

1 [Administrative Code - Local Business Enterprise Program]

2

3 **Ordinance amending the Administrative Code to revise the Local Business Enterprise**

4 **(LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) to: 1) increase**

5 **the LBE certification size thresholds and authorize an automatic increase to the**

6 **thresholds every five years based on the consumer price index; 2) change the LBE**

7 **certification size threshold term of calculation from an average of gross annual**

8 **receipts in the prior three to the prior five years; 3) increase penalties for violations of**

9 **Chapter 14B from up to 10% to up to 25% of the contract or subcontract amount; 4)**

10 **require prime contractors to include LBE subcontractors' approved payment requests**

11 **in payment applications within 30 days of receipt of an invoice; 5) authorize application**

12 **of separate LBE subcontract participation requirements for micro, small, and SBA-**

13 **LBEs; 6) extend the bonding assistance program to certain City-funded construction**

14 **projects; 7) authorize a pilot Mentor-Protégé expansion program, a pilot micro-LBE set-**

15 **aside program for certain design-build and construction manager/general contractor**

16 **projects, and a pilot Neighborhood LBE program; and 8) increase the contracting**

17 **Threshold Amount from \$706,000 to \$1,000,000 and the Minimum Competitive Amount**

18 **from \$129,000 to \$200,000; and make various other changes and clarifications to**

19 **Chapter 14B, as defined herein.**

20 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.

21 **Additions to Codes** are in *single-underline italics Times New Roman font*.

22 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

23 **Board amendment additions** are in double-underlined Arial font.

24 **Board amendment deletions** are in ~~strikethrough-Arial font~~.

25 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

1 Section 1. Chapter 14B of the Administrative Code is hereby amended by revising
2 Sections 14B.1, 14B.2, 14B.3, 14B.4, 14B.5, 14B.6, 14B.7, 14B.8, and 14B.16, and adding
3 Section 14B.22, to read as follows:

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

5 * * * *

6 (C) **Purpose.**

7 (1) **Assistance to Small Local Businesses.** This Chapter 14B is intended to
8 improve the ability of certified Local Business Enterprises (LBE), particularly micro LBEs, to
9 compete effectively for the award of City contracts. The Mayor shall establish Citywide goals
10 for participation by small and micro local businesses in contracting. The City shall use
11 Discounts, set asides, and LBE subcontracting participation requirements set forth in this
12 Chapter, information and training, and other assistance in order to reach these goals. The City
13 Administrator and Director of the Contract Monitoring Division shall oversee and assist other
14 City departments in implementing this Chapter and otherwise promoting the goal of increasing
15 LBE participation in City contracts.

16 * * * *

17 **SEC. 14B.2. DEFINITIONS.**

18 * * * *

19 "Minimum Competitive Amount" means (1) for the procurement of commodities,
20 professional services, and architect/engineering services, the "Minimum Competitive Amount"
21 as defined in Section 6.40(a) of the Administrative Code, ~~which shall be \$110,000~~ and (2) for the
22 procurement of general services, an amount equivalent to the "Threshold Amount" as defined
23 in Section 6.1 of the Administrative Code ~~which shall be \$600,000, provided that on January 1,~~
24 ~~2020, and every five years thereafter, the Controller shall recalculate the applicable Minimum~~
25 ~~Competitive Amount (and the Threshold Amount from which the Minimum Competitive Amount for~~

1 *general services is calculated) to reflect any proportional increase in the Urban Regional Consumer*
2 *Price Index from January 1, 2015, rounded to the nearest \$1,000.*

3 * * * *

4 "Threshold Amount" means, for public works/construction projects, the "Threshold
5 Amount" as defined in Administrative Code Section 6.1 ~~which shall be \$600,000 provided that on~~
6 ~~January 1, 2020, and every five years thereafter, the Controller shall recalculate the Threshold Amount~~
7 ~~to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1,~~
8 ~~2015, rounded to the nearest \$1,000.~~

9 * * * *

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

11 (A) **Criteria for LBE Certification.** The Director shall certify as an LBE any
12 business that meets all of the following criteria and also meets the criteria set forth in Section
13 14B.3(B), ~~Section 14B.3(C) or Section 14B.3(D):~~

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

16 (2) The business is continuously in operation.

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

18 (4) The business performs a Commercially Useful Function.

19 (5) The business maintains its principal place of business in a fixed office within
20 the geographic boundaries of the City that provides all of the services for which LBE
21 certification is sought, other than work required to be performed at a job site; provided,
22 however, that suppliers are not required to maintain their principal place of business in San
23 Francisco, but are required to maintain a fixed office in San Francisco that meets all of the
24 requirements of this Section other than the principal place of business requirement.
25

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

12 To establish a principal place of business in San Francisco, a business must
13 demonstrate that the majority of its principals are based in the San Francisco office.

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

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

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

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

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

3 (10) The business has average gross annual receipts in the prior ~~five~~^{three} (3)-fiscal
4 years that satisfy the criteria set forth in Section 14B.3(B), ~~Section 14B.3(C), or Section 14B.3(D).~~

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

7 (B) **Business Size Criteria for small-LBE.** The Director shall certify as a "Micro-LBE,"
8 "Small-LBE" or "SBA-LBE," as applicable, any business that meets the requirements of 14B.3

9 (A) and has average gross annual receipts in the prior ~~three~~^{five} (3)-fiscal years that do not
10 exceed the following limits:

<u>Category</u>	<u>Micro-LBE</u>	<u>Small-LBE</u>	<u>SBA-LBE</u>
<u>Public works/Construction</u>	<u>\$12,000,000</u>	<u>\$24,000,000</u>	<u>\$40,000,000</u>
<u>Specialty Construction</u>	<u>\$6,000,000</u>	<u>\$12,000,000</u>	<u>\$20,000,000</u>
<u>Goods/materials/equipment and General Services</u>	<u>\$6,000,000</u>	<u>\$12,000,000</u>	<u>\$20,000,000</u>
<u>Trucking</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$10,000,000</u>
<u>Professional Services:</u>			
<u>Legal Services</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
<u>Accounting</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
<u>Architecture/Engineering and Related Services</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
<u>Specialized Design Services</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
<u>Computer Systems Design and Technical Consulting Services</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>

1	<u>Management, Scientific, and</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
2	<u>Technical Consulting Services</u>			
3	<u>Scientific Research and</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
4	<u>Development Services</u>			
5	<u>Advertising and Related</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
6	<u>Services</u>			
7	<u>Other Professional, Scientific,</u>	<u>\$2,500,000</u>	<u>\$5,000,000</u>	<u>\$8,500,000</u>
8	<u>and Technical Services</u>			

9

10 For every five-year period starting with January 1, 2020-December 31, 2024, the Controller

11 shall recalculate the size criteria limits above to reflect any proportional increase in the Urban

12 Regional Consumer Price Index from January 1, 2020, rounded to the nearest \$10,000. The size

13 criteria limits as recalculated by the Controller shall take effect by operation of law on January 1 of the

14 first year of the next five-year period (thus, for example, on January 1, 2025 following the five-year

15 period ending December 31, 2024)(1) public works/construction – \$20,000,000; (2) specialty

16 construction contractors – \$10,000,000; (3) goods/materials/equipment and general services –

17 \$10,000,000; (4) professional services and architect/engineering – \$2,500,000; and (5) trucking –

18 \$3,500,000. The Director shall determine gross receipts according to recognized accounting

19 methodologies that the Director determines most accurately reflect the actual money that the

20 business received during the relevant period. Any business under common ownership, in

21 whole or in part, with any other business in a related industry meets the requirements of this

22 subparagraph only if the aggregate gross annual receipts of their percentage of ownership

23 added together of all of the businesses under such common ownership do not exceed these

24 limits. All businesses owned by married spouses or domestic partners are considered under

25 common ownership unless the businesses are in unrelated industries and no community

1 property or other jointly owned assets were used to establish or are used to operate either
2 business.

3 ~~(C) **Criteria for Micro-LBE.** The Director shall certify as a "Micro-LBE" any business that~~
4 ~~meets the requirements of 14B.3 (A) and also has average gross annual receipts in the prior three (3)~~
5 ~~fiscal years that do not exceed the following limits: (1) public works/construction – \$10,000,000; (2)~~
6 ~~specialty construction contractors – \$5,000,000; (3) goods/materials/equipment and general services –~~
7 ~~\$5,000,000; (4) professional services and architect/engineering – \$1,250,000; and (5) trucking –~~
8 ~~\$1,750,000. The Director shall determine gross receipts according to recognized accounting~~
9 ~~methodologies that the Director determines most accurately reflect the actual money that the business~~
10 ~~received during the relevant period. Any business under common ownership, in whole or in part, with~~
11 ~~any other business in a related industry meets the requirements of this subparagraph only if the~~
12 ~~aggregate gross annual receipts their percentage of ownership added together of all of the~~
13 ~~businesses under such common ownership do not exceed these limits. All businesses owned by married~~
14 ~~spouses or domestic partners are considered under common ownership unless the businesses are in~~
15 ~~unrelated industries and no community property or other jointly owned assets were used to establish or~~
16 ~~are used to operate either business.~~

17 ~~–(D) **Criteria for SBA-LBE.** The Director shall certify as a "SBA-LBE" any business that: (1)~~
18 ~~meets the requirements of 14B.3(A) and also has average gross annual receipts in the prior three (3)~~
19 ~~fiscal years that do not exceed the following limits: (1) public works/construction – \$33.5 million; (2)~~
20 ~~specialty construction contractors – \$17 million; (3) goods/materials/equipment and general services –~~
21 ~~\$17 million; (4) professional services and architect/engineering – \$7 million and (5) trucking – \$8.5~~
22 ~~million. The Director shall determine gross receipts according to recognized accounting methodologies~~
23 ~~that the Director determines most accurately reflect the actual money that the business received during~~
24 ~~the relevant period. Any business under common ownership, in whole or in part, with any other~~
25 ~~business in a related industry meets the requirements of this subparagraph only if the aggregate gross~~

1 ~~annual receipts of their percentage of ownership added together of all of the businesses under common~~
2 ~~ownership do not exceed these limits. All businesses owned by married spouses or domestic partners~~
3 ~~are considered under common ownership unless the businesses are in unrelated industries and no~~
4 ~~community property or other jointly owned assets were used to establish or are used to operate either~~
5 ~~business.~~

6 (CE) For purposes of ensuring nondiscrimination in City contracting and
7 subcontracting, the Director shall further certify all LBEs as MBEs, WBEs, and OBEs
8 according to the Ownership and Control of the LBE and shall maintain data on the availability
9 and utilization of MBEs, WBEs, and OBEs in City Contracting.

10 (1) **MBE Certification.** The Director shall certify as an MBE any business that is
11 certified as an LBE and is Owned and Controlled by a Person or Persons who is a member of
12 one or more of the following ethnic groups:

13 (a) African Americans, defined as persons whose ancestry is from any of the
14 Black racial groups of Africa or the Caribbean;

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

17 (c) Asian Americans, defined as persons with Chinese, Japanese, Korean,
18 Pacific Islander, Samoan, Filipino, Asian Indian, ~~and-or~~ Southeast Asian ancestry;

19 (d) Iranian Americans, defined as persons whose ancestry is from the country of
20 Iran;

21 (e) Latino Americans, defined as persons with Mexican, Puerto Rican, Cuban,
22 Central American, or South American ancestry. Persons with European Spanish ancestry are
23 not included as Latino Americans; and
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1 (f) Native Americans, defined as any person whose ancestry is from any of the
2 original peoples of North America, and who maintains cultural identification through tribal
3 affiliation or community recognition.

4 (2) **WBE Certification.** The Director shall certify as a WBE any business that is
5 certified as an LBE and is Owned and Controlled by one or more women.

6 (3) **OBE Certification.** The Director shall certify as an OBE any business that is
7 certified as an LBE and (i) does not demonstrate to the satisfaction of the Director that it is
8 Owned and Controlled by one or more women or one or more minority Persons or (ii) is not
9 certified as an MBE or a WBE.

10 **SEC. 14B.4. TERM OF CERTIFICATION, CERTIFICATION DENIAL PROTESTS**
11 **AND APPEALS.**

12 (A) **Period of Certification.** Certification for all categories of LBE shall be effective
13 for a three ~~(3)~~-year period provided that (1) businesses must at all times throughout the
14 certification period meet the criteria in Section 14B.3 as applicable; and (2) the Director may,
15 in ~~his or her~~ the Director's discretion, certify a business for a shorter period based on the
16 unique attributes of any applicant or renewal applicant that relate to such business's eligibility
17 or continued eligibility for certification. The Director may require certified businesses annually
18 to submit copies of their federal income tax returns and other documentation for the purpose
19 of verifying continuing eligibility for any certification status hereunder. The Director may
20 suspend or revoke the certification of any LBE that fails to submit requested tax returns or
21 other documentation in a timely fashion or otherwise fails to cooperate with the Director in any
22 investigation of that business's continued eligibility for certification.

23 (B) **Certification or Re-Certification Denial.** Whenever the Director determines
24 that an applicant or a certified business whose certification period is expiring (renewal
25 applicant) is not eligible for any requested certification, the Director shall notify the applicant or

1 renewal applicant in writing of the basis for such decision, and the date on which the business
2 will be eligible to reapply for the same certification; provided, however, that in all cases, the
3 applicant or renewal applicant has the right to notice of the Director's determination and a full
4 and adequate opportunity to be heard before the Director's decision is final. The Director shall
5 require a business to wait at least six months but not more than two years after the denial
6 before reapplying for certification in the same category.

7 (C) **Appeals.** Applicants and renewal applicants may appeal a Director's denial or
8 refusal to renew certification, or length of waiting period for reapplication imposed hereunder
9 to the City Administrator, or Hearing Officer appointed by the City Administrator, for a *de novo*
10 determination of the matter appealed. After affording the applicant a full and adequate
11 opportunity to be heard, the City Administrator's or Hearing Officer's decision shall be the
12 City's final administrative decision on the matter. Unless the City Administrator or Hearing
13 Officer issues an order to the contrary, the Director's determination shall not be stayed during
14 the appeal process.

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

16 (A) **PUC-LBE Certification.** In order to increase the ability of small businesses that
17 are located within the PUC water system service area but outside of the jurisdictional
18 boundaries of San Francisco to compete for PUC Regional Contracts, the Director shall certify
19 businesses as PUC-LBEs, including as either Small-PUC-LBEs or Micro-PUC-LBEs, and as
20 either PUC-MBEs, PUC-WBEs, or PUC-OBEs, that meet all of the following criteria:

21 (1) Only established small public works/construction, construction material
22 supplies, construction equipment rental, trucking, and professional services firms including
23 architecture or engineering firms may be certified as PUC-LBEs or any subcategory of PUC-
24 LBE. Only firms located within the PUC water system service area may be certified as PUC-
25 LBEs or any subcategory of PUC-LBE.

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

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

8 (4) Firms shall meet all criteria that the City Administrator shall by rule adopt to the
9 end that firms certified as PUC-LBEs shall be similarly situated to LBEs to the extent
10 practicable, taking into account the special circumstances of their location and the needs of
11 the PUC Regional Projects.

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

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

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

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

23 (b) To assist the Director in verifying the eligibility for certification of PUC-LBE
24 applicants by conducting site visits or undertaking other local or regional fact gathering to
25

1 ensure that applications for PUC-LBE certification undergo substantially the same scrutiny as
2 applications for other LBE certification;

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

6 (d) To receive reports from the City, to publicly discuss, and make
7 recommendations for rules and procedures regarding the implementation of this Chapter 14B
8 for PUC regional projects to the Director and the PUC;

9 (e) To make recommendations to the SFPUC General Manager to study the
10 feasibility of additional programs that will increase the participation of eligible firms for the
11 regional program; *and*;

12 (f) To provide status reports on the Advisory Committee's activities to the
13 SFPUC General Manager and the Director.

14 (3) The PUC Small Firm Advisory Committee shall establish bylaws, rules and/or
15 regulations for the conduct of its business. Administrative assistance and staffing for the PUC
16 Small Firm Advisory Committee shall be provided at the discretion of the PUC.

17 (4) Except for the PUC Small Firm Advisory Committee's authority as provided in
18 Section 14B.5(B)(2), the Director shall have the authority over the implementation of this
19 Chapter 14B for PUC Regional Projects to the same extent as all other Bids, proposals, and
20 Contracts subject to the Chapter.

21 (C) **PUC-LBE Status.** Except as provided in Subsection 14B.5(D), PUC-LBEs shall
22 have the status of LBEs for all purposes of this Chapter 14B for construction, specialty
23 construction, construction material suppliers, construction equipment rental firms, trucking,
24 and professional services including architectural and engineering for PUC Regional Projects.

1 PUC-LBEs shall not have the status of LBEs for PUC Regional Contracts for general services
2 or for any other Bid, proposal, or Contract subject to this Chapter.

3 (D) **Bid Discount Exception.** For PUC Regional Projects that will be performed
4 exclusively 70 miles or more beyond the jurisdictional boundaries of San Francisco and for
5 which no cost will be shared by members of BAWSCA, Contract Awarding Authorities shall
6 only apply Discounts to Bids from PUC-LBEs for the purpose of determining the apparent
7 highest ranked proposal or the apparent lowest Bid where application of the Discount will not
8 adversely impact the ranking for negotiation or award process of a Bid submitted by any
9 Micro-LBE, Small-LBE, or SBA-LBE certified under Section 14B.3. For Water System
10 Improvement Program projects, and projects outside of the jurisdictional boundaries of San
11 Francisco where all or some cost is shared by members of BAWSCA, PUC-LBEs shall have
12 the same status as LBEs.

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

14 (A) ~~Notwithstanding~~ Notwithstanding any other provisions of this Chapter 14B, in order
15 to increase the ability of small, local non-profit enterprises to compete for City Contracts on an
16 equal basis with small, local for-profit enterprises, the Director shall certify as Non-profit LBEs,
17 enterprises that meet all of the following criteria:

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

20 (2) The non-profit is continuously in operation.

21 (3) The non-profit is a California Nonprofit Organization that is both

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

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

1 (4) The non-profit performs a Commercially Useful Function. In the case of non-
2 profits, the Commercially Useful Function may be related or unrelated to its stated charitable
3 mission. The tax, or other implications, including forfeiture of tax-exempt status, that a certified
4 non-profit may incur for engaging in substantial business operations unrelated to its charitable
5 mission are solely the responsibility of the non-profit and not a ~~criteria~~ criterion for certification
6 hereunder.

7 (5) The non-profit maintains its principal place of business in a fixed office within
8 the geographic boundaries of the City.

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

19 To establish a principal place of business in San Francisco, a non-profit must
20 demonstrate that the majority of its paid and volunteer staff are based in the San Francisco
21 office.

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

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

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

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

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

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

16 (11) (a) Full time City employees, if any, who serve on the Board of Directors or
17 other governing body of the non-profit shall not constitute a majority of the membership of
18 such body or be capable of exercising a controlling number of votes for such body; and

19 (b) any non-profit that includes any full time City employees on its Board of
20 Directors or other governing body shall be ineligible for award, as a prime Contractor or
21 Subcontractor, of any Contract to be awarded by, and/or overseen by, the City Department or
22 entity that employs such Board or other governing body member.

23 (B) Only firms with average gross annual receipts in the prior ~~five~~^{three} fiscal years
24 that meet the requirements of Section 14B.3(B) *or* ~~Section 14B.3(C)~~ for Small-LBEs or Micro-
25 LBEs, respectively, may be certified as Non-profit Small-LBEs or Non-profit Micro-LBEs. The

1 Director shall determine gross receipts according to recognized accounting methodologies
2 that the Director determines most accurately reflect the actual money that the non-profit
3 received or was entitled to receive during the relevant period.

4 (C) **Certification as OBE.** All Non-profit LBEs shall be certified as OBEs. Non-
5 profits shall not be eligible for certification as MBEs or WBEs. Non-profit LBEs shall have the
6 status of LBEs for all purposes of this Chapter 14B, including but not limited to Bid Discounts
7 and subcontracting participation credit.

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

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

14 (A) **Good Faith Efforts by Awarding Authorities to Obtain LBE Bids on Prime**
15 **Contracts.** Contract Awarding Authorities shall use good-faith efforts for all Contracts subject
16 to the Discount provisions of this Chapter 14B to solicit and obtain Bids from the broadest
17 possible diversity of LBEs and to ensure that MBEs, WBEs, and OBEs are not arbitrarily
18 excluded from participation. Good faith efforts shall include the following:

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

21 (a) As soon as practical before soliciting Bids, Contract Awarding Authorities
22 shall submit Large Contract Proposals to the Director for review. The Director shall determine
23 whether the proposed Contract can be divided into smaller Contracts so as to enhance the
24 opportunity for participation by LBEs. For purposes of this paragraph, "Large Contract
25 Proposals" means any Public Works/Construction Contract estimated to cost more than

1 \$5,000,000, any Professional Services Contract estimated to cost more than \$1,000,000, and
2 any Commodities Contract with a term greater than one year, including any options to renew
3 or extend.

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

17 (2) Outreaching to all LBEs with appropriate certifications for the work or services
18 to be performed to solicit their interest in specific contracting opportunities when not
19 impracticable to do so, and encouraging LBEs to attend prebid meetings.

20 (3) Posting contracting opportunities on the Department, Office of Contract
21 Administration, and/or other centralized City website, as applicable, with adequate lead time
22 for LBEs to effectively respond to the opportunity.

23 (4) Providing all Bidders, including LBEs, access to adequate information about
24 the plans, specifications, and requirements of the proposed Contract.

25

1 (5) Using the services of community and contractors' groups to assist in the
2 recruitment of LBEs.

3 (6) For Professional Services, General Services, Architect/Engineering and
4 Commodities Contracts, the estimated cost of which exceeds \$10,000 but is less than the
5 Minimum Competitive Amount, or for Public Works/Construction Contracts, the estimated cost
6 of which exceeds \$10,000 but is less than the Threshold Amount, Contract Awarding
7 Authorities are not required to undertake the good faith efforts steps set forth in Section
8 14B.7(A)(3) when it is impracticable to do so.

9 (B) **Best Efforts on Contracts Not Otherwise Subject to this Chapter.** Contract
10 Awarding Authorities shall adopt the same good faith efforts set forth in Section 14B.7(A) for
11 the award of leases, franchises, concessions, and other Contracts not subject to the Discount
12 provisions of this Chapter 14B, unless impracticable to do so. At a minimum, Contract
13 Awarding Authorities shall notify LBEs that are certified to perform the work contemplated in a
14 Contract and solicit their interest in the Contract. For Contracts with mixed local and federal
15 and/or State funding subject to Section 14B.18(A) where the federal or State laws, rules, or regulations
16 prevent the implementation of LBE preference programs, Contract Awarding Authorities are
17 encouraged to the extent feasible to break up or create distinct portions of work, as applicable, to
18 isolate any local funds so as to maximize the ability to implement this Chapter 14B's programs.

19 (C) **Equal Opportunity in Prime Contracting.** Contract Awarding Authorities shall
20 ensure that all aspects of their contracting process are transparent, fair, and do not arbitrarily
21 disadvantage or discriminate against LBEs or any other business or Person on any basis
22 prohibited by law. Contract Awarding Authorities shall document their selection processes as
23 required by the Director to monitor and ensure compliance with this provision. The Director
24 shall report any contracting process by a Contract Awarding Authority that the Director
25 believes may be discriminatory in nature to the Human Rights Commission.

1 (D) **Contracts Subject to Prime Bid Discounts.** Contract Awarding Authorities
2 shall apply Discounts to all Contracts the estimated cost of which exceeds \$10,000 and is less
3 than \$10,000,000, except that the Bid Discount provisions applicable to SBA-LBEs shall apply
4 only to Contracts (other than Commodities Contracts) with an estimated cost of no less than
5 \$400,000 and no greater than \$20,000,000, and to Commodities Contracts with an estimated
6 cost of no less than \$400,000 and no greater than \$10,000,000. Discounts shall apply to Bids
7 from LBE Prime or Joint Ventures only where the LBE Prime or Joint Venture Partner will
8 perform a Commercially Useful Function on the Contract. A LBE Prime or Joint Venture
9 whose Bid receives a Discount and who thereafter fails to perform a Commercially Useful
10 Function under the Contract at least equivalent in scope and value to the role represented in
11 its Bid documents may be subject to sanctions as set forth in Section 14B.17(D) for
12 noncompliance with this Chapter 14B.

13 (E) **Amount of Discount.** Unless otherwise provided in this Chapter 14B, Contract
14 Awarding Authorities shall apply the following Discounts to each evaluation stage of the
15 selection process, including qualifications, proposals, and interviews:

16 (1) For Contracts estimated by the Contract Awarding Authority to cost in excess
17 of \$10,000 but less than \$10,000,000, a ~~ten percent (10%)~~ Discount to any Bid from a Small or
18 Micro-LBE. If after the application of the Discounts provided for in this Subsection 14B.7(E)(1)
19 or Subsection 14B.7(F) to any Bid from a Small or Micro-LBE, the apparent low Bidder or
20 highest ranking Proposer is not a Small or Micro-LBE, Contract Awarding Authorities shall
21 apply a 5% Discount to any Bid from an SBA-LBE. Contract Awarding Authorities shall apply
22 this ~~five percent (5%)~~ Discount to Contracts, except that the ~~five percent (5%)~~ Discount for SBA-
23 LBEs shall not be applied at any stage if it would adversely affect a Small or Micro-LBE.

24 (2) For Contracts estimated by the Contract Awarding Authority to cost in excess
25 of \$10,000,000 but less than \$20,000,000, a ~~two percent (2%)~~ Discount to any Bid from a

1 Small, Micro, or SBA-LBE for Public Works/Construction, Architect/Engineering, Professional
2 Services, or General Services Contracts. Bids from Small, Micro, or SBA-LBEs for
3 Commodities Contracts in excess of \$10,000,000 are not eligible for the Discount.

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

5 Unless otherwise provided in this Chapter 14B, for Contracts estimated by the Contract
6 Awarding Authority to cost in excess of \$10,000 but less than \$10,000,000, Contract Awarding
7 Authorities shall apply the following Discount to Bids from Joint Ventures with a Small and/or
8 Micro-LBE Joint Venture partner participation on Professional Services and
9 Architect/Engineering prime Contracts:

10 (1) ~~five percent (5%)~~ to a Joint Venture with Small and/or Micro-LBE Prime
11 Contractor participation that equals or exceeds ~~thirty five percent (35%)~~ but is under ~~forty~~
12 ~~percent (40%)~~;

13 (2) ~~seven and one half percent (7.5%)~~ to a Joint Venture with Small and/or Micro-
14 LBE Prime Contractor participation that equals or exceeds ~~forty percent (40%)~~;

15 (3) ~~ten percent (10%)~~ to a Joint Venture exclusively among Small and/or Micro-LBE
16 Prime Contractors.

17 (4) Contract Awarding Authorities shall apply the Discount to each stage of the
18 selection process, including qualifications, proposals, and interviews.

19 (5) The Contract Awarding Authority shall apply the Discount described in this
20 subsection (F) only to Bids from Joint Ventures, as defined in this Chapter 14B and its duly
21 promulgated Rules and Regulations, on Professional Services and Architect/Engineering
22 Contracts, and only to those Joint Venture Bids where the Director finds that the Small and/or
23 Micro LBE Joint Venture partner (a) will be responsible for, and has sufficient skill, experience,
24 and financial capacity to perform a clearly defined portion of the work, and (b) shares in the
25 Ownership, Control, management responsibilities, risks, and profits of the Joint Venture at

1 least in proportion to the value of its assigned Joint Venture work. The Joint Venture's Bid
2 must set forth in detail the Small and/or Micro-LBE Joint Venture partner's portion of the work
3 separately from the work to be performed by the non-LBE Joint Venture partner, and such
4 work must be assigned a commercially reasonable dollar value.

5 (G) **Affidavit.**

6 (1) Each Bidder and Contractor shall be required to sign an affidavit declaring
7 under penalty of perjury its intention to comply fully with the provisions of this Chapter 14B and
8 attesting to the truth and accuracy of all information provided regarding such compliance.

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

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

18 (H) **Additional Requirements.**

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

1 requirements in specified Subcontracts are material elements of the City's agreement to enter
2 into the Contract and failure to comply shall constitute a material breach of contract.

3 (2) If the Director finds that any Bidder, Subcontractor or Contractor fails to comply
4 with any of the provisions of this Chapter 14B, rules and regulations implementing the
5 Chapter, or Contract provisions pertaining to any LBE, LBE participation, or outreach, such
6 Bidder, Subcontractor, or Contractor shall be liable for liquidated damages for each Contract
7 in an amount unequal to the Bidder's or Contractor's net profit on the Contract, ten percent
8 25%(10%) of the total amount of the Contract or subcontract, as applicable, or \$1,000, whichever
9 is greatest, as determined by the Director. The liquidated damages assessed shall be payable
10 to the City upon demand and may be set off against any monies due to the Bidder,
11 Subcontractor, or Contractor from any Contract with the City. Such willful failure to comply with
12 any provisions of this Chapter 14B and the subsequent penalty shall be included in the Contractor's
13 evaluation report upon completion of the project, if such evaluation is collected.

14 (3) Contractors and Subcontractors shall maintain all records, including but not
15 limited to such information specified by the Director, necessary for monitoring their
16 compliance with the duties imposed on Contractors under this Chapter 14B, for five ~~(5)~~ years
17 following expiration of the Contract, or, as applicable, Subcontract, and shall permit the City to
18 inspect and audit such records.

19 (4) During the term of the Contract, Prime Contractors shall fulfill the LBE
20 participation commitments stated in their Bids and memorialized in their Contracts. A
21 Contractor's failure to achieve the level of LBE subcontractor participation specified in the
22 Contract shall be deemed a material breach of contract.

23 (5) Prime Contractors shall include in all Subcontracts with a LBE a provision
24 requiring the Prime Contractor to compensate the LBE Subcontractor for damages for breach
25 of contract or liquidated damages equal to 5% of the Subcontract amount, whichever is

1 greater, if the Prime Contractor fails to use the LBE Subcontractor as specified in the Bid and
2 Contract unless the Director and the Contract Awarding Authority both give advance approval
3 to the Prime Contractor to substitute the LBE Subcontractor or otherwise modify the LBE
4 commitments in the Bid and Contract documents. It shall be a material breach of contract for a
5 Prime Contractor to fail to include such clause in all Subcontracts with LBEs. This provision
6 shall also state that it is enforceable in a court of competent jurisdiction.

7 (6) Whenever amendments, modifications, supplements, or change orders
8 increase the total dollar value of the Contract, the Prime Contractor must comply with those
9 provisions of this Chapter 14B that applied to the original Contract with respect to the
10 amendment, modification, supplement, or change order.

11 (7) Contract Awarding Authorities shall submit to the Director for approval all
12 proposed Contract amendments, modifications, supplements, and change orders that
13 cumulatively increase by more than ~~twenty percent (20%)~~ the total dollar value of all Contracts
14 originally valued at \$50,000 or more. The Director shall impose or increase the Subcontracting
15 participation requirement as necessary to reflect additional opportunities for LBE participation
16 from the proposed amendment, modification, supplement, or change order as appropriate.

17 (8) Prime Contractors and Subcontractors may not engage in any Back
18 Contracting or other work shifting to a lower-tier Subcontract to evade using LBE
19 Subcontractors to perform work or for any other purpose inconsistent with the provisions of
20 this Chapter 14B, or rules and regulations adopted pursuant to this Chapter.

21 (9) **Prompt Payment.** For the duration of any Contract subject to LBE participation
22 requirements, the Prime Contractor shall:

23 (a) Pay its Subcontractors within three working days after receiving payment
24 from the City unless the Prime Contractor notifies the Director in writing within ten ~~(10)~~ working
25 days prior to receiving payment from the City that there is a bona fide dispute between the

1 Prime Contractor and the Subcontractor, in which case the Prime Contractor may withhold the
2 disputed amount but shall pay the undisputed amount. The Director may, upon making a
3 determination that a bona fide dispute exists between the Prime Contractor and
4 Subcontractor, waive this three-day payment requirement. In making the determination as to
5 whether a bona fide dispute exists, the Director shall not consider the merits of the dispute.
6 The Prime Contractor shall submit within 10 working days following receipt of payment from
7 the City, a statement, in a form specified by the Director, attesting that ~~he or she~~ the Prime
8 Contractor has paid all Subcontractors all undisputed amounts from previous City payments;
9 and

10 (b) Include its Subcontractor's approved payment requests in any payment application
11 to the City within 30 days of receiving an invoice from an LBE subcontractor.

12 (I) Reserved.

13 (J) **Waivers.** The Director shall waive the Discount provided in Section 14B.7(D),
14 and post all approved waivers online on a CMD website, if:

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

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

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

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

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

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

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

7 (3) Each Contract Awarding Authority shall include the following information
8 concerning its compliance with the Micro-LBE Set-Aside Program to the Board of Supervisors
9 as part of its annual report under Section 14B.15(B):

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

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

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

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

25

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

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

10 (M) **Prompt payment.** The City shall pay LBE Prime Contractors within ~~thirty~~ (30)
11 days of the date on which the City receives an invoice for work performed for and accepted by
12 the City.

13 (N) **Best Value Public Works Contract Discounts.** For Contracts authorized
14 under Administrative Code Section 6.74, Contract Awarding Authorities shall apply the
15 applicable Discount to the price or cost portion of the Bid only. No Discount shall apply to the
16 qualifications portion of the solicitation.

17 **SEC. 14B.8. SUBCONTRACTING.**

18 (A) **LBE Subcontracting Participation Requirements.** Prior to soliciting Bids,
19 Contract Awarding Authorities shall provide the Director with a proposed job scope for each
20 (1) Public Works/Construction Contract that equals or exceeds ~~fifty percent~~ (50%) of the
21 Threshold Amount, and (2) each Architect/Engineering, Professional Service, and General
22 Services Contract that equals or exceeds ~~fifty percent~~ (50%) of the Minimum Competitive
23 Amount. The Contract Awarding Authority may ask the Director to waive LBE subcontracting
24 participation requirements where it anticipates that there are no subcontracting opportunities
25

1 or there are not sufficient LBEs available to perform the subcontracting work available on the
2 Contract.

3 The Director shall set LBE subcontracting participation requirements, *including*
4 *separate Micro-LBE, Small-LBE, and SBA-LBE subcontracting participation requirements when*
5 *possible*, for each such Contract, where appropriate, based on the following factors:

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

8 (2) The availability *and capacity* of LBE Subcontractors certified to provide goods
9 and services required under the scope of the proposed Contract.

10 Except where the Director determines there are not sufficient Small and Micro-
11 LBEs available to perform the subcontracting opportunities presented by the scope of the
12 proposed Contract, Bidders must list and use only Small and Micro-LBEs to satisfy the LBE
13 subcontracting participation requirement set by the Director. Where the Director determines
14 that there are not sufficient Small and Micro-LBEs available, the Director may authorize
15 Contractors to satisfy the LBE subcontractor participation requirement by using Small, Micro
16 or SBA-LBEs, or may set separate subcontractor participation requirements for Small *and*
17 *Micro-LBEs*, and *for* SBA-LBEs. For each Contract where the Director sets a LBE
18 subcontracting requirement at less than ~~twenty percent~~ 20%, the Director shall prepare a written
19 explanation of the details justifying the LBE subcontracting requirement set. The written
20 explanation shall be posted on line as soon *as* practicable.

21 (B) **Satisfaction of Good Faith Efforts Requirements.** At the time of a Bid, all
22 Bidders must meet the LBE subcontracting participation requirement set by the Director, and
23 also must conduct good faith efforts and file evidence of good faith efforts as required in
24 Sections 14B.8(D) and (E) respectively, with the following exceptions:

1 (1) If LBE subcontracting participation in the submitted Bid exceeds the LBE
2 subcontracting participation requirement set by the Director for the Contract by at least ~~thirty-~~
3 ~~five percent (35%),~~ the Bidder is excused from conducting or documenting its good faith efforts
4 as otherwise required in Sections 14B.8(D) and (E). LBE subcontracting participation shall be
5 determined in this Section 14B.8(B)(1) only, as the sum of all participation by Small and
6 Micro-LBE Prime Contractors, Small and Micro-LBE Joint Venture partners, and Small and
7 Micro-LBE Subcontractors. Participation by SBA-LBE Subcontractors shall count toward LBE
8 subcontracting participation for purposes of determining whether the Bidder is excused from
9 conducting and documenting good faith efforts only if, under Subsection 14B(8)(A), the
10 Director permitted Bidders to list SBA-LBE firms to satisfy subcontracting participation
11 requirements on the Contract.

12 (2) Where the Director has set LBE subcontracting participation requirements for
13 Public Works/Construction Contracts in an amount less than the Threshold Amount or on
14 Architect/Engineering, Professional Services, or General Services Contracts in an amount
15 less than the Minimum Competitive Amount, Bidders are not required to conduct good faith
16 efforts or to file evidence of good faith efforts as required in Sections 14B.8(D) and (E).

17 (C) **Non-responsive Bids.** Bids that do not meet the LBE subcontracting
18 participation requirements set under 14B.8(A) will be rejected as non-responsive unless the
19 Director finds that the Bidder diligently undertook all the good faith efforts required by this
20 Chapter 14B (or that the Bidder is exempt from good faith efforts requirements under Section
21 14B.8(B)) and that the failure to meet the good faith efforts requirements and/or the
22 subcontracting participation requirements resulted from an excusable error. Bidders must
23 contact a LBE before listing that LBE as a Subcontractor in the Bid. Unless an excusable error
24 is found by the Director, a Bid that fails to document compliance with this requirement will be
25 rejected as non-responsive. In addition, only LBEs that have been contacted and agreed to be

1 listed as Subcontractors shall be credited toward meeting the LBE subcontracting participation
2 requirements.

3 (D) **Good Faith Outreach.** In addition to meeting the LBE subcontracting
4 participation requirements, Bidders on (1) Public Works/Construction Contracts that equal or
5 exceed the Threshold Amount; and (2) Architect/Engineering, Professional Service, or
6 General Services Contracts that equal or exceed the Minimum Competitive Amount shall
7 undertake good faith outreach as set forth in this Section 14B.8(D) and duly promulgated
8 Rules and Regulations to select Subcontractors to meet LBE subcontracting participation
9 requirements. Except where a Contract does not include LBE subcontracting participation
10 requirements or a Bid is exempt from good faith outreach under Section 14B.8(B), Bids from
11 Bidders who fail to conduct and/or to document adequate good faith outreach steps as
12 required by this Chapter 14B and its duly promulgated Rules and Regulations shall be
13 declared non-responsive.

14 (E) **Documentation of Good Faith Outreach.** Each Bid that equals or exceeds the
15 Threshold Amount or the Minimum Competitive Amount, as applicable, shall document good
16 faith outreach and include the documentation with the Bid. Unless otherwise excused by this
17 Chapter 14B, such documentation shall include: (1) the dollar amount of each subcontract and
18 a statement of the scope of work to be performed under the subcontract; (2) the identification
19 of each subcontract awarded to an LBE and, (3) for each subcontract, copies of the
20 Subcontractor Bids submitted. Such documentation shall contain at least the Bid amount and
21 a description of the scope of work, and separately, for each subcontract, a full and complete
22 statement of the reason(s) for selection of the Subcontractor. If the reason is based on relative
23 qualifications, the statement must address the particular qualifications at issue. If the reason is
24 the Bid's respective dollar amounts, the statement must state the amounts and describe the
25 similarities and/or dissimilarities in the scope of work covered by the Bids. If no written Bids

1 were submitted by some or all of the Subcontractors who bid the job, the Bidder shall submit a
2 written statement containing (1) the amount of each oral Bid; and (2) separately, for each
3 subcontract, a full and complete statement of the reason(s) for selection of the Subcontractor.
4 Successful Bidders shall maintain the documentation described in this paragraph for three (3)
5 years following completion of the Contract.

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

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

8 (1) **Program Description.** The City and County of San Francisco, acting through
9 the City Administrator, or, in ~~his or her~~the City Administrator's discretion, as delegated to the
10 Risk Manager, intends to provide guarantees to private bonding companies and financial
11 institutions in order to induce those entities to provide required bonding and financing to
12 eligible Contractors and Subcontractors bidding on and performing City Public
13 Works/Construction Contracts, and, upon the approval of the Risk Manager and provided that funds
14 are available, projects subject to development agreements or other agreements for construction of
15 facilities where the City and County of San Francisco is partially or wholly funding the project. This
16 bonding and financial assistance program is subject to the provisions of this Section
17 14B.16(A).

18 (2) **Eligible Contracts.** The assistance described in this Section 14B.16(A) shall
19 be available for any City Public Works/Construction Contract to which this Chapter 14B
20 applies.

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

23 (a) The business may be either a prime Contractor or Subcontractor; and

24 (b) The business must be certified by the CMD as an LBE according to the
25 requirements of Section 14B.3, 14B.5, or 14B.6; and

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

- 3 (i) Bond application assistance,
- 4 (ii) Assistance in developing financial statements,
- 5 (iii) Assistance in development of a pre-bond surety profile,
- 6 (iv) Identification of internal financial control systems, and
- 7 (v) Development of accurate financial reporting tools.

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

11 (a) With respect to a surety bond, the agreement to guaranty up to ~~forty percent~~
12 ~~(40%)~~ of the face amount of the bond or \$750,000, whichever is less;

13 (b) With respect to a construction loan to be made to a Contractor or
14 Subcontractor, an agreement to guaranty up to ~~fifty percent (50%)~~ of the original principal
15 amount of the construction loan or ~~fifty percent (50%)~~ of the actual loss suffered by the
16 financial institution as a result of a loan default, whichever is less; provided that in any event
17 the City's obligations with respect to a guaranty shall not exceed \$1,000,000;

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

21 (5) **Monitoring and Enforcement.** The Risk Manager shall maintain records on
22 the use and effectiveness of this program, including but not limited to (1) the identities of the
23 businesses and bonding companies participating in this program, (2) the types and dollar
24 amounts of public work Contracts for which the program is utilized, and (3) the types and
25 dollar amounts of losses which the City is required to fund under this program. The Risk

1 Manager shall submit written reports to the Board of Supervisors every six months beginning
2 January 1, 2015, advising the Board of the status of this program and its funding capacity, and
3 an analysis of whether this program is proving to be useful and needed.

4 **(6) Contributions to the San Francisco Self-Insurance Surety Bond Fund.**

5 Subject to the budgetary and fiscal provisions of the ~~San Francisco~~ Charter, each department
6 that conducts public works or improvements under Chapter 6 of the Administrative Code shall
7 contribute annually to the San Francisco Self-Insurance Surety Bond Fund ("the Fund") an
8 amount that is set by multiplying the annual contribution rate set pursuant to Administrative
9 Code Section 10.100-317(c) times its total appropriations for capital construction and
10 improvement.

11 **(7) Annual Certification of Funds.** The Risk Manager shall seek annual

12 certification of funds from the Self Insurance Bond Fund and approval as to form of such
13 certification from the Controller and City Attorney. Such certification shall be monitored by the
14 Risk Manager to ensure the program operates within the transactional bounds of the Self
15 Insurance Bond Fund and the appropriated budget for its administration. The Risk Manager
16 will review the amount certified each fiscal year with the Controller and City Attorney, should
17 there be a call on any bond funded through the program.

18 **(8) Line of Credit; Credit Enhancement Program.** The Risk Manager is hereby

19 authorized to negotiate a line(s) of credit or any credit enhancement program(s) or financial
20 product(s) with a financial institution(s) to provide funding; the program's guaranty pool may
21 serve as collateral for any such line of credit.

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

1 (9) **Default on Guarantees.** The Director shall decertify any Contractor that
2 defaults on a loan or bond for which the City has provided a guarantee on the Contractor's
3 behalf. However, the Director may in ~~his or her~~the Director's sole discretion refrain from such
4 decertification upon a finding that the City has contributed to such default.

5 (B) **Education and Training.** The City Administrator and Director shall continue to
6 develop and strengthen existing education and training programs for LBEs and City Contract
7 awarding personnel.

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

12 (D) **Mentor-Protégé Program.**

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

19 (2) Pilot Mentor-Protégé Expansion Program. The Director shall develop and
20 implement an expansion of the Mentor-Protégé Program to better incentivize participation by prime
21 contractors in the program. This expansion program shall apply to mentor Contractors bidding on
22 Administrative Code Chapter 6 public works construction projects who the Director determines have
23 meaningfully participated in the MPP MMP for a minimum period of time not less than three months.
24 The expansion program shall provide mentor Contractors with (i) up to a 1% Bid Discount, not to
25 exceed \$300,000, provided that the Bid Discount shall not result in an LBE losing status as the

1 apparent low bidder or highest ranked proposer; and/or (ii) a waiver of the good faith outreach
2 requirements in Section 14B.8. The Director shall apply the mentor benefit in consultation with the
3 Contract Awarding Authority, and cannot combine the benefit with any other available Chapter 14B
4 preference. This pilot program shall sunset five years from the operative date of the ordinance in Board
5 File No. _____, which created the pilot program. Four years and six months after the start of the
6 pilot program, the Director shall prepare a report on the efficacy of the program to the City
7 Administrator.

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

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

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

24 (H) Pilot Trucking Program. The Director shall develop and implement a set-aside
25 utilization program for Micro-LBE certified trucking firms. This pilot program shall apply to public

1 works projects where trade subcontractors are procured under Administrative Code subsections
2 6.61(c)(5) and 6.68(c). This pilot program shall sunset five years from the operative date of the
3 Ordinance in Board File No. _____ establishing the program. Four years and six months after the
4 start of the pilot program, the Director shall prepare a report on the efficacy of the program to the City
5 Administrator.

6 * * * *

7 **SEC. 14B.22. PILOT NEIGHBORHOOD LBE PROGRAM.**

8 (a) The Director shall develop and implement a pilot neighborhood, hyper-local preference
9 program, outlined in subsections (b)-(e), to encourage participation by neighborhood businesses on
10 City public works projects located in their neighborhood.

11 (b) **Eligible Contracts.** This neighborhood LBE program shall apply to Administrative
12 Code Chapter 6 Contracts for projects located within the jurisdictional boundary of San Francisco
13 estimated to cost over \$10,000 and less than \$10,000,000. The program shall not apply to Job Order
14 Contracts (JOC), As-Needed contracts, or other contracts where no specific project location is
15 specified at the time of Bid.

16 (c) **Eligible Businesses.** The program preferences as described in subsection (d) shall be
17 available to LBEs who meet one or both of the following criteria:

18 (1) **Project Zip Code LBE.** A “Project Zip Code LBE” means a certified Small or
19 Micro-LBE whose principal place of business is located in the same zip code as the zip code in which
20 the project is located; or

21 (2) **Neighborhood LBE.** A “Neighborhood LBE” means a certified Small or Micro-LBE
22 whose principal place of business is located in the same Neighborhood as the Neighborhood in which
23 the project is located, where “Neighborhood” is defined as any one of the 11 Supervisorial Districts as
24 defined and established in the San Francisco Charter, Appendix E at time of Bid.

1 (d) Amount of Discount. Contract Awarding Authorities shall apply the following Bid
2 Discounts to eligible contracts:

3
4 (1) A 1% Discount to Bids from a Neighborhood LBE when bidding on a Contract
5 where the project is located in the same Neighborhood as the Neighborhood LBE's principal place of
6 business.

7 (2) A 1.5% Discount to Bids from a Project Zip Code LBE when bidding on a Contract
8 where the project is located in the same zip code as the Project Zip Code LBE's principal place of
9 business.

10 (3) A 0.5% Discount to Bids from any bidder if the LBE subcontracting participation in
11 the submitted Bid includes participation by Neighborhood LBEs of at least 50% of the LBE
12 subcontracting participation requirement.

13 (4) A 1.5% Discount to Bids from any bidder if the LBE subcontracting participation in
14 the submitted Bid includes participation by Zip Code LBEs of at least 50% of the LBE subcontracting
15 participation requirement.

16 (e) The Discounts provided under this Section 14B.22 shall be combined with each other
17 and/or any other Discounts authorized under this Chapter 14B, except that a bidder cannot receive
18 cumulative Discounts based on either (1) and LBE's status as both a Neighborhood LBE and Project
19 Zip Code LBE simultaneously or (2) a bid that includes LBE subcontracting participation by both
20 Neighborhood LBEs and Project Zip Code LBEs. Contract Awarding Authorities shall apply these
21 Discounts to each evaluation stage of the selection process, as applicable.

22 (f) Final Report. Four years and six months after the start of the pilot program, the Director
23 shall submit a report on the efficacy of the program to the City Administrator.

24 (g) This program shall sunset five years from the operative date of the ordinance in Board File
25 No. _____, which created the pilot program.

1
2 Section 2. Chapter 6 of the Administrative Code is hereby amended by revising
3 Sections 6.1 and 6.40, to read as follows:

4 **SEC. 6.1. DEFINITIONS.**

5 * * * *

6 **Threshold Amount.** The Threshold Amount, for the purposes of this Chapter, is
7 ~~\$600,000~~1,000,000. For every five-year period starting with January 1, 2020-December 31, 2024, the
8 Controller shall recalculate the Threshold Amount to reflect any proportional increase in the Urban
9 Regional Consumer Price Index from January 1, 2020, rounded to the nearest \$10,000. The Threshold
10 Amount as recalculated by the Controller shall take effect by operation of law on January 1 of the first
11 year of the next five-year period (thus, for example, on January 1, 2025 following the five-year period
12 ending December 31, 2024). On January 1, 2020, and every five years thereafter, the Controller shall
13 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
14 Consumer Price Index from January 1, 2015, rounded to the nearest \$1,000.

15 * * * *

16 **SEC. 6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR**
17 **PUBLIC WORK PROJECTS.**

18 Notwithstanding any other provision of this Administrative Code, when a department
19 is seeking outside temporary professional design, consultant, or Construction Management
20 services for a Public Work or Improvement project, where the fee for such services shall
21 exceed the Minimum Competitive Amount, as defined below, the department shall procure
22 such services through a competitive process based primarily on qualifications.

23 (a) **Minimum Competitive Amount.** The Minimum Competitive Amount for
24 temporary outside professional service Contracts shall be ~~\$110,000~~200,000. For every five-year
25 period starting with January 1, 2020-December 31, 2024, the Controller shall recalculate the Minimum

1 Competitive Amount to reflect any proportional increase in the Urban Regional Consumer Price Index
2 from January 1, 2020, rounded to the nearest \$10,000. The Minimum Competitive Amount as
3 recalculated by the Controller shall take effect by operation of law on January 1 of the first year of the
4 next five-year period (thus, for example, on January 1, 2025 following the five-year period ending
5 December 31, 2024).~~On January 1, 2020, and every 5 years thereafter, the Controller shall recalculate~~
6 ~~the Minimum Competitive Amount to reflect any proportional increase in the Urban Regional~~
7 ~~Consumer Price Index from January 1, 2015, rounded to the nearest \$1,000.~~

8 Section 3. Chapter 21 of the Administrative Code is hereby amended by revising
9 Section 21.02 to read as follows:

10 **SEC. 21.02. DEFINITIONS.**

11 * * * *

12 "Minimum Competitive Amount" shall mean (i) for the procurement of Commodities and
13 Professional Services, the "Minimum Competitive Amount" as defined in Section 6.40(a) of
14 the Administrative Code, which shall be ~~\$110,000~~200,000 and (ii) for the procurement of
15 General Services, an amount equivalent to the "Threshold Amount" as defined in Section 6.1
16 of the Administrative Code which shall be ~~\$600,000~~1,000,000, provided that for every five-year
17 period starting with January 1, 2020-December 31, 2024, the Controller shall recalculate the Minimum
18 Competitive Amount (and the Threshold Amount from which the Minimum Competitive Amount for
19 General Services is calculated) to reflect any proportional increase in the Urban Regional Consumer
20 Price Index from January 1, 2020, rounded to the nearest \$10,000. The Minimum Competitive Amount
21 as recalculated by the Controller shall take effect by operation of law on January 1 of the first year of
22 the next five-year period (thus, for example, on January 1, 2025 following the five-year period ending
23 December 31, 2024)~~on January 1, 2020 and every five years thereafter, the Controller shall recalculate~~
24 ~~the Minimum Competitive Amount (and the Threshold Amount from which the Minimum Competitive~~

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City and County of San Francisco

Tails Ordinance

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

File Number: 210835

Date Passed: November 02, 2021

Ordinance amending the Administrative Code to revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B) to: 1) increase the LBE certification size thresholds and authorize an automatic increase to the thresholds every five years based on the consumer price index; 2) change the LBE certification size threshold term of calculation from an average of gross annual receipts in the prior three to the prior five years; 3) increase penalties for violations of Chapter 14B from up to 10% to up to 25% of the contract or subcontract amount; 4) require prime contractors to include LBE subcontractors' approved payment requests in payment applications within 30 days of receipt of an invoice; 5) authorize application of separate LBE subcontract participation requirements for micro, small, and SBA-LBEs; 6) extend the bonding assistance program to certain City-funded construction projects; 7) authorize a pilot Mentor-Protégé expansion program, a pilot micro-LBE set-aside program for certain design-build and construction manager/general contractor projects, and a pilot Neighborhood LBE program; and 8) increase the contracting Threshold Amount from \$706,000 to \$1,000,000 and the Minimum Competitive Amount from \$129,000 to \$200,000; and make various other changes and clarifications to Chapter 14B, as defined herein.

October 18, 2021 Rules Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 18, 2021 Rules Committee - DUPLICATED

October 18, 2021 Rules Committee - RECOMMENDED AS AMENDED

October 26, 2021 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

November 02, 2021 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 210835

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/2/2021 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



London N. Breed
Mayor



Date Approved