CITY & COUNTY OF SAN FRANCISCO
CONTRACT MONITORING DIVISION

CMD ATTACHMENT 4

Requirements for Micro-LBE Set-Aside Construction Contracts

FOR CONTRACTS $440,000 AND LESS THAT ARE ADVERTISED ON **JULY 1, 2015 TO JULY 31, 2015**

AND

For Contracts $600,000 AND LESS THAT ARE ADVERTISED ON OR AFTER AUGUST 1, 2015

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

A. To be eligible for this contract award, bidders must agree to comply with the Local Business Enterprise ("LBE") requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4, and Chapter 14B (where applicable), and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division ("CMD").

B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any bidder or contractor to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website at http://www.sfgov.org/cmd.

C. Micro-LBE Set-Aside Program

Under Section 14B.7(K)(1) of the Ordinance, the City may set-aside for competitive award to Micro-LBEs any construction contract estimated by the Contract Awarding Authority to be $440,000 or less (for contracts that are advertised on July 1, 2015 to July 31, 2015) and $600,000 or less (for contracts that are advertised on or after August 1, 2015). The Certification application is available on the CMD website at http:www.sfgov.org/cmd.

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

For assistance with this CMD Attachment
and/or assistance with the Equal Benefits Program,
please contact the CMD Main Office at (415) 581-2310

Contracts that are set-aside for award to Micro-LBEs shall not be subject to the LBE subcontracting goal under Section 14B.8. Micro-LBEs that subcontract any portion of a set-aside contract should subcontract to businesses certified as Micro-LBEs to the maximum extent possible. Micro-LBEs that subcontract any portion of a set-aside contract must serve a commercially useful function based on the contract's scope of work.

The Micro-LBE Prime must perform at least 25% of the contract work. Additionally, there should be no modifications to increase the contract amount unless there is an unforeseen situation—any such modification must have prior CMD approval.

IMPORTANT NOTICE: In this CMD Attachment 4, the term "LBE" refers to only San Francisco ("SF") CMD Certified Micro-LBEs/NPEs and, therefore, does not include SFPUC Micro-LBEs.

1.02 MICRO SET-ASIDE CONTRACT ELIGIBILITY

To be eligible for a micro set-aside contract the bidder must be a CMD Certified Micro-LBE in a certification category that corresponds with the contractor licensing requirements called out by the Contract Awarding Authority. A bidder that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the bid is due is not a Micro-LBE and is not eligible to bid on the contract even if the firm is later certified or ultimately prevails in its appeal.

1.03 CMD LBEUTS AND CONTRACT PERFORMANCE FORMS:

Upon request from CMD, the Contractor must provide copies of certified payrolls for itself and all subcontractors. Failure to submit all required information in the LBEUTS or Contract Performance Forms as instructed may result in the withholding of progress payments and final payment pursuant to Chapter 14B.

***NOTE 1*:**

Failure to complete or submit any of the forms may cause the bidder to be deemed non-responsive and ineligible for contract award. For negotiated contracts: The schedule for the submission of forms will be established by the CMD in conjunction with the Contract Awarding Authority on a contract-by contract basis.

NOTE 2:

FORM 2A: CMD LBE Subcontractor Participation Form is no longer in use. The information previously required under that form shall be included by the bidder as part of **DOCUMENT 00435 or Section 00 43 45 or Section 00 43 36** of the bid specifications**.**

A. In addition to meeting the requirements of the "Subletting and Subcontracting Fair Practices Act," Bidder shall list on Document 00435 **or Section 00 43 45 or Section 00 43 36** the dollar amount and portion of work to be performed by the bidder and each subcontractor/supplier including first and lower tier subcontractors/suppliers or service contractors such as truckers.

B. The apparent low bidder must submit the following forms by 5:00 p.m. on the fifth business day following Bid opening. If the CMD determines that the bidder is not acting in good faith in the timely and accurate submission of these forms, the bid may be determined non-responsive and rejected.

Note: No extensions of time to submit the forms are permitted except as specifically approved.

FORM 3: CMD Compliance Affidavit: The Micro-LBE Prime must perform at least 25% of the contract work or the bid will be deemed non-responsive. Micro-LBE Prime must specify on this form the dollar amount and portion of work to be self-performed. The bidder shall sign the Affidavit under penalty of perjury.

A. LBE Utilization Tracking System

Information regarding the LBE Utilization Tracking System (LBEUTS) can be found at http://www.sfgov.org/LBEUTS

1. **FORM 7: CMD Progress Payment Form:** Contractor shall submit online using the LBEUTS with each payment request. Failure to upload this information with each payment request may delay progress payment processing.

2. **FORM 9: CMD Payment Affidavit:** Following receipt of each progress payment from the Contract Awarding Authority, a Form 9 (or the information on Form 9) must be submitted online using the LBEUTS with the next progress payment request. Subcontractors are then required to acknowledge payment from Contractor online using the LBEUTS. Failure to submit required information may lead to partial withholding of progress payment, even if there are no subcontractor payments for the reporting period.

C. **FORM 8: CMD Exit Report and Affidavit: Submit with final Form 7. A separate Form 8 must be** completed for each LBE subcontractor and vendor (including lower tier subcontractors & suppliers).

Upon request from CMD, the contractor must provide copies of certified payrolls for itself and all subcontractors.

D. **FORM 10: CMD Contract Modification Form:** No modification without prior CMD approval.

E. Failure to submit any contract forms may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

1.04 NONCOMPLIANCE AND SANCTIONS

A. **Non-Compliance with Chapter 14B**

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing Rules and Regulations.

   a. If the CMD Director determines that there is cause to believe that a contractor has failed to comply with any of the requirements of the Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, the CMD Director shall notify the Contract Awarding Authority and attempt to resolve the non-compliance through conference and conciliation.

   b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.

c. The Director's finding shall indicate whether the contractor acted in good faith or whether noncompliance was based on bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.

2. Where the Director finds that the contractor acted in good faith, after affording the contractor notice and an opportunity to be heard, the Director shall recommend that the Contract Awarding Authority take appropriate action. Where the Director finds bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, which may include:

   a. Issuing an Order of Debarment prohibiting the contractor and affiliates from participating in City Contracting for a period not to exceed five years and terminating any existing contracts or subcontracts with the debarred contractor, in accordance with the Administrative Debarment provisions and procedures set forth in Administrative Code Chapter 28.

   b. Determining that the contractor has failed to comply with the provisions of Chapter 14B, sanctions are as follows:

      i) suspend a contract;
      ii) withhold funds;
      iii) assess penalties;
      iv) debarment;
      v) revoke CMD certification; or
      vi) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the contractor's net profit on the contract, 10% of the total amount of the contract or $1,000, whichever is greatest as determined by CMD.

   c. The Director's determination of non-compliance is subject to appeal the City Administrator pursuant to CMD Rules and Regulations.

   d. An appeal by a contractor to the City Administrator shall not stay the Director's findings.

   e. The CMD Director may require such reports, information and documentation from contractors, subcontractors, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

B. Procedure for the collection of penalties is as follows:

   1. The CMD Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the contractor that a determination of non-compliance has been made and that all payments due the contractor shall be withheld.

   2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

PART II. BID DISCOUNT

2.01 The bid discount does not apply.

PART III. LBE SUBCONTRACTOR PARTICIPATION

3.01 The LBE subcontracting goal does not apply.

3.02 Substitution, removal, or contract modification of LBE: No listed subcontractor, supplier, trucker or other business listed on Document 00435 **or Section 00 43 45 or Section 00 43 36** shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior CMD approval. In addition, any new subcontractors must have CMD's prior approval.

PART IV. NON-DISCRIMINATION REQUIREMENTS

4.01 GENERAL

As a condition of contract award, Contractors and subcontractors shall comply with the nondiscrimination requirements as defined by Chapter 12B of the Administrative Code.

4.02 NON-DISCRIMINATION PROVISIONS

A. Prior to the award of the contract, Contractor shall agree in its bid that it will abide by Administrative Code Chapter 12B by not discriminating in the provision of benefits between its employees with spouses and its employees with domestic partners, as required by Chapter 12B.

B. Contractor shall promote and ensure equal employment opportunities for persons of all ethnic backgrounds and genders in the construction workforce. Prior to award of the contract, Contractor shall agree in its bid that it will abide by Administrative Code Chapter 12B by not discriminating against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or AIDS/HIV status, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under Chapter 12B. This prohibition includes discrimination in employment, upgrading, demotion, transfer, recruitment advertising or recruitment, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractors shall place the same requirements in its subcontracts.

C. Contractor and its subcontractors shall send to each labor union with which they have a collective bargaining agreement a notice advising the union of this commitment to nondiscrimination and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

D. Neither the provision of a collective bargaining agreement nor the failure of a union with whom contractor has a collective bargaining agreement to refer any group of persons for employment shall excuse contractors' or its subcontractors' obligations not to discriminate under these provisions.

E. Contractor and its subcontractors shall ensure that all forepersons, superintendents and other on-site supervisory personnel maintain a working environment free of harassment, intimidation, and coercion.

F. Contractor and its subcontractors shall ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and changing facilities shall be provided to accommodate all workers.

G. Upon HRC request, an authorized representative of contractor, its subcontractors and suppliers will actively participate in compliance review meetings with a representative of the HRC to review the implementation of these nondiscrimination requirements. The authorized representative of the company in attendance must have authority to commit the organization.

Contractor shall be responsible to notify and to require the attendance of its subcontractors at such meetings. Contractors and subcontractors shall abide by any nondiscrimination program imposed by the HRC under Chapter 12B.4.

H. Non-Compliance and Sanctions:

1. A complaint of discrimination in employment initiated by any party after contract award will be processed in accordance with the HRC Rules of Procedures, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
2. A finding of discrimination may result in imposition of financial penalties and debarment from City contracting.

FORM 3: CMD COMPLIANCE AFFIDAVIT

1. Micro-LBE Prime should specify on the space below the dollar amount and portion of work to be self-performed

   $_____ and Scope of Work: _____

2. I will ensure that my firm complies fully with the provisions of Chapter 14B and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.

3. Upon request, I will provide the CMD with copies of contracts, subcontract agreements, certified payroll records and other documents requested so the HRC and CMD (as applicable) may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.

4. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the CMD shall be payable to the City and County upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.

5. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Date: _____

FORM 7: CMD PROGRESS PAYMENT FORM

To be submitted electronically using the LBEUTS. For more information visit www.sfgov.org/lbeuts.

To be completed by contractor and submitted to the Contract Awarding Authority with its monthly progress payment request.

TRANSMITTAL

TO: Resident Engineer or Inspector **COPY:** CMD Contract Compliance Officer

FROM: _____ **Date:** _____

SECTION 1. Fill in all the blanks

Contract Number: _____ **Contract Name:** _____

Reporting Period From: _____ **To:** _____ **Progress Payment No:** _____

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

1. **Original Contract Award Amount:** $ _____
2. **Amount of Change Orders, Amendments, and Modifications to Date:** $ _____
3. **Total Contract to Date *(Line 1 + Line 2)*:** $ _____
4. **Gross Amount Invoiced this submittal period:** $ _____
5. **All Previous Gross Amounts Invoiced:** $ _____
6. **Total Gross Amounts of Progress Payments Invoiced to Date *(Line 4 + Line 5)*:** $ _____
7. **Percent Complete *(Line 6÷ Line 3)*:** _____ %

Contractor must sign this form

_____
Owner/Authorized Representative (Signature)

_____
Name and Title (Print)

_____
Firm Name

_____
Telephone Fax

_____
Date

SECTION 2. For column "A", list the Prime Contractor, each joint venture partner and ALL subcontractors and suppliers including 2nd and 3rd tier subcontractors. Make copies if more space is needed. Prime contractors must retain copies of all the prime and subcontractor invoices supporting the information tabulated for this progress payment. CMD reserves the right to request and review this information up to five (5) years following project completion and, upon request, Prime Contractor shall submit the requested information to CMD within 10 business days.

Notes: *1.* Failure to submit all required information may lead to partial withholding of progress payment. (See Chapter 14B)
2. All firms must be CONTINUOUSLY listed on column "A" regardless if a firm is requesting payment.

A	B	C	D	E	F	G	H
Name of Firm List Contractor and all subcontractors, (including lower tier subcontractors and suppliers. Indicate if the firm is an LBE	**Service Performed**	**Amount of Contract or Purchase Order at Time of Award**	**Amount of Change Orders/Modifications to Date**	**Total Amount of Contract or Purchase Order to Date +/– Change Orders/Modifications (C + D) or (C–D)**	**Amount Invoiced this Reporting Period**	**Amount Invoiced to Date, including Amount Invoiced this Reporting Period (F)**	**Percent Completed to Date (G÷E)**
							%
							%
							%
							%
							%
							%
							%
							%
							%
LBE Sub-Totals							%
CONTRACT TOTALS							%

FORM 9: CMD PAYMENT AFFIDAVIT

To be submitted electronically using the LBEUTS. For more information visit www.sfgov.org/lbeuts.

TRANSMITTAL

TO: Resident Engineer or Inspector **COPY:** CMD Contract Compliance Officer

FROM (Contractor)**:** _____ **Date:** _____

List the following information for each progress payment received from the Contracting Awarding Authority. Use additional sheets to include complete payment information for all subcontractors (including lower tier subcontractors) and suppliers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress or final payment.

Contract Number: _____ **Contract Name:** _____

Contract Awarding Department: _____

Progress Payment No.: _____ **Period Ending:** _____

Amount Received: $ _____ **Date:** _____ **Warrant/Check No.:** _____

☐ **Check box and sign below if there is no sub payment for this reporting period.**

Subcontractor/Supplier Name	Business Address	Amount Paid	Payment Date	Check Number

I declare, under penalty of perjury under the laws of the State of California, that the above information is complete and that the tabulated amounts paid to date are accurate and correct. Contractor must sign this form.

_____
Owner/Authorized Representative (Signature)

_____
Name and Title (Print)

_____
Firm Name

_____
Telephone Date

FORM 8: CMD EXIT REPORT AND AFFIDAVIT

Prime Contractor must complete and sign this form (Sections 1 and 4) for each LBE subcontractor (incl. each lower-tier LBE subcontractor), supplier and trucker. **All** LBEs must complete and sign Sections 2 and 3 of this form. These forms should be submitted to the Contract Awarding Authority and CMD with the final progress payment request.

TRANSMITTAL

TO: Resident Engineer Inspector **COPY:** CMD Contract Compliance Officer

FROM (Contractor)**:** **Date Transmitted:**

SECTION 1. Please check this box if there are no LBE subcontractors/suppliers for this contract: ☐

Reporting Date: _____ **Contract Name:** _____

Name of LBE: _____ **Portion of Work (Trade):** _____

Original LBE Contract Amount: $

Change Orders, Amendments, Modifications: $

Final LBE Contract Amount: $

Amount of Progress Payments Paid to Date: $

Amount Owing including all Change Orders, Amendments and Modifications $

Explanation by contractor if the final contract amount for this LBE is less than the original contract amount:

SECTION 2. Please check one:

☐ **I did NOT subcontract out ANY portion of our work to another subcontractor.**

☐ **I DID subcontract out our work to:**

Name of Firm: _____ **Amount Subcontracted: $**

Name of Firm: _____ **Amount Subcontracted: $**

SECTION 3.

To be signed by the LBE:

☐ **I agree** ☐ **I disagree**

Explanation by LBE if it **is in disagreement with the above explanation or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment.**

Owner/Authorized Representative (Signature) Name and Title (Print)

Firm Name Telephone Date

SECTION 4.

If this form is submitted without the LBE's signature, the Prime must enclose verification of delivery of this form to the subcontractor/supplier.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

_____
Owner/Authorized Representative (Signature)

_____
Name and Title (Print)

_____
Firm Name

_____
Telephone Date

FORM 10: CMD CONTRACT MODIFICATION FORM

Contractor must submit this form with the required supporting documentation and obtain prior CMD approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CMD approved value by 20%. This form must be completed prior to the approval of such amendments, modifications or change orders.

Name of Project/Contract Title: _____

Original Contract Amount: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

1. A list of the new overall contract amounts for the prime contractor, subcontractors, and vendors.
2. A list of all prior contract amendments, modifications, supplements, and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.

_____
Owner/Authorized Representative (Signature)

_____
Name (Print) **Title**

_____
Firm Name

_____
Telephone **Date**