Amendment of the Whole
In Committee. 4/11/12

FILE NO. 120082  ORDNANCE NO. 76-12

[Administrative Code – Benefit Corporation Discount]

Ordinance amending the San Francisco Administrative Code by adding Chapter 14C, Sections 14C.1 through 14C.3, to provide for a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for a competitively-solicited City contract.

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

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

Section 1. Findings.

As established by California law, effective January 1, 2012, there is a new subtype of stock corporation in California, called a California Benefit Corporation. A benefit corporation is formed and subject to the California Corporations Code but has additional rights and responsibilities that do not apply to other California business corporations. This new corporation subtype allows entrepreneurs and investors to operate as publicly held stock corporations focused on social and environmental objectives rather than the economic return to investors, organize stock corporations that can pursue both economic and social objectives. California Benefit Corporations also differ from nonprofit corporations because they are for-profit entities and are not restricted to a charitable purpose. The new stock corporation subtype is different from traditional for-profit corporations that are organized to pursue profit and nonprofit corporations that must be used solely to promote social benefits.

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

The purpose of creating a general public benefit is in addition to, and may be a limitation upon, the corporation's purpose under the California Corporation Code.

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

No person may bring an action or claim against a benefit corporation to enforce its obligations under the benefit corporations laws except through a benefit enforcement.
proceeding either directly or through derivative actions brought by shareholders, directors, and other beneficial owners.

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

SEC. 14C.1. SHORT TITLE.

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

SEC. 14C.2. DEFINITIONS.

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

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

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

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

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

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

(g) "Nonprofit" means a nonprofit corporation that is incorporated in California under California Corporations Code §5000 et seq. as amended, or any successor legislation organized primarily or exclusively for charitable purposes and qualifies for the exemptions provided under California Revenue and Taxation Code Section 23701 and Internal Revenue Code Section 501(c)(3).
(h) "Regional Business" means a business that has a principal place of business located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, Sonoma and Sacramento.

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

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

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

SEC. 14C.3. BENEFIT CORPORATION DISCOUNTS.

(a) Eligibility. To be eligible for the Benefit Corporation Discount, the corporation must:

1. not be a subsidiary of a non Benefit Corporation; and
2. have been incorporated as a Benefit Corporation in California for at least six (6) months preceding the application of the Benefit Corporation Discount.

(b) California Secretary of State Verification. The HRC shall verify current Benefit Corporation status with the California Secretary of State and apply the Benefit Corporation Discount. As part of the verification process, HRC may require a Benefit Corporation to submit additional documentation with the bid or proposal to verify status.
(c) Third Party Verification. HRC may not apply the Benefit Corporation Discount until
the Benefit Corporation has received third party verification. HRC shall adopt rules and
regulations consistent with this Ordinance for determining if a Benefit Corporation has
complied with third party verification.

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

1. a 14B LBE, or a
2. Nonprofit bidder or proposer, or
3. S.F. Business unless the Benefit Corporation is also a S.F. Business; or
4. Regional Business unless the Benefit Corporation is also a Regional Business.

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

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

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

(eg) Amount of Discount. Contract Awarding Authorities shall apply a Benefit
Corporation Discount as follows:

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

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

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

(d) Verification of Status. Contract Awarding Authorities provide for the BCorporation and shall verify current Benefit Corporation status with the California Secretary of State. In addition, B Corporations shall, when applying for a B Corporation Discount, submit copies of their share certificates required under Division 1, Chapter 4 (beginning with Section 400) of the California Corporations Code

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

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

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

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

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

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

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

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

By: ALCIA CABRERA
Deputy City Attorney

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Ordinance amending the San Francisco Administrative Code by adding Chapter 14C, Sections 14C.1 through 14C.3 to provide for a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for a competitively-solicited City contract.

March 14, 2012 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

March 14, 2012 Budget and Finance Sub-Committee - CONTINUED AS AMENDED

April 04, 2012 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

April 04, 2012 Budget and Finance Sub-Committee - CONTINUED AS AMENDED

April 11, 2012 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

April 11, 2012 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

April 17, 2012 Board of Supervisors - PASSED ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar and Wiener
Excused: 1 - Olague

April 24, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/24/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date: May 4, 2012

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Clerk of the Board