

# COMMUNITY OUTREACH REPORT

JUNE 30, 2014



SAN FRANCISCO'S LOCAL BUSINESS ENTERPRISE  
**CHAPTER 14B ORDINANCE**

# Table of Contents

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- 4 | Executive Summary
- 8 | Evolution of the Chapter 14B  
LBE Program
- 10 | Methodology
- 16 | Findings & Recommendations
- 48 | Appendices
  - 50 | Online Survey Results
  - 84 | Community Letters
  - 96 | City Departments Workshop Results
  - 100 | Community Workshop Results
  - 110 | Stakeholder Directory





# Executive Summary



The goal of the Chapter 14B Local Business Enterprise Ordinance (LBE) is to maximize opportunities for local small businesses to compete for city contracts and prohibit discrimination in the award and administration of city contracts. Chapter 14B achieves these goals by implementing established policies – such as bid discounts and rating bonuses for small local businesses on public contracts – setting contracting goals, and setting aside certain public contracts for micro-local businesses.

The recent transfer of the 14B program from the Human Rights Commission (HRC) to the Contract Monitoring Division (CMD) presents a unique opportunity.

With the transition of management to CMD and oversight by the City Administrator's Office, there is a window to improve the program, survey the current business and economic climate, and implement changes to reflect the current business conditions in the City and County of San Francisco. The opportunity to update the legislation has only occurred twice before in the 50-year history of the program.

To gather input from the small business community about the 14B program, D&A devised a two-pronged, concurrent approach coupling community workshops with an online survey instrument. D&A held one workshop with the City staff responsible for contracting and four community workshops throughout the City with the LBE community, followed by an online survey distributed to more than 1,900 small business owners.

With this approach, D&A emphasized getting the most from these engagements in order to present honest, unfiltered, and truthful findings to reflect the current LBE landscape, how the LBE ordinance is affecting the community, and what changes to the ordinance could be made to ensure that small businesses can continue to operate and have a level playing field when bidding on City contracts in San Francisco.

This report describes our outreach, engagement, and data gathering process in great detail. It also presents the findings and recommendations for improving the legislation, administrative policies, and functional processes needed to implement these changes.

Findings contained in this report are not intended to be the definitive study on the effectiveness of the 14B program. Instead they represent a starting point of what we expect will be the transformation of current policies and programs to a more inclusive, capacity-building, opportunity-making program that maximizes contract opportunities for more of San Francisco's small businesses. Additional analysis and information is needed in order to make informed decisions about the impact and feasibility of the recommendations presented herein. While this outreach effort captured issues surrounding many key elements in the ordinance, this is really only the beginning of the process for evaluating needed changes to the ordinance and administrative aspects to be implemented. In other words, it would not be prudent to act on the preliminary recommendations made in this report or from any other source without a clear understanding of the impacts. That would simply be a "rush to failure." Moving forward without further examination runs the risk of implementing changes that could worsen conditions for LBEs, which certainly is not the intent of the City. Instead, we recommend that a careful deliberate process be launched that takes what we have started here and expands on it to achieve the desired results.

### Findings are organized into seven broad finding areas:

#### Finding Area 1: [Impact and Value of Chapter 14B LBE Contracting Program](#)

This section highlights that the LBE community benefits from participation in the Chapter 14B LBE Contracting Program and values the efforts of CMD and City Department staff. It points to the need for more evaluation and capacity building for the program and for increased resources to support the program objectives.

#### Finding Area 2: [Increase Contract Opportunities for LBEs](#)

This section contains feedback from LBEs on program areas that pertain to the overall availability of contracts for LBEs. These include goals for LBE contracting opportunities, waivers, LBE availability, leases and concessions/ grants/ public private developments, and design build contracts.

#### Finding Area 3: [Secure and Build the Pool of Eligible LBEs](#)

Currently, the ordinance does not feature a specific anti-retaliation process, and relies on the City's whistleblower program. There is a need to identify a specific reporting mechanism for the LBE program and a separate process for anti-retaliation.

#### Finding Area 4: [Executive Oversight, Transparency, and Enforcement](#)

This finding area reflects the LBE community's keen interest in seeing more oversight, enforcement, and transparency in the Chapter 14B LBE Contracting Program. LBE feedback examines the need for an oversight function to resolve disputes, increased transparency around decision-making processes with regard to waivers, an anonymous anti-retaliation mechanism, and increased surveillance of non-utilization of LBEs.

#### Finding Area 5: [Clarify LBE Criteria in Legislation \(Place of Business, Common Ownership, Joint Venture\)](#)

This finding area summarizes input from LBEs on specific aspects of LBE criteria as defined in the Chapter 14B legislation. These include the Place of Business, Common Ownership, and Joint Venture provisions of the ordinance.

#### Finding Area 6: [Improvements to Program Operation](#)

This finding area contains LBEs' feedback on improvements to core program processes. These include the LBE database, LBE certification process, procurement standardization, prompt payment, and contracting.

#### Finding Area 7: [Training and Education to Build Capacity](#)

This finding area describes the need for increased funding, training, and education for CMD and Department staff in administering the Chapter 14B LBE Contracting Program, and the need to support LBEs in participating in the program successfully.



# Evolution of the Chapter 14B LBE Program

San Francisco small businesses play an important role in the vibrancy and health of the City. They contribute millions of dollars to our economy every year. Historically, local small businesses have been at a competitive disadvantage and have had an increasingly hard time competing with larger firms to win public contracts.

In July of 1964, legislation was passed creating an ordinance formally establishing the City's Human Rights Commission (HRC). The HRC successfully advocated, developed, and implemented landmark legislation that promoted equal economic opportunity and public accommodations by public agencies for all citizens in San Francisco.

In 1984, the Board of Supervisors enacted the City's Minority, Women, and Local Business Enterprise (LBE) Utilization Ordinance to combat discrimination against minority- and women-owned businesses.

In 1996, California Proposition 209 was approved, which prohibited government agencies from using race or gender as a means to award contracts. This proposition made it more difficult for women and minorities to successfully compete for public contracts, and as a result, small businesses have been negatively impacted.

In 2004, the San Francisco Superior Court ruled that under Proposition 209, the City was prohibited from addressing discrimination in public contracting through the use of ethnicity- and gender-based bid preferences. As a result in 2006, a replacement to the 1984 LBE ordinance, Chapter 14B of the San Francisco Administrative Code, the LBE and Non-Discrimination in Contracting Ordinance, was adopted by the Board of Supervisors. This revised Ordinance, coupled with the court ruling for a race- and gender-neutral Local Business Enterprise (LBE) program, had a negative effect of limiting and thereby reducing contract opportunities for many LBEs.

In 2012, the Board of Supervisors transferred the oversight and administration of the contracting portion of Chapter 14B from the HRC to the Office of the City Administrator under a new division called the Contract Monitoring Division (CMD). As part of the transfer of function, the legislation needs to be updated to reflect current roles and the economic climate in San Francisco.





# Methodology



Objectives

In April 2014, the Office of the City Administrator announced its vision to engage the business community in San Francisco in a conversation about the administrative and legislative aspects of the Chapter 14B LBE program. D&A Communications responded to the request for proposals and was selected through a competitive bid process to provide community engagement, survey, and facilitation services. Over a three-month period, D&A was tasked to develop and implement a community outreach plan to help inform this vision. The primary objective of this effort was to gather information from the LBE community about how they experience administrative and legislative aspects of the program and to present this input to CMD.

To meet this objective, D&A Communications developed an engagement strategy to reach and gather feedback from a large cross-section of small businesses and other key stakeholders, including certified LBEs, non-LBEs, City vendors, City departments, and over 100 community organizations, throughout the City and County of San Francisco. Additionally, we designed an engagement strategy to encourage input and feedback during workshop sessions and hosted the workshops in facilities throughout the City. This approach is discussed below.

Outreach Methods

The strategy for capturing input from the LBE community on the Chapter 14B program was to gather both quantitative and qualitative information to surface significant areas of concern and improvement. Outreach and engagement activities included:

- › A kick-off meeting with Mayor Ed Lee, City Administrator Naomi Kelly, and key stakeholders. Meeting was held at City Hall on April 29, 2014, to inform key stakeholders about the community engagement process
- › Designed and launched a website featuring a calendar of engagement opportunities, information, and links to workshops and an online survey
- › Conducted a robust outreach program, including sending out a total of five emails for workshops to 2,000 contacts each time. In addition, we conducted phone outreach to over 100 businesses and organizations for each stage of the engagement process
- › Produced and sent out mailers to community organizations, vendors, and certified LBEs announcing workshops to a total of 3,700 people and delivered 1,000 workshop flyers to community organizations throughout the City
- › Developed, coordinated, and facilitated four community workshops and one workshop with City Agencies
- › Designed a 36-question online survey
- › Tracked all comments and forms of input

City Departments Workshop

D&A Communications identified the primary inquiry areas for this outreach and engagement strategy in collaboration with CMD and the City Administrator’s Office. Additional areas of inquiry grew organically out of LBE and City Department staff participation in workshops and survey responses. Following is a description of each of the core data gathering elements of the outreach and engagement strategy:

City Departments Workshop

One workshop with City departments was conducted on May 29, 2014. A total of 18 City staff representing nine departments attended. The workshop served as an opportunity for department staff responsible for contracting to discuss Chapter 14B and their experience with implementation, and to make recommendations for updates. We utilized a large group format with breakout sessions. This allowed participants to cover a large number of topics and to create a richer dialogue through sharing in smaller groups, while utilizing the large group discussions to identify commonalities. Additionally, by grouping participants with a balanced mix of seasoned contract administrators and staff who have limited experience with Chapter 14B, we created the opportunity for staff to learn from each other, and to expand their perspective.

Community Workshops

Four community workshops took place throughout the City. A total of 71 people attended. The community workshops were essentially focus groups, with an average of 10-15 individuals at each. While facilitators assisted in identifying topics, the specific interests of the attendees at each workshop drove the content and discussion topics.

June 2, 2014 Bayview	June 11, 2014 Mission	June 18, 2014 Civic Center	June 20, 2014 Sunset
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During each workshop, all discussions were captured via charting. Each group had the opportunity to confirm feedback during a wrap-up session as well as by submitting anonymous comments via a comment box.

A full list of participating City departments, workshop attendees and notes can be found in the **Appendix**.

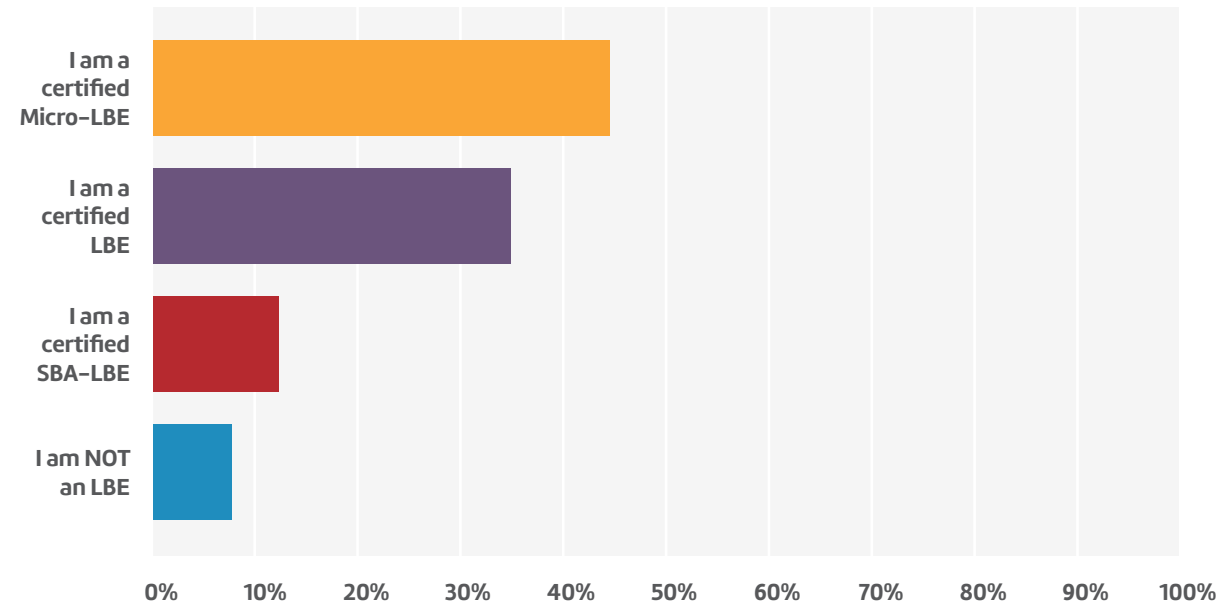
Online Survey

An anonymous online survey was developed and launched on the website on June 12, 2014. It was sent to approximately 2,000 people including registered Local Business Enterprises (LBE), Micro-LBEs, and SBA-LBEs; City and County of San Francisco vendors; and organizations and key individuals informing them of the online survey and providing the link to the survey website. To increase the response rate, business organizations were asked to reach out to their networks to participate. Notices to stakeholders were sent out on June 12th, 19th, 26th and July 1st to encourage participation.

During the approximately three-week period the survey website was active, 300 people completed the survey.

The survey featured 36 questions. Question types included multiple choice, dichotomous, rating scales, and open-ended. The survey began with simple questions to establish the respondents’ participation in the LBE program to more complex questions, which required knowledge of specific aspects of the Chapter 14B Local Business Enterprise ordinance, and their implications for program participants.

70% of the survey respondent pool indicated they had owned their businesses for more than 10 years; half of these have been certified LBEs for 10 or more years. 92% of respondents identified themselves as LBEs; the majority of these (44.6%) were Micro-LBEs, followed by LBEs (34.8%) and then by SBA-LBEs (12.5%), with 8% of those who answered this question indicating they were not LBEs.



While the majority of respondents, approximately 68%, have acted as subcontractors on City Contracts in the past three years, a significant portion of respondents, approximately 48%, had acted as prime contractors on city contracts. A substantial segment of respondents had performed in both capacities on City contracts at different times. Approximately 33% of respondents indicated that 30% or more of their business income was generated from work as an LBE; while 21.4% indicated that more than 50% of their business revenue was generated through work as an LBE.

**Community Letters**

In addition to the outreach we conducted, we also received feedback from three important small business community groups who provided a larger viewpoint of the ordinance from their respective organizations. Input included letters from the Council of Asian American Business Associations, Association of Asian American Attorney and CPA Firms, and the Coalition for Economic Equity.

Feedback collected as a result of the workshops, letters, and online survey are included as findings and recommendations in the remainder of this report.

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## Findings & Recommendations

# Findings Overview

Findings are organized into seven broad finding areas:

1. **Impact & Value of Chapter 14B LBE Contracting Program**
2. **Increase Contract Opportunities for LBEs**
3. **Secure & Build the Pool of Eligible LBEs**
4. **Executive Oversight, Transparency, & Enforcement**
5. **Clarify LBE Criteria in Legislation  
(Place of Business, Common Ownership, Joint Venture)**
6. **Improvements to Program Operation**
7. **Training & Education to Build Capacity**

Each of these is organized into a background discussion to understand baseline conditions—a discussion of feedback and responses gathered from outreach to the LBE community.

Many of the participants in the workshops were unfamiliar with specific language in the ordinance. They were, however, able to clearly articulate specific challenges and recommendations. In an order to assist in organizing the conversation, D&A categorized their feedback mapping back to specific sections of the ordinance. For example, if a workshop participant stated that their greatest challenge is getting paid within a reasonable amount of time from the prime, then we assigned that comment to prompt payment.

We trust this report and our findings will assist the City with identifying key areas for legislative improvements to the Chapter 14B Local Business Enterprise ordinance and to administrative aspects of the program, as they continue to provide benefits to local small businesses who contract with the City and County of San Francisco.



## Finding Area 1: Impact & Value of The Chapter 14B LBE Contracting Program

**Background** The intent of the Chapter 14B Ordinance is to address disparate access to economic opportunity and level the playing field for local businesses by increasing access to economic opportunities and building the capacity of local businesses to apply for, win, and execute City contracts.

According to CMD's FY 2012/2013 annual report, the CMD oversaw the award of over \$413M in formal contract awards at the Airport, Department of Public Works, Port, Public Utilities, and Recreation and Parks Department. Of these, \$160M (or 39%) were awarded to LBEs as prime contractors and \$82M (or 21%) were awarded to LBEs as subcontractors for a total of \$240M (or 60%) of formal contracts awarded to San Francisco LBEs from the City's five largest contracting agencies. There are currently over 1,400 firms actively certified by the Contract Monitoring Division in over 270 unique certification categories.

**Discussion** That the LBE community experience positive returns from participating in the program is a clear finding from this outreach and engagement process.

64% of survey respondents agreed that the LBE ordinance was helpful to their business, with 34% indicating strong agreement with this statement. The statement "The LBE ordinance has provided my company access to city contracts" was also well met by survey respondents, with 64% again in agreement or strong agreement. 47% of respondents indicated that a significant portion of their business revenue is generated from participation in the LBE program, with 21% of survey respondents attributing more than 50% of their business revenue and 26% of respondents attributing 16–30% of their revenue to Chapter 14B contracts.

This data demonstrates that the Chapter 14B program is valued by the LBE community and is impactful in providing contract opportunities to LBEs. In addition, LBEs expressed appreciation for city staff that are committed to the LBE program, to supporting LBEs, and to shepherding new businesses through the LBE certification process.

92% of survey respondents identified themselves as LBEs. Approximately 70% of this pool had acted as subcontractors in City contracts. Approximately 50% of the pool had served as prime contractors. Within these designations, the largest segment of respondents indicated that they had worked on 1 to 3 contracts over the last three years, 28% as subcontractors and 27% as primes. 21% of subcontractors and 10% of prime contractors had held 3 to 5 City contracts over the last 3 years. 7.7% of subcontractors and 5.3% of primes held 6 to 9 City contracts over the past 3 years. A small segment of both categories had held more than 10 City contracts, 11% and 7.45% for subcontractors and primes, respectively.

A preliminary picture painted by this data is that a small group of LBEs are positioned to win and execute 10 or more City contracts as either prime or subcontractor, with a much larger group competing for, winning, and executing 5 or fewer contracts over three years. Additionally, few LBEs tend to win contracts consistently; another trend that bears further exploration when examining program outcomes and barriers to participation in the program.

Furthermore, it is important to note that while LBEs perceive CMD as an important City agency that provides a valuable service within the City Administrator's Office, it is also understood to be understaffed and under-resourced. Most LBEs felt that the Chapter 14B program in its totality could be standardized, better enforced, more business friendly, and be modernized using technology to improve processes.

An in-depth evaluation of the program would further explore this finding area to examine how well and to what extent the execution of the ordinance is fulfilling its original intent and purpose: to buttress a significant sector of our local economy and to build capacity of LBEs in order to address systemic structural discrimination and exclusion.

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- Recommendations**
- › Allocate a percentage of all contract dollars to CMD for training and enforcement to resource current program operation adequately, which would give CMD more authority.
  - › Allocate funds to support additional research and evaluation on a regular basis to inform administrative changes, and in advance of any legislative changes to the ordinance.
  - › Perform a thorough evaluation of the program to examine how well and to what extent the execution of the ordinance is fulfilling its original intent and purpose. Primary inquiries and data collection strategies should be designed to address these questions: What percentage of all city contracts – both those to which Chapter 14B provisions are applied and all others – are bid, won, and executed by LBEs (micros, MBEs [by race/ethnicity], WBEs, and OBEs); City department performance – to what extent does participation in the program provide meaningful opportunities to LBEs; and what are barriers to entering and participating in the program.

## Finding Area 2: Increase Contract Opportunities for LBES

### Goals for LBE Contracting Opportunities

**Background** Section 14B.8.A of the ordinance specifies that the Director shall set LBE subcontracting participation goals for each such Contract, where appropriate, based on the following factors: the extent of subcontracting opportunities presented by the Contract; and the availability of Small and Micro-LBE Subcontractors certified to provide goods. Section 14B.1.c -1 of Chapter 14B states that the Mayor shall establish citywide goals for participation by small and micro local businesses in contracting. Yet efforts are made unevenly across city departments to meet LBE contracting goals, which results in diminished LBE capture of City contract dollars.

**Discussion** Qualitative data gathered from LBE community workshops and formal recommendations from key LBE stakeholders indicate a need to revisit, concretize, and expand goals for LBE contracting opportunities, both across City departments and agencies, and on all City contracts. Goal-setting reaffirms the City's commitment to providing citywide contracting opportunities for LBES and sets an enduring precedent to weather changes in political administration and managerial oversight of the LBE program.

**Citywide Goal:** While key stakeholders indicated that a higher level of citywide goal should be set, there was no consensus from the LBE community about what level to set as a citywide goal or a strategy to attain this goal. Recommendations around goal setting were to: survey other major agencies' and cities' goal setting protocol to assess the need for flexibility depending on the project and tied to industries utilized in a given contract; and to unbundle contracts to afford more contracting opportunities to LBES. Setting an aspirational goal would reaffirm the City's commitment to providing citywide contracting opportunities for LBES. Goal-setting should be consistent across city departments and set at the same level for similar types of services regardless of the issuing department. LBES were in agreement that a higher level of citywide goal would be attainable based on recent contract reports. The CMD should assess and evaluate past sub-contracting performance to establish a baseline and test the viability of potential changes before instituting citywide goals.

**Department Goals:** 34% of respondents to the question, "What percentage of LBE utilization should be required by each city agency?" indicated a 20-30% utilization goal, followed by 26% indicating a 30-40% utilization goal; 24% indicating a 15-20% utilization goal; and finally 17% of question respondents who felt an LBE utilization goal of more than 50% was appropriate. Qualitative comments from workshop participants and survey respondents clustered around three recommendations: Goals set for City departments should be tied to how tasks are organized within a project scope/solicitation; goal setting should be consistent across city departments and set at the same level for similar types of services regardless of the issuing department; and goal setting should be on a sliding scale with higher contract amounts having a higher LBE participation goal.

Key stakeholders submitted recommendations for ways that Departments could meet their LBE contracting goals. These included setting minimum LBE contracting goals on each contract, the development of a San Francisco First Program, supporting construction contracts under a specific threshold amount (\$400k), and professional services, general services, and departments considering LBES first to perform work. These strategies effectively target small contracts that fall below the threshold for informal and formal contracts criteria to which Chapter 14B provisions are applicable.

**Goal Setting Based on Availability:** While 36% of respondents indicated strong agreement with the statement, "The LBE goals seem appropriate for the contracts I have worked on or bid for," 31% indicated they disagreed or strongly disagreed with this statement.

A concern was highlighted about the current practice of setting LBE goals based on the number of firms certified in a given category – the greater number of firms in a category, the higher the LBE goal. This approach was thought to lead to many firms being excluded from contracts if they are in a larger LBE category because a prime could achieve its LBE goal with one firm rather than having to subcontract work to several firms. Another outcome is that categories in which there are only one or a few firms have such a low volume of work offered to them that they don't perceive it to be worth competing for. Additionally, if goals are always narrowly-set based on current availability, then there is no sense of forward movement – there is no effort to actively grow LBE participation, simply falling in line with current availability.

- Recommendations**
- Assess and evaluate past LBE contracts to a baseline and test the viability of potential changes before instituting citywide and department goals.
  - Survey other major agencies' and cities' goal setting protocol; Caltrans, the City of Oakland and Federal programs were specifically mentioned.
  - Provide training or assistance to departments to help them structure contracts to afford more opportunities for LBES.
  - Develop expertise in CMD staff about the industries/services that the City seeks to contract: construction and professional services especially. Train CMD staff on how to break down a scope of work for potential subcontracting opportunities.
  - City department Project Managers should be held accountable to break down the scope of work during the RFP process, so it is clear what their needs are. This would assist the Primes in identifying LBES for areas of the scope, and having a clearly defined need for them during the project.
  - The City should review the feasibility of departments setting goals based on a sliding scale either by department or contract size.
  - Set up an award and incentive program to assist the City in celebrating the agency meeting citywide and agency wide goals. Increase incentives for discovering and creating opportunities for LBES.



Waiver Process

**Background** Under certain circumstances, City departments may request that the CMD Director waive the LBE subcontracting goal for a particular contract. These circumstances include: Sole Source Waivers under Section 14B.7(J)(1) of the 14B Ordinance; Emergency Waivers under Section 14B.7(J)(2); and LBE Subcontracting Goal Waivers under Section 14B.8(A) of the 14B Ordinance. In FY 2012/13, the CMD approved 208 requests to waive the 14B Ordinance. Of the 208 14B waiver requests received, the type of 14B Ordinance waiver requests received can be broken down by count as follows: 10 (5%) were emergency waivers; 61 (30%) were subcontracting waivers; and 135 (65%) were sole source waivers.

**Discussion** Feedback from community workshops reflected a concern about lost contracting opportunities due to the waiver program. Recommendations from the LBE community were made in these areas:

- 1. Increased transparency and public oversight of waiver process, including posting/publishing intent to award waiver, with a mandated waiting and objection period.
- 2. Examine the practice of granting mid-project waivers, whereby the Prime or the City decides to perform work originally proposed to be subcontracted to a certified LBE.
- 3. Especially when a sole source or non-LBE waiver is granted, require or add incentives into the contract to incorporate LBEs into the work in order to build future LBE capacity in a given area where there is currently little or no LBE businesses.

- Recommendations**
- › Mandate that once the City department awards a contract, it cannot renege on its commitment to accept the proposed subcontracting plan submitted by the prime. Both the department and the prime must honor their commitment to the proposal and ensure the certified LBE gets the volume and quality of meaningful work it was promised.
  - › Have an open and transparent waiver process that allows for review and response from the LBE community, and potentially post waiver requests on the City’s website.
  - › Especially when a sole source or non-LBE waiver is granted, require or add incentives into the contract to incorporate LBEs into the work in order to build future LBE capacity in a given area where there is currently little or no LBE businesses.

LBE Availability

**Background** LBE availability, or the presence of certified LBEs in a given category, is used to identify and assemble work that is likely to be subcontracted to LBEs in contracts per Section 14B.9.B of the Chapter 14B Ordinance. LBE availability affects LBE contract goals and is linked to the frequency with which waivers are issued.

**Discussion** Survey respondents indicated that the great bulk of their work had come from the Department of Public Works, the Public Utilities Commission, San Francisco Airport, Recreation and Parks, and the Port of San Francisco, which is in keeping with information from CMD. It can be presumed that most of these contracts were in the building and construction trades and professional services. About 47% of the respondents indicated they were certified in these categories. The remainder, 50%, were certified in other categories. It is not surprising that when asked in which LBE categories would they like to see increased availability, 55% of respondents indicated they would like to see increased availability in categories other than building- and construction-related trades and professional services. This initial data points to a potential area of disconnect between the kind of work contained in the majority of available contracts and the certification categories of a significant portion of the pool of LBEs.

City staff who participated in community workshops made these recommendations to help align and expand contracting opportunities with availability: city staff should outreach to and engage with small businesses to encourage them to enter the LBE program; city departments along with CMD should be held accountable to identify more opportunities for contracting; the categories a business can be certified in should be reviewed and streamlined; ensure the categories for LBEs are up to date as it impacts availability and goal setting. It was also suggested that availability not be the sole criteria by which CMD set contracting goals. The City can use this as an opportunity to explore further ways to expand availability and set more aggressive goals.

- Recommendations**
- › Conduct in-depth analysis of the City’s contracting history and pool of LBEs to understand to what extent contracting opportunities are aligned with LBE certification categories.
  - › Explore ways to increase alignment between certification categories and LBE certification categories. With more availability and a dedicated effort to break down and find more contracting opportunities for LBEs, more contracts can be set-aside ensuring that a higher number of LBEs are eligible to compete for and possibly win contracts, instead of a small number of successful LBEs.
  - › Increase City Departments’ understanding of and participation in maximizing LBE availability with contract opportunities. Build capacity in the area of unbundling contracts to increase LBE contract participation.
  - › Develop strategies for actively reaching out and engaging small businesses to become certified. Increase opportunities for participation from potential LBEs by creating tools and resources on how to access the program, such as online video tutorials for becoming a City vendor and peer mentoring groups.

Leases & Concessions/Grants/Public Private Developments

**Background** In the award of leases, franchises, concessions, and other Contracts not currently subject to the Discount provisions of this Ordinance, Contract Awarding Authorities shall utilize the good faith efforts steps unless impracticable to do so. At a minimum, Contract Awarding Authorities should notify LBES that are certified to perform the work contemplated in a Contract and solicit their interest in the Contract. (Section 14B.7.B)

**Discussion** Key stakeholder recommendations and comments from workshop participants reflect an interest in expanding applicability of Section 14B beyond good faith efforts in outreach to LBES and to Leases, Concessions, and Public/Private Contracts deployed for city-sponsored events and/or developments on city land or requiring city approval. If the City wants to expand opportunities for LBES, then it should look to different types of contracting that are prevalent throughout the City but currently not covered by 14B.

**Recommendations** > Quantify total contract dollars in the Leases, Concessions, and Public/Private Contracts categories; assess LBE contractor presence in these categories; and incorporate preferences for LBES into these categories of contracts where opportunities are currently being lost.

Design/Build Contracts

**Background** Currently LBES can be excluded from the opportunity to compete for work in the preconstruction phase because, in most instances, the primes can/will meet its LBE goals in the construction phase. This is good for construction trades, but not for professional service businesses. As a result, there is little access to contracts for LBES whose skills would be utilized in the preconstruction phase.

**Discussion** There was strong agreement in qualitative data and recommendations from key stakeholders that LBE contracting goals should be set in such a way so as to increase utilization throughout the entire process, rather than focusing LBE utilization in the construction phase only. Recommendations are centered on setting targets for the design phase (architecture, engineering, et cetera) in addition to construction phases in order to ensure that LBES are capturing contracts in both phases/areas of work.

**Recommendations** > On design build contracts, LBE contracting goals should be set in such a way so as to increase utilization throughout the entire process, rather than focusing LBE utilization in the construction phase only; set separate LBE goals for each phase of the project to account for the separation of certifications and specialties of LBES; review the feasibility of setting separate goals for professional services, construction and suppliers; set larger percentages in each of these categories to allow LBES to gain greater access to a higher percentage of design/build contracts and to build capacity in areas outside of construction.



Finding Area 3: Build & Secure the Pool of Eligible LBES

Good Faith Efforts

**Background** Pursuant to Section 14B.8(D) of the Ordinance, in addition to meeting the LBE subcontracting goal, both the City and Prime contractors shall undertake adequate good faith efforts to LBE subcontractors. Good faith efforts include specific outreach elements, the intents of which are to provide for comprehensive outreach to a range of LBEs and to make new connections between Prime and LBE contractors. Good faith efforts are intended to increase LBE contracting opportunities, to build LBE relationships with Prime contractors, and to strengthen the pipeline of experienced LBEs eligible to bid on City contracts.

**Discussion** Feedback from the LBE community was focused on prime contractor good faith efforts required as part of the contracting process rather than City practices. Survey respondents and workshop participants commented on the effectiveness of good faith outreach strategies and to what extent these result in fostering growth in the LBE program through developing Prime/LBE contracting relationships.

On outreach strategies, feedback from outreach to LBEs indicated that print forms of outreach are outmoded, the City website and mobile communication devices (i.e. text message or cell phone application) should be utilized; contract advertisements should be centralized rather than distributed; and pre-bid gatherings were thought to be useful opportunities for Primes to connect with LBEs.

On effectiveness in fostering Prime/LBE relationships and contracting opportunities for LBEs, feedback from outreach to LBEs points to the need to examine outcomes from good faith efforts. To what extent do good faith efforts result in new Prime/LBE partnerships or connect LBEs with new subcontracting opportunities? One participant noted that utilizing established relationships is a good thing, as it reduces potential risk and cost to the City. Are there other more effective ways to support and build new LBE/Prime contracting relationships and cultivate new LBEs subcontractors? It was proposed in comments from survey respondents, workshop participants, and City Departments that the program noted that good faith outreach efforts are cumbersome for Prime LBEs; it was recommended that the program keep the provision that if a 35% LBE subcontracting goal is met, then the good faith effort requirement should be waived.

- Recommendations**
- › In the context of a larger program evaluation for the Chapter 14B program, examine effectiveness of good faith efforts conducted by prime contractors with regards to notifying LBEs of subcontractor opportunities and connecting LBE subcontractors with Prime contractors. Special attention should be paid to the question: to what extent are new relationships built between Primes and LBE subcontractors using good faith efforts, and what are other potential strategies for developing new relationships to broaden LBE utilization in City contracting?
  - › Consider a system that rewards a Prime that meets 35%+ of its LBE goal AND has subcontracted work to a firm it has not partnered with in the past by waiving the good faith effort requirement. Or, in the same vein, consider offering the prime contractor other incentives for utilizing subcontractors that the prime has not partnered with on past contracts.
  - › Include a new provision in the ordinance that requires prime contractors to initiate outreach notifications to certified LBE firms one month in advance if a contract has been announced 45 days before it is due.
  - › Review current communications strategies associated with the RFP process. Consider adding an app or text message notification as part of the RFP release to increase targeted outreach to LBEs in line with current technology use. Consider developing and circulating a monthly updated schedule or a monthly e-newsletter announcing upcoming RFP/RFQs, pre-bid conferences within the next 90 days. Consider centralizing solicitations on the city website rather than distributing them.
  - › Expand and create additional meaningful forums for primes and LBEs to connect and network, such as in city-sponsored, pre-bid, matchmaking events and other LBE contractor outreach initiatives.

### Economic Thresholds for LBE Certification

**Background** Current economic thresholds for certification of Small LBEs, Micro-LBEs, and SBA-LBEs were set in 2011, as part of defining criteria for eligibility. This economic threshold stratification fosters a continuum of LBEs from smaller to larger businesses that have access to contracting opportunities under the Chapter 14B Contracting Ordinance as they grow. Current economic thresholds are perceived to be out of step with the reality of economic growth in the City.

**Discussion** The issue of raising economic thresholds for certification of LBEs saw much discussion over the course of outreach and engagement with the LBE community. Recommendations from key stakeholders varied, but many support revising threshold levels and size categories and propose specific proposals for doing this. Feedback gathered from City Departments also generally indicates a need to adjust the economic threshold categories. Quantitative data from survey respondents was mixed, partially because 50% of survey respondents did not answer this question and partially because a significant number of respondents elected for no changes to thresholds. (31.5%, 29.5%, and 28.2% selected no changes to criteria for Micro, Small, and SBA LBE economic thresholds, respectively.) However, it is interesting to note that respondents showed more interest in raising thresholds for Micro-LBE and Small LBE thresholds than SBA thresholds, and more interest in raising thresholds for contractor, architect and engineering, and professional services categories than other categories.

Qualitative feedback from community workshops indicated general support from the LBE community for a proposed increase in economic thresholds. Concerns raised were that increasing thresholds will result in reduced contracting opportunities for the existing pool of LBEs and that changing the threshold will ensure the same LBEs are utilized but does not allow opportunity for new LBEs to participate in the program.

A range of ideas about how to structure thresholds was offered, but there was a cluster of recommendations that thresholds be tied to types of industry, with consideration of variables such as differing costs of materials and labor and revenue streams.

This data points towards the need for preliminary analysis in advance of any changes to economic threshold categories to test how the composition of the LBE pool would change with varying scenarios for new economic thresholds. This will help determine whether changes to thresholds will negatively impact the existing pool of LBEs; whether continued use of current thresholds results in cohorts of LBEs sizing out of the program despite the fact that actual revenue has not increased; and whether new thresholds would help to bring fresh LBEs into the program or simply retain the existing cohorts of LBEs.

Additional analysis of economic growth trends in the City by industry should take place to determine the context for economic thresholds. Relevant growth indices should be identified as they relate to LBEs and the Chapter 14B Local Business Enterprise Program. However, utilizing the current threshold and then applying growth indices assumes that the current thresholds were set accurately originally.

- Recommendations**
- › Conduct analysis in advance of any changes to economic threshold categories to test how the composition of the LBE pool would change with varying scenarios for new economic thresholds.
  - › Analyze economic growth trends in the City by industry to determine the context for economic thresholds. Research and identify relevant growth indexes to potentially tie to the Chapter 14B Local Business Enterprise Program.
  - › Consider eliminating the provision requiring Small and Micro-LBEs to include pass-through costs as part of calculating their gross revenues.



### Micro-LBE Set-Aside Program

**Background** The terms of the Micro-LBE Set-Aside Program are described in provision 14B.7.K of the Chapter 14B Ordinance. The Set-Aside Program attempts to ensure utilization of firms meeting Micro-LBE criteria to foster and grow them within the LBE program.

**Discussion** The Micro-LBE program was a significant topic during the community engagement process. Concerns from community workshops were focused on: uneven implementation of Micro-LBE Set-Aside Program requirements across City departments; lack of training, knowledge, and expertise among city staff in the Micro-LBE Set-Aside Program and strategies for contracting work to smaller LBEs; multiple scopes of work within a solicitation, which puts the solicitation as a whole beyond the capacity of many Micro-LBEs; and the need for a program commitment to Micro-LBE firms and firms smaller than Micro criteria threshold.

Recommendation areas that emerged from workshops were: better enforcement and training from CMD to ensure adherence to the provision; unbundling solicitations into single tasks that could be performed by smaller Micro-LBEs rather than a large multi-element task that could typically only be performed by a large LBE; incentivize larger contractors to partner/ subcontract with Micro-LBEs; lower thresholds for Micro-LBE criteria or create a new category for emerging Micro-LBEs to make more opportunities for LBEs at the smallest end of the LBE spectrum.

- › Examine the quantity and types of contracts that the City that has disbursed through the Micro-LBE Set-Aside Program over the past 5 to 10 year period, by department and industry, to evaluate trends in contract awards. This will assist in identifying opportunities for the City to develop additional set-asides and contracting opportunities for Micro-LBEs.

- Recommendations**
- › Revisit the Chapter 14B legislation to adjust set-aside goals and thresholds to increase contracting opportunities for Micro-LBEs. For example, under Chapter 6 - Increase the set-aside threshold to \$600,000 for public works/ construction and \$250,000 for services/commodities. Clarify the term eligible contracts in the description of the Micro-LBE Set-Aside Program. It currently states that not less than 50% of eligible Public Work/Construction Contracts estimated to be equal to or less than \$400,000 and not less than 25% of Eligible Services/Commodities contracts estimated to be equal to or less than \$100,000 are to be set-aside for Micro-LBEs.
  - › Consider adjusting the Micro-LBE contract threshold to increase the number of Micro-LBEs by specific certification category.
  - › Provide additional training for all CMD and contracting agency staff on the provisions of the Micro-LBE Set-Aside Program and how to assess and cultivate contract opportunities for Micro-LBEs. Training and better reporting is critical to the success of the program.
  - › Develop expertise in dividing scopes of services in the solicitation into single tasks that could be assigned to individual LBEs rather than a large multi-element task that could typically only be performed by a large LBE. Allow Micro-LBEs to respond to the task or tasks that they can perform instead of being required to respond to an entire scope of work that requires more than one specialty or trade be performed.
  - › Evaluate the merits of raising the economic threshold of Micro-LBEs to compete for work as a prime contractor on larger projects.
  - › Consider incentivizing Prime contractors, particularly in construction, to include Micro-LBEs in their proposal or to use a Micro-LBE that hasn't had a city contracting opportunity, in order to create additional Micro-LBE contracting opportunities.
  - › Establish a pre-qualified list of Micro-LBEs that can be accessed by contracting agencies as needed.

Emerging Micro-LBE

**Background** Currently, the smallest business eligible for LBE certification is Micro-LBE, defined as any business that meets the requirements of 14B.3(A) and also has average gross annual receipts in the prior three (3) fiscal years that do not exceed the following limits: (1) public works/construction – \$7,000,000; (2) specialty construction contractors – \$3,500,000; (3) goods/materials/equipment and general services – \$3,500,000; (4) professional services and architect/engineering – \$1,250,000; and (5) trucking – \$1,750,000.

**Discussion** Both in survey comments and in workshop discussions of economic thresholds and the Micro-LBE Set-Aside Program, LBEs showed an interest in seeing certification of firms currently smaller than the lowest certification threshold to increased access to contracts for smaller firms. This would also assist in bringing new LBEs into the LBE program.

**Recommendations** > Examine the viability of creating a new category called Emerging Micro-LBE category and update thresholds accordingly, so these smaller micro firms can compete effectively. Further assess the demand for such a category in San Francisco’s business community; assess contract/vendor opportunities already awarded to businesses of this size and how to increase them; explore outreach and support strategies for this prospective LBE segment.

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Finding Area 4: Programmatic Mechanisms for Oversight, Transparency, & Enforcement

**Background** Oversight and enforcement is not one function, but encompasses key top-level functions ranging from adjudication of disputes, to monitoring program operation to ensure the program goals are fulfilled, to improving program transparency and reporting mechanisms.

Historically, the oversight and adjudication functions for San Francisco’s Chapter 14B LBE Program took place under the City’s Human Rights Commission. With the transfer of the Chapter 14B LBE program to the City Administrator’s office, there is no longer an active oversight commission of all portions of the program. Currently, oversight is managed by the City Administrator’s Office, and involves the sourcing of a third party to act as a mediator in the event of a dispute. The Director of the program, now CMD’s Director, is broadly responsible for enforcement of compliance with the ordinance for LBEs and Prime contractors at her discretion, and in keeping with the provisions of the ordinance. Currently, the ordinance does not feature a specific anti-retaliation process, and relies on the City’s whistleblower program.

**Discussion** The LBE community strongly voiced a need for stronger oversight, transparency, and enforcement of the Chapter 14 LBE program at multiple levels. Four specific areas were identified for improved oversight and enforcement: **1)** mechanism for oversight overall, especially adjudication and dispute resolution; **2)** increased transparency around executive administrative actions that affect LBE contracts, especially waivers; **3)** increased oversight and enforcement of utilization of LBE subcontractors; and **4)** a program mechanism to allow LBEs to anonymously report Prime misconduct i.e. an anti-retaliation reporting mechanism.

**Oversight Commission:** With HRC no longer acting as sole LBE oversight, key stakeholders recommend convening a new oversight commission comprised of LBEs who actively oversee all portions of the program.

**Oversight and Enforcement of LBE Utilization:** 42% of survey respondents indicated that they had at one time been listed on a City contract as an LBE subcontractor and subsequently had not received a task order to perform work. To the LBE community, the issue of oversight and enforcement of LBE utilization is key. Workshop participant comments explored both the issue of prime contractors reneging on LBE contracting commitments and that of LBE subcontractors not being utilized or being underutilized because of their performance. A recommendation was to define a simple procedure to change subs that are not performing with clearly sanctioned reasons to change a sub: when the sub is not performing or going out of business. Another recommendation was to increase oversight, enforcement, and penalties for Prime contractors who renege without substantiated cause on their LBE subcontract commitment. Respondents’ comments pointed to a need for increased communication and follow up when contracts have been awarded to alert the LBE subcontractor of the work they were identified to perform. This demonstrates the need for the City to play a stronger enforcement role throughout the award and execution of a contract.

In addition to enforcement efforts, 26.24% of survey respondents believe that prior contract performance should play a large role in the LBE program. Survey and workshop comments were in support of making public and rating Primes’ past performance as partners and contractors to LBEs, and attaching program incentives to reward and incentivize Primes to participate in the program meaningfully.

**Anti-Retaliation Mechanism:** Approximately 25% of survey respondents saw no need for an anonymous mechanism for reporting program violations, while an additional 34% percent of respondents were unfamiliar with what an anti-retaliation provision is. However, comments from workshop participants, key stakeholders, and survey respondents were in agreement in requesting an anonymous reporting mechanism to report violations around payments, utilization, and contracting issues, an indication that LBEs can find themselves in vulnerable relationship to Primes within the context of the LBE program.

Recommendations Oversight Commission:

- › Establish a 14B Oversight commission with representatives appointed by the mayor. Commissioners cannot be current City employees or employed by a firm currently doing work with the City.

More Transparency Around Waiver Process:

- › Increase transparency and public process around decisions to issue waivers.

Anti-Retaliation Mechanism:

- › Develop a process, enforceable by CMD, or another entity, for LBEs to report violations in contracting with an anonymous reporting mechanism to encourage LBEs and prime contractors to seek recourse without fear of retribution.

Oversight and Enforcement of LBE Utilization:

- › Provide training and education for LBEs, CMD, and City Department staff around penalties for non-utilization as well as consistency across departments in training around subcontractor procedures.
- › Consider developing and adopting a provision to only change subcontractors in the event that they are not performing or are going out of business. Include sufficient flexibility in the means and method so as not to jeopardize contract performance. The prime must utilize the designated LBE listed in the contract within their specialty and cannot utilize another subcontractor for that task.
- › Ensure subcontractors are involved in all project conversations with City project managers and staff from the beginning of the project.
- › Consider assessing/increasing the penalty on prime contractors for no or low LBE utilization. Some penalty scenarios could be assessing a \$10,000 penalty, a 10% of total contract value penalty, or awarding the full amount the LBE would have earned if their services were utilized as outlined in the proposal.
- › Consider developing a Prime review system whereby LBEs can share their experiences in working with various Prime contractors, and this information can be shared forward or factored into a reward or penalty incentive system in subsequent contract awards. This could be a formalized process for evaluating past performance of Prime contractors. This effort would require committed resources for implementation and enforcement from CMD.

## Finding Area 5: Clarify Specific Aspects of Legislation

(Place of Business, Common Ownership, Joint Venture)

**Background** As part this outreach and engagement process, feedback was requested on some provisions of the Chapter 14 LBE ordinance having to do with criteria for LBE status. The common ownership provision for small LBEs requires that businesses under common ownership, including those owned by married spouses or domestic partners, must also comply with gross annual receipts limitations in order to qualify as LBEs. The principal place of business provisions of the ordinance require that in order to meet the criteria for an LBE, businesses must be located in a fixed office within the geographic boundaries of the City. The joint venture provision of the ordinance applies Bid/rating discounts to all Joint Venture bids from Small and Micro-LBEs on Professional Services and Architect/Engineering prime Contracts; it is structured to reward increased participation of LBEs in the Joint Venture.

**Discussion Common Ownership:** Comments from the LBE community related to the common ownership provisions primarily requested that this provision be amended to clarify that the provision does not apply to businesses in unrelated industries. Key stakeholders further recommended that the provision be amended to 1) eliminate the financial profile of a spouse or partner as criteria in determining a company's value that would not otherwise result in that business exceeding the financial threshold for participation and 2) allow owners with multiple businesses to qualify under the revenue threshold based solely on each individual business' revenue as long as each company is certified in a different category.

**Principal Place of Business:** Feedback from community workshops/survey responses and recommendations from key stakeholders support no change to the principal place of business provision. 80% of survey respondents believe that businesses whose principal place of businesses is not in San Francisco, but who have an office here and conduct a certain amount of work in the City should not be certified as an LBE. More oversight and stringent review of these criteria was requested. There was some discussion that this criteria should be weighed against the reality that it is increasingly expensive to maintain an office in the City, and that some types of businesses are not dependent upon a physical location. A number of respondents recommended waiving the requirement for businesses of certain industries or determining place of business based on whether the business's "nerve center," i.e. Corporate Operations, is located in San Francisco, such as IT, because the majority of their work is done virtually and not from a brick-and-mortar facility.

**Joint Venture:** Survey respondents and key stakeholders strongly indicated that the Joint Venture provisions should be amended to allow for partners to be from different industries as long as they are both performing prime level work and otherwise meet the definition of a JV. Workshop discussions and survey responses also noted that the joint venture program represents a mentorship/protégée opportunity between LBEs and non LBEs and among LBEs of different sizes that should be further explored and strengthened by creating preferences though the Bid discount mechanism. Some respondents also indicated a need to support LBEs in joint venture partnerships with legal and technical assistance. Overall there was an interest in seeing the JV program reviewed and strengthened.

### Recommendations Common Ownership:

- › Amend Common Ownership clause to specify that it should not apply to businesses in unrelated industries or any of the LBE certification categories.

### Principal Place of Business:

- › Further review the possibility of amending the Principal Place of Business provision, perhaps in a single-topic workshop; to ensure the City understands how altering this provision would affect current LBEs and what impact it would have on the overall program. Explore variables such as type of business and operation format in re-evaluating this provision.
- › Explore new configurations of this provision to be incorporated into the Chapter 14B ordinance to reflect a changing economic climate in the City. Potential ideas include comparing the gross revenue generated in San Francisco vs. overall company revenue and basing LBE certification on the percentage of work in the City and creating a separate category for LBEs who do a large amount of work in SF, but whose main office is in another Bay Area locality.
- › Develop a system for home-based small and micro businesses to expand into a shared business-hub space in which facility costs can be shared.

### Joint Venture:

- › Allow firms to Join Venture even if from different disciplines, as long as they are performing prime level work and otherwise meet the definition of a Joint Venture.
- › Establish a Joint Venture mentor protégé program, especially for professional services and architect/engineering specialties.



## Finding Area 6: Improvements to Program Operation

**Background** Several key areas for administrative improvement were identified through data gathered from this outreach and engagement process: LBE database, LBE certification process, contracting, procurement, and prompt payment. Until September of last year, certification was a paper driven process over a six-month period. Prompt payment is addressed in section 14.6.7.L of the ordinance. Instructions for procurement are cited in section IV.J of rules and regulations. Section 14B.7.H of the ordinance lays out provisions for the contracting process. Many City departments have their own contracting policies and procurement procedures, which can make for inconsistency between departments, and even within the same department, for the same kind of work. It is a problem that often makes it difficult for many LBEs to submit a competitive response to a solicitation.

**Discussion Database:** There was agreement among City departments that the LBE Database is cumbersome to navigate and needs to be simplified. It should be searchable by specific specialty, firm, industry certification category – i.e. micro, LBE SFPUC, Vendor non-profit – or social enterprise. Currently categories are lumped together and it is difficult for a potential prime to identify LBEs. Also, there should be a link to the LBE’s website.

**Certification:** While 44% of survey respondents agreed or strongly agreed with the statement: “I am satisfied with the LBE certification program,” a significant portion of respondents, 32%, strongly disagreed or disagreed with this statement. Survey respondents’ comments in response to the question “How can the certification process be improved?” highlighted these issues: a perceived increasing problem of certifying empty locations; requirements of certification process are experienced as cumbersome and intrusive; the process is experienced as unclear and needs to be simplified; and timelines need to be shortened. Respondents’ top recommendations were made in these areas: provide training and resources around certification for CMD staff specific to various industries; create a mentorship program or workshops to support new LBEs in going through the certification process; make the certification process more technology driven, and online certification program with digital submittals. Qualitative data from the City department’s workshop discussions surfaced similar areas of concern and recommendations for the LBE certification process.

**Procurement Standardization:** Participant comments from community workshops were in general agreement that the RFP process is often confusing and burdensome for small businesses to effectively submit bids, and that there is a need to standardize RFP requirements and solicitation processes across departments. Concerns that emerged from the workshops were: prescriptive pricing structure; lack of clearly-defined scopes of work and services; and bundled contracts that inhibit the ability of specialized trades and industries to bid.

Also mentioned was the often-used “on-call” or “as-needed” services RFP. While it may be convenient for a City department to use this approach, for an LBE, it is almost impossible to forecast the volume of work one can expect to perform under such a contract. Many LBEs who have won “on-call” contracts have never performed a single hour of work under the contract.

Billing rates in solicitations vary within and among issuing city departments and don’t appear to be tied to market rates. The market should decide and/or determine billing rates, which can be done through a compensation study. The impact of this existing policy is LBEs do not want to bid on City contracts.

**Contracting:** Qualitative feedback from community workshops surfaced the following concerns about the challenges faced in contracting: delayed payments from Prime contractors; large outlays in funds to cover the cost of materials without prompt reimbursement; lack of planning from City and Prime to take into account sub-consultant work; and disputes between subcontractor and prime contractors. Community workshops identified recommendations for improvement in these areas: more oversight and enforcement from the City with advocacy for subcontractors; identify recourse/solutions for when one prime or subcontractor delays payment; more training for City staff across departments around contracting and payment processes; add incentives by creating a process for rewarding prime contractors who have demonstrated good track records via LBE subcontractors; dispute resolution process; more relationship building between subcontractors and primes; and more education for prime and subcontractors.

**Prompt Payment:** There was significant discussion in the community workshops highlighting the lack of prompt payment by the prime contractors. The issues raised included the prime not paying the sub within the mandated timeline after receiving payment from the City; subcontractors waiving their payment options in the contracting process with the prime; and LBEs having to purchase materials in advance before payment as a large outlay. City Project Managers/staff take the position that the subcontractor is not contracted with the City, but with the Prime, which leaves LBE subcontractors to fend for themselves. This feedback underscores a need for more support and advocacy for small LBEs in the area of payment and in negotiating contracting with larger Prime contractors.

### Recommendations Database:

- › Restructure the LBE database and provide more ways to search for specific types of services and businesses by certification category.
- Certification:**
  - › Evaluate the performance and user experience of CMD’s year-old online certification process, implemented in September 2013.
  - › Shorten the 6-month waiting period for becoming a certified LBE.
  - › Increase term of certification beyond 3 years to reduce frequency and effort of recertification.

**Procurement Standardization:**

- › Standardize solicitation documents, so format and content is consistent and uniform from a contractual standpoint. In addition, the content should be standardized based on the type of services being solicited. For example, if PUC is seeking construction management services, the language in the solicitation should be the same as for DPW seeking the same services. Furthermore, the requirements and process for responding to all City RFPs, as well as how they are prepared and delivered to potential bidders, must all be standardized. This would help LBEs by eliminating the guesswork used now to navigate the maze of differing departmental requirements and effectively learn how to participate in the bidding process.
- › Unbundle specific specialties/trades for LBEs to perform and deliver on work within their capacity to do so. For each LBE category in which the solicitation document has set a goal, that it also has a clearly defined scope of services for each of those LBE categories. In this way, for example, if there is a 20% goal for document control, the solicitation must explicitly call for document control services to be performed.
- › Set rates, multiplier, and lump sum fees based on industry standards and actual overhead costs of doing business in San Francisco. Current solicitations require an overhead cost with a multiplier that cannot exceed 2.5%. This is inherently unfair to an LBE whose operational costs are a larger percentage of its expenses than those of a majority firm which has the advantage of spreading its costs across more employees and multiple and locations.
- › Conduct a market compensation study to determine direct labor rates for individual employees and fully loaded billing rates for various professional service and construction service industries. The compensation study should be updated annually.
- › Set a standard 10% LBE Prime markup on all pass-through costs to account for the management and coordination.
- › Develop a process for responses to RFPs to be submitted electronically.

**Contracting and Prompt Payment:**

- › Increase resources and staff for CMD to more effectively monitor contracting and payments and assist LBEs in resolving payment issues.
- › Develop a transparent institutionalized process for CMD to mitigate prompt payment issues in the event of delayed or non-payment. This could also be achieved through establishing the 14B LBE oversight commission.
- › Increase the City's direct participation in LBE subcontracts. Explore the possibility of: the City contracting directly with the LBE subcontractors, which would mitigate many of the prompt payment issues; developing contract language which includes a provision that allows an LBE subcontractor to address payment issues with the City Project Manager or contracting officials or file a complaint with the commission; or developing contract language to include a provision for separate checks to be issued directly to LBEs, in the event the Prime has one or more incidents of not paying its subs in accordance with prompt payment policies.
- › Enforce more stringent penalties for late payments by prime contractors.
- › Establish a new "Prompt Payment Policy" which stipulates that City Project Managers must approve invoices for payment within 5 working days of receipt, thereby eliminating the practice of invoices sitting for 2-3 business weeks before processing. Any discrepancies with the invoice will result in that part of the invoice being short-paid, but under no circumstances will an entire invoice be held hostage and left unpaid on account of a billing error. LBE prime contractors shall pay their subs within 3 working days of being paid by the Client. Majority prime contractors shall pay LBE subs within 3 working days of receiving an invoice to eliminate the practice of "We'll pay you, when we get paid."
- › Make a provision allowing the cost of construction materials and/or other construction submittals to be reimbursed by the City upon proof of invoice.
- › Provide LBEs technical training in contract administration and management, highlighting key areas of contracting to be aware of and review when presented with a subcontracting agreement.
- › Consider developing a Prime review system whereby LBEs can share their experiences in working with various Prime contractors. This information can be shared forward or factored into a reward or penalty system in subsequent contract awards.



## Finding Area 7: Training & Education to Build Capacity

**Discussion Training for City staff:** In workshop discussions, comments from City staff and the LBE community point to a critical need for more training for City staff administering the program. City staff requested training and clarity in both specific issues, like LBE goal setting and waivers, existing ways to resolve Prime non-utilization of subcontractors, and LBE availability, and general provisions of the ordinance to support them in doing their work and in explaining the ordinance/process to contractors/LBEs. Additionally staff suggested that a peer program for City Departments would support city staff in collaborating and sharing information with each other. This finding was echoed by the LBE community who wanted to see more training for City staff in the areas of specific contracting expertise: evaluating a scope of services and subdividing it in a way that maximizes contract opportunities for LBEs and minimizes the contract administration effort of the prime; or training needed for contract officers on specific industries and key variables across industries, such as base rates and multipliers. This kind of expertise is a key ingredient in strengthening the LBE program.

**Training for LBEs:** LBEs also indicated a desire for more training to help them understand and navigate the program, and to negotiate their relationships with Prime contractors. The need for more information and training around the ordinance is reflected in the survey, where most questions having to do with specific provisions of the Chapter 14B ordinance/program were largely unanswered. It was clear that there is a small active segment of the LBE community that understands implications of specific aspects of the program as they relate to their best interests. Yet, in response to the 14 survey questions that solicit feedback on specific aspects of the LBE program, there was a significant drop of response rate; approximately 50 to 70% of respondents did not respond at all to these questions, with a significant portion of those who did respond indicating they had no comment or were unfamiliar with the provisions.

Specific training requests from workshops were around guidelines for waivers, payment processes, and key provisions in contracting with Primes. It was suggested several times that a mentorship program where smaller, newly-certified LBEs are paired with larger, more experienced LBEs/Primes could support training and education. CMD's mentor-protégée program is scheduled for launch in December 2014 as a pilot.

### Recommendations Education and Training for City Department staff:

- › Assess current training for City staff administering the Chapter 14B LBE Ordinance Program across all Departments, especially with regards to the areas of improvement identified by City staff and the LBE community. Identify gaps and areas that need strengthening.
- › Institutionalize a peer working group across departments for City staff to share information and learn from each other.

### Education and training for LBEs:

- › Identify/assess current training and education opportunities available to LBEs through CMD offerings and identify where offerings meet/don't meet the needs identified by LBEs in the discussion above. Examine current LBE participation in these. Identify strategies to increase participation by disseminating more information to the LBE community.
- › CMD's mentor-protégée program is scheduled for launch in December 2014 as a pilot. It will be important to have clearly identified goals and measurement mechanisms to evaluate the impact of the program.
- › A related recommendation for further exploration has to do with education and training for Non-LBE Prime contractors to help them understand contracting and partnering with LBEs as part of the Chapter 14B LBE program.

## Conclusion

This report is a summary of extensive community dialogue conducted by D&A Communications on behalf of the City Administrator's Office and the Contracts Monitoring Division to gather input about the legislative and administrative aspects of the Chapter 14B Local Business Enterprise (LBE) program.

Overall, this outreach campaign showed that LBEs have increased access to City contracts through the program, and believe that the Contracts Monitoring Division has been implementing the ordinance to the best of their ability. However, we identified 19 areas of findings and numerous recommendations for enhancing the 14B program. There were several major findings that became apparent during the outreach that were not part of the workshop discussion areas or the online survey questions. First is how much some small businesses in San Francisco depend on the LBE program for the success of their business. Second is the large number of LBEs who are certified but are unable to fully utilize the LBE program to its fullest capacity or are unsuccessful in winning work. Third is that the program is missing "Command Emphasis". A program of this magnitude and significance must have top-down communication from the Mayor and all Department/Agency heads that affirms the City's commitment to the LBE program. Fourth is to establish a mentorship program in which the City and current, successful LBEs coach and guide "newbies" through the process with education, technical assistance, and relationship building.

This report is not intended to be the definitive study on the effectiveness of the 14B program. Instead, it represents the starting point of what we expect will be the transformation of current policies and programs to a more inclusive, capacity-building, opportunity-making program that maximizes contract opportunities for more of San Francisco's small businesses. Additional analysis and information needs to be obtained in order to make informed decisions about the feasibility of the recommendations presented herein. While this outreach effort captured issues surrounding many key elements in the ordinance, this is really only the beginning of the process for evaluating needed changes to the ordinance and administrative aspects to be implemented. In other words, it would not be prudent to act on the preliminary recommendations made in this report. That would simply be a "rush to failure". Moving forward without further examination runs the risk of implementing changes that could worsen conditions for LBEs, which certainly is not the intent of the City. Instead, we believe that a careful, deliberate process be launched that takes what we have started here and expands on it to achieve the desired results.

We trust this report and our finding will assist the City with identifying key areas for legislative improvements to the Chapter 14B Local Business Enterprise ordinance, and to administrative aspects of the program, as they continue to provide benefits to local small businesses as they contract with the City and County of San Francisco.

## Lessons Learned: Limitations and Recommendations for Methodology Going Forward

First, an important lesson learned from outreach and engagement with the LBE community was that there are varying levels of knowledge of and experience with the 14B program among LBEs. It is clear from survey data that the respondent pool contained a contingent of seasoned, experienced LBEs. However, responses to the survey overall point towards a lack of knowledge among LBEs about specific aspects of the Chapter 14 LBE Ordinance and Program, which is admittedly complex and not easily understood. Most survey questions having to do with specific provisions of the Chapter 14B Ordinance/Program went largely unanswered; in response to the 14 survey questions that solicit feedback on specific aspects of the LBE program, there was a significant drop in response rate in relation to the previous questions. 50 - 70% of those who answered the survey did not respond at all to these questions, with a significant portion of those who did respond indicating they had no comment or were unfamiliar with the provisions.

This trend was also seen in LBE community workshops, where participants showed uneven levels of understanding of the Chapter 14LBE ordinance and program.

As a result, it was important to customize workshops to serve the least experienced and knowledgeable persons in the group. This approach made it difficult to move forward with deep or far-reaching specific discussions during the workshops. However, an interesting dynamic happened; the more experienced business owners helped answer questions and coached, advised and mentored those who were unfamiliar with the program. That kind of synergy is what made the workshops invaluable even under non-ideal conditions.

Given the opportunity to continue this outreach effort, we recommend that you first hold informational workshops to determine groupings based on the participants experience for the follow-on specialized feedback workshops. For example, there could be four groups; startup businesses with no knowledge; 1-2 years' experience working with the LBE program with no award, some years' experience with one award; and LBEs who have worked as a prime.

Second, in this effort, workshop participants and survey respondents were largely comprised of LBEs. LBEs represent one part of the community regulated under the Chapter 14B Local Business Enterprise Ordinance. The other is comprised of non-LBE prime contractors. Further engagement and outreach to non-LBE prime contractors is necessary to better understand how the other half of the regulated community experiences the program, what their concerns and needs are, and their perspectives on potential changes to specific provisions of the Ordinance.

*Stakeholder directory, letters and detailed survey and workshop outcomes can be found in the **Appendix** to this report.*

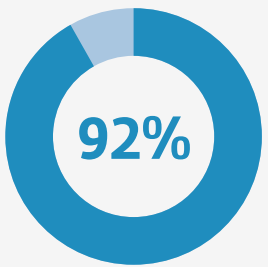


A low-angle photograph of a construction site. In the foreground, three construction workers are seen from behind, wearing white hard hats and bright yellow-green safety vests. They are looking towards a large building under construction. The building has a mix of blue and red panels. A crane is visible in the sky, and a tall, classical-style building is in the background. The sky is a deep red color. The image is overlaid with a large red diagonal shape on the right side.

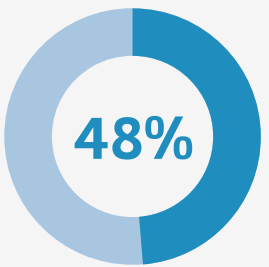
# Appendices



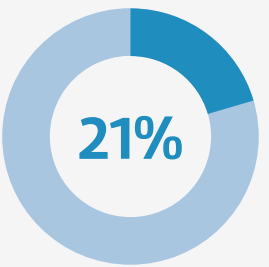
# Survey Results at a Glance



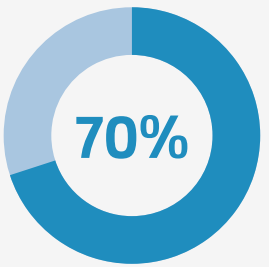
**92%** of respondents to the survey were certified LBEs, Micro-LBEs, or SBA-LBEs



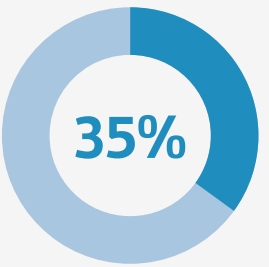
**48%** of survey respondents are satisfied with the LBE program



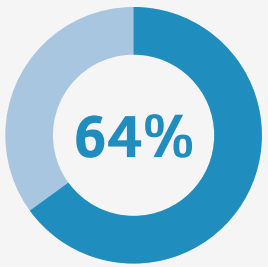
**21%** of survey respondents see more than 50% of their work come from being an LBE



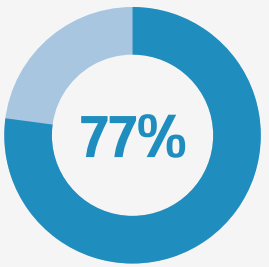
**70%** of survey respondents have owned their business for 10 years or more...



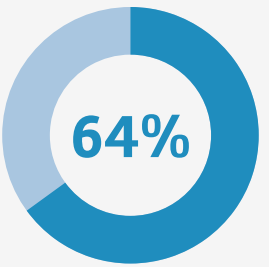
...and **35%** have been an LBE from more than 10 years



**64%** of survey respondents agree or strongly agree that the LBE ordinance has provided their company access to City contracts



Of the respondent to this question, **77.65%** have had two, one or zero contracts with the City as a prime contractor in the last three years



**64%** of survey respondents agree that the LBE program is helpful to their business

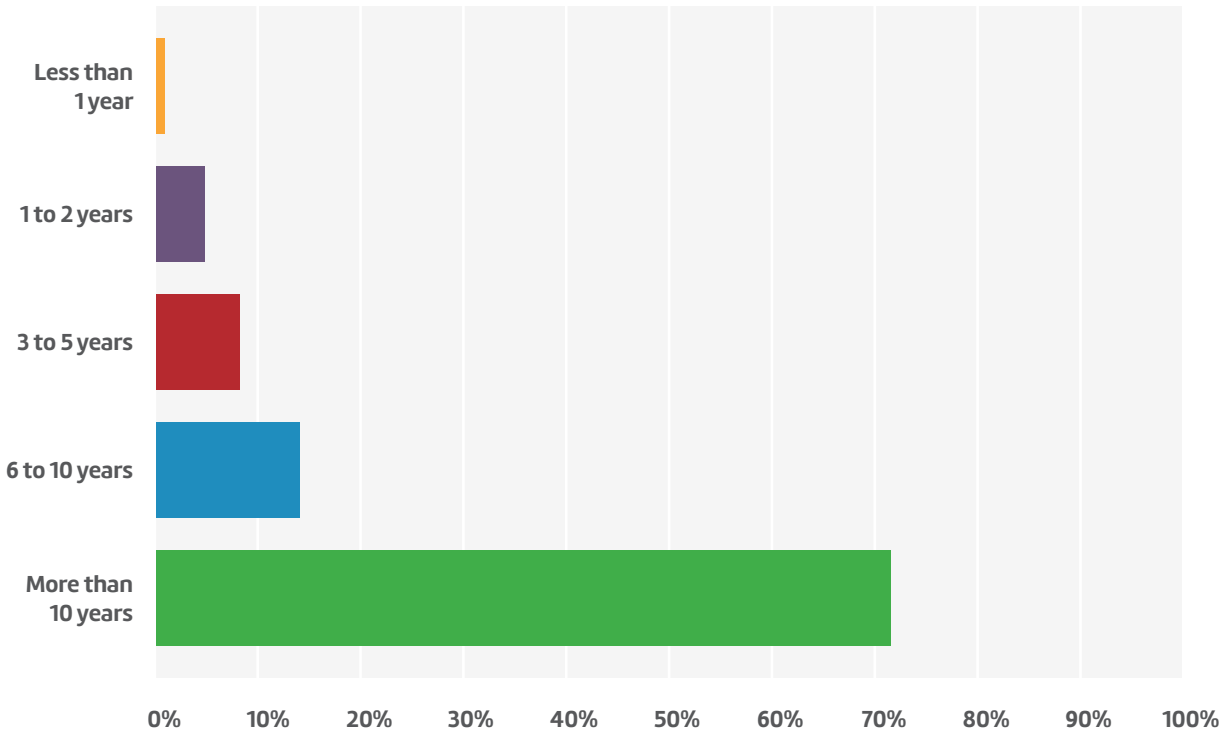


Q1: How long have you owned your business?

291/294 respondents

More than **71%** of the respondents to this question have owned their business for more than 10 years

**1.02%** did not respond



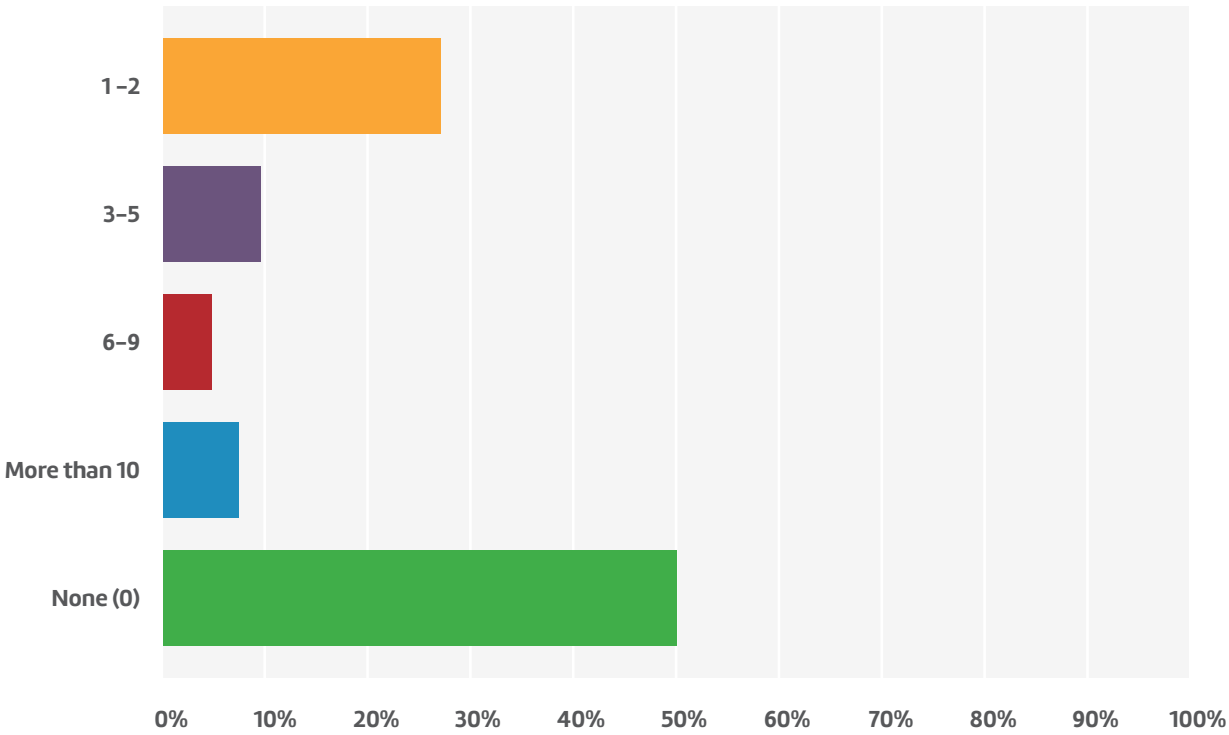
Answer Choices	Responses
less than 1 year	0.69% 2
1 to 2 years	4.81% 14
3 to 5 years	8.25% 24
6 to 10 years	15.12% 44
More than 10 years	71.13% 207
Total	291

Q2: During the last three years, how many City contracts have you had as a prime contractor?

282/294 respondents

Of the respondent to this question, **77.65%** have had two, one or zero contracts with the City as a prime contractor in the last three years

**4.08%** did not respond

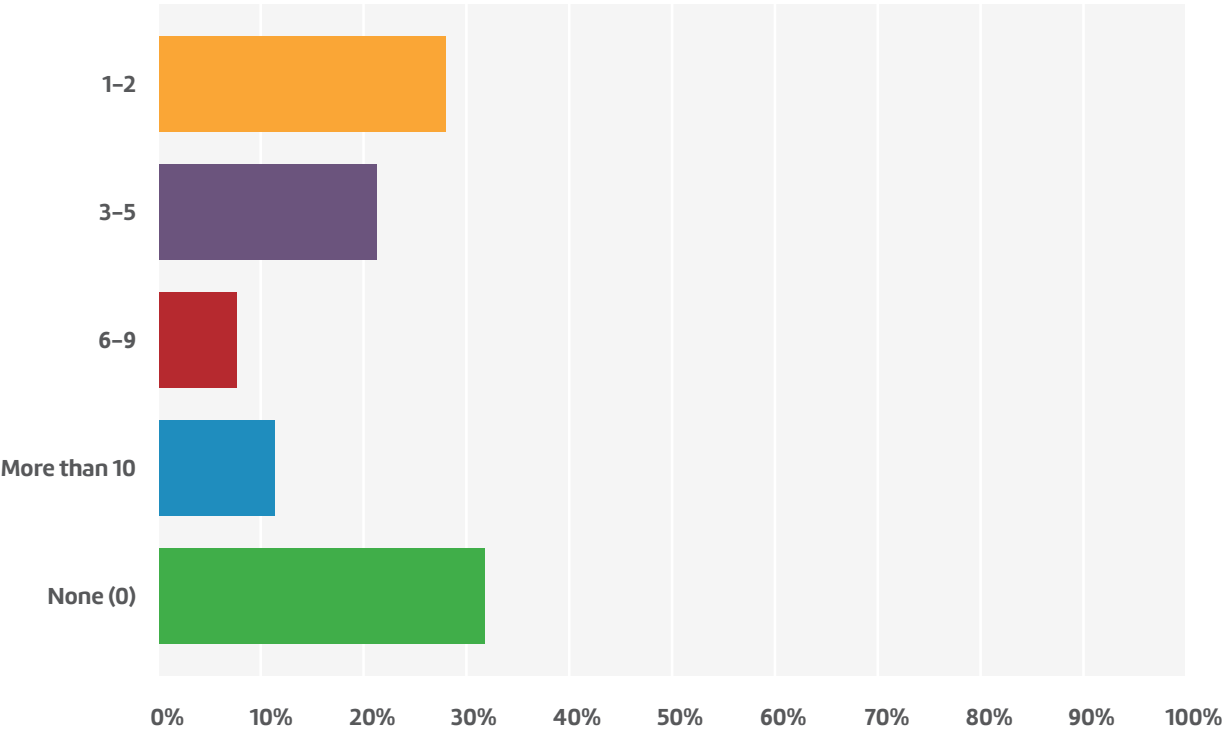


Answer Choices	Responses
1-2	27.30% 77
3-5	9.57% 27
6-9	5.32% 15
More than 10	7.45% 21
None (0)	50.35% 142
Total	282

Q3: During the last three years, how many contracts have you worked on as a subcontractor?

283/294 respondents  
3.74% did not respond

59.72% of the respondents to this question have had two, one or zero contracts where they worked as a subcontractor



Answer Choices	Responses	
1-2	27.92%	79
3-5	21.20%	60
6-9	7.77%	22
More than 10	11.31%	32
None (0)	31.80%	90
Total		283

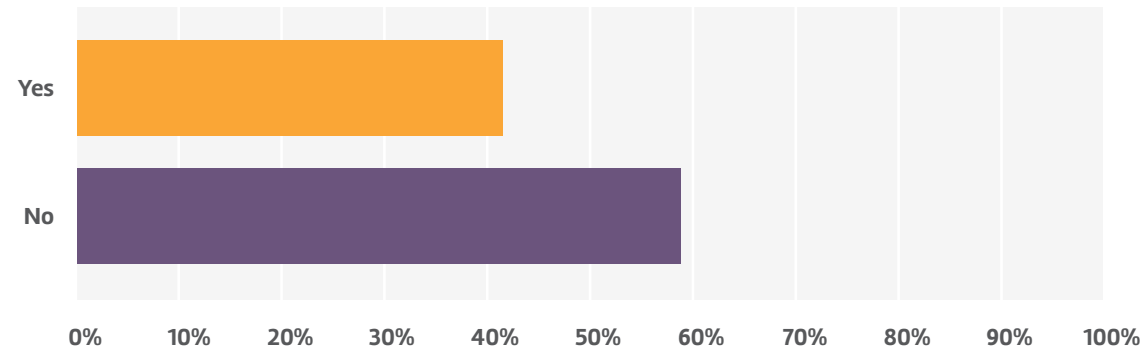
Q4: Which departments in the City and County of San Francisco have you worked with the most on LBE-governed contracts?

228/294 respondents  
22.49% did not respond

Answer Choices	Responses	
I am a certified Micro-LBE	44.60%	128
I am a certified LBE3	34.84%	100
I am a certified SBA-LBE	12.54%	36
I am not an LBE	8.01%	23
Total		287

Q5: Have you partnered with LBEs for City contracts?

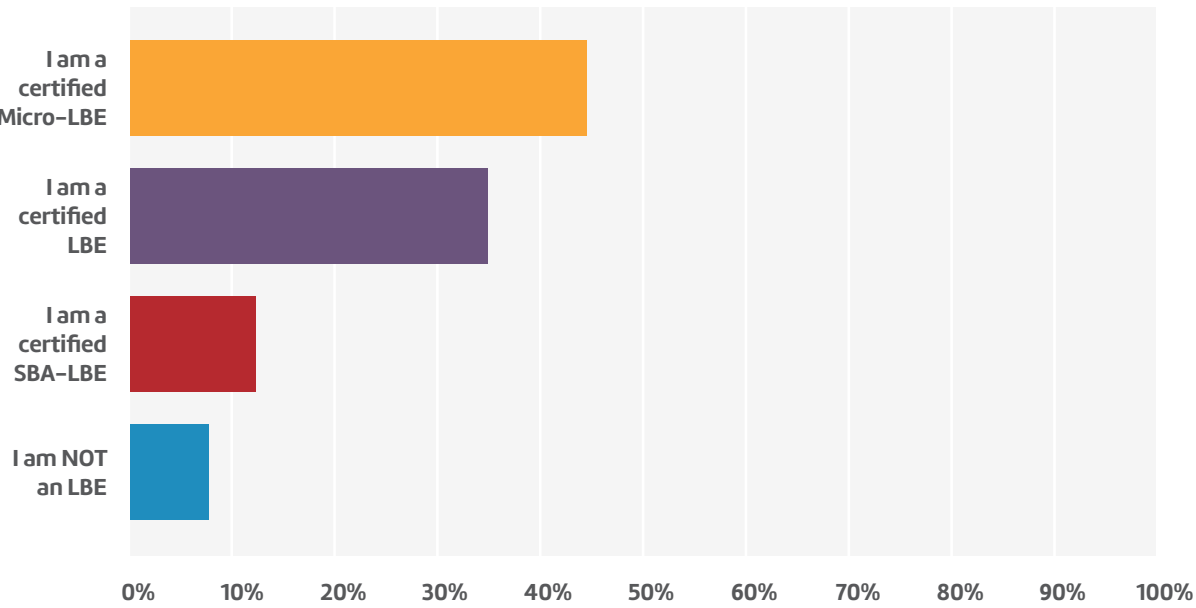
287/294 respondents  
2.38% did not respond



Answer Choices	Responses	
Yes	41.11%	118
No	58.89%	169
Total		287

Q6: Please indicate if you are an LBE.

287/294 respondents  
2.38% did not respond



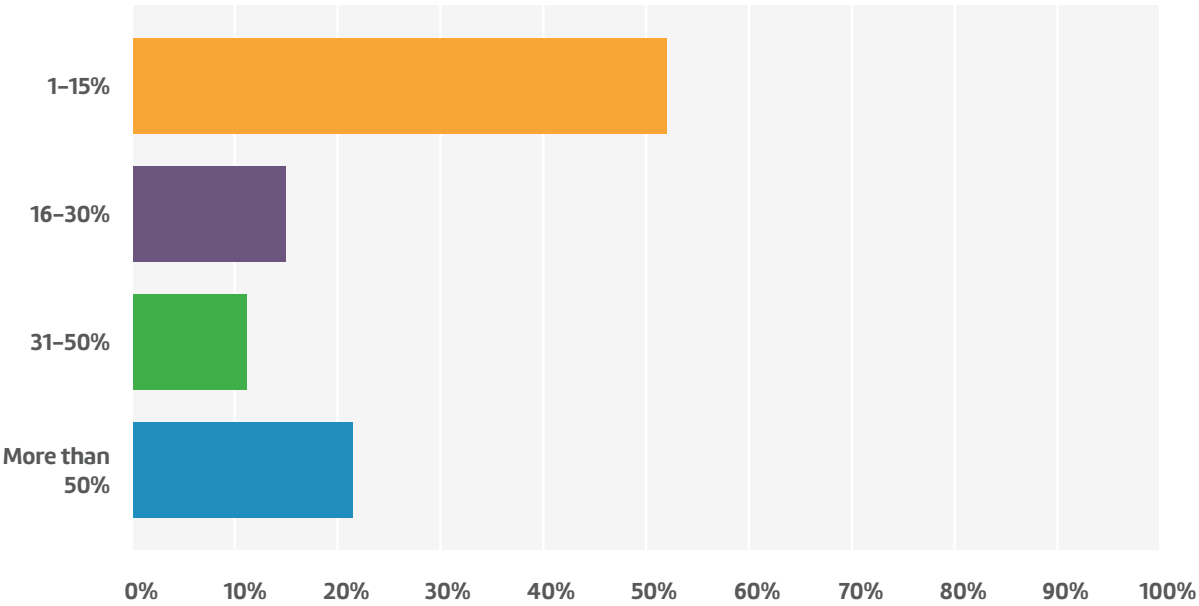
Answer Choices	Responses	
I am a certified Micro-LBE	44.60%	128
I am a certified LBE3	34.84%	100
I am a certified SBA-LBE	12.54%	36
I am not an LBE	8.01%	23
Total		287



**Q7: Since January 1, 2011, how much of your business revenue has been generated through work as an LBE in San Francisco?**

**247/294** respondents  
**15.99%** did not respond

**21.46%** of respondents to this question identified that more than 50% of their business revenue is generated from work as an LBE

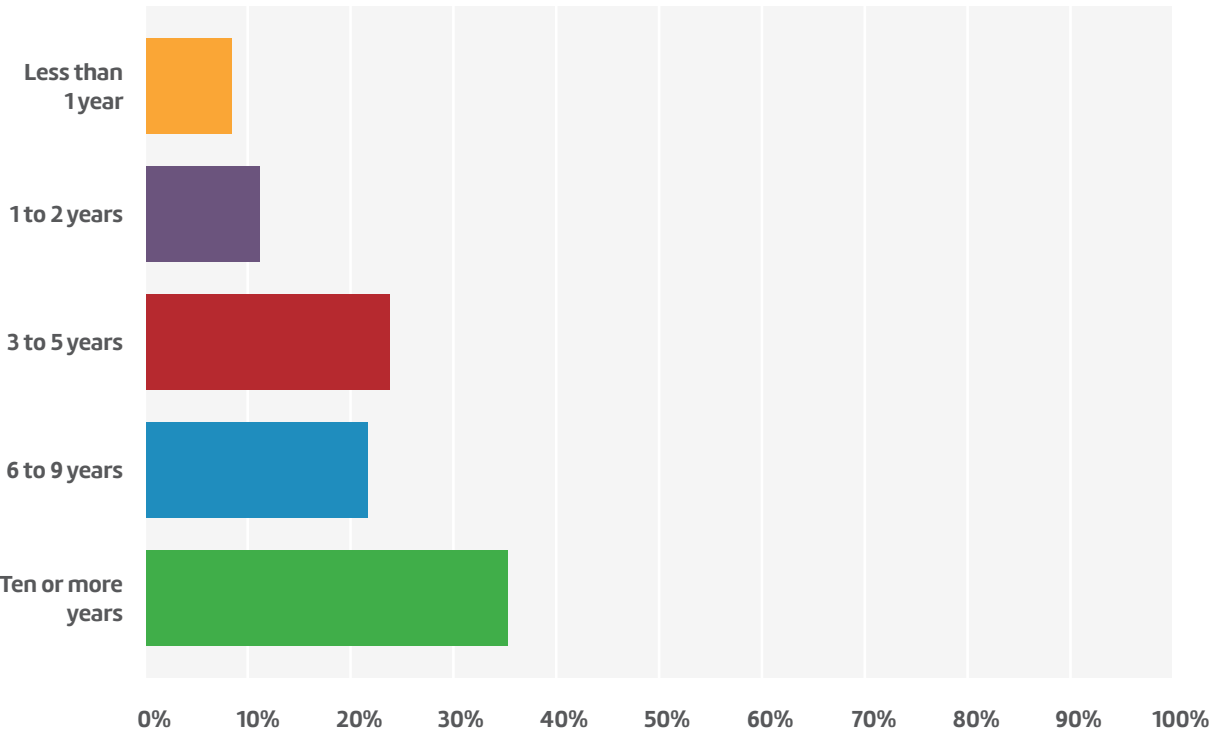


Answer Choices	Responses	
1-15%	52.23%	129
16-30%	14.98%	37
31-50%	11.34%	28
More than 50%	21.46%	53
Total	247	

**Q8: How long have you been a certified LBE?**

**261/294** respondents  
**11.22%** did not respond

**35.25%** of respondents to this question have been a certified LBE for more than ten years



Answer Choices	Responses	
Less than 1 year	8.43%	22
1 to 2 years	11.11%	29
3 to 5 years	23.75%	62
6 to 9 years	21.46%	56
Ten or more years	35.25%	92
Total	261	

Q9: Which LBE category are you certified in?

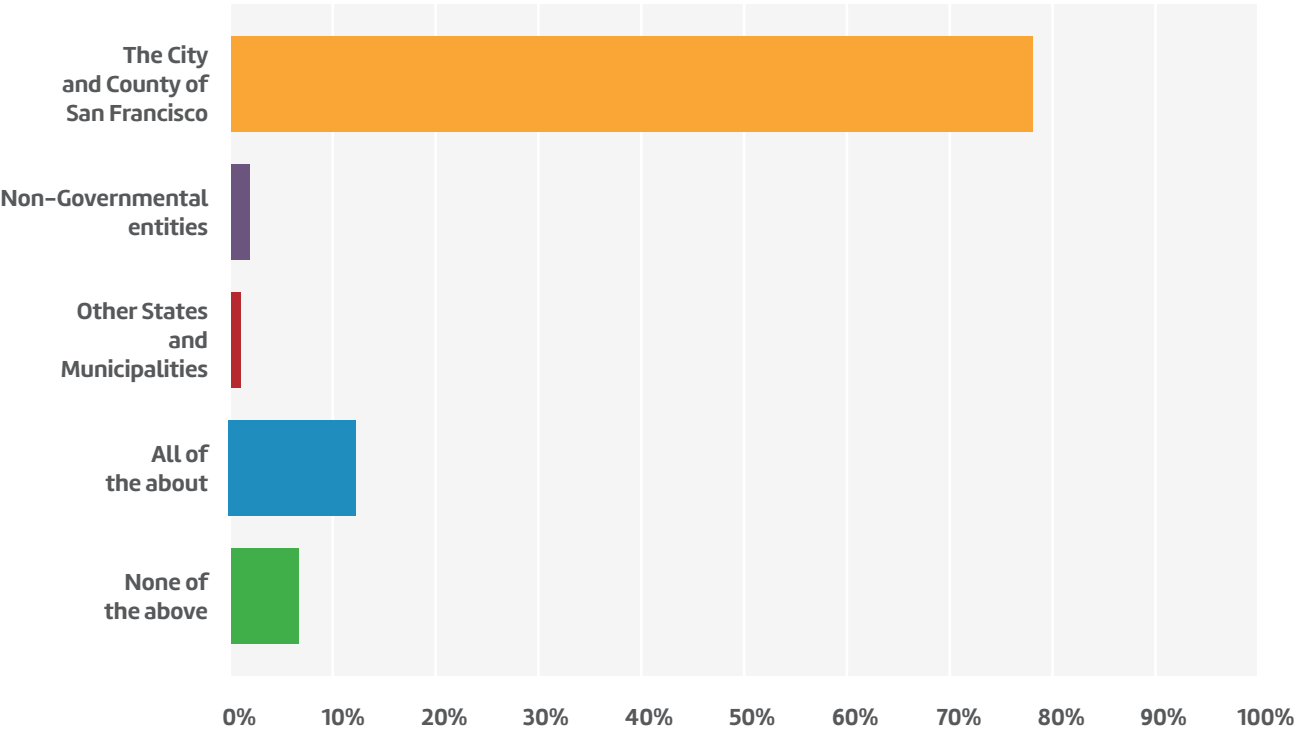
Landscape Contractor (C-27)	2.1%
Structural Engineering	2.5%
Community Relations/Public Affairs	3.4%
Civil Engineering	3.8%
Environmental Advisory Services	3.8%
Construction Management	4.6%
General Building Contracting (B)	4.6%
Construction & Building Materials and	5.0%
General Engineering Contracting (A)	8.0%
Architectural, Including Historical	8.8%
Other	52.1%

238/294 respondents  
19.05% did not respond

Q10: I use my LBE certification to apply for contracts with...

257/294 respondents  
12.59% did not respond

78.21% of the respondents to this question use their LBE certification to apply for contracts with the City and County of San Francisco

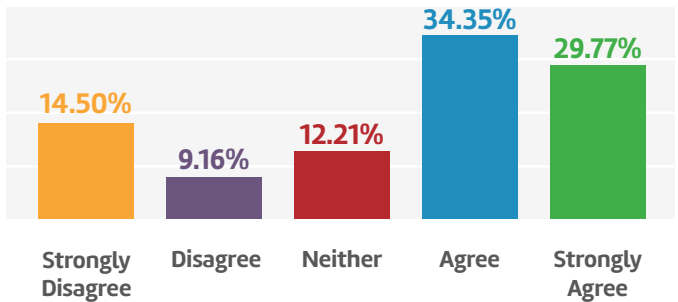


Answer Choices	Responses	
The City and County of San Francisco	78.21%	201
Non-governmental entities	1.95%	5
Other States and Municipalites	0.78%	2
All of the above	12.45%	32
None of the above	6.61%	17
Total		257

**Q11: The LBE ordinance has provided my company access to city contracts.**

262/294 respondents

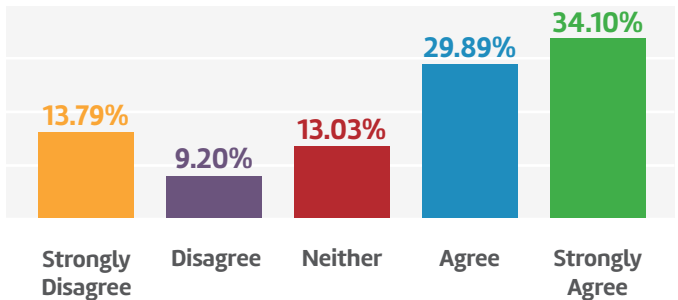
10.88% did not respond



**Q12: The LBE ordinance is helpful to my business.**

261/294 respondents

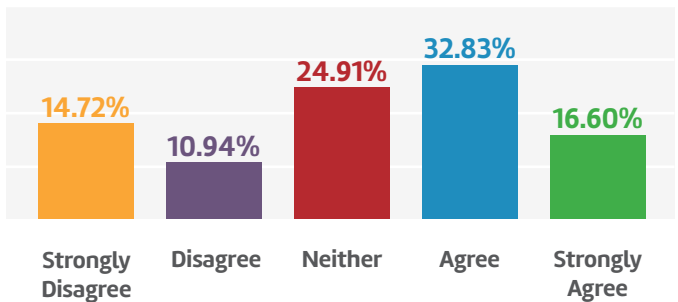
11.22% did not respond



**Q13: Prime contractors have utilized my business according to established contract terms.**

265/294 respondents

9.86% did not respond



**Q14: What changes, if any, would you recommend to the common ownership provisions?**

124/294 respondents

57.82% did not respond

22.58% of respondents believe that no changes need to be made to the common ownership provisions in the ordinance

21.77% were not familiar with this provision in the ordinance

2% of respondents were satisfied with the current provisions

5% of respondents agree that common ownership should not apply to businesses in unrelated industries or LBE certification categories

**Additional respondent feedback & recommendations:**

- > Provisions should be amended to clarify that gross annual receipts should not be combined for businesses in unrelated industries.
- > Allow businesses owned by the same owners to qualify under the revenue threshold based solely on that company's own revenue. As long as each company is certified in a different category.
- > Do not allow a common ownership spouse to be a factor in the certification of an LBE unless that spouse is actively involved in the primary discipline of the business.



**Q15: What anti-retaliation provisions, if any, do you think should be added to the LBE ordinance?**

**114/294** respondents

**61.22%** did not respond

**25.43%** of respondents believe that no provisions are needed for anti-retaliation

**34.21%** were not familiar with the idea of anti-retaliation provisions

**3%** of respondents were satisfied with the current process for whistleblowing

**8.77%** of respondents agreed there is a need for stringent provisions, process, remedies, penalties and compensation

**3.5%** expressed a need for anonymous mechanisms, such as a phone line or website, to report prime contractors that are violating the intent of the LBE program

**Additional respondent feedback & recommendations:**

- › Complaints regarding prime contractor non-compliance should be assessed and evaluated anonymously by CMD
- › Allow LBE to contract directly with the City instead of the prime, which would mitigate many retaliation issues
- › Incentives should be offered to anyone who provides information that leads to the successful prosecution of violating companies
- › CMD needs the power to impose sanctions as a result of retaliations
- › Educate CMD and LBEs to clarify the current laws and what types of things you are protected from

**Q16: How, if at all, do you think prior contractor performance should play a role in the LBE program?**

**141/294** respondents

**52.04%** did not respond

**26.24%** of respondents believe that prior contract performance should play a large role in the LBE program

**17.7%** did not have a comment for or against this aspect of the ordinance

**10.6%** of respondents were satisfied with the current process and didn't feel additions needed to be made about contractor performance

**4.25%** of respondents suggested a contractor performance rating and ranking system with anonymous complaints and compliments posted for public viewing on the website. Most described this as a "Professional Yelp Service" that allows peer-evaluations to track trends and performance over time

**2.83%** of respondents agreed that a contract should not be awarded, where LBE requirements are necessary, if the prime contractor is not in good standing

**Additional respondent feedback & recommendations:**

- › Extra points should be awarded to prime contractors in future contract bidding processes for being in good standing with the City
- › Evaluate primes history of successfully working with various LBEs and have a public work history for each prime receiving a contract more than \$300,000
- › Misuse of good faith efforts process should be noted and enforced as part of this process

**Q17:** *The criteria for good faith efforts for city departments to obtain LBE bids can be found in section 14B.7 and consist of specific elements: Arranging contracts by size and type of work; encouraging LBEs to attend prebid meetings; advertising in general, trade and local business media; notifying certified LBEs; providing adequate information about the plan; negotiating in good faith as allowed by local laws; and utilizing the services of community and contractors’ groups.*

**How could these good faith outreach efforts for city departments be improved?**

**19.59%** of respondents are happy with the current good faith efforts requirements and process

**9.45%** did not have a comment for or against this aspect of the ordinance

**6.75%** highlighted the need for narrowing notifications and add additional technology for RFP release by category to ensure clearer communication and outreach. Suggestions included an app or text message notification to increase targeted outreach

**2.72%** of respondents requested that LBEs receive a monthly updated schedule or a monthly e-newsletter about upcoming RFPs or RFQs within the next 3 months

A small group, **2.72%** of respondents, felt that good faith efforts are not effective in fostering growth in the LBE program and should be eliminated

**Additional respondent feedback & recommendations:**

- › Centralized rather than distributed advertisement should be mandatory. Require all City RFP advertisements be posted on the city website
- › Give prime incentive of no GFE if a 35% LBE goal is met. This is a win-win provision for the prime and the LBE
- › Allow primes to set up tables at pre-bids to have a more relaxed opportunity to speak with potential LBEs
- › Follow federal sba 8(a) model and pair mentor firms with protégés (50/50 JV with the protégé firm as the lead) which will act as a graduate program for the LBEs to learn and grow.

**141/294** respondents

**52.04%** did not respond

**Q18:** **The current economic thresholds for LBE certification are listed below. Please select the categories you think should be adjusted and indicate the desired threshold amount.**

**149/294** respondents

**49.32%** did not respond

Threshold	Respondents who believe threshold should be changed
Micro-LBE	
Micro-LBE Thresholds: Class A and Class B General Contractors: \$7,000,000	16.1%
Micro-LBE Thresholds: Specialty Construction Contractors: \$3,500,000	9.4%
Micro-LBE Thresholds: Trucking and Hauling: \$ 1,750,000	4.0%
Micro-LBE Thresholds: Goods, Materials, and Equipment Suppliers: \$3,500,000	5.4%
Micro-LBE Thresholds: General Service Providers: \$3,500,000	3.4%
Micro-LBE Thresholds: Architect/Engineering: \$1,250,000	16.1%
Micro-LBE Thresholds: Professional Services: \$1,250,000	15.4%
Small LBE	
SBA Thresholds: Class A and Class B General Contractors: \$33,500,000	18.8%
SBA Thresholds: Specialty Construction Contractors: \$17,000,000	12.1%
SBA Thresholds: Trucking and Hauling: \$8,500,000	4.0%
SBA Thresholds: Goods, Materials, and Equipment Suppliers: \$17,000,000	4.7%
SBA Thresholds: General Services Providers: \$17,000,000	2.7%
SBA Thresholds: Architect/Engineering: \$7,000,000	19.5%
SBA Thresholds: Professional Services: \$7,000,000	21.5%
SBA Thresholds: No Changes	29.5%
SBA Thresholds: Consumer Price Index Adjustment Only	4.7%
SBA	
SBA Thresholds: Class A and Class B General Contractors: \$33,500,000	9.4%
SBA Thresholds: Specialty Construction Contractors: \$17,000,000	6.7%
SBA Thresholds: Trucking and Hauling: \$8,500,000	4.0%
SBA Thresholds: Goods, Materials, and Equipment Suppliers: \$17,000,000	4.0%
SBA Thresholds: General Services Providers: \$17,000,000	2.7%
SBA Thresholds: Architect/Engineering: \$7,000,000	8.7%
SBA Thresholds: Professional Services: \$7,000,000	6.0%
SBA Thresholds: No Changes	28.2%
SBA Thresholds: Consumer Price Index Adjustment Only	4.0%

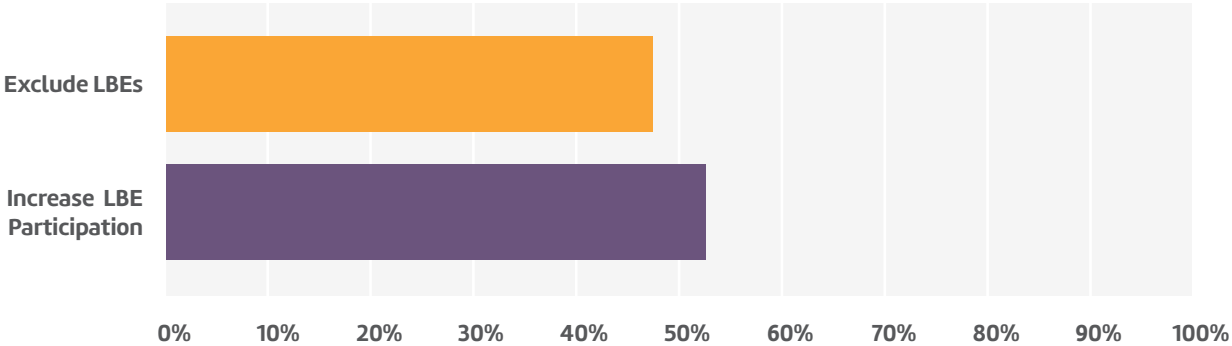
Q19: Do the current thresholds exclude LBEs or increase LBE participation?

174/294 respondents  
40.82% did not respond

17.81% of respondents believe an update to the thresholds would increase LBE participation

13.79% did not have a specific comments for or against thresholds as it relates to increasing to excluding LBE participation

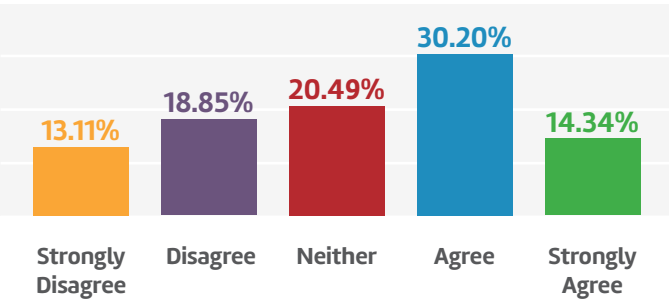
4.02% of respondents who commented on this question agree that the current thresholds are adequate for increasing LBE participation



Answer Choices	Responses	
Exclude LBEs	47.7%	83
Increase LBE Participation	52.3%	91
Total	174	

Q20: I am satisfied with the LBE certification program.

244/294 respondents  
17.01% did not respond





**Q21: How can the certification process be improved?**

**136/294** respondents

**53.74%** did not respond

**11%** of respondents to this question are happy with the current certification process

**9.55%** believe that certifying empty locations is an increasingly prevalent problem during the certification process

**7.35%** of respondents to this question feel the process is invasive and cumbersome and not always clear for potential LBEs

**3.67%** agree that the certification process needs to be simplified and timelines shortened

**3.67%** of the respondents think that the certification process could be improved by providing training and resources for CMD staff

**2.20%** suggested a mentorship program for new LBEs to go through the process – LBE Workshops

**2.20%** requested a more technology-driven process, and to update forms utilizing an online certification program with digital submittals

**Additional respondent feedback & recommendations:**

- › Certification language needs to be reviewed to ensure it is clear, concise and easy to understand
- › Review financials yearly of active LBEs and remove company's certifications as necessary
- › Increased oversight of certification of material suppliers needed
- › Appeal process is not clear
- › Certification categories need to be updated and add additional categories
- › Requirements for PUC LBE program need to be adjusted
- › Require a longer period of residency for certification- 2-3 years
- › Thorough investigation of certifying large companies opening offices in SF to meet certification requirements
- › Require prime contractors to complete a yearly training to staff on the purpose and intent of the LBE program
- › Update the requirements to not request past three years of information if you are renewing certification
- › Accept California small business certification for LBE certification if applicant can demonstrate at least 50% of current work is performed in City and County of SF
- › Allow professional services firms which are based in PUC Right of Way to be allowed to become PUC-LBE and PUC Micro-LBE
- › Increased enforcement of payroll verification for SF based businesses
- › Break out professional services into separate categories
- › Allow Micro-LBEs to be certified with locations at non-profit micro office spaces
- › Adjust heavy equipment requirement that an SF office needs to include housing tractors
- › Adjust IT requirement for a storefront to participate in the program

**Q22: Do you think businesses whose principal place of business is not in San Francisco, but who have an office here and conduct a certain amount of work in the City, should be certified as LBEs?**

233/294 respondents  
2.75% did not respond

80% of respondents believe that businesses whose principal place of businesses is not in San Francisco, but who have an office here and conduct a certain amount of work in the City, should not be certified as an LBE

**Additional respondent feedback & recommendations:**

- › In general, there was also a consensus for the need for increased oversight, resources and enforcement of the primary place of business section of the ordinance
- › Determine percentage of volume of work in San Francisco vs. overall company work – should be at least 35%–50% in SF to be fair
- › Give primary place of business in SF a priority, perhaps a rating bonus, but don’t exclude businesses that do a high level of work in the city from the program
- › Create a separate category for LBEs who do a large amount of work in SF, whose main office is in another Bay Area locality
- › Develop a system for small and micro businesses who are working from their home to grow their business and work on city contracts – partnerships with business incubators

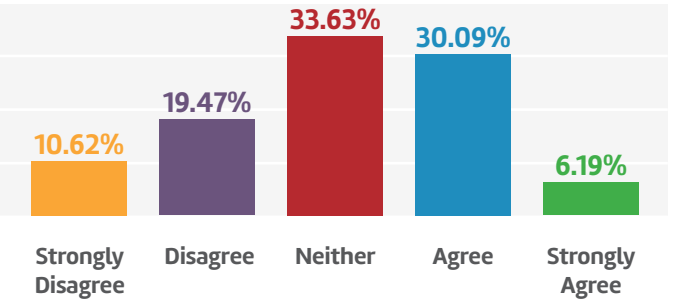
**Q23: In which LBE category would you like to see increased availability?**

125/294 respondents  
57.48% did not respond

Other	55.20%
Architectural, Including Historical	8.8%
Construction Management	5.6%
Accounting Services: CPAs	4.8%
General Building Contracting (B)	4.8%
General Engineering Contracting (A)	4.8%
Civil Engineering	4.0%
Construction & Building Materials	4.0%
Environmental Advisory Services	3.2%
Community Relations/Public Affairs	2.4%
Electrical Contracting (C10)	2.4%

**Q24: The LBE goals seem appropriate for contracts that I have worked on or bid for. Please select the option that most accurately reflects how you feel about the proposed statement.**

226/294 respondents  
23.13% did not respond

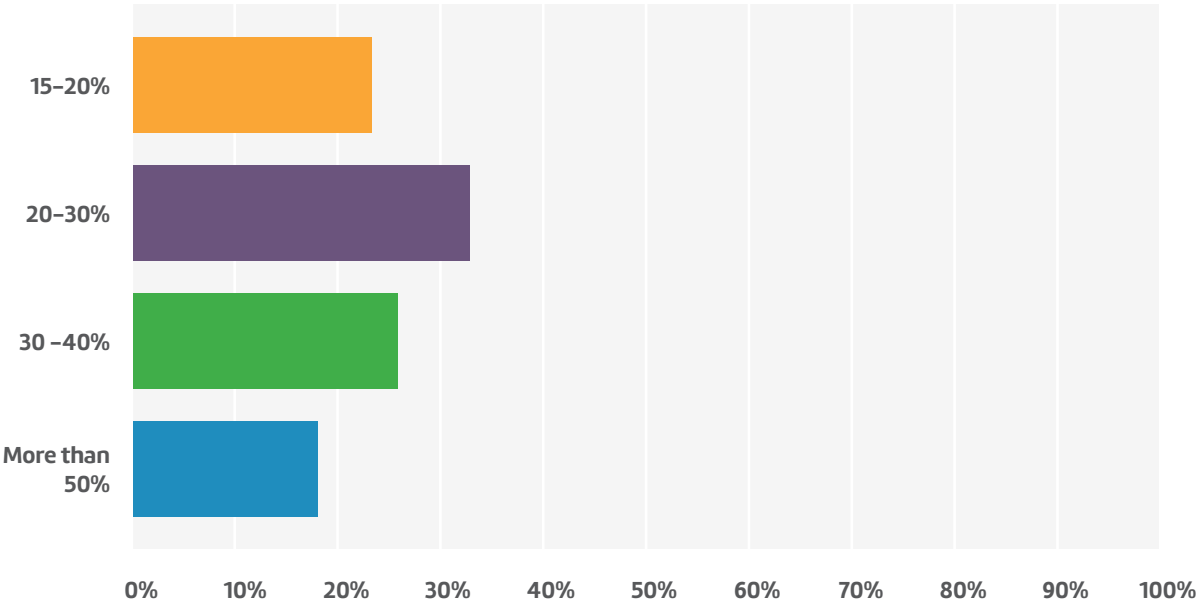


**Q25: What percentage of LBE utilization should be required by each city agency?**

**190/294** respondents  
**35.37%** did not respond

In general **11.57%** of respondents felt that setting goals for city departments depends on the project scope and the department

- 4.21%** agreed that there should be no citywide goal
- › More than 50% as there are many capable LBEs and local workers and this mandate would ensure they were a priority
  - › As Local Hire Ordinance increases, so must the LBE participation
  - › Ensure that departments completing similar work are setting goals at the same levels- SFPUC needs to match larger participation goals similar to DPW
  - › Use a sliding scale, the higher the contract amount, the higher the participation goal.
  - › Projects in millions should be 50% LBE participation and under \$800,000 should be 15-20%



Answer Choices	Responses	
15-20%	23.68%	45
20-30%	33.68%	64
30-40%	25.79%	49
More than 50%	16.84%	39
Total		190

**Q26:** *The good faith outreach requirements that apply to bidders and the usage of LBE subcontractors can be found in 14B.8 and consist of six specific elements; attending prebid meetings to inform all bidders of LBE requirements; identifying and selecting subcontracting opportunities to meet LBE goals; advertising for subcontractors; contacting at least the number of requisite LBEs before the bids due date; performing follow-up contact after initial solicitation; advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance required.*

**141/294** respondents  
**52.04%** did not respond

**How could these good faith outreach efforts for prime contractors be improved?**

In general **27.52%** of respondents did not have a clear recommendation on improving the good faith efforts for prime contractors

- 7.33%** agreed that the current process is adequate and working well
- 5.40%** of the respondents agreed that the current process is very time consuming for both the prime and the subcontractor and needs to be streamlined
- 3.37%** mentioned that the good faith efforts process was seen as a waste of time for the LBEs as they felt the prime generally chooses LBEs they have worked with on previous projects.
- 8.38%** requested that prime contractors need to be more consistent in sending out notifications to certified LBE firms in timely manner, they should be required to initiate outreach one month in advance
- 3.37%** would like to have good faith efforts waived and offer incentives for primes for utilizing an LBE they have not used before on City contracts
- 7.03%** want more stringent requirements and better enforcement and consequences when requirements are not met

**Additional respondent feedback & recommendations:**

- › Require primes to follow-up with LBEs and detail why they didn't choose that firm, can be seen as a learning exercise for the LBEs
- › Create an online system to streamline notify LBEs by category
- › Develop a process for webinar/video for questions to be asked during the process to offer increased access to prime contractors
- › Require the prime to provide their complete communications exchanges with LBEs in their proposal



**Q27:** *The current penalty for non-utilization of LBEs by subcontractors is defined in section 14B(H)(2) and says that, "the...Contractor shall be liable for liquidated damages for each contract in an amount equal to the Bidder's or Contractor's net profit on the Contract, ten percent (10%) of the total amount of the Contract or \$1,000."*

**185/294** respondents  
**37.07%** did not respond

**What should the penalty be for nonutilization?**

In general, **42.70%** of respondents to this question believe that the current penalties for nonutilization are sufficient

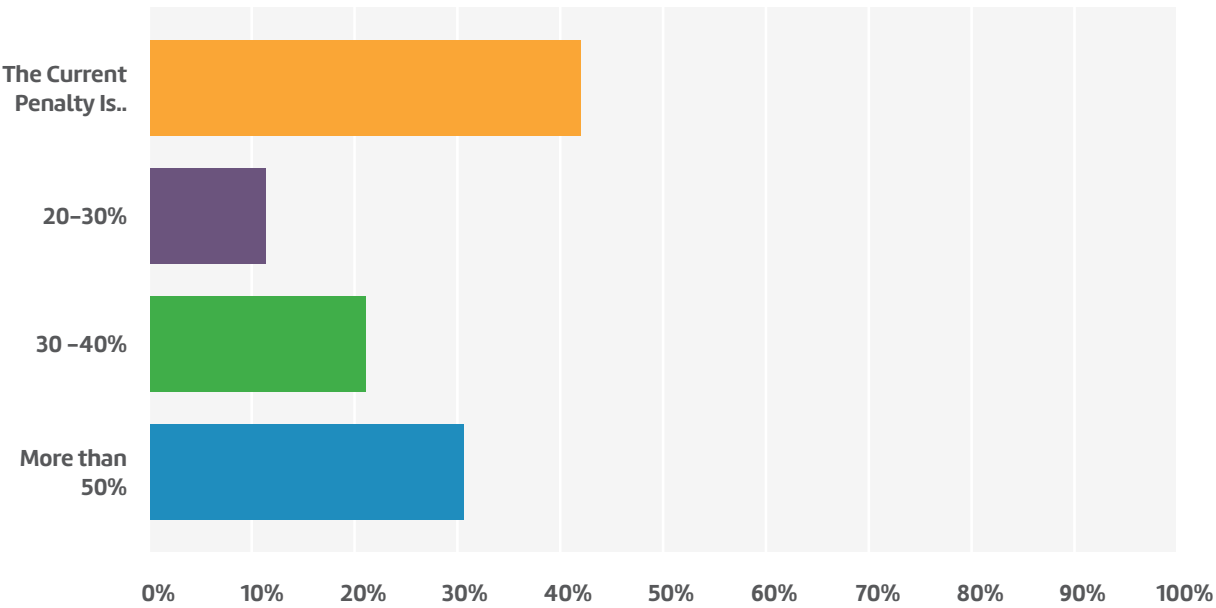
**3.24%** of respondents would like to award the full amount the LBE would have earned if their services were utilized as outlined in the proposal

**3.78%** agree that enforcement is key to ensuring the penalties are successful in deterring nonutilization

**2.16%** would like to see an increase in the penalty to a higher amount, such as \$10,000 or 10% of total contract value

**Additional respondent feedback & recommendations:**

- › Use funds from penalties to strengthen outreach to the LBE community
- › Provisions basis for non-use, and as-needed contracts need to be included in this section of the ordinance



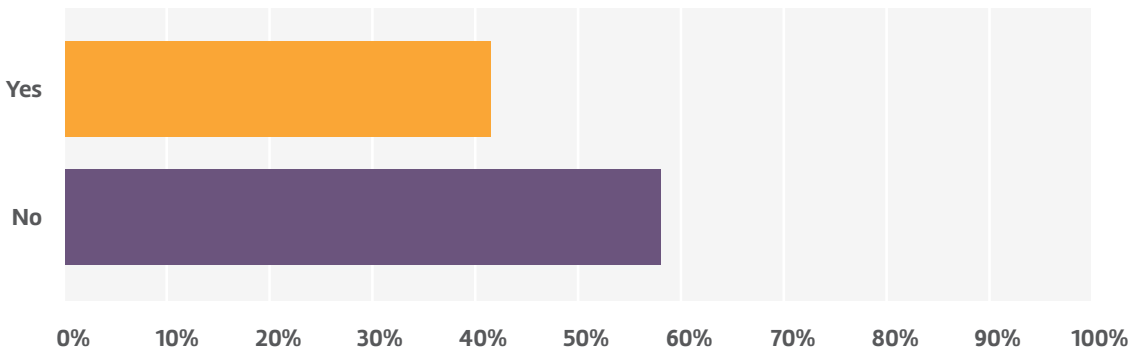
Answer Choices	Responses
The current penalty is adequate	42.70% 79
A defined amount per day that the contractor is out of compliance	6.49% 12
A percentage of the total contract amount	20.54% 38
A percentage of the total amount that should have been paid to the LBEs	30.27% 56
Total	185

**Q28:** **Have you ever been listed on a City contract as a LBE subcontractor and not received a task order to perform work?**

**212/294** respondents  
**27.89%** did not respond

Generally, the main issue raised by respondents was the need for increased communication and follow-up when a contract has been awarded that alerts the subcontractor of the result and the percentage of work they were identified to perform on the contract.

Additionally, there is an increased need for oversight from CMD to provide enforcement

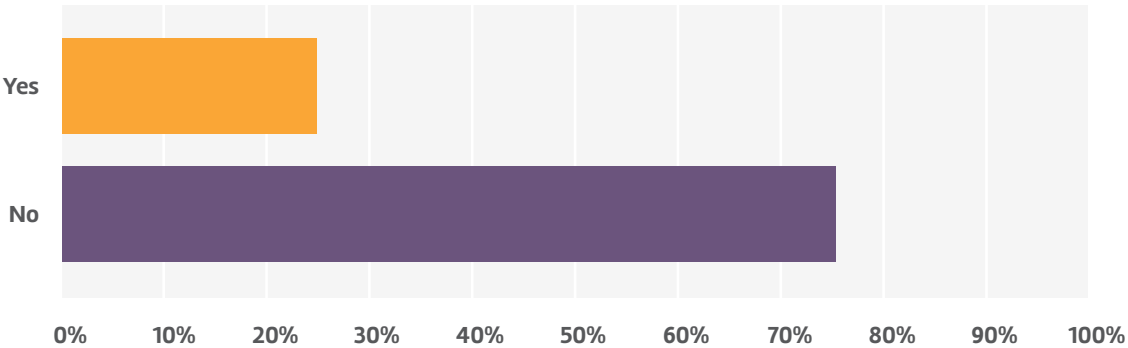


Answer Choices	Responses
Yes	41.98% 89
No	58.02% 123
Total	212

Q29: Have you ever been a member of a joint venture team on an LBE-governed contract?

228/294 respondents  
22.45% did not respond

74.56% of respondents to this question have not been member of a joint venture team



Answer Choices	Responses	
Yes	25.44%	58
No	74.56%	170
Total	228	

Q30: What improvements, if any, would you make to the joint venture program (section 14B.7(F))?

75/294 respondents  
74.49% did not respond

26.66% of respondents to this question believe that the current program is adequate and requires no changes

34.66% of the respondents had no comment on the topic of the joint venture program

Additional respondent feedback & recommendations:

- › Allow joint venture partners to be from different industries 2
- › Create a preference for an SBA-LBE and Micro-LBE JV partnership 2
- › Decrease the amount for JV preference points
- › Process to ensure that LBE JV partners have increased opportunities and are able to perform the percentage of assigned work as outline in the proposal
- › Increase the bonus to 10%
- › Ensure that all communication about the project is addressed to both JV partners
- › Require one JV partner be an LBE 2
- › Simplify the legal language and provide legal advice for LBEs during contracting
- › JV partners should be limited to their one partnership and not be allowed to submit proposals on more than one team

**Q31: What improvements, if any, do you have to improve the waiver process (section 14B.7(J))?**

75/294 respondents

74.49% did not respond

A high percentage, **64%**, of respondents to this question had no comment or were not familiar with the waiver process

**Additional respondent feedback & recommendations:**

- › Contact LBEs who provide similar services before granting a waiver
- › Publish intent to award waiver, allowing for objection and response period
- › Mandate a waiting period
- › Ease the time frame for emergency waivers
- › Increase the oversight for emergency waivers
- › Create a panel/committee for waiver approval
- › Increase transparency

**Q32: What improvements, if any, would you make to the Micro-LBE Set-Aside Program (section 14B.7(K))?**

90/294 respondents

69.39% did not respond

Of those who answered this question, **28.88%** had no comment or did not have any ideas for improvements.

**Additional respondent feedback & recommendations:**

- › Generally, most respondents to this question would like to see the threshold for MLBE contracts raised and the number of contracts awarded in an LBE capacity raised
- › Allow LBEs to compete for other non-set-aside contracts without 10% LBE subcontractor participation
- › 5% of all contracting in each department, by dollar amount, must be set-aside for Micro-LBE competition only
- › Amounts should be increased to \$500,000 and contract terms should be revised to allow LBEs to take less risk than is currently put on them
- › Enhance reporting and increase number
- › Give Micro-LBEs access to more projects with more responsibility, so that they can learn City processes and develop experience as a prime.
- › 1/3 of all LBE should be set-aside for Micro-LBE that would assure participation from the smaller businesses
- › Make it easy/streamlined for city departments to setup a Micro-LBE set-aside contracts. City departments would like to use LBEs, but if it takes them three months of paperwork, waiting and red tape, they will use another way.
- › The people reviewing the proposals for a set-aside project should possess adequate knowledge of the discipline they are reviewing.
- › Simplify the RFP/RFQ submittal process and requirements for the Set-Aside Program.



**Q33: What improvements, if any, should be made to the Design/Build portion of the ordinance (section 14B.19)?**

70/294 respondents

76.19% did not respond

Of those that did answer this question, **57.41%** had no comment or did not have any ideas for improvements

**Additional respondent feedback & recommendations:**

- › Design/Build portion should have LBE participation based on Preconstruction and Construction. Typically LBE don't get opportunity to participate in Preconstruction phase because the prime achieves goals in construction phase.
- › LBE participation, need to be required for all Design/Build projects
- › Design/Build projects/contracts, shall have two-step process, a contract for design-build "bridging" documents preparation (for up to 30% design); and a team for actual design-build that performs final design and construction. The design-build contract shall have different LBE goals for design vs. construction. Design build contracts shall not impose unreasonable insurance and indemnification requirements to the design professionals and thus prevent LBE firms from participating.
- › Maintain/strengthen the segregation between "design/engineering" and "construction trades"
- › Makes sure that there are opportunities for Architecture, Engineering and the trades in proportion to their typical allocation of work.
- › Separate 40% requirements for both design and construction
- › Separate goals for professional services, construction and suppliers

**Q34: What recommendations, if any, do you have to create additional Set-Aside Programs in the ordinance?**

74/294 respondents

74.83% did not respond

**43.24%** of respondents to this question had no comment or did not have any ideas for improvements

**Additional respondent feedback & recommendations:**

- › 40% of total city contracts should be LBE and Micro-LBE set-aside for the reason that most of the LBEs only work in San Francisco, while the large firms work statewide, nationwide and worldwide.
- › Create a set-aside for LBEs that do NOT require any subcontracting to other small businesses but rather subcontracting to Large businesses. This gives the successful bidder LBE the experience of managing a large project, managing the skill set and bandwidth of a large firm, learning the techniques/style/approach/personnel of a large and successful firm.
- › Create Set-Aside Programs for LBE prime contractors that are similar to the one for micros.
- › Form an Advisory Board of Professionals to review ALL contracts and determine how to create additional Set-Aside Programs
- › More as-needed contracts should be set-aside for professional services, such as structural engineering
- › Make it easy/streamlined for city departments to setup a Micro-LBE set-aside contracts.
- › Mandate each department to increase by 33%
- › Mandatory set-aside for LBEs for every project
- › Set-asides should be a rotating list that is up for renewal every couple of years

## PROPOSED CHANGES TO LBE ORDINANCE

The undersigned supports the following:

### **STRUCTURAL REFORM NEEDED IN CONNECTION WITH TRANSFER OF LBE FUNCTIONS TO CAO OFFICE**

Legislation is needed to provide for an oversight body that oversees the Contract Management Division. At least 2/3 of the members of such body should be owners of certified LBEs, including owners of certified micro-LBEs and at least 1/3 of the members of such body should be owners of certified micro-LBEs. Members of such body would be appointed by the Mayor. Similar to the current HRC, such a body would oversee the transferred functions, approve city-wide LBE goals, and oversee waivers granted. Such body would set agendas for its monthly meetings. Director of the CMD would answer to such body. A good size for such body would be 11 members, but it could have up to 15 members. A separate advisory body, similar to the current LBE Advisory Committee, should also be instituted. A good size for such body would be 15 members. Such advisory body would advise the oversight body.

If it is determined that under conflict-of-interest law or other applicable law, members of the oversight body would be conflicted out of entering into any contract with the City as a result of being members of such oversight body, then such oversight body may consist of non-LBE members and at least 2/3 of the members of the advisory body should be owners of certified LBEs, including owners of certified micro-LBEs, and at least 1/3 of the members of such advisory body should be owners of certified micro-LBEs.

### **OTHER LEGISLATIVE ACTION REQUIRED**

- 1) **Bid Preferences** – raise threshold for bid preferences from \$10M to \$20M. Above that level, apply preference to firms demonstrating LBE economic development program for subcontractors
- 2) **City-wide Goals** – *e.g.* 40% LBE, with 20% of that micro. Prohibit overconcentration in any trade/discipline.
- 3) **LBE and Micro Set-Aside Mandate** – At least 10% of all contracting in each department, by dollar amount, must be set aside for LBE competition only. (contract amounts up to \$2.5M). Included within that amount, at least 5% of all contracting in each department, by dollar amount, must be set aside for micro-LBE competition only (contract amounts up to \$1.25M).
- 4) **Small/Micro Size Thresholds** – add provision to require CAO to annually review amounts and recommend inflationary or other adjustments

- 5) **Design-Build Contracts** – include separate provisions to deal with design-build contracts
- 6) **Joint Ventures** – add into JV definition/provisions that in appropriate cases, joint venture partners can be in different industries, as long as they are both performing prime level work and otherwise meet the definition of a JV.
- 7) **Criteria for Small, Micro, and SBA-LBEs** – amend “common ownership” provision (which requires aggregating gross annual receipts for any businesses under common ownership to determine whether business has met size standards) to clarify that the provision does not apply to businesses in unrelated industries.
- 8) **Anti-Retaliation Provisions** – strengthen anti-retaliation provisions to provide for remedies/penalties similar to those remedies/penalties imposed under the CA Whistleblower Protection Act, pursuant to which fines and imprisonment in county jail may be imposed upon those City officials or employees who are found to have engaged in acts of reprisal, retaliation, threats, coercion, or similar acts (any of which, a “Retaliation”) against a person or firm seeking to provide goods or services to the City or any of its departments where such Retaliation is taken in response to or as a result of such person or an owner or representative of such firm raising questions about, making inquiries into, criticizing, protesting, or commenting in any manner on (any of which, a “Protected Inquiry”), how or the manner in which a contracting decision or contracting decisions are made. In addition to all other penalties provided by law, any person who intentionally engages in such acts of Retaliation against a person or firm seeking to provide goods or services to the City or any of its departments for having made any such Protected Inquiry should be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party should also be entitled to reasonable attorney's fees.

### **OTHER REFORMS NEEDED**

- 1) LBE mandate needs to be fully funded and enforced.
- 2) Reporting by Departments has to be timely and accurate. Penalties should be imposed for any noncompliance.
- 3) LBE provisions should apply to Private Development Agreements approved by the city
- 4) Staff training is needed for consistent and appropriate interpretation of Ordinance, including provisions regarding JV rating bonuses

5) Certification rolls to be checked (this can be done on a spot check basis or on a rolling basis). Also, firms decertified or not certified in the last 2 yrs should have an automatic right of review based on the new, clearly stated requirements

Organization: Council Asian American Business Associations



By: \_\_\_\_\_

Name: Frank Fung

Title: Chair

Date: March 18, 2013

Organization: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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Organization: Association of Asian American Attorney and  
CPA Firms

By:  \_\_\_\_\_

Name: Alexis Chiu

Title: President

Date: March 18, 2013

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**COALITION FOR ECONOMIC EQUITY**  
**Legislative Proposal – Amendments to 14B**  
**(as of July 2, 2014)**

**Note:** these proposals are based on the Coalition “wish list,” updated and organized here to focus specifically on legislative changes needed

- I. Set City-Wide Goals** – e.g. 40% Small-LBE, including 20% Micro-LBE. Each department of the City will be subject to such goals. Prohibit overconcentration in any trade/discipline.
- II. Expand Tools To Assist Departments In Meeting Goals**
  - A. *Mandatory Contracting Minimums* – on each contract, set mandatory minimum Small-LBE and Micro-LBE participation requirements as high as possible based on available data; provided, however, the mandatory minimum participation requirement for each contract should be not less than 20% Small-LBE, of which at least 10% should be Micro-LBE. Participation may be achieved by LBEs as primes, subs, or joint venture partners. Small- and Micro-LBE participation goals also should be set as high as possible for each contract.
  - B. *San Francisco First Program* – for contracts less than the threshold/minimum competitive amount, Departments must first consider Small-LBE or Micro-LBE firms.
  - C. *Expand Set-Aside Program* – 10% of all contracting in each department, by dollar amount, must be set aside for LBE competition only. (contract amounts up to \$2.5M). Included within that amount, 5% of all contracting in each department, by dollar amount, must be set aside for micro-LBE competition only (contract amounts up to \$1.25M).
- III. Expand Reach of 14B**
  - A. *Apply 14B To Concessions*
  - B. *Apply 14B To Leases*
  - C. *Apply 14B To Private Developments On City Land Or Where City Approval Is Otherwise Needed*

**IV. Amendments To Keep Pace With Economic Growth**

- A. *Bid Preferences* – raise threshold for bid preferences from \$10M to \$20M, except remove threshold entirely for contracts for professional services and architect/engineering. Above that threshold, to the extent a threshold applies, apply preference to firms demonstrating LBE economic development program for subcontractors
  - B. *Small/Micro Size Thresholds* – make adjustments in size thresholds for the following (as a result of change of vote, consensus not reached for professional services and architect/engineering):
    1. for public works/construction, raise thresholds to \$20,000,000 for “Small-LBE” and \$10,000,000 for “Micro-LBE”;
    2. for specialty construction contractors, raise thresholds to \$10,000,000 for “Small-LBE” and \$5,000,000 for “Micro-LBE”;
    3. for goods/materials/equipment and general services, raise thresholds to \$10,000,000 for “Small-LBE” and \$5,000,000 for “Micro-LBE”;
  - C. *Future Adjustments To Small/Micro Size Thresholds* – DO NOT add any provision for future adjustment.
- V. Anti-Retaliation Measures** – strengthen anti-retaliation provisions to provide for remedies/penalties similar to CA Whistleblower Protection Act.
- VI. Oversight Commission** – create Commission to provide oversight of CMD and Director. Commission should be made up primarily of Small-LBEs and Micro-LBEs (e.g., 2/3 Small-LBEs, including 1/3 Micro-LBEs).
- VII. Other/Technical Amendments**
- A. *Joint Ventures* – add into JV definition/provisions that in appropriate cases, joint venture partners can be in different industries, as long as they are both performing prime level work and otherwise meet the definition of a JV.
  - B. *Criteria for Small, Micro, and SBA-LBEs* – amend “common ownership” provision (which requires aggregating gross annual receipts for any businesses under common ownership to determine whether



business has met size standards) to clarify that the provision does not apply to businesses in unrelated industries.

- C. *Design-Build Contracts* – set separate goals for professional services, construction, and suppliers.
- D. *Contract Amendments* – require primes to comply with 14B on any change orders, amendments, etc... over 5% (current threshold is 10%)
- E. *“Principal place of business” requirement* – NO CHANGE
- F. *Exceptions/State and Federal* – DO NOT ADD provision that where federal law prohibits use of local geographic preferences, the term LBE shall be substituted with SBE and the local geographic preference provisions of 14B shall not apply.

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## City Workshop

The workshop with City departments served as an opportunity for department staff to discuss the Chapter 14B ordinance; experience in implementation, administration and meeting requirements; and make recommendations for updates to 14Bs. This workshop allowed City department staff to learn from each other and expand their perspective.

The following provides a summary of the topics and discussion of key issues raised during the workshop.

### LBE Database

- › The LBE database is often hard to navigate and needs to be simplified. Various City departments agreed that it would be great to add a feature allowing expanded search capabilities: search by service or by LBE owner name
- › Another way to improve the database would be refining the registration process. There were suggestions to add, change, and remove categories with a goal of improving the database
- › Ensure certification categories are accurate and robust to cover all LBEs in order to create a complete and robust database
- › Certifications need to be accurate in order for the database to work properly
- › Technology is helping the process, but there is a further opportunity to integrate or link LBE Tracking UTS with City's financial system

### Contractor Goal Setting

- › Generally, the City Departments felt that the goal setting process is adequate, however they would like more training and clarity on how process works to both be aware and explain to contractors/LBEs
- › Increase clarity about the LBE goal setting through Department training
- › The group was in agreement that goals based on availability was a good process for goal setting
- › Add/review the categories and availability to ensure the categories are accurate which will assist City departments with goal setting

### Subcontractor Utilization

- › Define a simple procedure to change subs that are not performing. Accepted reasons to change a sub: when the sub is not performing or is going out of business
- › The process is cumbersome to add new subs if vendor has gone out of business and the prime still needs to meet the contract goals
- › Flexibility needed for substitution when there is an issue surrounding the sub's performance

- › Align LBE subcontractor thresholds with procurement thresholds
- › Need more standardized process and resources for enforcement to ensure LBE subs working and the primes are utilizing subs
- › Training and clarity about existing remedies for non-utilization of subs.
- › Consistency around CMD training regarding how the subconsultant process works so all departments are cohesive
- › Need clarity on monthly reporting process to ensure city departments are able to accurately look at subconsultant utilization

### LBE Availability

- › There is a need for City department education and collaboration around how to improve LBE availability
- › There was a consensus to ensure that the categories for LBEs are up to date, as it directly impacts availability and goal setting
- › Lack of availability can create more waivers
- › Would be helpful to have more information about LBEs as defining specific industries is often a cumbersome process
- › Increase participation from potential LBEs by creating tools and resources on getting involved with the program, such as an online video tutorial for becoming a City vendor and peer mentoring groups

### Waivers

- › Emergency waiver request process should be changed and feature the possibility to automatically grant a waiver with specific criteria
- › Review waiver process and standard timeline for approval. The group recommended that the process feature a two-week approval window
- › Speed up process to not delay contracts, no response means the waiver should be approved
- › The departments highlighted the need for increased education on how the goals are set, which would assist in implementing waiver requests
- › Waivers for Micro-LBEs need established "automatic waiver" categories and process for program
- › Sole Source Waivers need to have a standard turn-around time (If not granted within xx days, then deemed granted)

### Micro-LBE

- › There is a need for an easy-to-use list of pre-qualified Micro-LBEs based on areas of expertise (self identification and verification)
- › Re-assess the roles and responsibilities under the program and streamline the Micro-LBE process
- › Collaboration and education for CMD staff is critical to the success of the Micro-LBE program. Create a peer program for City departments
- › Develop a bridge program for Micro-LBE subs to move into a prime bidder role, utilizing peers, City experts, SFPUC Contractors Assistance Center and make it a citywide effort
- › Often difficult to get MLBE resulting in waivers
- › Create a program that offers administrative services support for Micro-LBEs
- › Adjust percentages and requirements by changing large percentage required. It is a limiting factor to make it only Micro-LBEs, could help to increase the size of pool expanded to all LBEs if availability is not present

### Citywide Goals

- › Generally, the City departments were supportive of instituting a citywide goal but raised some valid concerns:
  - » Setting a citywide goal may conflict with civil service Chapter 6 – may be a better goal for that section
  - » Possibly no long-term viability. The CMD needs to look at past for baseline as it may not be sustainable. They need to test viability before instituting large citywide goals
  - » A citywide goal may work if was all departments together meeting a goal. There needs to be more research to look at the number of contracts to set a baseline of current LBE participation, then move forward from a more educated position, e.g., if 15% consider implementing a 15-20% goal
- › Scaling percentage to smaller departments

### Enforcement and Penalties

- › Process needs to be developed and consequences implemented for City departments who are not meeting goals

### Good Faith

- › Return to prior system where prime contractors could meet the good faith goal by meeting or surpassing an LBE goal. However, the departments did see a potential drawback of many primes only utilizing the same LBE firm for every proposal

### LBE Goals

- › The departments agreed that an increased level of raining on how sub-goals are developed and what the formula is would be helpful for them

### Primary Place of Business

- › Headquarters in San Francisco requirement needs to be reviewed to accommodate current business climate
- › Principle place of business should not need to be in San Francisco based on specific industries: IT and computer services being one example.

### Thresholds

- › While the City departments felt that generally the threshold levels and size categories should be revised to match the current economic climate, they did identify a few questions that would further inform any updates to the thresholds:
  - » What is the number of LBEs who have been pushed out of the program due to current threshold?
  - » Would there be enough LBEs that would be affected by a higher threshold to institute the change?
- › Adjust LBE program to match purchasing thresholds
- › There is a need for consistent thresholds and definitions across purchasing/civil service, 12b/ first source, chapter 6/21 etc.

### General Process

- › Further define the terms used in the ordinance, for example “Eligible contracts,” and provide additional training for staff so everyone is working from the same common understanding

### LBE Certification

- › LBEs need to comply with other City requirements and property and payroll taxes, and they should be registered City vendors
- › Certifying empty locations is an increasingly prevalent problem
- › Modernize how to market to potential LBEs and identify ways to connect new primes/subs
- › The registration process needs to be simplified and timelines shortened
- › Definitions and requirements are potentially outdated
- › More technology-driven process: update forms, online certification program with digital submittals
- › “Local” may not be correct term – or should be better defined



## Community Workshops

The community workshops focused on engaging the participants in meaningful conversation and fostering a more robust discussion, giving participants the opportunity to share varying points of view. While facilitators assisted in identifying topics, the content and discussion topics were driven by the specific interests of the attendees at each workshop.

### Subcontractor Utilization

- › Mechanism that ensures the subs on a contract are involved in project conversations
  - » Subcontractors need to be at the table when the prime is meeting with the project manager
  - » City Agency and prime contractors: when hosting a kick-off meeting, should be required to host the entire team as a directive from the City – will promote better understanding of the subs skills for the Project Manager
- › Mechanism for notifications when there is a task that a sub is qualified for
- › Tracking as-needed utilization in a public forum for subcontractors who are listed on an as-needed contract and not utilized
- › Access to a list of whom the City agency utilized from the pool and show why they chose someone from a different city or state
- › City needs to ensure subs are utilized within specialties before primes utilize another vendor
- › Penalties for when scope comes up but the sub didn't get utilized
- › Open information for public to see what subs are used on projects

### LBE Availability

- › Hold agencies accountable as partners in developing opportunities to diversify the LBE pool and increasing availability
- › Certify LBEs as “competitive”
- › Look at availability of LBEs to develop additional set-asides

### Micro-LBE Set-Aside

- › MLBE set-aside needs to have an increase in the number of set-asides
- › Increase the Micro-LBE contract thresholds for set-asides to 1 million
- › Allow MLBEs to self-identify for specialties
- › Micro-LBE set-aside needs to be reviewed if it is not implemented properly.
- › Unbundle more contracts to create opportunities that encourage the MLBE to bid as prime
- › Micro-LBEs cannot always meet all service areas of an RFP, which affects the availability and their ability to bid on contracts successfully. Scopes are often too broad for micros with specialized services. Target set-asides for various industries.

- › Incentivize primes to encourage the creation of their own Micro Set-Aside Program
- › Certain percentage should be set-aside for micros and a program developed for new LBEs and mentors as part of the Set-Aside Program (10%)
- › Special set-aside for 94124 to level playing field

### Micro-LBE

- › Regarding the dollar amount threshold for Micro-LBE contracts, the City needs to be careful when raising thresholds, as Micro-LBEs don't always have the operating capital to complete large contracts
- › Lower Micro threshold or divide into two categories to level the playing field, creating an “emerging Micro-LBE” designation
- › Often challenging to get started as a Micro-LBE. Create a training program to help MLBEs break into the game, like a mentor program with successful LBEs or primes
- › Prime contractors always use the same sub, making it difficult for new MLBEs to participate. Create incentives for primes to use new MLBE subs (extra points if they use a sub that department hasn't contracted with before)
- › Negotiations by City with vendors for utilization by Micro-LBEs– promoting competitive cost (such as materials)

### Waiver Process

- › There should be no waivers granted
- › Waivers should be granted in emergencies only
- › Review the process for mid-project waivers after the majority of the work has been completed
- › Training and strict guidelines for waivers
- › Department-wide LBE goals would assist with not having waivers
- › Define process and provide training for contesting a waiver
- › More incentives for primes to utilize an LBE when there is a waiver. Offer more points for LBE utilization when a waiver is applied and a further bonus for creating LBE opportunities
- › All primes and City departments must use an LBE at some point on the project. If a waiver is given, they need to look at utilization within multi-stage projects
- › Mandate waivers at RFP Development level – create process and oversight
- › Review subcontracting waiver requirements
- › More transparency on when waivers are requested and a public process when a waiver is required
  - » See federal requirements – posted “intent to sole source”

- » Recommend that agency be required to notify if they are going to request a waiver
- › Subutilization and waivers process is not working well together. Waivers are requested when subs can actually do the work. We need a mechanism for review of subutilization to combat waivers
  - » City department oversight with invoicing process
  - » Course corrections and penalties, enforcement
- › Oversight and clarity on the waiver process with increased oversight
  - » Scope changes – no penalties
  - » Change orders – trigger notifications to subs
  - » Make sure compliance people are on the front end
- › Resolution options for waivers need to be reviewed and clearly identified
- › Resolution/mediation needs to have a deep commitment from City and prime contractors
  - » LBE & Prime meetings to try and keep utilization even if on another project
  - » Bring compliance people in on sit downs in mediation

#### Citywide Goals

- › Need flexibility depending on project, which may affect the citywide goals
- › Set citywide goals at 50%, this would be attainable for most contracts and City agencies
- › Certain types/construction: 30% would be achievable
- › Unbundle large contracts to help meet these goals and set-aside more contracts for LBEs
- › Industries will have different capabilities to reach citywide LBE goals Set goals by industry
- › Look at Caltrans format as a guide
- › Include Prime LBEs when measuring whether a City department has met their goal
- › End of fiscal year – have to meet overall goal for citywide but can adjust contract to contract
  - » **LBE Goals**
- › Goals need to be raised – review Oakland’s goal setting process
- › Raise to a 20% goal
- › Raise to a 40% goal
- › Don’t over award self-performing LBE primes as there is a need to keep a small amount of contracts for an LBE sub

#### As-Needed Pools

- › There are too many firms in current pools. Specific performance as-needed can work well, but if there are a couple dozen trades involved it can be a hindrance to the success of the LBE
- › Creation of LBE pools for City departments to utilize when needed is a good idea, but often doesn’t help an LBE plan ahead for current work
- › Pool RFQ Process Needs to be adjusted and provide communication to “pool” LBEs on contracts
  - » Require this info to be shared with LBEs in Pool
  - » Process for review
  - » Tracking and reporting

#### SBA Program

- › Need to update program point system, maybe add a percentage that recognizes SBA still needs an advantage
- › Middle ground for SBA to get preference: point system, if you JV, get 5-7%

#### Joint Venture Program

- › Process needs to be reviewed and strengthened. There needs to be a stronger emphasis on a J/V mentor program
- › Enforcement needed to ensure the partnership is beneficial for both parties
- › Remove from ordinance
- › Needs new structure, and to review how to structure mentoring into contracts
  - » Structured relationships
  - » Levels/HRs
  - » Define success
  - » Requirements

#### RFP Process

- › RFP process is burdensome and often confusing with varying requirements from Department to Department. Standardize requirements and process for responding, as well as how they are written
- › RFP process needs to be standardized
  - » Eliminate guesswork
  - » Requirements
  - » Help Micro-LBEs
  - » Procedures across departments
- › Look at construction process – advocates with organizations
- › Bids that dictate how LBEs structure pricing is not sufficient for all industries, and stops the LBE from bidding. Review the process for determining pricing structure based on industry.

- › Stop giving bonus points for low multipliers
- › Allow LBE specific pricing breakdowns and that LBEs don't have to meet multiplier standard
- › Create Lump sum RFPS – no pricing break downs
- › Review process and develop more structure on actual services needed during RFP Process with more clarity from project managers on needs of contract during development and projections moving forward
- › Unbundle more contracts
  - » Unbundle specific specialties/trades (i.e. flooring)
  - » Ability to meet city requirements but cannot meet general contractor requirements
  - » Primes/general contractors are making LBE utilization difficult

#### General City Process

- › Generally positive interactions with contracting compliance officer (CMD)
- › Top down communications and commitment to program from city leadership
- › Share percentage of project funds that actually go to LBE with public
- › Ongoing Transparency Audits
- › Commitment by city to bring “newbies” through the process with a mentor
- › Reporting about primes vs. subs fees regularly on all contracts
- › City commitment to ensure that LBE program supports, not hinders
- › Reporting need to see a report on how many LBEs total are being utilized
- › Look at developing partnerships extending program through partnerships: Small Business Commission
- › Follow through/program to ensure continued support for LBEs to be successful
  - » Training
  - » Payments
- › Independent contract compliance officers
  - » Ensure they have ability to be advocates
  - » Independence from city agency is important
- › Training needed for contracting officer on specific industries example: Advertising
  - » Base rates and multiplier are specific to each industry
  - » Calculating city rate mark-ups hinders bidding for work

#### Primary Place Of Business

- › Need to review requirements
- › Primary place of ownership has to be in SF
- › More stringent review of ensuring that LBEs have an office and do business in SF during certification
- › Look at changing the designation of what constitutes a primary place of business: maybe the gross receipts business tax payment during certification
- › Principal place of business should not need to be in SF – i.e. IT businesses don't need office, but they should be able to prove a certain threshold of business completed in SF

#### Enforcement, Penalties, and Incentives

- › If an Agency is not meeting their goals, then they should increase their goal for next year
- › Take the percentage the City Department missed and put into a Micro set-aside opportunity
- › Increase accountability as there is no current reporting- add electronic reporting
- › Incentives award from May for City Departments
- › Look at state program to celebrate meeting goals- SARS
- › Performance measurement of City departments with a report card/ranking – similar to the list published of “best places to work” that comes out during the budgeting process
- › Need additional resources for robust compliance – important for CH14 to be implemented correctly and enforced to be impactful
- › Retribution process needs to be added and a better format for complaints should be developed
- › Need a better process for resolving non-payments
- › Higher enforcement/penalties for primes on LBE issues especially delaying payments
- › CMD staff needs training and funding to enforce
- › Loss of HRC means there is no current civilian oversight function
- › Sub payments need a new process and increased enforcement. Primes don't get paid until subs are paid
- › Contract compliance officer – responsible for ensuring subs are utilized and investigate people on team being used
- › Sole Source
- › Sole source needs to be improved, build in requirements for utilization of new LBEs/mentor protégé



### Design/Build Contracts

- › Design/Build Contracts need to set goals for LBEs and have utilization throughout entire process

### LBE Certification

- › Definitions and Requirements are potentially outdated
  - » “Local” may not be correct term – or should be better defined
  - » The registration process needs to be simplified and timelines shortened
  - » Modernize how to market to potential LBEs, and how to connect new primes/subs
  - » LBE forms need updating to ensure a clear and concise and more technology driven process
  - » Categories need to be expanded look at federal program for expanding categories
  - » Certifying empty locations is a problem
  - » B, C, and D in the Ordinance need to be reviewed – outdated since 2006
  - » Ensure LBEs have vendor identification as part of certification, based on category
  - » Ability to add LBE categories based on entire staff/company after initial certification
  - » C-corps requirements hinder process Change requirement for certification as it relates to C-corps with multiple owners, based on percentage
  - » Same LBEs use the program consistently, hard for new LBEs to get involved. Set term limits for how long you can be an LBE

### Good Faith

- › Pre-bid meetings are helpful to meet new subs
- › Engineering industry is easy to find LBEs – generally easy to do good faith outreach and to exceed goals
- › Review the good faith process to improve efficiency
- › If you meet 35%+ of goal by establishing a new relationship, you should be able to waive good faith efforts. Extra bonus points if they use an LBE they haven’t used before
- › It is a challenge when large teams already have their team formed
- › Difficult for micros to break into the game, set-aside contracting opportunity with dollar threshold for those who have not done work with agency within a specific period of time.
  - » Incentives for primes to utilize new subs
  - » Subtract points for NOT utilizing new subs
- › Utilizing established relationships are not a bad thing, as using unknown subs could be a gamble and costly to City

### Thresholds

- › Economic levels need to be increased to meet current state of the economy
- › Don’t increase too much to increase the number of LBEs
- › Emerging Micro Category – Create an emerging Micro category and update thresholds accordingly
- › Economic Thresholds need to be reviewed by industry as inflation affects each industry differently – contractor materials, etc.
- › Raise thresholds regularly (year by year to account for economy)
- › Distinction between labor and materials and how thresholds are set – materials are often the largest piece of a construction project
- › Not one universal raise of thresholds. Set based on specific industries, and on research and analytics
- › Changing the threshold will ensure that the same LBEs are utilized. Keep thresholds consistent so same LBEs aren’t protected. Gives more opportunity to new LBEs to participate
  - » Ad agency – media buys are not profits but counted towards revenue – just a pass through
  - » Architectural, construction, sub consultants
- › Thresholds should be set with an index to increase with cost of living year after year
- › Look at developing a formula that takes outside work/\$ from outside SF into account when determining LBE status – don’t include
- › Micro/SBA should get same discounts across larger contracts
- › Limitations on being an SBA when they outgrow LBE program

### Bonding

- › Remove bonding requirements at initial contract
- › There are a finite pool of those who have bonding
- › Ease bonding burden by offering credit line from the City for bonding

### General Additions

- › Leases and Concessions Leases and concessions, public/private partnerships – not exempt from the LBE program
- › City events and public/private partnerships – evaluate participation in large projects that utilize infrastructure, how can LBEs be utilized

### Prompt Payment

- › City to provide payment in advance for materials, so the contractor doesn't pay for large outlays
- › Transparency on prime payments from agency for subs
- › Prime not paying sub promptly – the process needs to be reviewed and enhance tracking added
- › Subs waive their payment options in the contracting process training for subs so they don't waive their rights during the contracting process
- › Consistent sub contract language needs to be a requirement to ensure subs are not waiving their rights during the contracting process with the prime
- › Safety mechanism needs to be added that allows the City to pay the sub directly
- › Sub payments dispute doesn't mean the prime has the right to not pay the sub
- › Identify language that protects contractors from complying with legitimate complaints
- › Update ability for general contractor to exert control over subs and their payment

### Contracting

- › Add LBEs to the contracts with the agency, not only contract with prime
- › Build subconsultant work into timelines
- › More planning from Agency to utilize Subs
- › Provide training on the payment system so LBEs fully utilize
- › Consistency between all departments on contracting process and terms
- › Large outlays on construction contracts are hurting LBEs. Create a threshold/dollar amount for large outlays during the contract process
- › Invoicing agency with proof of purchase within an outline threshold- keeps the contractor from feeling like a bank
- › Ensure that any split in contract is profitable for LBEs (Not 1%, etc.)
- › Raise bonus to add incentive to utilize LBEs

- › City needs to be advocate for LBEs in disputes with prime
- › Resolution between all levels of subs – all tiers, not just between City and prime
- › Look at implementing bonus structure during contracting for primes who have good ratings
- › Rating system to award primes and their ability to/performance in payment to subs Review additional ideas for offering incentives
- › Process for addressing payment when one contractor (prime or sub) delays payment that ensures other subs are paid. Require prime pulls "problem sub" from invoice and submits for payment
- › Retroactive credit for utilizing subs who would have been LBEs/designated at the time of award. Mechanism/allowance that allows utilization of LBEs in a designation they aren't certified
- › Refer/implement AIA standards for construction contracts
  - » Credit scores evaluated during contracting process to demonstrate good standing
  - » Rating could be Satisfactory/Unsatisfactory or letter A, B, C, D, C, etc. and affect contract award
- › Increase education and relationship building between prime and sub Education and relationship – between prime and sub to ensure understanding of sub capabilities
- › City requirement to include entire team by ensuring LBEs/subs involved in kick-off so Project Manager knows subs specialties
- › Need program for monitoring terms of sub contracts
  - » Meet standards of City
  - » No additional requirements above City
  - » Payment terms
  - » Insurance requirements

Stakeholders

Organizations Invited to Participate

Organizations and members who were invited to participate ranged from those focused on community, small business, and special interests. We invited each organization to reach out to their network and invite them to participate.

American Civil Liberties Union of Northern California  
Asian American Architects & Engineers–Northern CA  
Asian American Association of Attorney & Certified Public Accountant Firms  
Asian American Contractors Association  
Asian Business League  
Asian Law Caucus  
Asian, Inc.  
Association of General Contractors  
Bay Area Local Initiatives Support Corporation  
BayView Merchants Association  
Business for Social Responsibility  
California Professional Association of Specialty Contractors  
Chinatown Community Development Center  
Chinatown Merchants Association  
Chinese American Citizens Alliance  
Chinese Chamber of Commerce  
City and County of San Francisco – Office of Small Business  
Clement Street Merchants Association  
Coalition for Economic Equity  
Contract Monitoring Division  
Council of Asian American Business Associations  
Equal Justice Society  
Equal Rights Advocates  
Equity Advisory Committee for Human Rights Commission  
eWomen Network  
Excelsior Action Group  
Filipino American Chamber of Commerce (FACC)  
Fillmore Merchants & Improvement Association  
Fisherman’s Wharf Merchants Association  
Glen Park Merchants Association  
Golden Gate Business Association  
GreenLight Fund

Haight Ashbury Merchants Association  
Hayes Valley Merchants Association  
Hispanic Chamber of Commerce (SFHCC)  
Inner Sunset Merchants Association  
Japantown Merchants Association  
Judah Merchants Association  
La Raza Community Resource Center  
Lawyers Committee for Civil Rights  
Lower 24th Street Merchants Association  
Lower height Merchant & Neighbor Association—LoHaMNA  
Lower Polk Neighbors and Merchants  
Marina Merchants Association  
Merchants of Upper Market & Castro (MUMC)  
Mid Divisadero Merchants Association  
Mission Creek Merchant Association  
Mission Economic Development Agency  
Mission Merchant Association  
National Association for Minority Contractors  
National Association of Women Business Owners  
Noe Valley Merchants Association  
Noriega–Lawton Merchants Association  
North Beach Business Association  
Northeast Mission Merchants and Biz Association  
Northern California Certified Small Business Association  
OBDC Small Business Finance  
One Bay Area – Equity Collaborative  
Outer Mission Merchants and Residents Association  
Outer Sunset Merchants Association  
People Organizing to Demand Environmental & Economic Rights (PODER)  
Polk Street Merchants Association  
Potrero Dogpatch Merchants Association  
Potrero Hill Association of Merchants and Businesses  
Public Advocates

Renaissance Entrepreneurship Center  
Rotary Club of San Francisco  
Sacramento Street Merchants Association  
San Bruno/Ocean Avenue Merchants Association  
San Francisco African American Chamber of Commerce  
San Francisco Council of District Merchants Association  
San Francisco Locally Owned Merchant Alliance (SFLOMA)  
San Francisco Small Business Administration  
San Francisco Small Business Network  
SF Chamber of Commerce  
SF Council of District Merchants Associations  
SF Small Business Advocates  
SFPUC Contractors Assistance Center  
Small Business Development Center  
South Beach Mission Bay Business Association  
South of Market Business Association  
Southeast Asian Community Center  
SPUR  
Taraval Parkside Merchants Association  
Tenderloin Merchants Association  
The Council of Asian American Business Associations of CA  
The Greenlining Institute  
TMC Working Solutions  
Union Square Business Improvement District  
Union Street Association  
Upper Fillmore Merchants Association  
Urban Habitat – Bay Area Social Equity Caucus  
Urban Solutions  
Valencia Street Merchants  
West Portal Merchants Association  
Yerba Buena Alliance



Stakeholders  
**Workshop Attendee Industries**

Each workshop had participants from varying industries, where each possessed a different point of view, and offered feedback on the various topics discussed.

- Architecture
- Civil Engineering
- Conflict Resolution
- Construction
- Construction Management
- Construction Supply
- Consultant
- Design/Communications
- Design/Consulting
- Electric
- Engineering
- Food Services
- Government Consulting
- Graphic Design
- Marketing
- PR
- Professional Services
- Software
- Transportation Contracts and Security

Stakeholders  
**City Department Workshop Attendees**

Each workshop had participants from varying industries, where each possessed a different point of view, and offered feedback on the various topics discussed.

- Recreation & Parks Department
- Police Department
- Department of Public Works
- Office of the Controller
- Port of San Francisco
- San Francisco International Airport
- Treasure Island Development Authority
- Mayor’s Office of Housing and Community Development
- San Francisco Public Library
- Department of Technology
- Adult Probation Department
- Department of the Environment
- San Francisco Municipal Transportation Agency
- Department of Public Health
- San Francisco Public Utilities Commission
- Human Services Agency
- Planning Department



Prepared by D&A Communications

On behalf of the City and County of San Francisco, Office of the City Administrator, Contracts Monitoring Division