
**CHAPTER 14C:
CALIFORNIA BENEFIT CORPORATION DISCOUNT**

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Editor's Note:

This chapter's enacting ordinance provides "This Ordinance shall become operative 90 days from the effective date of the Ordinance and shall expire three years thereafter unless extended by ordinance of the Board. Upon the expiration of this Ordinance, the City Attorney shall cause this Chapter to be removed from the Administrative Code." See Ord. [76-12](#), Sec. 4.

SEC. 14C.1. SHORT TITLE.

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

(Added by Ord. [76-12](#), File No. 120082, Eff. 6/3/2012, Oper. 9/1/2012)

SEC. 14C.2. DEFINITIONS.

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

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

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

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

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

"CMD" means the Contract Monitoring Division of the Office of the City Administrator to which the City Administrator has delegated responsibility to implement this Chapter, and shall also mean and include any department or division of the Office of the City Administrator that the City Administrator may in the future designate as successor to the Contract Monitoring Division to assume the duties of the Contract Monitoring Division set forth in this Chapter.

"Director" means the Director of the Contract Monitoring Division or his or her designee.

"Nonprofit" means a nonprofit corporation that is incorporated in California under California Corporations Code § 5000 *et seq.* as amended, or any successor legislation organized primarily or exclusively for charitable purposes and qualifies for the exemptions provided under California Revenue and Taxation Code Section 23701 and Internal Revenue Code Section 501(c)(3).

"Regional Business" means a business that has a principal place of business located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, Sonoma and Sacramento.

"S.F. Business" means a business that has a principal place of business located in the geographic limits of San Francisco and is registered with the Office of the Treasurer & Tax Collector's Business Registration records, excluding a certified 14B LBE.

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

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

SEC. 14C.3. BENEFIT CORPORATION DISCOUNTS.

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

(1) not be a subsidiary of a non Benefit Corporation; and

(2) have been incorporated as a Benefit Corporation in California for at least six (6) months preceding the application of the Benefit Corporation Discount.

(b) **California Secretary of State Verification.** The CMD shall verify current Benefit Corporation status with the California Secretary of State and apply the Benefit Corporation Discount. As part of the verification process, CMD may require a Benefit Corporation to submit additional documentation with the bid or proposal to verify status.

(c) **Third Party Verification.** CMD may not apply the Benefit Corporation Discount until the Benefit Corporation has received third party verification. CMD shall adopt rules and regulations consistent with this Chapter for determining if a Benefit Corporation has complied with third party verification.

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

(1) 14B LBE, or

(2) Nonprofit bidder or proposer, or

(3) S.F. Business unless the Benefit Corporation is also a S.F. Business; or

(4) Regional Business unless the Benefit Corporation is also a Regional Business.

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

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

(g) **Amount of Discount.** CMD shall apply a Benefit Corporation Discount as follows:

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

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

(h) **Review by CMD and Controller.** For the first two years this Chapter is in effect, the Director of the CMD, in coordination with the Controller, shall conduct a biannual evaluation of the impact of the Benefit Corporation Discount in City contracting. Thereafter, the CMD Director and the Controller shall conduct an annual evaluation. This report shall analyze Benefit Corporation participation levels by reviewing the number of City contracts awarded to Benefit Corporation bidders or proposers, including the size, type, and dollar amount of the contract. This report may provide recommendations to the Board of Supervisors for amendments to this Chapter.

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

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

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

(Added by Ord. [76-12](#), File No. 120082, Eff. 6/3/2012, Oper. 9/1/2012; amended by Ord. [250-13](#), File No. 130584, App. 11/8/2013, Eff. 12/8/2013)