

BOARD of SUPERVISORS



City Hall  
1 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  
Romulus Asenloo, Director, Contract Monitoring Division  
Jaci Fong, Office of Contract Administration

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee

DATE: September 20, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation:

**File No. 170921**

**Ordinance amending the Administrative Code to establish a trial Local Business Enterprise (LBE) incentive program that would allow an LBE joint venture rating bonus on professional services and design-build contracts over \$20 million, and allow departments to use the amount of LBE subcontractor participation in core disciplines as selection criteria in professional services contract procurements.**

If you have any 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: Lynn Khaw, Office of the City Administrator  
Rochelle Fretty, Contract Monitoring Division  
Kofo Domingo, Office of Contract Administration

1 [Administrative Code - Establish a Trial Local Business Enterprise Joint Venture and Core  
2 Discipline Incentive Program]

3 **Ordinance amending the Administrative Code to establish a trial Local Business**  
4 **Enterprise (LBE) incentive program that would allow an LBE joint venture rating bonus**  
5 **on professional services and design-build contracts over \$20 million, and allow**  
6 **departments to use the amount of LBE subcontractor participation in core disciplines**  
7 **as selection criteria in professional services contract procurements.**

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9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
11 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
12 **Board amendment additions** are in double-underlined Arial font.  
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
14 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
15 subsections or parts of tables.

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

17 Section 1. The Administrative Code is hereby amended by adding Section 14B.21; to  
18 read as follows:

19  
20 **SEC 14B.21. ADDITIONAL JOINT VENTURE AND CORE DISCIPLINE INCENTIVE**  
21 **TRIAL PROGRAM**

22 **(a) Joint Venture Incentives For Use By Contract Awarding Authorities.**

23 **(1) Prime Professional Services Contracts. For Professional Services and**  
24 **Architecture/Engineering prime Contracts estimated by the Contract Awarding Authority to cost in**  
25 **excess of \$20,000,000, the Contract Awarding Authority may apply a rating bonus as described in**

1 subsection (a)(3) to proposals from Joint Ventures with Small and/or Micro-LBE Joint Venture  
2 partners. The applicability of the rating bonus shall be clearly identified in the request for  
3 qualifications/proposals or other solicitation document.

4 (2) Design-Build Contracts. For Design-Build Contracts estimated by the Contract  
5 Awarding Authority to cost in excess of \$20,000,000, Contract Awarding Authorities may apply a  
6 rating bonus as described in subsection (a)(3) to proposals from design-builders where the lead  
7 designer is a Joint Venture with a Small and/or Micro-LBE Joint Venture partner. The applicability of  
8 the rating bonus shall be clearly identified in the request for qualifications/proposals or other  
9 solicitation document.

10 (3) Rating Bonus. The following rating bonus may apply where the Director finds that  
11 the Small and/or Micro LBE Joint Venture Partner (i) will be responsible for, and has sufficient skill,  
12 experience, and financial capacity to perform a clearly defined portion of the work, (ii) shares in the  
13 Ownership, Control, management responsibilities, risks, and profits of the Joint Venture at least in  
14 proportion to the value of its assigned Joint Venture work, and (iii) performs a Commercially Useful  
15 Function:

16 (A) Up to 2% rating bonus to a Joint Venture with LBE prime Contractor or  
17 lead design partner participation that equals or exceeds 5% but is less than 10% of the prime level  
18 work or design portion of a Design-Build Contract.

19 (B) Up to 4% rating bonus to a Joint Venture with LBE prime Contractor or lead  
20 design partner participation that equals or exceeds 10% but is less than 15% of the prime level work or  
21 design portion of a Design-Build Contract.

22 (C) Up to 6% rating bonus to a Joint Venture with LBE prime Contractor or lead  
23 design partner participation that equals or exceeds 15% of the prime level work or design portion of a  
24 Design-Build Contract.

1                   (4) The rating bonus shall not apply to any cost portion of the selection or evaluation  
2 process.

3                   (5) For prime Professional Services Contracts, LBE prime Joint Venture partner  
4 participation cannot be used towards meeting the Contract's LBE Subcontractor Participation  
5 Requirement. For Design-Build Contracts, LBE lead design Joint Venture partner participation can be  
6 used towards meeting the Contract's LBE Subcontractor Participation Requirement. For both  
7 Contract types, LBE Joint Venture partner participation can be used towards meeting the good faith  
8 outreach exemption in Section 14B.8(B)(1).

9                   (b) Core Discipline Incentives For Use by Contract Awarding Authorities. For all  
10 Professional Services and Architecture/Engineering prime Contracts, Contract Awarding Authorities  
11 may, in consultation with the Director, include as evaluation or selection criteria in the Contract  
12 procurement, a prime Contractor's use of Micro and/or Small-LBEs in core disciplines to meet the  
13 Contract's LBE Subcontractor Participation Requirement. The Contract Awarding Authority shall  
14 specify in the request for qualifications/proposals or other solicitation document what trades, scopes of  
15 work, or discipline areas will be considered core disciplines for a Contract. The weight of this core  
16 discipline selection criteria in the overall selection process will be at the discretion of the Contract  
17 Awarding Authority, and shall be clearly identified in the request for qualifications/proposals or other  
18 solicitation document.

19                   (c) Sunset Date. This Section 14B.21 shall expire by operation of law three years from its  
20 effective date. Upon its expiration, the City Attorney shall cause Section 14B.21 to be removed from  
21 the Administrative Code.

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23                   Section 2. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

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4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

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7 By:

  
Yadira Taylor  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Establish a Trial Local Business Enterprise Joint Venture and Core Discipline Incentive Program]

**Ordinance amending the Administrative Code to establish a trial Local Business Enterprise (LBE) incentive program that would allow an LBE joint venture rating bonus on professional services and design-build contracts over \$20 million, and allow departments to use the amount of LBE subcontractor participation in core disciplines as selection criteria in professional services contract procurements.**

Existing Law

Chapter 14B of the Administrative Code provides up to a 10% bid discount or rating bonus on bids or proposals from joint ventures where at least one joint venture partner is a certified small or micro Local Business Enterprise (LBE). This joint venture bid discount or rating bonus can apply to professional services contracts estimated to cost between \$10,000 and \$10 million.

All professional services contracts that equal or exceed \$55,000 include an LBE subcontracting participation requirement set by the Contract Monitoring Division (CMD). Contractors must meet this requirement by subcontracting out portions of the contract work to LBEs. The LBE subcontracting participation requirement can be met with any certified small or micro LBE.

Amendments to Current Law

This ordinance would add additional joint venture and LBE subcontractor participation incentives for use by City departments on a trial 3-year basis.

Joint Venture Incentive

The ordinance would provide departments, at their discretion, to apply up to a 6% joint venture rating bonus on professional services contracts costing more than \$20 million. The rating bonus would apply to bids or proposals from joint ventures with at least one small or micro- LBE joint venture partner.

For design-build construction contracts, the ordinance would allow departments, at their discretion, to apply up to a 6% joint venture rating bonus on design-build contracts costing more than \$20 million to proposals from design-builders where the lead designer (architect or engineer) is a joint venture with a small or micro LBE joint venture partner.

The rating bonus for professional services and design-build contracts cannot apply to the cost portion of the selection or evaluation process.

Core Discipline LBE Subcontractor Participation Incentive

This ordinance would allow departments in professional services procurements, to include as selection criteria a prime contractor's use of micro or small LBEs in core disciplines to meet the contract's LBE Subcontractor participation requirement. The department would specify in the RFQ/RFP or other procurement documents what trades, scopes of work, or discipline areas would be considered core disciplines for that contract.

Background Information

The intent of Chapter 14B of the Administrative Code is to improve the ability of small, local business enterprises (LBEs) to compete effectively for the award of City contracts. The program's main tools to achieve this goal is through a contracting preference program and the setting of LBE subcontractor participation requirements. The preference program, for purposes of bid comparison, adds "points" to contract proposals from qualified small, local business where contracts will be awarded based on the highest score or applies "discounts" to bids from qualified small, local business for comparison where contracts will be awarded based on lowest cost. The Contract Monitoring Division (CMD), the division of the City Administrator's office charged with implementing Chapter 14B, sets LBE subcontracting participation requirements for each contract subject to Chapter 14B based on the extent of subcontracting opportunities presented by the scope of the proposed contract, and the availability of LBE subcontractors certified to provide goods or services in the categories related to the contract's scope of work.

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