

FILE NO. 050784

ORDINANCE NO.

92-06

[Establishing a Small Local Business Enterprise Program; Prohibiting Discrimination in Contracting and Subcontracting.]

Ordinance amending the San Francisco Administrative Code by adding Chapter 14B to establish a Small and Micro Local Business Enterprise Program, prohibit discrimination in City contracting, and suspend Chapter 12D.A.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 14A.04 to read as follows:

SEC. 14A.04 ENACTING CHAPTER 14A AS A NON-EMERGENCY ORDINANCE.

(A) This Chapter 14A, which was initially enacted by the Board of Supervisors as an emergency ordinance, is hereby enacted as a non-emergency ordinance. Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply with Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or after July 26, 2004 and before July September 1, 2006 and any amendment to such contracts; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law, or the law would otherwise require execution of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and not Chapter 14A shall apply.

(B) Any amendment to a contract initiated before July 26, 2004 in which the Contractor agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law,

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1 or the law would otherwise require execution of a new contract, rather than an amendment to an
2 existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.

3 (C) All contracts initiated on or after ~~May~~ September 1, 2006 shall be governed by
4 Chapter 14B.

5
6 Section 2. The San Francisco Administrative Code is hereby amended by adding
7 Chapter 14B to read as follows:

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

9 (A) Short Title. This ordinance shall be entitled "Local Business Enterprise and Non-
10 Discrimination in Contracting Ordinance."

11 (B) Findings.

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

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

22 (3) The public has an interest in fostering a strong and vibrant network of small and very
23 small micro businesses in San Francisco. In part, San Francisco can accomplish this goal by ensuring
24 that small and micro local businesses can compete for public contracts on a level playing field.
25

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

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

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

18 Since that time, this Board and the City's Human Rights Commission have actively and
19 extensively documented and studied discrimination against and disadvantages faced by these groups to
20 gauge the effectiveness of the prior Minority, Women and Local Business Enterprise Ordinances (the
21 "M/W/LBE Ordinances") and to assess the need for further and continuing action. The earlier studies
22 are documented in the legislative history of the previous amendments and re- enactments of the
23 ordinance, including Ordinance Nos. 175-89, 155-92, 210-97, 457-97, 82-98, 296-98, 210-99, 283-99
24 and 134-03. The findings underlying these ordinances have been reviewed and analyzed in the
25 preparation of this ordinance and are hereby incorporated by reference into the legislative history of

1 this ordinance. These materials include disparity studies, transcripts of live testimony by dozens of
2 witnesses, case studies of discrimination, and voluminous other materials. An index and a separate
3 synopsis of this material are on file with the Clerk of this Board in File No. 98-0612. These materials
4 are all incorporated by reference into the legislative history of this ordinance. The collection and
5 analysis of relevant information is ongoing.

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

12 In issuing its injunction, the Superior Court did not dispute the accuracy of the City's disparity
13 studies or otherwise take issue with the City's underlying findings of discrimination and disparity.
14 However, the Court ruled that California's Proposition 209 does not allow the City to address the
15 identified problem through its prior methods. The Board finds and declares that the need for the City
16 to identify, rectify, and prevent discrimination in its public contracting still exists, and the City is
17 committed to ensuring that neither MBEs nor WBEs nor any other business is arbitrarily or unfairly
18 excluded from contracting opportunities. The City remains committed to addressing discrimination in
19 public contracting to the fullest extent allowed by law, in a manner that is consistent with all
20 requirements of federal and state law.

21 (C) Purpose.

22 (1) Assistance to Small Local Businesses. The City shall assist small and micro local
23 businesses to increase their ability to compete effectively for the award of City contracts. The Mayor
24 shall establish Citywide goals for participation by small and micro local businesses in contracting.
25 The City shall provide the bid discounts, set asides, and subcontracting opportunities set forth in this

1 ordinance, information and training, and other assistance to small and micro local businesses in order
2 to reach these goals. The Human Rights Commission and Director shall assist other City departments
3 to implement the goal of increasing participation in City contracts by small and micro local businesses.

4 (2) Nondiscrimination. Neither the City nor any of its officers or employees shall
5 discriminate against any person or business on any basis prohibited by law in the award or
6 administration of City contracts. Persons or businesses that are awarded City contracts shall not
7 discriminate against any person or business on any basis prohibited by law in the performance or
8 administration of any City contract, including in the selection of subcontractors.

9 (3) Human Rights Commission. The Human Rights Commission shall adopt rules and
10 regulations necessary to carry out this ordinance.

11 **SEC. 14B.2 DEFINITIONS.**

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

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

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

24 "Bidder" means any business that submits a bid or proposal.

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

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

15 "Commission" means the Human Rights Commission.

16 "Commodity Contract" means an agreement to purchase any product, including materials,
17 equipment and supplies.

18 "Contract" means any agreement between the City and a person to provide or procure labor,
19 materials, equipment, supplies, or services to, for, or on behalf of the City for a price to be paid out of
20 monies deposited in the City treasury or out of trust monies under the control of or collected by the
21 City. A "contract" includes an agreement between a non-profit or public entity and a contractor for
22 the performance of construction or construction-related services, where the contract is funded by the
23 City. A "contract" does not include: (1) grants, whether funded by the City or by federal or state grant
24 funds, to a nonprofit entity to provide services to the community; (2) sales of the City's personal or real
25 property; (3) loan transactions, whether the City is a debtor or creditor; (4) lease, franchise, or

1 concession agreements; (5) agreements to use City real property; (6) gifts of materials, equipment,
2 supplies or services to the City; or (7) agreements with a public agency except for that "contract"
3 includes all contracts or other agreements between the City and persons or entities, public or private,
4 in which such persons or entities receive money from or through the City for the purpose of contracting
5 with businesses to perform public improvements. Without limitation of the foregoing, "contract"
6 includes any agreement between the City and a person to provide or procure labor, materials,
7 equipment, supplies, or services to, for, or on behalf of the City for PUC Regional Projects.

8 "Contract awarding authority" means any City officer, department, commission, employee or
9 board authorized to enter into contracts on behalf of the City. A non-profit or government public
10 entity that receives funds from the City to pay for construction or construction related services is a
11 "contract awarding authority" for the purposes of contracting for the performance of those services.

12 "Contractor" means any person who enters into a contract with the City.

13 "Control" means an individual possesses the legal authority to manage business assets, good
14 will and the daily operations of a business, and actively and continuously exercises such authority.

15 "Director" means the Director of the Human Rights Commission, 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 "General Manager" means the General Manager of the San Francisco Public Utilities
19 Commission, or his or her designee.

20 "General services contract" means an agreement for those services that are not professional
21 services. Examples of "general services" include: janitorial, security guard, pest control, parking lot
22 management and landscaping services.

23 "Joint Venture" shall mean an association of two or more professional services or
24 architecture/engineering businesses acting as a contractor and performing or providing services on a
25 professional services or architecture/engineering contract, in which each joint venture partner

1 combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares in the
2 ownership, control, management responsibilities, risks and profits of the joint venture in proportion to
3 its claimed level of participation.

4 "Local Business Enterprise (LBE)" means a business that is certified as an LBE under Section
5 14B.3. LBEs are either Small-LBEs or Micro-LBEs, and are also either MBEs, WBEs, or OBEs.

6 "Minimum Competitive Amount" means (i), for professional services, general services,
7 architect/engineering and commodities contracts, the "minimum competitive amount" as
8 defined in Chapter 6.40(A) of the Administrative Code, which shall be \$29,000 except that on
9 January 1, 2010, and every five years thereafter, the Controller shall recalculate the minimum
10 competitive amount to reflect any proportional increase in the Urban Regional Consumer
11 Price Index from January 1, 2005, rounded to the nearest \$1,000, as adjusted from from time
12 to time as provided in Chapter 6.40(A), and (ii) for public works/construction contracts, the
13 "threshold amount" as defined in Chapter 6.1(L) of the Administrative Code which shall be
14 \$104,000 except that on January 1, 2010, and every five years thereafter, the Controller shall
15 recalculate the threshold amount to reflect any proportional increase in the Urban Regional
16 Consumer Price Index from January 1, 2005, rounded to the nearest \$1,000, as adjusted from
17 time to time as provided in Chapter 6.1(L).

18 "Minority business enterprise (MBE)" means a business that is certified as an MBE under
19 Section 14B.4(B)

20 "Other Business Enterprise (OBE)" means a business that is certified as an OBE under Section
21 14B.4(D).

22 "Owns" or "Ownership" means an individual: (a) possesses a record ownership interest, such
23 as partnership interest or stock interest, of at least 51 percent of the business; (b) possesses incidents
24 of ownership, including an interest in profit and loss, equal to at least the required record ownership
25 interest; (c) contributes capital to the business equal to at least the required record ownership

1 percentage (unsecured promissory notes or notes secured by the business or business assets are not
2 sufficient to constitute capital contributions); and (d) contributes expertise relevant to the business
3 'commercially useful function' proportionate to the stated ownership interest.

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

6 "Professional services contract" means an agreement for services that require extended
7 analysis, the exercise of discretion and independent judgment, or the application of an advanced,
8 specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course
9 of study or equivalent experience in the field. Examples of professional service providers include
10 licensed professionals such as accountants, and non-licensed professionals such as parking lot
11 management, software developers and financial consultants. For the purpose of this ordinance, a
12 contract for architectural, engineering, or other professional design, consulting or construction
13 management services for a public work project shall be considered an architect/engineering contract
14 and not a professional services contract.

15 "PUC" or "Public Utilities Commission" means the San Francisco Public Utilities Commission,
16 the City Department that provides water, wastewater, and municipal power services to San Francisco
17 and, under contractual agreement with 29 wholesale water agencies, also supplies water to 1.6 million
18 additional customers within three Bay Area counties.

19 "Public works/construction contract" means a contract for the erection, construction,
20 renovation, alteration, improvement, demolition, excavation, installation, or repair of any public
21 building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public
22 facility that is performed by or for the City, and the cost of which is to be paid wholly or partially out of
23 moneys deposited in the City treasury or out of trust monies under the control of or collected by the
24 City. For purposes of this ordinance only, "public works/construction contract" includes contracts
25

1 between a person, including a non-profit entity or public agency, and a contractor for construction or
2 construction-related services, where the contract is funded by the City.

3 "PUC Regional Projects" means the projects to be performed outside of the geographic
4 limits of San Francisco that are identified as regional projects and included in the formally
5 approved Capital Improvement Program of the San Francisco Public Utilities Commission's
6 approximately \$4.3 billion project to seismically reinforce and otherwise enhance the Hetch
7 Hetchy water supply system, as it may be amended from time to time, and shall also include
8 Repair and Replacement work ("R&R") only where such work is to be performed in
9 association with a regional Capital Improvement Program project.

10 "Subcontractor" means any person providing goods or services to a contractor or
11 subcontractor in fulfillment of the contractor or subcontractor's obligations arising from a contract
12 with the City.

13 ~~PUC Regional Projects means the projects identified as regional projects and included~~
14 ~~in the formally approved Capital Improvement program of the San Francisco Public Utility~~
15 ~~Commission's approximately \$4.3 billion project to seismically reinforce and otherwise~~
16 ~~enhance the Hetch Hetchy water supply system, as it may be amended from time to time and~~
17 ~~all other contracts issued by the PUC to be performed at sites beyond the geographic limits of~~
18 ~~the City.~~

19 "Threshold Amount" means, for public works/construction projects, the "threshold
20 amount" as defined in Chapter 6.1(L) of the Administrative Code which shall be \$114,000
21 except that on January 1, 2010, and every five years thereafter, the Controller shall
22 recalculate the threshold amount to reflect any proportional increase in the Urban Regional
23 Consumer Price Index from January 1, 2005, rounded to the nearest \$1,000, as adjusted from
24 time to time as provided in Chapter 6.1(L).

1 "Woman Business Enterprise (WBE)" means a business that is certified as a WBE under Section
2 14B.4(C).

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

4 (A) Criteria for LBE Certification. Through appropriately promulgated procedures, if any,
5 the Director shall certify as an LBE any business that meets all of the following criteria and also meet
6 either the criteria set forth in Section 14.B.3(B) or Section 14.B.3(C):

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

9 (2) The business is continuously in operation.

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

11 (4) The business performs a commercially useful function. -

12 (5) The business maintains its principal place of business in a fixed office within the
13 geographic boundaries of the City that provides all of the services for which LBE certification is
14 sought, other than work required to be performed at a job site; provided, however, that suppliers
15 are not required to maintain their principal place of business in San Francisco, but are required to
16 maintain a fixed office in San Francisco that meets all of the requirements of this Section other than the
17 principal place of business requirement. The office must provide all of the services for which LBE
18 certification is sought, other than work required to be performed at a job site.

19 An office is a fixed and established place of business, including a qualified home office, where
20 business is conducted on a regular basis of the type for which certification is sought. A residence
21 qualifies as an office only if none of the persons who own or control the business also maintains an
22 office outside the residence in the same or related field, and the persons who own or control the
23 business claimed a business deduction on the prior year's income tax return, or for, businesses started
24 after the last tax return, would qualify for a deduction on the next tax return. None of the following
25 constitutes an office: a post office box, a temporary location, a movable property, a location that was

1 established to oversee a project such as a construction project office, or work space provided in
2 exchange for services, as opposed to monetary rent.

3 To establish a principal place of business in San Francisco, a business must demonstrate that
4 the majority of its principals are based in the San Francisco office, and that it pays San Francisco
5 payroll taxes on at least 51% of its total payroll.

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

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

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

12 (8) The business owner has licenses or other relevant trade or professional certifications,
13 or, where licensing is not required, relevant training and experience that are appropriate for the type
14 of business for which the business seeks certification.

15 (9) The business is owned and controlled as defined herein by individuals who reside in the
16 United States or its territories.

17 (10) The business has average gross annual receipts in the prior three fiscal years that
18 satisfy the criteria set forth in either Section 14B.3(B) or Section 14B.3(C).

19 (11) The business is not owned or controlled as defined herein in part or in whole by a full
20 time City employee.

21 (B) Criteria for Small – LBE. The Director shall certify as a "Small – LBE" any business
22 that meets the requirements of 14B.3(A) and has average gross annual receipts in the prior three fiscal
23 years that do not exceed the following limits: (1) public works/ construction - \$14,000,000; (2)
24 specialty construction contractors - \$7,000,000; (3) goods/ materials/ equipment and general services -
25 \$7,000,000; (4) professional services and architect/engineering - \$2,500,000; and (5) trucking -

1 \$3,500,000. The City shall determine gross receipts, according to recognized accounting
2 methodologies that the City determines most accurately reflect the actual money that the business
3 received during the relevant period. Any business under common ownership, in whole or in part, with
4 any other business meets the requirements of this subparagraph only if the aggregate gross annual
5 receipts of all of the businesses under such common ownership do not exceed these limits. All
6 businesses owned by married spouses or domestic partners are considered under common ownership
7 unless the businesses are in unrelated industries and no community property or other jointly owned
8 assets were used to establish or are used to operate either business.→).

9 (C) **Criteria for Micro – LBE.** The Director shall certify as a "Micro – LBE" any business
10 that meets the requirements in 14B.3(A) and also has average gross annual receipts in the prior three
11 fiscal years that do not exceed the following limits: (1) public works/ construction - \$7,000,000;(2)
12 specialty construction contractors -\$3,500,000; (3) goods/ materials/ equipment and general services -
13 \$3,500,000; (4) professional services and architect/engineering - \$1,250,000; and (5) trucking -
14 \$1,750,000. Any business under common ownership, in whole or in part, with any other business meets
15 the requirements of this subparagraph only if the aggregate gross annual receipts of all of the
16 businesses under such common ownership do not exceed these limits. All businesses owned by married
17 spouses or domestic partners are considered under common ownership unless the businesses are in
18 unrelated industries and no community property or other jointly owned assets were used to establish or
19 are used to operate either business.

20 **SEC. 14B.4 NON-DISCRIMINATION CERTIFICATION.**

21 (A) For purposes of ensuring non-discrimination in City contracting and subcontracting,
22 and subject to appropriately promulgated procedures, if any, the Director shall further certify Small-
23 LBEs and Micro-LBEs as MBEs, WBEs and OBEs according to the ownership and control of the LBE.

1 (B) MBE Certification. The Director shall certify as an MBE any business that is certified
2 as an LBE and is owned and controlled by one or more minority persons. A minority person is a
3 member of one or more of the following ethnic groups:

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

6 (2) Arab Americans, defined as persons whose ancestry is from an Arabic speaking country
7 that is a current or former member of the League of Arab States;

8 (3) Asian Americans, defined as persons with Chinese, Japanese, Korean, Pacific Islander,
9 Samoa, Filipino, Asian Indian, and Southeast Asian ancestry;

10 (4) Iranian Americans, defined as persons whose ancestry is from the country of Iran;

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

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

17 (C) WBE Certification. The Director shall certify as a WBE any business that is certified as
18 an LBE and is owned and controlled by one or more women.

19 (D) OBE Certification. The Director shall certify as an OBE any business that is certified
20 as an LBE and (i) does not demonstrate to the satisfaction of the Director that it is ~~not~~ owned and
21 controlled by one or more women or one or more minority persons or (ii) is not certified as an MBE
22 or a WBE.

23 (E) Period of Certification. The Director may certify LBEs as small-LBEs or Micro-LBEs,
24 and as MBEs, WBEs or OBEs for a period not to exceed three years provided that businesses must at
25 all times throughout the certification period meet the criteria in Section 14B.3 and Section 14B.4 as

1 applicable. The Director may require certified businesses annually to submit documentation for the
2 purpose of verifying continuing eligibility for any certification hereunder.

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

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

9 (1) Only established small public works/construction firms, construction material
10 supplies, construction equipment rental and trucking firms may be certified as PUC-LBEs or any
11 subcategory of PUC-LBE.

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

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

17 (4) PUC-LBEs owned and controlled by one or more minority persons or women according
18 to all of the criteria set forth in Section 14B.3(B) or 14B.3(C), respectively, shall be certified as PUC-
19 MBEs or PUC-WBEs. PUC-LBEs that do not demonstrate qualifying ownership and control by
20 minority persons or women shall be certified as PUC-OBES.

21 (5) Firms shall meet all criteria and be certified for the period that the PUC HRC shall
22 by rule adopt under Section 14B.5(B), to the end that firms certified as PUC-LBEs shall be similarly
23 situated to LBEs to the extent practicable, taking into account the special circumstances of their
24 location and the needs of the PUC Regional projects.

1 (B) PUC Small Firm Contracting Oversight Advisory Committee. There is hereby
2 established a PUC Small Firm Contracting Oversight Advisory Committee as follows:

3 (1) The PUC Small Firm Contracting Oversight Advisory Committee shall have seven
4 (7) five (5) members; who shall be appointed by the The PUC General Manager shall appoint
5 five (5) members in consultation with the Bay Area Water Supply and Conservation Agency
6 (BAWSCA) to represent the interest of individuals and businesses located within the PUC water system
7 service area but outside of the geographical limits of San Francisco. (2) The Chair of the Human
8 Rights Commission shall appoint one(1) member, who shall be a current Commissioner of the
9 Human Rights Commission. The Mayor shall appoint (1)member who shall be a certified LBE
10 to represent the interests of Small-LBEs, Micro-LBEs, MBEs, WBEs and OBEs. Each
11 member Members shall serve at the pleasure of his or her appointing authority the PUC General
12 Manager. Members of the PUC Small Firm Contracting Oversight Advisory Committee shall not be
13 compensated, but shall be reimbursed for expenses in accordance with the Controller's published
14 policies.

15 (2) The purposes and duties of the PUC Small Firm Contracting Oversight Advisory
16 Committee are:

17 (a) To adopt rules and procedures and to recommend legislative changes to the City
18 that will result in the broadest possible participation of PUC-LBEs in PUC-Regional Projects
19 within the Advisory Committee's responsibilities;

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

1 (bc) to outreach to the business community about PUC PUC-LBE certification and
2 contracting opportunities and to provide information to the Director regarding the availability of
3 potential PUC-LBEs;

4 (ed) to receive reports from the City, to publicly discuss, and make recommendations to the
5 Director and the PUC for rules and procedures regarding the implementation of this Ordinance
6 for PUC regional projects to the Director and the PUC; and

7 (de) to make recommendations to HRC to study the feasibility of additional programs to
8 further the goals of the Ordinance that will increase the participation of eligible firms for the
9 regional program;

10 (f) to provide status reports on the Advisory Committee's activities to the
11 Commission and the General Manager.

12 (4) The PUC Small Firm Contracting Oversight Advisory Committee shall establish
13 bylaws, rules and/or regulations for the conduct of its business. Administrative assistance and staffing
14 for the PUC Small Firm Contracting Oversight Advisory Committee shall be provided in the
15 discretion of the PUC.

16 (5) Except for the PUC Small Firm Contracting Oversight Advisory Committee's
17 authority to adopt rules and procedures as provided herein in Section 14B.5.B.2, the Director
18 shall have full power and the authority over the implementation of this Ordinance for PUC Regional
19 Projects to the same extent as all other bids, proposals and contracts subject to the Ordinance. The
20 Director shall consult fully with the PUC to the extent required in the Ordinance.

21 (C) PUC-LBEs shall have the status of LBEs for all purposes of this Ordinance only for
22 construction, specialty construction, construction material suppliers, construction equipment
23 rental firms and trucking services for PUC Regional Projects to be performed outside of the
24 geographic limits of San Francisco and other PUC contracts to be performed outside of the
25 geographic limits of San Francisco. PUC-LBEs shall not have the status of LBEs for PUC contracts

1 for architectural and engineering services, professional services or general services to be performed
2 outside of the geographic limits of San Francisco or for any other bid, proposal or contract subject
3 to this Ordinance.

4 **SEC. 14B.6 RESERVED**

5 **SEC. 14B.7 PRIME CONTRACTS.**

6 (A) Good Faith Efforts to Obtain LBE Bids on Contracts Subject to this Ordinance.
7 Contract awarding authorities shall use good-faith efforts for all contracts subject to the discount
8 provisions of this ordinance to solicit and to obtain bids from the broadest possible range of LBEs and
9 to ensure that neither MBEs nor WBEs nor OBEs are arbitrarily excluded from participation. Good
10 faith efforts shall include the following.

11 (1) Arranging contracts by size and type of work to maximize the opportunities for LBEs to
12 participate. This includes dividing projects into smaller parts.

13 (a) As soon as practical before soliciting bids or proposals, contract awarding authorities
14 shall submit large contract proposals to the Director for review. The Director shall determine whether
15 the proposed contract can be divided into smaller contracts so as to enhance the opportunity for
16 participation by LBEs. For purposes of this paragraph, "large project" means any public
17 works/construction contract estimated to cost more than \$5,000,000, any professional services contract
18 estimated to cost more than \$100,000, and any multiple year commodities contract with a term greater
19 than one year, including any options to renew or extend.

20 (b) If the Director determines, after consulting with the contract awarding authority, that
21 the contract can be divided into smaller contracts, then the Director and the contract awarding
22 authority shall confer regarding all of the costs and benefits of soliciting the contract as a single
23 contract or dividing it into smaller contracts, including but not limited to the potential for enhanced
24 opportunities for LBE participation as prime contractors, the potential for LBE participation as
25 subcontractors, relative costs, administrative issues, and any other matters relevant to the

1 accomplishment of the purpose of the subject contract or contracts. If, after exchanging information
2 and conferring regarding these issues, the contract awarding authority and the Director are unable to
3 agree on whether or how the contract divided into smaller contracts, or on the size and number of
4 contracts, the Mayor or his-the Mayor's designee shall resolve the matter.

5 (2) Encouraging LBEs to attend prebid meetings that are held to inform potential bidders of
6 contracting opportunities.

7 (3) Advertising in general circulation media, trade association publications and local
8 business media, and posting the contacting opportunity on the department's website or other
9 centralized City website.

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

12 (5) Providing LBEs with adequate information about the plans, specifications and
13 requirements of the contract.

14 (6) When allowed by local laws governing City contracting, negotiating with LBEs in good
15 faith.

16 (7) Using the services of community and contractors' groups to assist in the recruitment of
17 LBEs.

18 (8) For professional services, general services, architectural/engineering and
19 commodities contracts, the estimated cost of which exceeds \$10,000 but is less than the
20 minimum competitive amount or for public works/construction contracts, the estimated cost of
21 which exceeds \$10,000 but is less than the threshold amount, contract awarding authorities
22 are not required to undertake the good faith efforts steps set forth in Sections 14B.7(A)(3) or
23 14B.7(A)(4), when it is impracticable to do so.

24 (B) Best Efforts on Contracts Not Otherwise Subject to this Ordinance. In the award of
25 leases, franchises, concessions, and other contracts not subject to the discount provisions of this

1 ordinance, contract awarding authorities shall utilize the good faith efforts steps unless impracticable
2 to do so. At a minimum, contract awarding authorities should notify LBEs that are certified to perform
3 the work contemplated in a contract and solicit their interest in the contract.

4 (C) Non-Discrimination in Prime Contracting. Contract awarding authorities shall ensure
5 that all aspects of the contracting process are free from discrimination against any person on any basis
6 prohibited by law, and ensure broad contracting opportunities for all categories of LBEs. Contract
7 awarding authorities shall maintain such documentation of their selection process as required by the
8 Director to monitor and ensure compliance with this provision.

9 (D) Contracts Subject to Prime Bidding Discounts. Unless otherwise provided in this
10 ordinance, contract awarding authorities shall apply discounts to all contracts the estimated cost of
11 which exceeds \$10,000.

12 (E) Amount of Discount. Unless otherwise provided in this ordinance, contract awarding
13 authorities shall apply a 10% discount to any bid from a Small – LBE or Micro – LBE. Contract
14 awarding authorities shall apply these discounts to each stage of the selection process, including
15 qualifications, proposals and interviews.

16 (F). Joint Ventures For Professional Services and Architecture/Engineering. Unless
17 otherwise provided in this ordinance, contract awarding authorities shall extend the following
18 bid/rating discount to all bids, proposals and contracts from LBEs on professional services and
19 architecture/engineering contracts: (1) five percent to a joint venture with LBE participation that
20 equals or exceeds 35 percent but is under 40 percent; (2) seven and one-half percent to a joint venture
21 with LBE participation that equals or exceeds 40 percent; (3) ten percent to a LBE or a joint venture
22 among LBEs. Contract awarding authorities shall apply the bid/rating discount to each stage of the
23 selection process, including qualifications, proposals and interviews.

24 The contract awarding authority shall apply the joint venture bid/ratings discount only to
25 professional services and architecture/engineering contracts and only to a joint venture (1) that meets

1 the requirements contained in this ordinance, and (2) when the LBE is an active partner in the joint
2 venture, performs work, manages the job and takes financial risks in proportion to the required level of
3 participation stated in the bid documents, is responsible for a clearly defined portion of the work to be
4 performed, and shares proportionately in the ownership, control, management responsibilities, risks,
5 and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail
6 separately from the work to be performed by the non-LBE joint venture partner. The LBE joint
7 venture's portion of the contract must be assigned a commercially reasonable dollar value.

8 (G) Affidavit. Each bidder, proposer and contractor shall be required to sign an affidavit
9 declaring under penalty of perjury its intention to comply fully with the provisions of this ordinance
10 and attesting to the truth and accuracy of all information provided regarding such compliance.

11 (H) Additional Requirements and Required Contract Terms. Contract awarding authorities
12 shall include in all contracts with their contractors, and all contractors shall include in their contracts
13 with subcontractors the following requirements , in addition to other requirements set forth in the
14 municipal code. For the purposes of this section, "contractor" includes all subcontractors.

15 (1) Each contract shall incorporate this ordinance by reference, shall require contractors
16 to comply with its provisions in awarding and administering such contracts, and shall provide
17 that the willful failure of any bidder or contractor to comply with the requirements of this ordinance or
18 rules and regulations implementing this ordinance shall be deemed a material breach of contract.

19 (2) Contracts shall provide that in the event that the Director finds that any bidder,
20 subcontractor or contractor willfully fails to comply with any of the provisions of this ordinance, rules
21 and regulations implementing the ordinance, or contract provisions pertaining to LBE, MBE, WBE,
22 OBE or Micro-LBE participation, outreach, or non-discrimination, the bidder, subcontractor or
23 contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's
24 or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000,
25 whichever is greatest, as determined by the Director. All contracts shall also contain a provision in

1 which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages
2 assessed shall be payable to the City upon demand and may be set off against any monies due to the
3 bidder, subcontractor or contractor from any contract with the City.

4 (3) Contracts shall require all contractors to maintain records, including such information
5 requested by the Director or Commission, necessary for monitoring their compliance with this
6 ordinance. Contracts shall require prime contractors to include in any subcontract with a LBE a
7 provision requiring the subcontractor to maintain the same records. Contracts shall require
8 contractors and subcontractors to maintain such records for three years following completion of the
9 project and shall permit the Director, Commission and Controller to inspect and audit such records.

10 (4) Contracts shall require prime contractors, during the term of the contract, to fulfill the
11 LBE participation commitments submitted with their bids. Willful failure to comply with the level of
12 LBE subcontractor participation specified in the contract shall be deemed a material breach of
13 contract.

14 (5) Contracts shall require, and shall require prime contractors to include in any
15 subcontract with a LBE a provision requiring, the prime contractor to compensate any LBE
16 subcontractor for damages for breach of contract or liquidated damages equal to 5% of the
17 subcontract amount, whichever is greater, if the prime contractor willfully fails to comply with its
18 commitment to use the LBE subcontractor as specified in the bid/proposal unless the Commission
19 Director and the contract awarding authority both give advance approval to the prime contractor to
20 substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. This
21 provision shall also state that it is enforceable in a court of competent jurisdiction.

22 (6) Contracts shall require prime contractors, whenever amendments, modifications,
23 supplements, or change orders cumulatively increase the total dollar value of the contract by more than
24 10 percent, to comply with those provisions of this ordinance that applied to the original contract with
25 respect to the amendment, modification, supplement or change order.

1 (7) Contracts shall require prime contractors to submit to the Director for approval all
2 contract amendments, modifications, supplements, and change orders that cumulatively increase by
3 more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more. The
4 Director shall review the proposed amendment, modification, supplement or change order to correct
5 any contracting practices that exclude any category of LBEs from new contracting opportunities.

6 (8) Contracts in which subcontracting is used shall prohibit back contracting to the prime
7 contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this
8 ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining
9 to LBE utilization.

10 (9) Contracts in which subcontracting is used shall require the prime contractor to pay its
11 subcontractors within three working days after receiving payment from the City unless the prime
12 contractor notifies the Director in writing within 10 working days prior to receiving payment from the
13 City that there is a bona fide dispute between the prime contractor and the subcontractor, in which
14 case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The
15 Director may, upon making a determination that a bona fide dispute exists between the prime
16 contractor and subcontractor, waive this three-day payment requirement. In making the determination
17 as to whether a bona fide dispute exists, the Director shall not consider the merits of the dispute.

18 Contracts in which subcontracting is used shall also require the contractor, within 10 working days
19 following receipt of payment from the City, to file an affidavit, under penalty of perjury, that he or she
20 has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors
21 and the amount paid to each.

22 (I) Exceptions.

23 (1) The bid discount provisions of this ordinance are not applicable to any contract
24 estimated by the contract awarding authority to cost in excess of \$10,000,000.

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

5 (J) Waivers. The Director shall waive the LBE bid discounts, and report the waiver to the
6 Commission, if:

7 (1) The Director finds, with the advice of the contract awarding authority and the Office of
8 Contract Administration, that needed goods or services are available from a sole source that is
9 qualified to do business with the City;

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

15 (3) For contracts in excess of \$5,000,000, a contract awarding authority establishes that
16 sufficient qualified LBEs capable of providing the needed goods and services required by the contract
17 are not available, or the application of the LBE discount will result in significant additional costs to the
18 City if the waiver of the bid discount is not granted.

19 (K) Pilot Set-Aside Program. The Director may set aside for competitive award to Micro –
20 LBEs any of the following contracts:

21 (1) Public work/ construction contracts where the contract amount is equal to or less than
22 \$250,000;

23 (2) Contracts other than public work/ construction contracts where the contract amount is
24 equal to or less than \$100,000.

1 (3) The competitive award requirements of the Municipal Code shall otherwise apply to
2 contracts in the set-aside program, except that if (a) fewer than two Micro – LBEs submit bids, or (b)
3 the contract awarding authority determines that the contract would not be awarded at a fair market
4 price, then the contract awarding authority may reject all bids and remove the contract from the set-
5 aside program.

6 (4) The Director shall have a goal of setting aside in each fiscal year 25% of all contracts
7 that are eligible to be set aside in each fiscal year.

8 (5) Contracts that are set-aside for award to Micro – LBEs shall not be subject to
9 subcontracting goals under Section 14B.8. Micro – LBEs that subcontract any portion of a set-aside
10 contract should subcontract to businesses certified as Micro – LBEs, to the maximum extent possible.
11 Micro – LBEs that subcontract any portion of a set-aside contract must serve a commercially useful
12 function based on the contract's scope of work, and must perform at least 50% of the contract work.

13 (L) Prompt payment. The City shall pay LBEs within 30 days of the date on which the City
14 receives an invoice for work performed for and accepted by the City. The Controller shall work with
15 the Director and contract awarding authorities to implement this Citywide prompt-payment policy. The
16 City shall consult with affected community members and relevant City officials, including the Director,
17 the Controller, and contract awarding authorities, to design and implement a prompt payment program
18 within six (6) months of the effective date of this ordinance. Such program shall include procedures for
19 the payment of late penalties where prompt payment does not occur.

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

21 (A) LBE Participation Goals. Prior to soliciting bids or proposals, contract awarding
22 authorities shall provide the Director with a proposed job scope for all public work/construction, and
23 for all architect/engineering, professional service and general service contracts that exceed the
24 minimum competitive amount. The contract awarding authority may ask the Director to waive
25

1 subcontracting goals where it anticipates that there are no subcontracting opportunities or there are
2 not sufficient LBEs available to perform the subcontracting work available on the contract.

3 The Director shall set LBE participation goals for each such contract, where appropriate,
4 based on the following factors:

5 (1) The extent of subcontracting opportunities presented by the contract; and

6 (2) The availability of LBE subcontractors capable of providing goods and services on the
7 contract.

8 (B) Bids that do not meet the LBE participation goal set under 14B.8(A) will be rejected as
9 non-responsive unless the Director finds that the bidder diligently undertook all the good faith
10 efforts required by this Ordinance and that the failure to meet the goal resulted from an
11 excusable error. The contract awarding authority shall require bidders or proposers on the contracts
12 to contact a LBE before listing that LBE as a subcontractor in the bid or proposal. A bid that fails to
13 comply with this requirement will be rejected as non-responsive. In addition only LBEs that
14 have been contacted and agreed to be listed as subcontractors shall be credited toward meeting the
15 LBE participation goal.

16 (C) Good Faith Outreach All bidders shall undertake good faith outreach as set forth in
17 this Section 14B.8(C) to select subcontractors to meet LBE goals, except that bidders on public
18 works/construction contracts for less than the threshold amount are not required to undertake the
19 good faith efforts steps set forth in Sections 14B.8(C)(3) or 14B.7(C)(4), when it is
20 impracticable to do so. Bids from bidders who fail to undertake the following required good faith
21 outreach steps and/or who fail to submit the documentation of good faith outreach required in Section
22 14B.8(D) shall be declared nonresponsive:

23 (1) Attending any presolicitation or prebid meetings scheduled by the City to inform all
24 bidders of LBE program requirements for the project for which the contract is awarded;

25 (2) Identifying and selecting subcontracting opportunities to meet LBE goals;

1 (3) Advertising for LBE subcontractors by posting the opportunity in an accessible location,
2 specified by the City, not less than 10 calendar days before the date the bids can first be submitted.
3 This paragraph applies only if the City gave public notice of the project not less than 15 calendar days
4 prior to the date the bids can first be submitted;

5 (4) Contacting LBEs certified to perform the identified work;

6 (5) Providing LBEs that have notified the bidder of their interest with adequate information
7 about the plans, specifications, and requirements for the work, provided that the Director may cap the
8 number of contacts required;

9 (6) Negotiating in good faith with LBEs, and not unjustifiably rejecting their bids or
10 proposals; and

11 (7) Advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance
12 required by the City or the bidder.

13 (D) Each bid shall document good faith outreach and include the documentation with the
14 bid. Such documentation shall include: (a) the dollar amount of each subcontract and a statement of
15 the scope of work to be performed under the subcontract; and (b) the identification of each subcontract
16 awarded to an LBE. Bidders shall also maintain the following documentation, which shall be
17 submitted upon request of the Director: (a) and, (c) for each subcontract, copies of the
18 subcontractor bids submitted. Such documentation shall contain at least the bid amount and a
19 description of the scope of work. If no written bids were submitted by some or all of the subcontractors
20 who bid the job, the bidder shall ~~maintain~~ submit a written statement containing (i) the amount of each
21 oral bid; and (b)ii) separately, for each subcontract, a full and complete statement of the reason(s) for
22 selection of the subcontractor. If the reason is based on relative qualifications, the statement must
23 address the particular qualifications at issue. If the reason is the respective dollar amounts bid, the
24 statement must state the amounts and describe the similarities and/or dissimilarities in the scope of
25

1 work covered by the bids. Bidders also shall maintain the documentation described in this paragraph
2 for three years following submission of the bid or completion of the contract, whichever is later.

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

4 (A) Prohibition on Discrimination. A bidder may not discriminate in its selection of
5 subcontractors against any person on the basis of race, gender, or any other basis prohibited by law.

6 (B) Availability Data. In order to prevent unlawful discrimination in the selection of
7 subcontractors, and to identify and correct unlawful practices, the City will monitor the administration
8 of City contracts, including the selection of subcontractors, as provided in this Section. For public
9 work/construction, architect/engineering, professional service, and general service contracts which the
10 contract awarding authority reasonably anticipates will include subcontractor participation, prior to
11 the solicitation of bids or proposals, the Director shall assemble data regarding the availability of
12 MBEs, WBEs and OBEs to provide work that is likely to be subcontracted. The Director, in the
13 Director's sole discretion, shall determine the appropriate methodology.

14 (C) Requirements for Solicitations. In all solicitations of public work/construction,
15 architect/engineering, professional service, and general service contracts which the contract awarding
16 authority reasonably anticipates will include subcontractor participation, the contract awarding
17 authority shall include the availability data described above. Bidders shall undertake all required
18 good faith efforts outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs
19 are unfairly or arbitrarily excluded from the required outreach.

20 (D) Review of Bid. The Director may review or investigate any bid, including the selection
21 of the bidder's subcontractors, to determine whether discrimination may have occurred. The Director
22 shall review bids, during the bid protest period, to determine whether: (1) a potential subcontractor or
23 other person has filed a complaint of discrimination; (2) there is a significant difference between the
24 percentages of MBEs, WBEs, or OBEs available to provide goods and services as subcontractors on
25 the contract and the percentages of the bidder's subcontractors who are MBEs, WBEs, or OBEs; or (3)

1 other facts and circumstances suggest that further inquiry is warranted. The Director, in the Director's
2 sole discretion, shall determine whether and when to investigate further the conduct of a bidder or
3 contractor. Investigations will be conducted under the procedures in Section 14B.17.

4 **SEC. 14B.10 POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.**

5 (A) Human Rights Commission. In addition to the duties and powers given to the Human
6 Rights Commission elsewhere, the Commission shall:

7 (1) When necessary, subpoena persons and records, books and documents for a proceeding
8 of the Commission or an investigation by the Director or an audit pursuant to Section 14B.10(B)(5)
9 conducted to further the purposes of this ordinance.

10 (2) Adopt rules and regulations establishing standards and procedures for effectively
11 carrying out this ordinance.

12 (3) Issue forms for the Controller or contract awarding departments to collect information
13 from contractors as prescribed by this ordinance.

14 (4) Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor,
15 (ii) the Director's denial of an application for or revocation of the certification of a business as a
16 Small- LBE, Micro-LBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to waive or to
17 reduce subcontractor participation goals.

18 (5) By regulation require contract awarding authorities, departments and the Controller to
19 provide to the Director such information as will be necessary to enable the Director to report to the
20 Mayor and the Board of Supervisors at the end of each fiscal year on the progress each City
21 department has made towards the achievement of LBE participation goals and towards the goal of
22 ensuring against discrimination and exclusion of MBEs, WBEs, or OBEs, and to perform his/her other
23 duties. The database is a public record available to the public as provided by state and local law;

1 (6) Adopt rules and regulations as deemed necessary by the Director to ensure that the joint
2 venture bid/rating discount is applied only to joint ventures where the LBE has sufficient skill,
3 experience, and financial capacity to perform the portion of the work identified for the LBE.

4 (B) HRC Director. In addition to the duties and powers given to the HRC Director
5 elsewhere, the Director shall:

6 (1) Levy the same sanctions that a contracting awarding authority may levy as specified in
7 Section 14B.17.

8 (2) Ensure that the necessary data is collected and analyzed. Annually, and more often if
9 the Director deems necessary, the Director shall identify areas of contracting where the City or any of
10 its departments are failing to meet LBE participation goals or are contracting with MBEs, WBEs, or
11 OBEs at rates less than would be expected in the absence of discrimination. The results of this study
12 shall be included in the Commission's annual report required by Section 14B.15(B).

13 (3) Provide information and other assistance to LBEs to increase their ability to compete
14 effectively for the award of City contracts.

15 (4) Grant waivers as set forth in Sections 14B.7(J) and 14B.8(A), and disqualify a bidder or
16 contractor as set forth in Section 14B.17.

17 (5) In cooperation with the Controller, randomly audit at least three prime contractors each
18 fiscal year in order to insure their compliance with the provisions of this ordinance. The Director, in
19 cooperation with the Controller, shall furthermore randomly audit 10 percent of the joint ventures
20 granted bid discounts in each fiscal year. The Controller shall have the right to audit the books and
21 records of the contractors, joint venture participants, and any and all subcontractors to insure
22 compliance with the provisions of this ordinance.

23 (6) Take actions to ensure compliance with the provisions of this ordinance, including,
24 without limitation, intervening in the selection process, by modifying the criteria used for selecting
25

1 selection panelists or contractors to correct any practices that hinder equal business opportunities for
2 LBEs or Micro-LBEs, and for MBEs, WBEs, and OBEs.

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

4 (A) In addition to the duties given to the Controller elsewhere, the Controller shall work
5 cooperatively with the Director to provide such contractual encumbrance and payment data as the
6 Director advises are necessary to monitor the participation of Small – LBEs, Micro – LBEs, MBEs,
7 WBEs, and OBEs in City prime contracts. If any department refuses or fails to provide the required
8 data to the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

9 (B) The Controller shall not certify the award of any contract subject to this ordinance
10 where the Director has notified the Controller that the contract awarding authority has not provided
11 the information the Director advises is necessary under this ordinance.

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

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

1 Director and notice and opportunity to be heard, that the information has not been provided, the
2 Controller shall withhold 20 percent of the payment otherwise due until the information is provided.

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

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

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

12 (A) By July 1st of each fiscal year, issue notices to all City departments informing them of
13 their duties under this ordinance. The notice shall contain the following information: (1) the City-wide
14 and department-specific LBE goals that departments are expected to use good-faith efforts to attain
15 during the fiscal year and that a department's failure to use good-faith efforts to attain the participation
16 goals shall be reported to this Board in the Commission's annual report; (2) the availability of MBEs,
17 WBEs, and OBEs to perform City contracting, both City-wide and department-specific, and that
18 departments are expected to take all steps necessary to ensure against illegal or arbitrary
19 discrimination or exclusion of any certified business; and (3) the data each department is required to
20 provide the Controller on each contract award.

21 (B) Coordinate and enforce cooperation and compliance by all departments with this
22 ordinance.

23 (C) Designate a liaison to the Human Rights Commission to facilitate communication and
24 compliance with this ordinance.

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

1 (A) In addition to the powers and duties given to contract awarding authorities elsewhere,
2 contract awarding authorities shall:

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

6 (2) Use the City's Surety Bonding Program set forth in Section 14B.17 to assist LBEs
7 bidding on and performing City public works/construction contracts to meet bonding requirements
8 and/or obtain construction loans.

9 (3) Submit to the Office of Contract Administration (OCA) in electronic format or a format
10 specified by the OCA, all bid opportunities, requests for proposals and solicitations for which
11 published notice or advertising is required, no later than 10 calendar days prior to the due date of the
12 bid opportunity, request for proposals or solicitation. A contract awarding authority must obtain a
13 waiver from its commission, or in the case of a department that has no commission, from the Board of
14 Supervisors, if it cannot meet the requirements of this Section.

15 (4) Impose such sanctions or take such other actions as are designed to ensure compliance
16 with the provisions of this ordinance, which shall include, but are not limited to:

17 (a) Refuse to award a contract.

18 (b) Order the suspension of a contract.

19 (c) Order the withholding of funds.

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

22 (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for
23 providing goods or services to the City for a period not to exceed five years, based on the standards set
24 forth in this ordinance and rules and regulations promulgated by the Commission. Any business

1 disqualified under this subsection shall have a right to review and reconsideration by the Commission
2 after two years upon a showing of corrective action indicating that violations are not likely to recur.

3 (5) Not award any contract to a person or business that is disqualified from doing business
4 with the City under the provisions of this ordinance.

5 (6) Designate a staff person to be responsible for responding to the Director and
6 Commission regarding the requirements of this ordinance.

7 (7) Maintain accurate records as required by the Director and the Commission for each
8 contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the
9 contractor awarded the contract, its identity as a Small-LBE, Micro – LBE, MBE, WBE or OBE, the
10 efforts made by the contract awarding authority to solicit bids from LBEs, including Micro – LBEs,
11 MBEs, WBEs and OBEs, responses received from such businesses, and a full and complete statement of
12 the reason(s) for selection of the contractor addressing the particular qualifications at issue.

13 (8) Where feasible, provide technical assistance to LBEs to increase their ability to compete
14 effectively for the award of City contracts.

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

18 (10) Provide the Director with written notice of all contract amendments, modifications,
19 supplements and change orders that cumulatively result in an increase or decrease of the contract's
20 dollar amount of more than 10 percent. Such notice shall be provided within 10 days of each such
21 contract modification.

22 (11) Whenever contract amendments, modifications, supplements or change orders
23 cumulatively increase the total dollar value of a contract by more than 10 percent, the contract
24 awarding authority shall require compliance with those provisions of this ordinance that applied to the
25 original contract.

1 (12) All contract amendments, modifications, supplements or change orders that
2 cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued
3 at \$50,000 or more shall be subject to prior approval of the Director, who shall review the proposed
4 amendment, modification, supplement or change order to correct contracting practices that exclude
5 Small-LBEs or Micro – LBEs from new contracting opportunities or discriminate against MBEs, WBEs
6 or OBEs.

7 (B) Contract awarding authorities or departments may invite, encourage or request
8 businesses to joint venture on any professional services or architecture/engineering contract to promote
9 LBE participation.

10 (C) For the purpose of determining LBE participation, contracts awarded to joint ventures
11 in which one or more LBEs are combined with one or more business that are not LBEs shall be deemed
12 by the contract awarding authority to be awarded to LBEs only to the ~~extend~~ extent of the LBE
13 participation in the joint venture.

14 (D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and to any
15 limitations or requirements associated with the issuance of municipal financings, including but not
16 limited to the use of tax-exempt financing and other long-term obligations, contract awarding
17 authorities shall set aside the following percentage of the value of each contract, as defined in Section
18 14B.2, to fund the administration and enforcement of this Chapter 14B by the HRC. Such funds shall
19 be used solely for the actual costs of administering and enforcing this Chapter. The HRC shall provide
20 monthly statements to contract awarding authorities and the Controller's Office that account for all
21 expenditures related to administering and enforcing this Chapter, broken down by staff member,
22 project, and activity. Any funds that are not expended on the actual costs of administration and
23 enforcement relating to the subject contract shall be returned to the source fund as soon as practicable.
24 This Section 14B.13(D) shall not apply to contracts that are funded by bonds that were authorized prior
25 to the effective date of his ordinance.

1 (1) For contracts having an estimated value under \$ 1 million, the contract awarding
2 authority shall set aside 2% of the value of the contract for the purpose described in this Section.

3 (2) For contracts having an estimated value of at least \$ 1 million but less than \$ 10 million,
4 the contract awarding authority shall set aside 1% of the value of the contract for the purpose
5 described in this Section.

6 (3) For contracts having an estimated value of at least \$ 10 million but less than \$ 50
7 million, the contract awarding authority shall set aside .5% of the value of the contract for the purpose
8 described in this Section.

9 (4) For contracts having an estimated value of \$ 50 million or more, the HRC Director, in
10 consultation with the contract awarding authority, shall determine the level of funding necessary to
11 administer and enforce this ordinance with respect to the subject contract, provided that the funding
12 shall not exceed .5% of the value of the contract. The contract awarding authority shall set aside the
13 designated funds to be used solely for the purpose described in this Section.

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

21 If, after exchanging information regarding the nature of the contract and the administrative
22 activities required, the contract awarding authority and the Director do not agree on the cost of
23 administering and enforcing this Chapter, the Mayor or his the Mayor's designee shall determine the
24 appropriate amount to be set aside for the purpose described in this Section.

1 The Human Rights Commission shall report on compliance by contract awarding authorities
2 with set-asides determined under this Section 14B.13(D)(5) and on the agreed upon funds for
3 contract awarding authorities under 14B.13(D)(5) in the Commission's annual report under Section
4 14B.15(B).

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

7 **SEC. 14B.14-14 POWERS AND DUTIES OF THE OFFICE OF CONTRACT**

8 **ADMINISTRATION.**

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

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

14 (B) Maintain a central office where all bids, requests for proposals and solicitations will be
15 listed and kept current.

16 (C) Cause to be posted upon a website the following information concerning current bids,
17 requests for proposals and solicitations: the title and number; the name of the contract awarding
18 authority; and the name and telephone number of the person to be contacted for further information.
19 Such information shall be posted with sufficient lead time to provide adequate notice and opportunity to
20 potential City contractors and vendors to participate in the bid opportunity, request for proposals or
21 solicitation, but in no event less than 10 calendar days prior to the due date for such bid opportunity,
22 request for proposals or solicitation.

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

24 (A) Reporting by the Director. Commencing January 1, 2007-, and no later than the first
25 day of every third month thereafter, the Director shall issue a written report to this Board. That report

1 shall document each City department's performance under the terms of this ordinance, including,
2 among other things, each City department's progress in meeting LBE goals and ensuring non-
3 discrimination against MBEs, WBEs, and OBEs, and the success of each department's prime
4 contractors in complying with the LBE subcontracting provisions of this ordinance and ensuring non-
5 discrimination against MBEs, WBEs, and OBEs. That report shall also state the level of participation
6 of all categories of LBEs and whether or not each City department has fully reported all data
7 required by this ordinance or requested by HRC or the Controller.

8 (1) Whenever the Director's report concludes that a department management's intentional
9 disregard or negligent performance of obligations imposed by this ordinance has contributed to that
10 department's failure to meet its prime contracting goals or requirements of this ordinance, or the
11 failure of its prime contractors to meet their subcontracting goals or requirements of this ordinance, or
12 whenever the Director's report concludes that a City department has failed to provide any data
13 required by this ordinance or requested by the HRC or the Controller, the Clerk of this Board shall
14 schedule before the appropriate committee of the Board a hearing on that report. The Clerk shall also
15 give notice of that hearing to the heads of the departments identified in the report and request the
16 attendance of the heads of those departments at the committee hearing. The Clerk's notice shall inform
17 the department heads that they must be prepared to respond to the Director's finding of intentional
18 disregard and/or negligent performance and to explain what steps they intend to take to forestall
19 repetition of the problems identified in the Directors' report. The same procedure shall be followed
20 whenever the Director's report identifies any department as having failed to meet its prime or
21 subcontracting goals for three consecutive quarters. If the Director's report indicates that a City
22 department has not met its goals for three consecutive quarters, HRC and the City department shall
23 institute a targeted program to remedy lack of participation by LBEs in any affected industry.
24
25

1 (2) The Director shall report to the Commission all waivers acted upon pursuant to Section
2 14B.7(J) and 14B.8(A). Such report shall be made on a monthly basis following the granting of the
3 waiver.

4 (B) Reporting by City Departments. By the last day of each fiscal year, all contract
5 awarding authorities and City departments shall report annually to the Mayor on their progress in the
6 preceding fiscal year toward the achievement of the LBE goals and their steps to ensure non-
7 discrimination against MBEs, WBEs, and OBEs.

8 (C) Reporting by the Commission. By July 1st of each fiscal year subject to this
9 ordinance, the Commission shall submit an annual report to the Mayor and this Board on the progress
10 of the City toward the goals of this ordinance, together with an identification of problems and specific
11 recommendations for: (1) improving the City's performance in fostering LBE participation in City
12 contracting, and (2) ensuring non-discrimination against MBEs, WBEs, and OBEs. The Commission's
13 report shall include an analysis of the bidding environment in the various industries that participate in
14 City contracts.

15 Each year, after receiving the Commission's annual report, the Board shall hold a hearing to
16 review the City's performance under this ordinance, the administration of this ordinance by the HRC,
17 and the progress of City departments towards the purposes of this ordinance, and other subjects
18 pertaining to the ordinance.

19 The Board shall act upon the Commission's recommendations by the first Board meeting of
20 January in each fiscal year subject to this ordinance.

21 **SEC. 14B. 16 BONDING AND OTHER ASSISTANCE.**

22 (A) Bonding and Financial Assistance Program.

23 (1) Program Description. The City and County of San Francisco, acting through the
24 Commission, intends to provide guarantees to private bonding companies and financial institutions in
25 order to induce those entities to provide required bonding and financing to eligible contractors and

1 subcontractors bidding on and performing City public work and construction contracts. This bonding
2 and financial assistance program is subject to the provisions of this Section 14B.16(A).

3 (2) Eligible Contracts. The assistance described in this Section 14B.16(A) shall be available
4 for any City public works or construction contract to which this ordinance applies.

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

7 (a) The business may be either a prime contractor or subcontractor; and

8 (b) The business must be certified by the Director as an LBE according to the requirements
9 of Section 14B.3;

10 (c) The business may be required to participate in a "bonding assistance training program"
11 as offered by the Commission, which is anticipated to provide the following:

12 (i) Bond application assistance.

13 (ii) Assistance in developing financial statements.

14 (iii) Assistance in development of a pre-bond surety profile.

15 (iv) Identification of internal financial control systems, and

16 (v) Development of accurate financial reporting tools.

17 (4) Agreements Executed by the Human Rights Commission. The Director is hereby
18 authorized to enter into the following agreements in order to implement the bonding and financial
19 assistance program described in this Section 14B.16(A):

20 (a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face
21 amount of the bond or \$750,000, whichever is less;

22 (b) With respect to a construction loan to be made to a contractor or subcontractor, an
23 agreement to guaranty up to 50 percent of the original principal amount of the construction loan or 50
24 percent of the actual loss suffered by the financial institution as a result of a loan default, whichever is

1 less; provided that in any event the City's obligations with respect to a guaranty shall not exceed
2 \$750,000;

3 (c) Any other documents deemed necessary by the Director to carry out the objectives of
4 this program, provided that such documents shall be subject to review and approval by the City
5 Attorney's Office.

6 (5) Monitoring and Enforcement. The Director shall maintain records on the use and
7 effectiveness of this program, including but not limited to (1) the identities of the businesses and
8 bonding companies participating in this program, (2) the types and dollar amounts of public work
9 contracts for which the program is utilized, and (3) the types and dollar amounts of losses which the
10 City is required to fund under this program. The Director shall submit written reports to the Board of
11 Supervisors every six months beginning January 1, 2007, advising the Board of the status of this
12 program and its funding capacity, and an analysis of whether this program is proving to be useful and
13 needed.

14 (6) Funding and Accounts. As of July September 1, 2006, funding for this program may
15 be derived from the following sources:

16 (a) The Board of Supervisors has appropriated or will appropriate funds for the operation
17 of this program.

18 (b) Each Department authorized to contract for public works or improvements pursuant to
19 San Francisco Administrative Code Chapter 6 may commit to this program up to ten percent (10%),
20 but not less than one percent (1%), of the budget for every public work or improvement undertaken. (A
21 "public work or improvement" is defined in San Francisco Administrative Code Chapter 6.).

22 (c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate
23 a line(s) of credit or any credit enhancement program(s) or financial products(s) with a financial
24 institution(s) to provide funding; the program's guaranty pool may serve as collateral for any such line
25 of credit.

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

5 (7) Term of Bonding Assistance Program. The Director is authorized to enter into the
6 agreements described in this Subsection for a period ending on the earlier of (1) June 30, 2008 or (2)
7 the date on which the Controller is no longer able to certify the availability of funds for any new
8 guarantee agreement.

9 (8) Default on Guarantees. The Human Rights Commission shall decertify any contractor
10 that defaults on a loan or bond for which the City has provided a guarantee on the contractor's behalf.
11 However, the Human Rights Commission may in its sole discretion refrain from such decertification
12 upon a finding that the City has contributed to such default.

13 (B) Education and Training. The Director shall continue to develop and to strengthen
14 education and training programs for LBEs and City contract awarding personnel.

15 (C) Cooperative Agreements. With the approval of the Commission and the Board of
16 Supervisors, the Director may enter into cooperative agreements with agencies, public and private,
17 concerned with increasing the use of LBEs in government contracting.

18 **SEC. 14B.17 ENFORCEMENT.**

19 (A) The Director shall monitor the City's utilization of Small-MBEs, Micro-LBEs, MBEs,
20 WBEs, and OBEs in City contracting. The Director shall issue an exit report for any contract that
21 includes LBE subcontracting participation and/or LBE prime contract participation as a joint venture
22 partner. The purpose of this exit report is to ensure that prime contractors are complying with their
23 commitments to use LBE subcontractors and LBEs are performing services as set forth in the
24 bid/proposal and contract documents for the joint ventures.

25 (B) Investigations. The Director shall investigate potential violations of this ordinance.

1 Bidders, contractors, subcontractors and applicants for certification shall provide to the City
2 any information that the City deems relevant, and shall cooperate in all other respects with such an
3 investigation. A request for information from a bidder, contractor, subcontractor or applicant shall
4 identify the records required and the time for response. If the bidder, contractor, subcontractor or
5 applicant fails to respond to the request for information, or otherwise fails to cooperate in the
6 investigation, appropriate sanctions, as provided in Section 14B.17(C), may be imposed. In an
7 investigation of potential discrimination by a prime bidder prior to contract award, if the bidder fails to
8 respond to the request for information, or otherwise fails to cooperate in the investigation, the bid will
9 be rejected as non-responsive, and additional sanctions may be imposed.

10 (C) Conference and Conciliation.

11 In the Director's sole discretion, the Director may attempt to resolve noncompliance with this
12 ordinance by any bidder, contractor, subcontractor or applicant for certification through informal
13 processes, including conference and conciliation.

14 (D) Sanctions. The City, including the Director and contract awarding authorities, as
15 appropriate, may impose any of the following sanctions on a bidder, contractor, subcontractor or
16 applicant for certification who fails to comply with this ordinance, provided that, except as may
17 otherwise be provided by duly promulgated rules, if any, under Section 14B.5 for PUC-LBEs,
18 any violation related to certification must be based on a finding by the Director:

- 19 (1) Reject all bids;
20 (2) Declare a bid non-responsive;
21 (3) Suspend a contract;
22 (4) Withhold funds;
23 (5) Assess penalties;
24 (6) Debar a bidder;
25 (7) Deny certification;

1 (8) Revoke certification.

2 (E) Procedures for Denials or Revocation of Certification. Whenever the Director
3 proposes to deny an application for or revoke the certification of a business, the Director shall notify
4 the applicant or certified business in writing of the basis for the denial or revocation, and the date on
5 which the business will be eligible to reapply for certification. The Director shall provide the applicant
6 or certified business with an opportunity to be heard before a final determination is made. The
7 Director shall require a business to wait at least six months but not more than two years after the
8 denial or revocation before reapplying for certification in the same category.

9 (F) Procedures for Director Findings of Discrimination.

10 In determining whether a bidder, contractor or subcontractor has engaged in discrimination in
11 violation of this ordinance, the Director may consider: (1) direct evidence of discrimination, (2)
12 procedures used to select subcontractors, including relative qualifications, (3) significant differences
13 not attributable to any legitimate non-discriminatory business reason between the available
14 percentages of MBEs, WBEs, or OBEs capable of providing goods and services as subcontractors on a
15 contract or a series of contracts and the percentages of the bidder's subcontractors who are MBEs,
16 WBEs, or OBEs, or (4) any other relevant evidence.

17 Whenever the Director proposes to issue a finding of discrimination against any bidder,
18 contractor or subcontractor, the Director shall notify the bidder, contractor or subcontractor in writing
19 of the basis for the finding, provided that any proposal to debar a business shall be governed by Section
20 14B.17(G) The Director shall provide the bidder, contractor or subcontractor with an opportunity to be
21 heard before a final determination is made.

22 (G) Procedures for Debarment. The Director shall have the authority to act as a charging
23 official under San Francisco Administrative Code Chapter 28 to debar a bidder or contractor for
24 violations of this Chapter. The debarment procedures of Chapter 28 shall govern.

1 (H) Commission to Hear Appeals. Except as provided in Section 14B.17(G), the
2 Commission shall hear appeals challenging any determination of the Director under this section. The
3 Commission may sustain, reverse or modify the Director's findings and sanctions imposed, or take such
4 other action to effectuate the purpose of this ordinance. Unless the Commission so orders, an appeal
5 shall not stay the Director's findings and the imposition of sanctions.

6 (I) Referral to Other Agencies. No person shall knowingly make, file or cause to be filed
7 with the City any materially false or misleading statement or report in connection with this ordinance.
8 If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed
9 with the City any materially false or misleading statement or report made in connection with this
10 ordinance, the Director shall report that information may impose any sanction described in this Section
11 14B.17, or may refer the matter to the City Attorney or the District Attorney for appropriate action.

12 (J) Willful Noncompliance by Contract Awarding Authority. Whenever the Director finds
13 after investigation that a contract awarding authority has willfully failed to comply with its duties
14 under this ordinance, the Director shall transmit a written finding of noncompliance specifying the
15 nature of the noncompliance, to the contract awarding authority, the Commission, the Mayor and this
16 Board.

17 The Director shall attempt to resolve any noncompliance through conference and conciliation.
18 Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the finding
19 of noncompliance along with a finding that conciliation was attempted and failed to the Commission
20 and this Board.

21 The finding of noncompliance shall be communicated to the Mayor for appropriate action to
22 secure compliance.

23 **SEC. 14B. 45 18 APPLICABILITY, OPERATIVE DATE AND TRANSITION PROVISIONS.**

24 (A) Suspension of Chapter 12D.A. All provisions of Administrative Code Chapter 12D.A
25 that were invalidated by the Superior Court orders dated July 26 and August 23, 2004, in Coral

1 Construction, Inc. v. City and County of San Francisco (Sup. Ct. No. 421249) shall be and are
2 suspended and are of no force and effect; provided, however, the provisions of Chapter 12D.A that
3 were invalidated by the court's orders shall be suspended only so long as, and only to the extent that,
4 the City is enjoined by the court from enforcing the provisions of Chapter 12D.A. If the injunction is
5 lifted or stayed in its entirety, Chapter 12D.A shall automatically become effective and enforceable,
6 and this Chapter 14B shall be suspended.

7 (B) Operative date of this Chapter. Chapter 14B shall become operative on July
8 September 1, 2006, and shall govern all contracts initiated on or after that date.

9 (C) Applicability.

10 Chapters 12D.A, 14A and 14B shall apply as follows:

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

16 Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply with
17 Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or after July 26,
18 2004 and before July September 1, 2006 and any amendment to such contracts; provided, however,
19 that if a competitive solicitation for an agreement to the proposed changes to the contract is required
20 by law, or the law would otherwise require execution of a new contract, rather than an amendment to
21 an existing contract, the provisions of Chapter 14B and not Chapter 14A shall apply.

22 (2) This Chapter 14B shall govern all contracts initiated on or after July September 1,
23 2006, and any amendments thereto.

24 (3) For all contracts described in Section 14B.18(C)(1) and Section 14B.18(C)(2) to which
25 this Chapter 14B applies, when any provision of the San Francisco Municipal Code or other local law

1 refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it shall be read as referring
2 instead to Chapter 14B.

3 (D) Transition Provisions.

4 In order to effect an orderly transition from Chapter 14A to this ordinance, any business
5 certified as an LBE under Chapter 12D.A or a DBE under Chapter 14A shall be deemed an LBE under
6 this Chapter 14B until the earlier of (1) the expiration of the business' certification under 12D.A or
7 14A, (2) the business' failure to maintain the certification criteria under which it was certified, or (3)
8 January 1, 2007. The Director may, by appropriate rules and regulations, establish procedures to
9 allow such businesses certified as LBEs or DBEs under 12D.A or 14A to demonstrate their eligibility
10 for certification under Section 14B.3 of this ordinance on an expedited basis, prior to the expiration of
11 their existing certification.

12 The Director shall deem any application for DBE certification under Chapter 14A that is
13 pending on the effective date of this ordinance to be an application for certification under Chapter 14B.

14 (E) State or Federal Provisions. In contracts which involve the use of any funds furnished,
15 given or loaned by the government of the United States or the State of California, all laws, rules and
16 regulations of the government of the United States or the State of California or of any of its
17 departments relative to the performance of such work and the conditions under which the work is to be
18 performed, shall prevail over the requirements of this ordinance when such laws, rules or regulations
19 are in conflict.

20 (F) Severability. The provisions of this ordinance are declared to be separate and
21 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this
22 ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect
23 the validity of the remainder of this ordinance, or the validity of its application to other persons or
24 circumstances.

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(G) General welfare clause. In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(H) Three-year review. No later than three years from the effective date of this ordinance, the Board of Supervisors shall hold a hearing for the purpose of conducting a comprehensive review of this ordinance. The Board shall take testimony from all affected parties, and shall enact any changes that it deems appropriate.

(I) Municipal Transportation Agency. Consistent with Charter section Section 8A.101(g), the Municipal Transportation Agency shall comply with the provisions of this Chapter 14B.

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

By: Catharine Barnes
Catharine Barnes
Deputy City Attorney



City and County of San Francisco
Tails - DRAFT
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 050784

Date Passed:

Ordinance amending the San Francisco Administrative Code by adding Chapter 14B to establish a Small and Micro Local Business Enterprise Program, prohibit discrimination in City contracting, and suspend Chapter 12D.A.

April 25, 2006 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

May 2, 2006 Board of Supervisors — FINALLY PASSED


Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Maxwell

File No. 050784

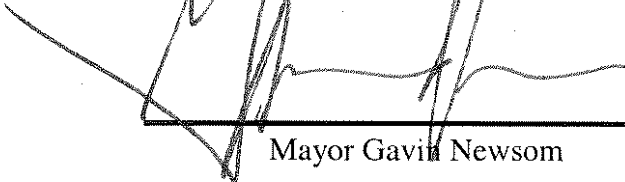
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on May 2, 2006 by
the Board of Supervisors of the City and
County of San Francisco.

05.11.06

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom