

- Require separate LBE participation requirements on design and construction portions of work for Design-Build construction contracts.
- Clarify existing provisions of Section 14B.19

Development Agreements

- Add new provision requiring development agreements entered into pursuant to Chapter 56 of the Administrative Code to include a LBE utilization plan that requires CMD to set a LBE utilization requirement set in conformance with the City-wide LBE Participation Goal, compliance with the good faith outreach requirements and nondiscrimination provisions of 14B, and a reporting, monitoring, and enforcement program that allows CMD to assess penalties or other sanctions.

Other/Operative Date

- Repeal Ordinance No. 97-10. Ordinance No. 97-10 granted bid discounts to joint venture partnerships with LBE firms for public works construction projects procured under the integrated project delivery provision of Section 6.68 of the Administrative Code. The provisions of Ordinance No. 97-10 purporting to amend the Administrative Code are not presently codified. Further, the purpose of Ordinance No. 97-10 was to facilitate completion of the Bayview Branch Library Construction Project, and the project is complete.
- Become operative on July 1, 2015 and would apply to all Contracts first advertised for Bids or initiated on or after this date.

Background Information

This digest reflects amendments made on November 13, 2014 and November 24, 2014 at the Government Audit and Oversight Committee. The amendments would: 1) keep the limit up to

which the City may guaranty as part of the Surety Bond Program at \$750,000; 2) keep the Mayor as the official who resolves the matter when an awarding authority and the Director are unable to agree on whether to divide a Contract into smaller contracts in order to maximize the opportunities for LBEs to participate; 3) change section 14B.5 to allow bid discounts for PUC-LBEs on PUC Regional Projects that are 70 miles or more outside San Francisco or for which costs are shared with BAWSCA; 4) require Mayor to include a sub-goal of at least 20% participation by Micro-LBEs as part of the City-wide LBE Participation Goal, 5) require CMD to post online any waivers granted under 14B.7(J) and the written justifications required if a subcontracting participation requirement is set under 20% under Section 14B.8(A); 6) add back certain existing language from the Chapter related to non-discrimination; 7) establish two separate working groups to look at LBE participation in City leases and concession agreements and LBE architect participation; and 8) correct various typographical or other mistakes in the version introduced.

Effective July 28, 2012, under the powers granted to the Mayor under Charter Section 4.132, Mayor Lee transferred to the City Administrator all of the duties and functions of the Human Rights Commission (HRC) and the Director of the Human Rights Commission under Chapter 14B, with the exception of the authority of the Director of the HRC set forth in Section 14B.9(D) and 14B.17(E), to investigate and issue findings concerning possible unlawful discrimination by a bidder or City contractor in selecting subcontractors for City contracts.

Pursuant to this transfer of functions, the City Administrator became responsible for implementing and enforcing all aspects of Chapter 14B and duly adopted regulations. Additionally, until Chapter 14B can be amended, all references to the "Director" in 14B and its rules and regulations shall be read as referring to the Deputy City Administrator designated by the City Administrator to oversee the transferred functions, and all references to the "Human Rights Commission" shall be read as referring to the City Administrator.

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Member, Board of Supervisor
District 5



City and County of San Francisco

COB, Comm Clerk,
Leg Dep.

LONDON N. BREED

November 14, 2014

TO: Angela Calvillo
Clerk of the Board of Supervisors

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

Clerk of the Board Calvillo,

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matters to be of an urgent nature and request they be considered by the full Board on November 25, 2014, as Committee Reports:

140999 Administrative Code - 14B Local Business Enterprise Program

Sponsors: Mayor; Chiu

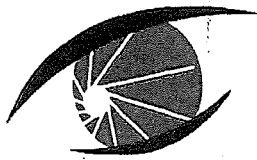
Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance ("Chapter 14B") to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; 5) require Administrative Code, Chapter 56, development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for an LBE contractor advance program to fund loans to subcontractors; 7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; 8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; 9) establish a Mentor-Protégé Program between established successful contractors and LBEs; 10) require separate LBE participation on design and construction portions of design-build construction contracts; 11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 12) make various other changes in Chapter 14B.

These matters will be heard in the Special Government Audit and Oversight Committee on November 24, 2014, at 1:15 PM.

London Breed
Supervisor District 5, City and County of San Francisco

A handwritten signature in cursive script that reads "London Breed".

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SUBMITTED IN COMMITTEE

FILE NO.
140999

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STATEMENT OF KEN CASTLE

Director, Marketing & Business Development, OJO TECHNOLOGY

TO: Government Audit and Oversight Committee, San Francisco Board of Supervisors

DATE: November 13, 2014

Honorable members of the Government Audit and Oversight Committee

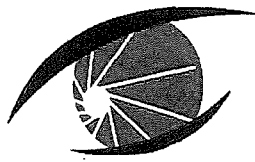
I represent a California-certified small business and federally certified Disadvantaged Business Enterprise that has engaged in several public projects with San Francisco city agencies.

Specifically, our company is a computer engineering-based integrator of physical security systems, including video, access control and intrusion. Among our recent projects is the Pier 27 Justin R. Herman Cruise Ship Terminal and a network of Muni light rail stations below Market Street. As a company based in Alameda County, we've been fortunate to win contracts through the RFP process, largely as a result of our DBE certification.

I'm here today to encourage you to revisit the qualifications for Local Business Enterprise, specifically to allow outside small, minority, women-owned and DBE certified companies to set up subsidiary offices or joint ventures in San Francisco, and thus become eligible for LBE certification.

Let me make a few points:

- City agencies are frequently challenged to find qualified San Francisco companies in our space to bid on projects or to perform maintenance, particularly when specific engineering certifications and skill sets are needed.
- We as a small business also have difficulty finding qualified LBEs that have the credentials to subcontract to us for various scopes of work on our San Francisco projects.



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- The major barrier to entry for us would be moving our corporate office to San Francisco. Why wouldn't it be of value to the city for us to open a satellite office and hire local people to perform the work that is in such high demand? And why shouldn't that type of presence qualify for LBE status?
- It should be noted that in other cities, notably Sacramento, the qualifications to be an LBE for large public works projects are merely to have an office in the city or county, or to joint venture with an existing company.
- Be aware that outside companies are gaming the current system that you have in place. We know of a company that is based 150 miles away but was awarded a city contract on the promise that this company would relocate its corporate headquarters in San Francisco. The company got the contract and leased a tiny space – around 200 square feet – that is seldom occupied. This is not a primary center of business, or a major staging area, but purely and simply, a toehold to justify applying for LBE status. In this instance, it worked, even though this company continues to maintain its core staff and business two-and-a-half hours away from San Francisco.

What I am suggesting is that you consider modifying the LBE requirements to allow Bay Area small, minority, veteran- and women-owned businesses to establish an office in San Francisco, and thus qualify for LBE status, without requiring them to designate it as the corporate headquarters. As another option, allow these companies to partner with or joint venture with existing LBEs, and thus be qualified to bid on public works projects that carry LBE thresholds.

We think that this will be a win/win/win for the city, for the city's existing small business community and for non-resident companies that would like to contribute to San Francisco's public infrastructure and commerce.

Please consider amending this ordinance to accommodate this type of participation.

###

Somera, Alisa (BOS)

To: Breed, London (BOS)
Cc: Johnston, Conor (BOS); True, Judson; Calvillo, Angela (BOS); Major, Erica; Tang, Katy (BOS); Quizon, Dyanna (BOS); Chiu, David (BOS)
Subject: Committee Report Removal: File 140999

Supervisor Breed,

The Clerk of the Board received your memo requesting File No. 140999 (14B Local Business Enterprise Program) be placed on the November 18, 2014 Board agenda as a Committee Report. Since this matter was Continued to the Call of the Chair today in GAO, prior to the Board agenda being finalized, it has been removed from the November 18th Board agenda since it was not recommended out.

If you have any questions or concerns, please let me know. Thank you.

Alisa Somera

Assistant Clerk
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
415.554.4447 direct | 415.554.5163 fax
alisa.somera@sfgov.org

Click [HERE](#) to complete a Board of Supervisors Customer Service Satisfaction form.

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**Disclosures:** *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

FORWARDED VIA EMAIL 11/10/14

**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292  
FAX (415) 252-0461

November 10, 2014

**TO:** Government Audit and Oversight Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** November 13, 2014 Government Audit and Oversight Committee Meeting

**TABLE OF CONTENTS**

| <b>Item</b> | <b>File</b>                                                              | <b>Page</b> |
|-------------|--------------------------------------------------------------------------|-------------|
| 3           | 14-0999 Administrative Code – 14B Local Business Enterprise Program..... | 1           |

**Item: 3**  
**File: 14-0999**

**Departments:**  
 City Administrator, Contract Monitoring Division  
 Human Rights Commission

## EXECUTIVE SUMMARY

### Legislative Objectives

- Ordinance to amend the City's Administrative Code to change the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance to (1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; (2) require the Mayor to annually set an aspirational City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; (3) increase the LBE certification size thresholds for small and micro LBEs; (4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; (5) require Administrative Code, Chapter 56 development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; (6) authorize preparation of an implementation plan for, and feasibility study of a LBE contractor advance program to fund loans to subcontractors; (7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; (8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; (9) allow implementation of a Mentor-Protégé Program to foster partnerships between established successful contractors and LBEs; (10) require separate LBE participation requirements on design and construction portions of design-build construction contracts; (11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and (12) make various other changes in Chapter 14B.

### Fiscal Impact

- Increasing thresholds for micro and small LBE firms and eliminating barriers to bidding on City work will assist in increasing the pool of City-certified LBEs. If more firms are certified as LBEs, there should be more competition to secure City work, potentially reducing bid costs. However, more LBE certified firms could qualify for bid discounts or preferences, potentially increasing the cost to the City by an undetermined amount.
- The Contract Monitoring Division is currently reviewing the amount of staff and resources needed to implement the proposed revisions, but may require up to 4-5 additional Contract Compliance Officers, a total annual cost including fringe benefits of approximately \$600,000. These positions would be supported with both General Fund and non-General Fund monies. All additional funding requests would be subject to Board of Supervisors appropriation approval.
- In addition, increasing the guaranty surety bond limits from \$750,000 to \$1,000,000 will potentially increase the required budget allocations from all participating departments, and/or decrease the number of guarantees available to LBE contractors, although the specific cost increases have not been determined.

**Policy Consideration**

- On July 28, 2014, the Controller's Office of Economic Analysis submitted a Local Business Enterprise Threshold Analysis to the City Administrator which found that the Consumer Price Index (CPI) is the best measure to use to revise LBE thresholds. Given that thresholds had not been recalculated since the inception of the ordinance in 2006, a CPI adjustment would reflect a 17.1% increase. On October 23, 2014, the Local Business Enterprise Advisory Committee (LBEAC) recommended that the LBE criteria thresholds be increased by 17.1% across all industry categories and these thresholds be reviewed every three years, for cost of living increases. In contrast, the proposed amendments would increase the thresholds by 43% for some but not all industries for the micro and small firms to be certified as LBEs, with no increases for SBA-LBEs and does not provide for future increases in these thresholds.

**Recommendations**

1. Based on the Risk Manager's recommendation regarding the City's Surety Bond Program, amend the proposed ordinance on page 62, lines 5 and 10 to delete \$1,000,000 and replace with \$750,000, which is the current threshold.
2. Amend the proposed ordinance on page 64, line 14 to also require the City Administrator to submit the implementation plan, including feasibility study on the LBE advance payment program to the Board of Supervisors by June 1, 2015.
3. Amend the proposed ordinance on pages 16 and 17 to (a) increase by 17.1%, each of the existing micro, small and SBA firms gross annual receipts criteria to be eligible for LBE certification as summarized in Table 4 below and (b) require these thresholds be automatically reviewed every three years by the Controller's Office for cost of living adjustments.
4. Approve the proposed ordinance, as amended.

**MANDATE STATEMENT**

Charter Section 2.105 authorizes all legislative acts by written ordinance or resolution, subject to majority vote of the members of the Board of Supervisors.

**BACKGROUND**

Chapter 14B of the City's Administrative Code, entitled the Local Business Enterprise and Non-Discrimination in Contracting Ordinance, specifies the City's local business contracting preference and non-discrimination programs. In accordance with Chapter 14B, because San Francisco's small businesses generally experience proportionately higher costs than larger businesses or businesses located outside the City, these small local businesses are at a competitive disadvantage to compete for public contracts. Therefore, Chapter 14B programs are designed to assist qualified local small businesses in competing for the award of City contracts by (a) adding points to proposals for contracts that are awarded based on the highest score, or (b) applying discounts to proposals for contracts that are awarded based on the lowest costs. In addition, Chapter 14B provides contracting set asides, subcontracting goals, City payment provisions, and training programs to assist small local businesses to compete for City contracts.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would amend Chapter 14B of the City's Administrative Code to comprehensively change the existing Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance to:

- (1) Codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division;
- (2) Require the Mayor to annually set an aspirational City-wide LBE participation goal of not less than 40% of the value of upcoming contracts;
- (3) Increase the LBE certification size thresholds for small and micro LBEs;
- (4) Increase the bid discount or bonus allowed to Federal Small Business Administration (SBA) LBE economic thresholds on contracts between \$10,000 and \$10,000,000;
- (5) Require Administrative Code, Chapter 56 development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions;

- (6) Authorize preparation of an implementation plan for and feasibility study of a LBE contractor advance program to fund loans to subcontractors;
- (7) Increase the Surety Bond Program limit from \$750,000 to \$1,000,000;
- (8) Require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts;
- (9) Allow for the implementation of a Mentor-Protégé Program to foster partnerships between established successful contractors and LBEs;
- (10) Require separate LBE participation requirements on design and construction portions of design-build construction contracts;
- (11) Repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and
- (12) Make various other changes in Chapter 14B.

**(1) Transfer from Human Rights Commission to City Administrator**

Currently Chapter 14B specifies that the Human Rights Commission is responsible for implementation and enforcement of Chapter 14B. However, on July 12, 2012, the Mayor transferred the duties and functions of the Human Rights Commission to the City Administrator. The proposed ordinance would amend Chapter 14B to be consistent with current practices to require the City's contract procedures be under the City Administrator.

The proposed amendments would also allow the City Administrator to adopt future rules, regulations, guidelines and other actions necessary to implement and enforce the provisions under Chapter 14B. However, under the proposed amendments, the Director of the Human Rights Commission would still be responsible for Section 14B.9(D) and 17(E) to investigate and issue findings regarding possible unlawful discrimination by a bidder or City contractor in selecting subcontractors for City contracts.

**(2) Mayor annually sets aspirational City-wide LBE participation goal of at least 40%**

Chapter 14B currently requires the Mayor to notify City departments of the City-wide LBE goals by July 1<sup>st</sup> of each year. However, such City-wide annual LBE goals have not been established for approximately the past ten years. As a City-wide LBE goal, there is no enforcement of this provision. Instead, each City department contract currently specifies LBE percentage participation based on the availability of certified LBEs in the City's database for each industry as related to each contract. Ms. Maria Cordero, Executive Director of the Contract Monitoring

Division in the Office of the City Administrator, estimates that approximately 25-35% of the City’s subject contracts are currently awarded to eligible LBEs.

Under the proposed amendments, each year the Mayor would set and report to the Board of Supervisors a City-wide LBE participation aspirational goal as a percentage of the overall dollar value of contracts to be awarded in the upcoming fiscal year, based on prior fiscal year LBE utilization data and current LBE availability, but not less than 40%.

**(3) Increase the LBE certification size thresholds for micro and small LBEs**

Currently, LBE businesses are certified by the City based on gross annual receipts that are less than specified limits which differ by industry based on the average gross receipts of that firm over the past three years. Table 1 below summarizes the current maximum annual earnings for individual types of micro, small and SBA eligible LBE firms.

**Table 1: Current Annual Thresholds for Micro, Small and SBA Firms to be Eligible for Certification Based on Gross Annual Receipts over 3 Years**

| Industries                               | Micro       | Small        | SBA          |
|------------------------------------------|-------------|--------------|--------------|
| General Contractors/Construction         | \$7,000,000 | \$14,000,000 | \$33,500,000 |
| Specialty Construction Contractors       | 3,500,000   | 7,000,000    | 17,000,000   |
| Goods/Equipment & General Services       | 3,500,000   | 7,000,000    | 17,000,000   |
| Professional Services incl Arch/Engineer | 1,250,000   | 2,500,000    | 7,000,000    |
| Trucking and Hauling                     | 1,750,000   | 3,500,000    | 8,500,000    |

According to the Controller’s Office, these annual thresholds for certifying eligible LBE firms have not changed since 2006, despite increasing costs. The proposed amendments would change the annual maximum gross annual receipts criteria for certifying micro LBE firms as shown in Table 2 below.



**Table 2: Proposed Annual Thresholds in Prior 3 Fiscal Years for Micro LBE Certification**

| Maximum Gross Annual Receipts            | Current     | Proposed     | Increase (\$/%) |
|------------------------------------------|-------------|--------------|-----------------|
| General Contractors/Construction         | \$7,000,000 | \$10,000,000 | \$3,000,000/43% |
| Specialty Construction Contractors       | 3,500,000   | 5,000,000    | 1,500,000/43%   |
| Goods/Equipment & General Services       | 3,500,000   | 3,500,000    | 0               |
| Professional Services incl Arch/Engineer | 1,250,000   | 1,250,000    | 0               |
| Trucking and Hauling                     | 1,750,000   | 1,750,000    | 0               |

The proposed amendments would also change the maximum annual gross receipts criteria for certifying small LBE firms as shown in Table 3 below.

**Table 3: Proposed Annual Thresholds in Prior 3 Fiscal Years for Small LBE Certification**

| Maximum Gross Annual Receipts            | Current      | Proposed     | Increase (\$/%) |
|------------------------------------------|--------------|--------------|-----------------|
| General Contractors/Construction         | \$14,000,000 | \$20,000,000 | \$6,000,000/43% |
| Specialty Construction Contractors       | 7,000,000    | 10,000,000   | 3,000,000/43%   |
| Goods/Equipment & General Services       | 7,000,000    | 10,000,000   | 3,000,000/43%   |
| Professional Services incl Arch/Engineer | 2,500,000    | 2,500,000    | 0               |
| Trucking and Hauling                     | 3,500,000    | 3,500,000    | 0               |

The maximum annual gross receipts criteria for certifying SBA LBEs would not change under the proposed amendments.

According to the office of the sponsor of the proposed ordinance, the proposed 43% increases for some of the industries were based on stakeholder input.

**(4) Increase bid discount for SBA LBEs on contracts between \$10,000 and \$10,000,000**

Currently, for contracts between \$10,000 and \$10,000,000, the bid discount is 10% for Small or Micro LBEs and 2% for SBA LBEs. Under the proposed amendments, the bid discount would remain the same at 10% for Small or Micro LBEs, but would increase from 2% to 5% for SBA LBE contracts of between \$10,000 and \$10,000,000, as long as no Micro LBE or Small LBE is

adversely impacted. For contracts between \$10,000,000 and \$20,000,000, the bid discounts for Small, Micro or SBA LBEs would remain the same at 2%.

**(5) Require development agreements to include LBE utilization plan and compliance**

The proposed ordinance would add a new provision to Chapter 14B to require development agreements entered into pursuant to Chapter 56 of the City's Administrative Code<sup>1</sup> to include a detailed LBE utilization plan that requires the setting of a LBE utilization requirement in conformance with the City-wide LBE participation goal, compliance with good faith outreach requirements and nondiscrimination provisions and includes reporting, monitoring and enforcement provisions. To date, the City has entered into four development agreements under Chapter 56, including (a) Park Merced, (b) Trinity Plaza, (c) California Pacific Medical Center (CPMC), and (d) Pier 70.

**(6) Implementation of a contractor advance payment program to fund loans to subcontractors**

Under the proposed ordinance, the City Administrator, in consultation with the Controller, would submit an implementation plan, including a feasibility study to the Mayor by June 1, 2015 to develop a LBE advance payment program to fund temporary loans to LBE subcontractors for approved invoices on City-funded contracts. Ms. Cordero advises that currently, no City-sponsored loan program exists to assist LBE subcontractors, such that these LBE subcontractors often have to rely on private bank's lines of credit to fund their operations and pay their employees, although the LBE subcontractors may have completed their specific work on a City-funded contract. Given that the Board of Supervisors has a significant interest in the proposed LBE contractor program, the City Administrator should also submit the implementation plan, including feasibility study to the Board of Supervisors by June 1, 2015.

**(7) Increase the Surety Bond Program limit from \$750,000 to \$1,000,000**

With respect to the City's Surety Bond Program, the proposed ordinance would increase the limit to which the City may guaranty agreements from up to \$750,000 to up to \$1,000,000. According to Mr. Matt Hansen, the City's Risk Manager, the City's Surety Bond Program provides technical assistance and underwriting of bid and performance bonds for construction contractors. The Program is currently funded by contributions from the major City departments that undertake construction contracts, including the Public Utilities Commission, Department of Public Works, Port, Airport and Recreation and Park.

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<sup>1</sup> Chapter 56 of the City's Administrative Code addresses public planning of private development projects in the City to enhance public benefits beyond those achievable through existing ordinances and regulations by entering into voluntary development agreements between the developer and the City.

Mr. Hansen reports that the current Program limit of \$750,000 has sufficient capacity to support all requests to date and is not expected to be a barrier to LBE contractor's receiving Surety Bond Program assistance in the future. In fact, Mr. Hansen advises that the Program should not be increased at this time because such an increase will impact the previously conducted actuarial analysis, potentially increasing budget contributions from all participating departments, and/or decreasing the number of guarantees available to LBE contractors. Therefore, Mr. Hansen recommends that the Surety Bond Program not be increased to \$1,000,000 at this time.

**(8) Make good faith efforts to obtain at least three bids from LBEs for contracts under threshold**

The proposed amendments would add a new San Francisco First Program which would require City departments to make good faith efforts for contracts greater than \$10,000 to obtain at least three LBE bids for all public works contracts under the threshold amount (\$400,000) or for professional or general services or commodities contracts under the minimum competitive amount (\$100,000). If three bids from LBEs are not obtained, City departments must document a finding explaining why three bids were not obtained.

**(9) Establish a Mentor-Protégé Program between established successful contractors and LBEs**

In accordance with the proposed ordinance, the Director of the Contract Monitoring Division would establish a Mentor-Protégé Program to foster partnerships between established, successful contractors and LBEs to provide training, networking and mentoring opportunities with the goal to improve LBE participants' ability to compete effectively for City contracts and allowing mentor contractors' exemption of the good faith outreach requirements. Ms. Cordero advises that this City Mentor-Protégé Program would be modeled on the existing Caltrans mentor-protégé program, and could begin in early 2015.

**(10) Require separate LBE participation on design-build contracts**

The proposed ordinance specifies that the Director of the Contract Monitoring Division shall establish separate LBE participation requirements on design and construction portions of work for Design-Build construction contracts with the City.

**(11) Repeal provisions relating to completion of Bayview Branch Library Construction Project**

The proposed ordinance would specifically repeal Ordinance No. 97-10 which granted bid discounts to joint venture partnerships with LBE firms to facilitate the completion of the Bayview Branch Library Construction Project, which was completed in early 2013.

**(12) Make various other changes in Chapter 14B**

Numerous other changes are incorporated in the proposed ordinance to correct and clarify existing and proposed provisions in Chapter 14B, including (a) exempting agreements awarded under emergency conditions, (b) deleting provisions concerning San Francisco Payroll Taxes as a criteria to establish a principal place of business, (c) adding definitions, (d) allowing joint venture partners to be in different industries if such partners are also acting as the prime contractor, (e) provide the Director of the Contract Monitoring Division with discretion to certify or renew a certification of a business for a shorter period of time based on unique attributes of individual businesses, (f) allow Director of Contract Monitoring Division to suspend or revoke LBE certification that fails to submit requested documents or cooperate in any investigation regarding continued eligibility, (g) increase contractors requirement to maintain all records for monitoring compliance by two years from three to five years, (h) replace the Mayor with the City Administrator as the designated official to resolve LBE contracting issues, and (i) require the Director of Contract Monitoring Division to make a finding justifying the LBE subcontracting requirement if set at less than 20%.

The proposed ordinance would apply to all eligible contracts advertised for bid or initiated on or after July 1, 2015.

**FISCAL IMPACT**

The proposed ordinance states that stimulating the expansion of small firms or development of new enterprises fosters economic growth and independence for San Francisco and its taxpayers. This expansion of local small businesses advances the public interest, contributes to the economic well-being of all San Franciscans and tends to minimize the burden on the General Fund to provide for general welfare.

In addition, one of the major goals of the proposed ordinance is to increase the pool of City-certified LBEs in order to increase the number of qualified LBE prime contractors and subcontractors who will be eligible to bid on City contract work. Increasing the thresholds for micro and small LBE firms and eliminating some of the barriers to bidding on City work, as proposed in this ordinance, will assist in potentially increasing the pool of City-certified LBEs. If more firms are certified as LBEs, there should be more competition to secure City work, potentially reducing the bid costs to secure that work. However, as more firms are certified as LBEs, more firms could likely qualify for specified bid discounts or preferences, ultimately increasing the cost to the City by an undetermined amount.

The Contract Monitoring Division under the City Administrator would be responsible for implementing and enforcing the provisions of Chapter 14B. Ms. Jennifer Johnston, Deputy City Administrator, estimates that the proposed amendments will require additional contract

compliance and monitoring staff to (a) handle greater workloads as more firms are LBE eligible, (b) develop the new Mentor Protégé Program, (c) conduct a feasibility study to develop a LBE advance payment for temporary loans to LBE subcontractors, (d) establish separate LBE participation requirements for Design-Build construction contracts, and (e) address the numerous changes. Ms. Johnston advises that the Contract Monitoring Division is currently reviewing the amount of staff and resources that may be needed to implement the proposed revisions, but may require up to 4-5 additional Contract Compliance Officers, which currently have annual salaries of \$98,488, or a total annual cost including fringe benefits of approximately \$600,000. These positions would need to be supported with both General Fund and non-General Fund monies. All additional funding requests would be subject to Board of Supervisors appropriation approval.

In addition, Mr. Hansen estimates that the increase from \$750,000 to \$1,000,000 in the limit to which the City may guaranty surety bond agreements will potentially increase the required budget allocations from all participating departments, and/or decrease the number of guarantees available to LBE contractors, although the specific cost increases have not been determined.

## **POLICY CONSIDERATION**

One notable policy question for consideration is the amount of the increase in the LBE thresholds as shown above in Tables 1, 2 and 3.

On July 28, 2014, the Controller's Office of Economic Analysis staff submitted a Local Business Enterprise Threshold Analysis to the City Administrator. This analysis found that the Consumer Price Index (CPI) is the best measure to use to revise LBE thresholds, as the CPI reflects all determinants subject to inflationary and market pressures, including inflation, cost of living and price. Based on the Controller's analysis that thresholds had not been recalculated since the inception of the ordinance in 2006, a CPI adjustment would reflect a 17.1% increase.

In addition, on October 23, 2014, the Local Business Enterprise Advisory Committee (LBEAC)<sup>2</sup> recommended that the LBE criteria thresholds be increased by 17.1% as recommended by the Controller's Office, across all industry categories. In addition, the LBEAC recommended that these thresholds be reviewed by the Controller every three years, for cost of living increases. In contrast, as shown in Tables 2 and 3 above, the proposed amendments would increase the thresholds by 43% for some but not all industries for the micro and small firms to be certified as LBEs, with no increases for SBA-LBEs. The proposed ordinance also does not provide for future increases in these thresholds.

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<sup>2</sup> The Local Business Enterprise Advisory Committee is comprised of 14 members, appointed by the Mayor, representing small, micro and large businesses, community based organizations and enterprise department contract management staff.

Based on the Controller’s analysis and the recommendations of the LBEAC, the proposed ordinance should be amended to increase the annual thresholds for each of the micro, small and SBA firms that are eligible for LBE certification by 17.1%, as summarized in Table 4 below. Similarly, amend the proposed ordinance to require that these thresholds be reviewed by the Controller every three years for cost of living adjustments.

**Table 4: Recommended 17.1% Threshold Increases Based on Controller and LBEAC Recommendations**

| Industries                               | Micro       | Small        | SBA          |
|------------------------------------------|-------------|--------------|--------------|
|                                          | Proposed    | Proposed     | Proposed     |
| General Contractors/Construction         | \$8,200,000 | \$16,400,000 | \$39,000,000 |
| Specialty Construction Contractors       | 4,100,000   | 8,200,000    | 20,000,000   |
| Goods/Equipment & General Services       | 4,100,000   | 8,200,000    | 20,000,000   |
| Professional Services incl Arch/Engineer | 1,500,000   | 3,000,000    | 8,000,000    |
| Trucking and Hauling                     | 2,000,000   | 4,000,000    | 10,000,000   |

**RECOMMENDATIONS**

1. Based on the Risk Manager’s recommendation regarding the City’s Surety Bond Program, amend the proposed ordinance on page 62, lines 5 and 10 to delete \$1,000,000 and replace with \$750,000, which is the current threshold limit.
2. Amend the proposed ordinance on page 64, line 14 to also require the City Administrator to submit the implementation plan, including feasibility study on the LBE advance payment program to the Board of Supervisors by June 1, 2015.
3. Amend the proposed ordinance on pages 16 and 17 to (a) increase by 17.1% the annual thresholds for each of the existing micro, small and SBA firms gross annual receipts criteria to be eligible for LBE certification as summarized in Table 4 above and (b) require that these thresholds be automatically reviewed every three years by the Controller’s Office for cost of living adjustments.
4. Approve the proposed ordinance, as amended.

Member, Board of Supervisor  
District 5



City and County of San Francisco

COB, BOS II, LEG  
Dep.

CC, Dep  
CA  
CPag

**LONDON N. BREED**

November 7, 2014

TO: Angela Calvillo  
Clerk of the Board of Supervisors

RE: Government Audit and Oversight Committee  
COMMITTEE REPORT

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 NOV - 7 PM 3:17

Clerk of the Board Calvillo,

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matters to be of an urgent nature and request they be considered by the full Board on September 16, 2014, as Committee Reports:

**140999 Administrative Code - 14B Local Business Enterprise Program**

**Sponsors: Mayor; Chiu**

Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance ("Chapter 14B") to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; 5) require Administrative Code, Chapter 56, development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for an LBE contractor advance program to fund loans to subcontractors; 7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; 8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; 9) establish a Mentor-Protégé Program between established successful contractors and LBEs; 10) require separate LBE participation on design and construction portions of design-build construction contracts; 11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 12) make various other changes in Chapter 14B.

These matters will be heard in the Government Audit and Oversight Committee on November 13, 2014, at 11:00 a.m.

London Breed  
Supervisor District 5, City and County of San Francisco

A handwritten signature in black ink that reads "London Breed".

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448
FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors
DATE: October 6, 2014
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 140999

Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance ("Chapter 14B") to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; 5) require Administrative Code, Chapter 56, development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for an LBE contractor advance program to fund loans to subcontractors; 7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; 8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; 9) establish a Mentor-Protégé Program between established successful contractors and LBEs; 10) require separate LBE participation on design and construction portions of design-build construction contracts; 11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 12) make various other changes in Chapter 14B.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

\_\_\_ No Comment
\_\_\_ Recommendation Attached

Chairperson, Small Business Commission



BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Naomi Kelly, City Administrator, Office of the City Administrator  
Jaci Fong, Director, Office of Contract Administration  
Ben Rosenfield, City Controller, Office of the Controller  
Matthew Hansen, Risk Manager, Risk Management  
Emily Murase, Executive Director, Department on the Status of Women  
Harlan Kelly, Jr., General Manager, Public Utilities Commission  
Mohammed Nuru, Director, Department of Public Works  
Theresa Sparks, Executive Director, Human Rights Department  
Ed Reiskin, Executive Director, Municipal Transportation Agency

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: October 6, 2014

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Mayor Lee on September 23, 2014:

**File No. 140999**

**Ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance ("Chapter 14B") to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide LBE participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10,000,000; 5) require Administrative Code, Chapter 56, development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for an LBE contractor advance program to fund loans to subcontractors; 7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; 8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; 9) establish a Mentor-Protégé Program between established successful contractors and LBEs; 10) require separate LBE participation on design and construction portions of design-build construction contracts; 11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 12) make various other changes in Chapter 14B.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

C:

Monique Zmuda, Office of the Controller  
Iris Wong, Department on the Status of Women  
Juliet Ellis, Public Utilities Commission  
Donna Hood, Public Utilities Commission  
Fuad Sweiss, Department of Public Works  
Frank Lee, Department of Public Works  
Gloria Lopez, Human Rights Department  
Janet Martinsen, Municipal Transportation Agency  
Kate Breen, Municipal Transportation Agency  
Dillon Auyoung, Municipal Transportation Agency

Bos - 11, 30F, GAO, Leg. Dep.,

COB

President, District 3  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-7450  
Fax No. 554-7454  
TDD/TTY No. 544-5227

DAVID CHIU  
邱信福  
市參事會主席

**PRESIDENTIAL ACTION**

Date: 9/30/14

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. \_\_\_\_\_  
(Primary Sponsor)

Title. \_\_\_\_\_

Transferring (Board Rule No. 3.3)

File No. 140999 Chiu  
(Primary Sponsor)

Title. Admin Code - 14B Local Business Program

From: Budget & Finance Committee

To: Government Audit & Oversight Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor \_\_\_\_\_

Replacing Supervisor \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committee)

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 SEP 30 AM 10:34

*David Chiu*

David Chiu, President  
Board of Supervisors

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *EW* Mayor Edwin M. Lee *ML*  
RE: Administrative Code – 14B Local Business Enterprise Program  
DATE: September 23, 2014

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Attached for introduction to the Board of Supervisors is an ordinance amending the Administrative Code to comprehensively revise the Local Business Enterprise (“LBE”) and Non-Discrimination in Contracting Ordinance (“Chapter 14B”) to: 1) codify the transfer of implementation and enforcement of Chapter 14B from the Human Rights Commission to the City Administrator and Contract Monitoring Division; 2) require the Mayor to annually set an overall City-wide Local Business Enterprise (LBE) participation goal of not less than 40% of the value of upcoming contracts; 3) increase the LBE certification size thresholds for small and micro LBEs; 4) increase the bid discount allowed to SBA-LBEs on contracts between \$10,000 and \$10 Million; 5) require Administrative Code Chapter 56 development agreements to include a LBE utilization plan and be subject to certain Chapter 14B provisions; 6) authorize preparation of an implementation plan for a LBE contractor advance program to fund loans to subcontractors; 7) increase the Surety Bond Program limit from \$750,000 to \$1,000,000; 8) require the City to make good faith efforts to obtain at least three bids from LBEs for contracts under the threshold or minimum competitive amounts; 9) to establish a Mentor-Protégé Program between established successful contractors and LBEs; 10) require separate LBE participation on design and construction portions of design-build construction contracts; 11) repeal Ordinance No. 97-10 relating to completion of the Bayview Branch Library Construction Project; and 12) make various other changes in Chapter 14B.

Please note that this item is co-sponsored by Supervisor David Chiu.

Should you have any questions, please contact Nicole Wheaton at (415) 554-7940.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 SEP 23 PM 2:04  
*MLB*

170999