



**San Francisco Administrative Code
CHAPTER 14B**

Rules and Regulations

**LOCAL BUSINESS ENTERPRISE UTILIZATION AND NON-
DISCRIMINATION IN CONTRACTING ORDINANCE**

Effective Date: 7/1/2015

The City Administrator adopts these rules and regulations pursuant to Section 14B.1(D) of the Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance, codified as Administrative Code Chapter 14B.

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I. DEFINITIONS

The definitions listed below are supplements to those set forth in Section 14B.2 of the Administrative Code.¹ Please refer to those definitions when consulting these Rules.

“Broker” shall mean a firm that purchases and sells, but does not regularly take possession of stock materials and is not a “supplier”.

“Business day(s)” when referring to a time period within which an action must be taken shall mean all days excluding all City holidays and/or weekends.

“Day” or “days” when referring to a time period within which an action must be taken shall mean calendar days unless otherwise specified.

“Harm” means any material and tangible economic detriment, loss, or damage.

“Prime Level Work” means any portion of work that is listed in the prime’s minimum qualification section in the RFQ/RFP.

“Rules” shall refer to these Rules and Regulations.

“Supplier” shall mean a firm with the financial and physical capability to purchase, to stock, and to distribute or to sell. The supplier shall stock the types of items consistent with the relevant industry practice, and have appropriate invoices and inventory located within the boundaries of the City. A supplier must continually maintain a warehouse stocked with inventory within the geographical boundaries of the City.

II. POWERS AND DUTIES OF THE CITY ADMINISTRATOR

- A. The City Administrator's powers and duties under Chapter 14B are set forth in Section 14B.10.
- B. The Contract Monitoring Division through its staff, shall gather data on industry subgroups and compile a list of contractors/consultants to determine the availability and utilization of local contractors/consultants in a particular industry under each subgroup.

III. POWERS AND DUTIES OF THE DIRECTOR OF THE CONTRACT MONITORING DIVISION (CMD)

- A. The powers and duties of the Director are set forth in Section 14B.10.
- B. In addition to the powers and duties set forth in Chapter 14B, the Director shall:
 - 1. Monitor the level of LBE subcontractor participation specified in a prime contract. The Director may investigate suspected violations of the LBE Ordinance, in accordance with the procedures provided by the Ordinance and these Rules.

¹ All subsequent references are to Chapter 14B of the San Francisco Administrative Code unless specified.

C. Non-Discrimination Program

1. As provided in Section 14B.9, CMD will monitor the administration of City Contracts, including the selection of subcontractors to prevent unlawful discrimination in the selection of subcontractors.
2. CMD will investigate, mediate, and resolve discrepancies concerning City contracting requirements and processes involving the LBE program. If CMD discovers evidence of discrimination in a bidder's selection of subcontractors, CMD will refer the matter to the Human Rights Commission.
3. For Contracts with an LBE Subcontracting Participation Requirement, the Director shall determine the availability percentages of MBE, WBE, and OBE subcontractor participation which would be expected in a bid or proposal in the absence of discrimination.
4. A Bidder is not required to achieve the MBE, WBE, and OBE availability subcontractor percentage for a particular contract. If there is significant difference between a Bidder's list of MBE, WBE, and/or OBE Subcontractors in dollar amounts which reflect the availability percentages, CMD shall document the actual subcontractor utilization and may refer the matter to HRC for further investigation.
5. All Bidders must fully cooperate in an investigation of discrimination. All Bidders must immediately respond to HRC requests for information and shall comply with document requests. Failure to cooperate shall be treated as non-compliance.
6. The Director shall issue an exit report or close out memo for any Contract that includes LBE subcontracting participation and/or prime joint venture participation.

IV. POWERS AND DUTIES OF DEPARTMENTS/CONTRACTING PROCEDURES

- A. The powers and duties of Contracting Awarding Authorities are set forth in Section 14B.13.
- B. Contract Awarding Authorities shall apply the Bid discount/rating bonus to bids and proposals from LBEs, pursuant to Sections 14B.7(D), (E), and (F). LBEs shall not receive the bid discount for brokerage, referral or temporary employment services unless the request for proposal or bid specifications specifically requires these services in the proposed project.

C. Formal Contracting Procedures

1. For purposes of these Rules and Regulations, the following shall be considered formal contracts:
 - a) Public Works construction Contracts valued at and above the "Threshold Amount" as defined by Chapter 14B; and
 - b) Professional services, general services², architect/engineering, and commodities

² The Minimum Competitive Amount for general services is equal to the "Threshold Amount" as defined in Section 6.1 of the Administrative Code.

contracts valued at and above the “Minimum Competitive Amount” as defined by Chapter 14B.

2. For formal Contracts, the procedures the Contract Awarding Authority must adhere to include, but are not limited to, the following:
 - a) No less than ten (10) business days prior to advertisement, Contract Awarding Authority shall submit the draft RFQ/P and/or Request for Bids including scope of work, evaluation criteria, and cost estimate evaluation to CMD so that appropriate LBE subcontracting participation requirements may be determined;
 - b) Comply with all Awarding Authority “Good Faith” efforts to obtain LBE Bids as provided in Section 14B.7(A), copied below for reference as follows:
 - Arrange Contracts by size and type of work to maximize opportunities for LBEs;
 - Outreach to all LBEs with appropriate certification to solicit their interest in the contracting opportunity;
 - Encourage LBEs to attend prebid meetings;
 - Post contracting opportunities on the department, OCA, and/or other centralized City website with adequate lead time for LBEs to effectively respond to the opportunity;
 - Use the services of community and contractors’ groups to assist in the recruitment of LBEs; Provide all Bidders, including LBEs access to adequate information about the plans, specifications and requirements of the proposed Contract;
 - c) Work with CMD to apply the Bid discount/rating bonus at each stage of the selection process.

D. Contracts Between \$10,000 and Threshold Amount or Minimum Competitive Amount

1. Contracts greater than \$10,000 but less than the Threshold Amount (Public Works) or Minimum Competitive Amount (Professional or General Services and Commodities) must be procured through either the Micro-LBE Set-Aside Program or the San Francisco First Program.
2. If the Contract meets the parameters of the Micro-LBE Set Aside Program, Contract Awarding Authorities shall use its best efforts to procure the Contract under this program, to ensure it meets its yearly Micro-LBE Set Aside requirement under Section 14B.7(K). If the Contract is not procured under the Micro-LBE Set Aside Program, the Contract Awarding Authority shall provide CMD with a written explanation why the contract was not set aside, or if it was set aside, why it was not awarded to a Micro-LBE.
3. If the Contract cannot be procured as a Micro-LBE Set Aside, then the Contract must be procured through the San Francisco First Program as provided in Section 14B.7(L).

E. Micro-LBE Set-Aside Program

1. Pursuant to Section 14B.7(K), Contract Awarding Authorities, in consultation with the Director shall:
 - a) Set-aside award to Micro-LBEs not less than 50% of public works Contracts estimated to cost between \$10,000 and the Threshold Amount (currently \$440,000);
 - b) Set-aside award to Micro-LBEs not less than 25% of Contracts other than public works construction Contracts estimated to cost between \$10,000 and the Minimum Competitive Amount (currently \$110,000)..
2. If (i) fewer than two Micro-LBEs submit Bids, or (ii) 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 rebid the Contract without restriction to Micro- LBEs.
3. Contracts that are set-aside for award to Micro-LBEs shall not be subject to subcontracting participation requirements 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, and must perform at least 25% of the contract work.
4. The Bid discount provisions of Section 14B.7(D) and (E) shall not apply to set-aside contracts.
5. At the beginning of each fiscal year, each Contract Awarding Authority shall meet with CMD to determine all Contracts that are eligible for the Micro-LBE Set-Aside Program. This information shall be updated quarterly by each Contract Awarding Authority.
6. Contract Awarding Authorities shall annually report on its compliance towards meeting the Micro-LBE Set Aside requirements as provided in Section 14B.7(K)(3).

F. San Francisco First Program (Informal Contracting Procedures)

1. The San Francisco First Program applies to the following Contracts:
 - a) Public works Contracts not aside for Micro-LBEs under Section 14B.7(K), the estimated cost of which exceeds \$10,000 but is less than the Threshold Amount; and
 - b) Professional services, general services, architect/engineering and commodities Contracts not aside for Micro-LBEs under Section 14B.7(K), the estimated cost of which exceeds \$10,000 but is less than the Minimum Competitive Amount.
2. For all Contracts subject to the San Francisco First Program, the Contract Awarding Authority must adhere to the following:
 - a) For Contracts estimated to cost more than 50% of the Threshold Amount or Minimum Competitive Amount, Contract Awarding Authorities, no less than ten (10) business days prior to advertisement or quote/proposal submittal deadline if no

advertisement is required, shall submit the draft RFQ/P and/or Request for Bids or Quotes, if any, including scope of work, evaluation criteria, and cost estimate evaluation to CMD so that appropriate LBE subcontracting participation requirements may be determined.

- b) Comply with all Awarding Authority “Good Faith” efforts to obtain LBE Bids as provided in Section 14B.7(A), copied below for reference as follows:
 - Arrange Contracts by size and type of work to maximize opportunities for LBEs;
 - Outreach to all LBEs with appropriate certification to solicit their interest in the contracting opportunity;
 - Encourage LBEs to attend prebid meetings;
 - Post contracting opportunities on the department, OCA, and/or other centralized City website with adequate lead time for LBEs to effectively respond to the opportunity if not impracticable to do so;
 - Use the services of community and contractors’ groups to assist in the recruitment of LBEs;
 - Provide all Bidders, including LBEs access to adequate information about the plans, specifications and requirements of the proposed Contract;
 - c) Attempt to obtain at three or more quotes, bids, or proposals from Micro or Small LBEs.
 - d) Work with CMD to apply the Bid discount/rating bonus at each stage of the selection process.
 - e) If the Contracting Awarding Authority is unable to obtain 3 more more quotes, bids, or proposals from Micro or Small LBEs, the Contract Awarding Authority shall prepare a written finding explaining why at least 3 bids, quotes, or proposals from LBEs were not obtained. The written justification should include the following:
 - the outreach efforts performed by the Contract Awarding Authority including the specific LBE category(ies) outreached to and the number of micro or small LBEs solicited; and
 - a summary of the responses received from micro or small LBEs.
 - f) In cases were the LBE subcontracting participation requirement does not apply because the Contract Awarding Authority let out a Contract that is under 50% of the Minimum Competitive Amount or Threshold Amount, CMD will not approve contract amendments, modifications, supplements, or change orders that cumulatively increase the original contract amount by more than 20% unless CMD determines that there is a compelling reason that justifies such an approval. As such, Contract Awarding Authorities should be mindful when letting out contracts that are under 50% of the Minimum Competitive Amount or Threshold Amount as applicable.
3. Contract Awarding Authorities shall consult with CMD prior to awarding any Contract solicited through the above process where the bid/proposal resulted in

the contract significantly exceeding the Threshold Amount for public works contracts, or the Minimum Competitive Amount for professional services, general services, architect/engineering and commodities contracts.

G. Prequalified Pools; Procedure and Recommendations

1. Public Works Construction Contracts. For prequalified pools for public works construction Contracts, where the Contract Awarding Authority conducts a Request for Qualifications process, the following procedures shall apply:
 - a) Contract Awarding Authorities that wish to establish a pool of prequalified firms to provide construction services may do so using objective criteria (e.g., Yes/No or True/False responses). If objective criteria are used and a positive response is required for each question, the LBE bid discount/rating bonus provision of the Ordinance shall not be applied because of the nature of the criteria. However, if objective criteria are used and the respondent is not required to provide a positive response to each question (e.g. 8 out of 10 questions must be answered in the affirmative) then the LBE bid discount/rating bonus provisions of the Ordinance shall be applied. After the pre-qualification process, the LBE bid discount provisions of the Ordinance shall apply to the selection of a contractor. The LBE Joint Venture bid discounts/bonuses does not apply to construction contracts.
 - b) Contract Awarding Authorities that wish to establish a pool of prequalified firms to provide construction services may do so using subjective criteria (e.g., price or other open responses that are scored by the contract awarding department/selection panel). If subjective criteria are used to establish the prequalified pool, the LBE bid discount/rating bonus provisions of the Ordinance shall be applied. After the pre-qualification process, the LBE bid discount provisions of the Ordinance shall apply to the selection of a contractor. The LBE Joint Venture bid discount/rating bonus does not apply to construction contracts.
2. Professional and General Services, and Commodities. For prequalified pools for professional services, general services, architect/engineering and commodities Contracts, where the Contract Awarding Authority conducts a Request for Qualifications process, the following procedures shall apply:
 - a) Contract Awarding Authorities that wish to establish a pool of prequalified firms to provide these types of services may do so using objective criteria (e.g., Yes/No or True/False responses). If objective criteria are used and a positive response is required for each question, the LBE bid discount/rating bonus provision of Chapter 14B shall not be applied because of the nature of the criteria. However, if objective criteria are used and the respondent is not required to provide a positive response to each question (e.g. 8 out of 10 questions must be answered in the affirmative) then the LBE bid discount/rating bonus provisions of Chapter 14B shall be applied. The Contract Awarding Authority must specify in the RFQ, the method used to assign work/select the consultant from the prequalified pool (e.g., if after the pre-qualification process, the Contract Awarding Authority will rotate using the prequalified firms based on the ranking, or if the Contract Awarding Authority will conduct an evaluation process to determine which pre-qualified

firm shall receive work). After the pre-qualification process, if the Contract Awarding Authority conducts an evaluation process to determine which pre-qualified contractor shall receive work, the LBE bid discount/rating bonus provisions of Chapter 14B shall apply to the selection of a consultant. In this subsection, “evaluation process” shall include the submission of proposals, submission of quotes, and/or conducting interviews. If an entity is selected from the pool with no further selection process (and such selection is allowed under provisions of the Administrative Code), the Contract Awarding Authority shall report to CMD whether or not the firm selected is an LBE. If the entity selected is not an LBE, the Contract Awarding Authority shall deliver to the CMD within five (5) business days of the selection a written explanation of the reasons for said selection.

- b) Contract Awarding Authorities that wish to establish a pool of prequalified firms to provide these types of services may do so using subjective criteria (e.g., price or other open responses that are scored by the contract awarding department/selection panel). If subjective criteria are used to establish the prequalified pool, the LBE bid discount/rating bonus provisions of Chapter 14B shall be applied. The Contract Awarding Authority must specify in the RFQ, the method used to assign work/select the consultant from the prequalified pool (e.g., if after the pre-qualification process, the Contract Awarding Authority will rotate using the prequalified firms based on the ranking, or if the Contract Awarding Authority will conduct an evaluation process to determine which pre-qualified firm shall receive work). After the pre-qualification process, if the Contract Awarding Authority conducts an evaluation process to determine which pre-qualified contractor shall receive work, the LBE bid discount/rating bonus provisions of the Ordinance shall apply to the selection of the consultant. In this subsection, “evaluation process” shall include the submission of proposals, submission of quotes, and/or conducting interviews. If an entity is selected from the pool with no further selection process (and such selection is allowed under provisions of the Administrative Code), the Contract Awarding Authority shall report to CMD whether or not the firm selected is an LBE. If the entity selected is not an LBE, the Contract Awarding Authority shall deliver to CMD within five (5) business days of the selection a written explanation of the reasons for said selection.

H. Contractor Selection Process; Selection Panel Procedures.

1. CMD has the power and duty to monitor and ensure compliance with the provisions of Chapter 14B including ensuring that all aspects of City contracting processes are transparent, fair, and do not arbitrarily disadvantage or discriminate against LBEs or any other business or person on any basis prohibited by law. Specifically, under Section 14B.10.(B)(6), CMD shall:

Take actions to ensure compliance with the provisions of this Chapter, including, without limitation, intervening in the selection process in the even of actual discrimination or harm, or issuing recommendations for selection processes administered directly by Contract Awarding Authorities to ensure that the minimum qualifications, evaluation

criteria, or scoring methodologies set forth in the requests for bids, qualifications, or proposals, or the selection panel deliberations do not inadvertently disadvantage qualified Small-LBEs, Micro-LBEs, WBEs, and OBEs, in competing for opportunities in City contracting.

2. Pursuant to Sections 14B.7(C) and 14B.10(B)(7), Contract Awarding Authorities shall:
 - a) Not less than 10 business days prior to Contract advertisement, Contract Awarding Authorities shall submit the draft RFQ/P, or other document specifying the scope of work, engineer's estimate or project budget breakdown, minimum qualifications requested, and proposed evaluation criteria and selection procedures to CMD.
 - b) Provide CMD with at least ten business days notice of the Contract's selection schedule including dates, times, and locations of any deadlines, interviews, meetings, or other selection milestone. CMD staff may monitor, observe, or be present during any stage of the selection process.
 - c) Provide CMD with a list of the selection panel members, if any. The list shall be submitted no later than ten business days prior to the Bid or proposal's due date, and shall include a brief summary of each panel member's ethnicity, gender, expertise, place of business and job title.
3. At its discretion, CMD may record the selection process, including any interviews or panel member deliberations.
4. **Selection Panel Member Makeup.** In order to ensure that selection processes do not arbitrarily disadvantage or discriminate against any LBE or other person, Contract Awarding Authorities shall abide by the following:
 - a) Selection panel members should reflect the diversity of San Francisco.
 - b) The project manager and any staff who worked on the RFP or RFQ shall not serve on the selection panel.
 - c) No more than 50% of the selection panel members should be from the Contract Awarding Authority.
5. **Selection Panel Deliberation/Discussion.** Prior experience has indicated that on occasions, discussion among panelists has introduced discriminatory considerations and unfairness into the selection process. Accordingly, CMD urges Contract Awarding Authorities and the selection panel members not to hold discussions. If the panel members decide to deliberate, the discussion shall be limited to the criteria listed in the RFP/RFQ or the oral interview questions/criteria. Selection panel members are subject matter experts and must score individually based on the responses provided by the proposers. Panel members shall not bring in unsubstantiated outside information.

Selection panel members shall not, (i) discuss among themselves the scores or ratings of individual proposers; (ii) advocate for or against a particular firm; or (iii) single out a particular firm until after the selection process has been completed.

- If the Director finds that panel deliberations result in discrimination or harm to an LBE, the Director shall intervene in the selection process as set forth in Section 14B.10(B)(6). Such intervention can include, but is not limited to, excluding scores or requiring that the Contract Awarding Authority redo the selection process. The Contract Awarding Authority shall not inform the panel members of the identities of firms that are eligible for the bid discount/rating bonus at any stage of the selection process.
6. Contract Awarding Authorities shall ensure that each evaluator will score each proposer or consultant on a predetermined point system, or other system that permits the application of bid discount/rating bonus at each stage of the selection process, in a fair and objective fashion.
 7. **Oral Interviews.** If the selection process includes an oral interview, the Contract Awarding Authority shall abide by the following procedures:
 - a) After each consultant's oral interview is complete, panel members shall tally their respective raw scores.
 - b) After each consultant's oral interview, the Contract Awarding Authority will immediately forward the original score sheets from each panel member to CMD.
 - c) The Contract Awarding Authority shall issue a letter to CMD listing the ranking, score, and bid discount/rating bonus of each consultant not less than two (2) business days after oral interviews have been completed.
 - d) If the highest ranked consultant is an LBE, and after engaging in good faith negotiations the Contract Awarding Authority is unable to reach final agreement with that LBE, it may proceed to negotiate with the next ranked proposer after notifying the Director. If the Director finds that the Contract Awarding Authority's failure to award the contract to an LBE is in violation of Chapter 14B, the Director shall intervene in the selection process to correct any discriminatory contracting processes as set forth in Section 14B.10.
 8. **Waivers or Modification to Procedures.** If the Contract Awarding Authority believes that one or more of the above provisions are not feasible, the Contract Awarding Authority shall immediately request a waiver or modification to the procedures from CMD. The request must be in writing. If CMD determines that one or more of the procedures are not feasible or in the best interest of the City, the CMD Director may waive or modify a particular procedure.
- I. Each Contract Awarding Authority shall designate a staff person to be responsible for responding to CMD regarding the requirements of Chapter 14B.
 - J. Contract Awarding Authorities shall include all relevant CMD attachments with solicitations for bids or proposals. These attachments explain in detail the CMD requirements for the procurement process. Proposers for architect/engineering and professional services contracts must complete and submit all applicable CMD Forms in a separate sealed envelope to be submitted with the proposal. Contract Awarding Authorities shall deliver the sealed envelope and a complete set of the proposal documents to CMD. Following completion of the selection process, CMD shall give a copy of the relevant CMD forms to the Contract Awarding Authority.

K. LBE Utilization Tracking System (LBEUTS).

1. The Director shall notify all Contract Awarding Authorities in writing of what information the Contract Awarding Authority must enter into the LBE Utilization Tracking System (LBEUTS) and the timeframes for entering the required data into the LBEUTS so that CMD may effectively monitor City contracting in furtherance of Chapter 14B.
2. Contract Awarding Authorities bare all operational and fiscal responsibilities in ensuring that all contracting data the Director deems necessary for CMD to effectively monitor and issue Reports on each Contracting Awarding Authority's progress toward achieving the requirements of this Chapter is entered into the LBEUTS. Contract Awarding Authorities with in-house contract data tracking systems are required to pay for and/or allocate resources to build any necessary programming bridge as required by CMD to ensure that all data is entered timely and accurately into the LBE Utilization Tracking System.
3. Contract Awarding Authorities shall inform the Director when they require training to comply with the LBEUTS reporting requirements.
4. Contract Awarding Authorities shall input accurately and completely the required contracting information into the LBEUTS on a timely basis. Data concerning any particular payment issued by a Contract Awarding Authority shall be entered completely and accurately within 10 calendar days of issuing such payment.
5. Any Contract Awarding Authority that fails to input accurate and complete contracting information shall be reported to the Mayor and the Board of Supervisors in the Director's Quarterly Report. Consistent failure to input accurate and complete information shall be treated as willful non-compliance under Section 14B.17(J).
6. Prime Contractors are responsible for inputting accurately and completely, all subcontractors listed on their original LBE participation breakdown submitted at time of bid or proposal into the LBEUTS system, unless already populated by a Department's in-house contract administration database. Any adjustments or deviations must have CMD concurrence. Upon receipt of notification of payment by the City's FAMIS system, Primes are responsible for paying their LBE subcontractors as provided under 14B.7(H)(9) as well as identifying the date of payment on the LBEUTS system.
7. Upon payment notification by the Prime Contractor, Subcontractors are responsible for validating their receipt of payment on the LBEUTS system.
8. Failure by the Prime or Subcontractor to perform their requirements in the LBEUTS shall be a material breach of contract and subject to sanctions or penalties as provided in Section 14B.17.

V. REPORTING REQUIREMENTS AND DEADLINES

A. Contracting Department Annual Reports.

1. As provided in Section 14B.15(B), all Contract Awarding Authorities each fiscal year

shall submit to the Board of Supervisors a report detailing the department's:

- a) Progress toward the achievement of the City-wide LBE Participation Goal;
- b) Progress toward Contract-specific LBE subcontracting participation requirements;
- c) Steps to ensure non-discrimination against MBEs, WBEs, and OBEs; and
- d) Compliance with the Section 14B.7(K)(3) Micro-LBE Set Aside Program.

B. Quarterly Reports.

1. In the event that a Contract Awarding Authority has not made its contracting data readily available in the LBEUTS, the Contract Awarding Authority shall provide CMD with the following information in a format as requested:
 - a) The total number and value of contracts awarded in that fiscal year subject to Chapter 14B.
 - b) The total number and value of contracts subject to Chapter 14B awarded to LBEs.
 - c) The total value of LBE subcontractor participation on each contract subject to chapter 14B awarded in that fiscal quarter.
 - d) The total number and value of all task orders issued under any As-Needed or JOC contract, including the overall LBE participation (prime versus sub), non LBE participation (prime versus sub), a brief description of the scope of work, and whether or not the task order issued was for specialty work.
 - e) A list of contracts awarded with a contract value under 50% of the Minimum Competitive Amount/Threshold Amount and included no LBE subcontracting participation requirement, but were subsequently amended, modified, supplemented and/or had change orders so that the contract value is over the Minimum Competitive Amount/Threshold Amount.
2. The data required in subsection (B)(1) above shall be provided by the following dates:
 - a) November 1 for the prior fiscal quarter July 1 through August 31.
 - b) February 1 for the prior fiscal quarter October 1 through December 31.
 - c) May 1 for the prior fiscal quarter January 1 through March 31.
 - d) August 1 for the prior fiscal quarter April 1 through June 30.

C. City Administrator Annual Report.

1. As provided in Section 14B.15(C), the City Administrator shall submit its annual report to the Mayor and the Board on the progress of the City towards achieving the goals of Chapter 14B, including identification of problems and specific recommendations for improving participation by all categories of LBEs in City contracting. The report shall include an analysis of the availability of MBEs, WBEs, and OBEs and the bidding environment in the various industries that participate in City contracts.

VI. MICRO-LBE, SMALL-LBE & SBA-LBE CERTIFICATION

A. Principal Place of Business in San Francisco Certification Criteria.

To establish that a business' principal place of business is located in San Francisco, in addition to the requirements of Section 14B.5(A)(5), the business must demonstrate the following criteria, or as otherwise determined by the Director:

1. The business owner(s) must declare under penalty of perjury that the business maintains its principal place of business in San Francisco consistent with Chapter 14B.3(A)(5).
2. The business must submit documentation demonstrating that it has been located and doing business in San Francisco for at least six (6) months preceding its application for certification as an LBE.
3. If a business seeking to be certified has more than one operating location, it must demonstrate that its local office is its principal place of business. It must maintain its principal place of business in a fixed office within the geographic boundaries of the City, where it provides all of the services for which LBE certification is sought, other than work required to be performed at a job site. All businesses, except for suppliers, must demonstrate that the majority of its principals are based in the San Francisco office.
4. To be certified as a supplier, a business is not required to maintain its principal place of business in San Francisco, but must maintain a fixed office in San Francisco that meets all of the local office requirements other than the principal place of business requirement.
5. All business owners are considered principals for purposes of determining principal place of business.
6. A business must operate from an independent office site, have daily functions, fixtures and equipment and sufficient space necessary to operate the business for which certification is sought.
7. An arrangement for the right to use office space on an 'as needed' basis where there is no office exclusively reserved for the firm does not qualify as an 'office'. The applicant must submit a rental agreement for the office space/home, rent receipt or canceled check. If the office space is owned by the business or applicant, the business must submit property tax or deed statement documenting ownership.
8. The business location, unless located in a residence, must prominently display the name of the firm. A business that is located in a residence and that seeks to be certified as an LBE must substantiate that none of the owners of the business also maintain an office that is located outside of the home for this business activity.
9. Businesses must submit copies of their annual San Francisco Business Tax Registration Certificate as well as Federal and State Payroll documents (i.e. DE-6 or DE-9).

B. Size Criteria

1. Upon request, all LBEs must submit complete business Federal Income Tax returns for the three prior fiscal years. For any business established less than three years, business owners must provide Individual Income Tax returns for up to the three most recent years. Thereafter, upon recertification or upon request, all LBEs shall submit to CMD a copy of the business' most recent annual Federal Income Tax Returns and all financial statements in order to support the continuing certified status of that business. Failure to provide the appropriate documentation as required under this paragraph may result in suspension of the business certification.
2. SBA LBE certification does not expire provided the SBA submits business Federal Income Tax returns for the most recent tax year.
3. Additional documentation relating to financial status, including, but not limited to, audit and financial statements, must be submitted upon request. Failure to provide such documentation may result in suspension of certification.

C. Expertise, Ownership, and Control

1. All business owners shall possess incidents of ownership, such as interest in profit and loss, equal to at least the required ownership interest percentage. They must exercise control of the business, including but not limited to the legal authority to manage business assets, good will and the daily operation of a business consistent with the required ownership interest percentage. All business owners must actively and continuously exercise such authority.
2. All business owners shall contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.
3. All LBEs must submit three (3) recent contracts demonstrating the type of work and expertise for which certification is sought.
4. All LBEs shall possess a valid California license for the type of work it is certified to perform, if such license is required by State law. Where the applicant is a business owned by a single person, it must submit proof of applicable professional licenses as well as proof that the owner is the license qualifier and has the training, education and work experience in that type of business. For businesses that do not require a license, the owner must have training, education and work experience in that type of business.
5. Where the applicant is a business owned by more than one person, it must submit proof that the business owners individually and collectively have the relevant training, education and work experience in that type of business. If a license is required by state law, at least one business owner must have the appropriate license.
6. Business owners must fully manage and control their business. A business owner may not be employed outside of his/her business by a firm in the same industry. A business owner may be employed part-time in a different industry only if the certified

firm employs dedicated personnel to oversee the daily operations of the certified business while the owner is engaged in his/her outside employment.

D. Criteria for Suppliers

1. In addition to the local office requirements identified above, suppliers must maintain a warehouse in San Francisco that is stocked with inventory consistent with their certification.
2. A supplier must have a direct relationship with manufacturers for the materials, equipment, and supplies for which they seek certification, demonstrating that:
 - a) The supplier has an agreement with the manufacturer authorizing the supplier to distribute their products.
 - b) The supplier is able to provide a manufacturer's warranty.
3. To be eligible for the bid discount, a certified prime supplier must stock the item sought by the City and must take possession and control of the item(s) to be supplied and delivered to the City rather than drop-shipping to the job site.

E. Criteria for Truckers

1. An LBE trucking entity must possess the appropriate motor vehicle registration and Motor Carrier Permit (MCP), in its own name, for all trucks and/or trailers to be used in the work. LBE trucking entities must park their registered vehicles and trailers within the geographical boundaries of the City.

F. MBE, WBE, and OBE Certification

1. A business seeking LBE certification may also indicate on its certification application whether it is owned and controlled (as defined in Chapter 14B) by a person or persons who is a member of one or more of the groups specified in Section 14B.3(E). To be certified as an MBE or WBE, owner(s) must submit evidence of MBE or WBE status by providing a copy of a driver's license, passport, birth certificate or other appropriate documentation. Any business owner that does not submit persuasive documentation of MBE or WBE status will be certified as an OBE.
2. A business that qualifies to be certified as both MBE and WBE must select to be certified as either MBE or WBE.

VII. NON-PROFIT LBE CERTIFICATION

- A. Non-profit LBEs shall have the status of LBEs for all purposes of Chapter 14B, including but not limited to bid discounts/rating bonuses and subcontracting participation credit.

B. Principal Place of Business in San Francisco Certification Criteria

1. The Director of the non-profit must declare under penalty of perjury that the non-profit maintains its principal place of business in the City and County of San Francisco consistent with Section 14B.6.
2. The non-profit must submit documentation demonstrating that it has been located and doing the same type of business activity as the type(s) for which certification is sought in San Francisco for at least six (6) months preceding its application for certification.
3. If a non-profit seeking to be certified has more than one operating location, it must demonstrate that its local office is its principal place of business. It must maintain its principal place of business in a fixed office within the geographic boundaries of the City, where it provides all of the services for which non-profit certification is sought, other than work required to be performed at a job site. Non-profits must demonstrate that the majority of its paid and volunteer staff are based in the San Francisco office, and that it pays San Francisco payroll taxes on at least 51% of the total payroll for non-exempt employees.
4. To be certified as a non-profit supplier, a non-profit is not required to maintain its principal place of business in San Francisco, but must maintain a fixed office in San Francisco that meets all of the local office requirements other than the principal place of business requirement.
5. A non-profit must operate from an independent office site, have daily functions, fixtures and equipment and sufficient space necessary to operate the business for which certification is sought.
6. An arrangement for the right to use office space on an 'as needed' basis where there is no office exclusively reserved for the firm does not qualify as an 'office'. The non-profit must submit a rental agreement for the office space/home, rent receipt or canceled check. If the office space is owned by the non-profit, the non-profit must submit property tax or deed statement documenting ownership.
7. The non-profit location, unless located in a residence, must prominently display the name of the non-profit. A non-profit that is located in a residence that seeks to be certified must substantiate that there is no other office outside of the residence for the non-profit activities.
8. Non-profits must submit copies of their annual San Francisco Business Tax Registration Certificate as well as Federal and State Payroll documents (i.e. dE-6 or dE-9). For non-profits having more than one operating location, the non-profit must submit the comparable forms required in those locations.

C. Size Criteria

1. A non-profit must annually submit copies of its current filings with State and Federal agencies, including the California Attorney General Form RRF-1, the California Franchise Tax Board Forms 199 and 109, the California Secretary of State Form SI-100 and the Internal Revenue Service Form 990, including Schedule A. For new

certification applications, the non-profit enterprise must submit to CMD copies of the above documents and the Form 990 for the previous two fiscal years. Additional documentation relating to financial status, including audit reports and financial statements, must be submitted upon request. Failure to provide the appropriate documentation as required under this paragraph may result in suspension of the business certification. In addition to the above documents, the nonprofit enterprise shall submit to the CMD a copy of its Articles of Incorporation as filed with the California Secretary of State as well as a copy of the IRS determination letter confirming its exempt status under section 501(c)(3) of the Internal Revenue Code.

2. Gross receipts for non-profits shall include all gifts, grants and other revenues from business activities and investments. The non-profit shall submit, as evidence of all gifts, grants and other revenues, a copy of its most recent audited annual financial statement and a copy of its most recent annual report listing sources of charitable contribution, grant funding and other revenues.
3. If a non-profit enterprise loses its federal tax-exempt status, it shall notify CMD. The Director may suspend or revoke its certification.

D. Expertise, Ownership and Control

1. A non-profits must submit three recent contracts outlining the scope of work and expertise for which certification is sought.
2. A non-profit shall demonstrate that it has continuously employed and will continue to employ an individual qualified to perform the type of work for which it seeks certification. A qualified individual possesses a valid California license for the type of work for which certification is sought, if such license is required by State law. Where no such license is required, the qualified individual must have training, education and work experience in the type of work for which certification is sought.
3. A non-profit must notify HRC within 10 days of any change in the employment status of the qualified individual. Failure to do so will result in the decertification of the non-profit for a period of one year.
4. The qualified individual must fully manage and control all of the non-profit's certified work activities in the industry in which it is certified. The qualified individual may not be employed outside of the non-profit by any other non-profit or for-profit enterprise in the same industry. A qualified individual may be employed part-time in a different industry only if the non-profit also employs dedicated personnel to oversee the daily operations of the certified work activities while the qualified individual is engaged in his/her outside employment.

E. Criteria for Non-Profit Suppliers

1. In addition to the local office requirements identified above, a non-profit supplier must maintain a warehouse in San Francisco that is sufficiently stocked with inventory consistent with its certification.

2. To be eligible for the bid discount, a certified non-profit supplier must stock the item sought by the City and must take possession and control of the item(s) to be supplied and delivered to the City rather than drop-shipping to the job site.

F. Criteria for Non-Profit Truckers

1. A non-profit trucking entity must possess the appropriate motor vehicle registration, in its own name, for all trucks and/or trailers to be used in the work. Non-profit trucking entities must park their registered vehicles and trailers within the geographical boundaries of the City.

G. OBE Classification

1. All certified non-profits will be classified as Other Business Enterprises (“OBES”).

VIII. SFPUC-LBE CERTIFICATION

- A. SFPUC-LBEs shall have the status of LBEs for all purposes of Chapter 14B only for public works/construction, specialty construction, construction material suppliers, construction equipment rental firms, trucking, and professional services including architectural and engineering for SFPUC Regional Projects.

LBEs shall have the same status as SFPUC LBEs for SFPUC Regional Projects. SFPUC-LBEs shall not have the status of LBEs for non-SFPUC Regional Projects, SFPUC Regional General Services projects, or other City Department.

B. Principal Place of Business/Location

1. The business owner(s) must declare under penalty of perjury that the business maintains a local office in the SFPUC Water System Service Area as defined by the zip codes attached in Appendix A.
2. The business must submit documentation demonstrating that it has been located and doing business in the SFPUC Water System Service Area for at least six (6) months preceding its application for certification as a SFPUC-LBE.
3. A business must operate from an independent office site, have daily functions, fixtures and equipment and sufficient space necessary to operate the business for which certification is sought.
4. An arrangement for the right to use office space on an ‘as needed’ basis where there is no office exclusively reserved for the firm does not qualify as an ‘office’. The applicant must submit a rental agreement for the office space/home, rent receipt or canceled check. If the office space is owned by the business or applicant, the business must submit property tax or deed statement documenting ownership.
5. The business location, unless located in a residence, must prominently display the name

of the firm. A business that is located in a residence and that seeks to be certified as a SFPUC-LBE must substantiate that none of the owners of the business also maintain an office that is located outside of the home for the same type of business activity.

6. SFPUC-LBEs must submit copies of their annual San Francisco Business Tax Registration Certificates, if applicable.

C. Size Criteria

1. A SFPUC- LBEs must annually submit complete business Federal Income Tax returns for the past three (3) most recent years. Upon request, all PUC-LBEs must submit complete business Federal Income Tax returns to the three most recent prior years. For any business that has been established within the past three years, business owners must substitute their three most recent Individual Income tax returns. Thereafter, upon recertification or upon request, all PUC-LBEs shall submit to CMD a copy of their annual Federal Income Tax returns and all financial statements in order to support the continuing certified status of that business. Failure to provide the appropriate documentation as required under this paragraph may result in suspension of the business certification.
2. Additional documentation relating to financial status, including, but not limited to, audit and financial statements, must be submitted upon request. Failure to provide such documentation may result in suspension of certification.

D. Expertise, Ownership, and Control

1. All business owners shall possess incidents of ownership, such as interest in profit and loss, equal to at least the required ownership interest percentage. They must exercise control of the business, including but not limited to the legal authority to manage business assets, good will and the daily operation of a business consistent with the required ownership interest percentage. All business owners must actively and continuously exercise such authority.
2. All business owners shall contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.
3. All SFPUC- LBEs must submit three (3) recent contracts outlining the scope of work and expertise for which certification is sought.
4. All SFPUC-LBEs shall possess a valid California license for the type of work it is certified to perform, if such license is required by State law. Where the applicant is a business owned by a single person, it must submit proof of applicable professional licenses as well as proof that the owner is the license qualifier and has the training, education and work experience in that type of business. For businesses that do not require a license, the owner must have training, education and work experience in that type of business.

5. Where the applicant is a business owned by more than one person, it must submit proof of applicable professional licenses as well as proof that the managing owner is the license qualifier and has the training, education and work experience in that type of business. For businesses that do not require a license, the managing owner must have training, education and work experience in that type of business.
6. Business owners must fully manage and control their business. A business owner may not be employed outside of his/her business by a firm in the same industry. A business owner may be employed part-time in a different industry only if the certified firm employs dedicated personnel to oversee the daily operations of the certified business while the owner is engaged in his/her outside employment.

E. Criteria for PUC-LBE Suppliers

1. In addition to the local office requirements identified above, a SFPUC-LBE supplier must maintain a warehouse in the SFPUC Water System Service Area as defined by the zip codes identified in Appendix A. It must be stocked with inventory consistent with its certification.
2. To be eligible for the bid discount, a certified SFPUC-LBE prime supplier must stock the item sought by the City and must take possession and control of the item(s) to be supplied and delivered to the City rather than drop-shipping to the job site.

F. Criteria for PUC-LBE Truckers

1. A SFPUC-LBE trucking entity must possess the appropriate motor vehicle registration and MCP in its own name, for all trucks and/or trailers to be used in the work. SFPUC-LBE trucking entities must park their registered vehicles and trailers within the geographical boundaries of the SFPUC Water System Service Area as defined by the zip codes identified in Appendix A.

G. MBE, WBE, and OBE Certification

1. Businesses seeking PUC-LBE certification may also indicate on their certification application whether they are owned and controlled by a person or persons who is a member of one or more of the groups specified in Section 14B.3(E). To be certified as MBE or WBE, owner(s) must submit evidence of MBE or WBE status by providing a copy of driver's license, passport, birth certificate or other appropriate documentation. Any business owner that does not submit persuasive documentation of MBE or WBE status will be certified as an OBE.
2. A business that qualifies to be certified as both MBE and WBE must select to be certified as either MBE or WBE.

IX. AUDITS, CERTIFICATION-RENEWAL PERIODS, AND RECERTIFICATION APPLICATION

- A. A certification may be audited at any time to ensure eligibility. Certification may be suspended and/or revoked after an audit is performed. Loss of a license will result in immediate suspension until the license is re-instated. A firm will be permitted to contest a suspension within three (3) business days of being notified.
- B. Certification renewal is generally granted for a period of three (3) years, or for such shorter times as may be warranted.
- C. A certified business is required to notify CMD in writing within 10 days of any possible relevant change affecting its certification eligibility, such as size, location, ownership or employment of a qualified individual, control, telephone/fax numbers, licenses and/or work category. Failure to do so may result in suspension or revocation before the certification period expires.
- D. A prime contractor or subcontractor must be certified at the time of the bid submission to qualify for a bid discount or to be counted towards meeting the LBE subcontracting participation requirement. Any certification that is, or has been, suspended, or is in the process of appealing the Director's denial of certification, suspension or revocation shall not be considered eligible for a bid discount/rating bonus or be counted toward the LBE subcontracting participation requirement for any bid submission until the appeal process is finalized.
- E. To be recertified, a business must submit a recertification application accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided. All applicants are required to submit the following documents: Copies of current licenses and annual Federal Income Tax forms or the IRS Form 990, including Schedule A as appropriate.
- F. CMD may request any other document it considers necessary to determine eligibility for recertification.

X. APPEAL PROCEDURES FOR DENIALS, SUSPENSIONS, AND REVOCATIONS OF LBE CERTIFICATION

- A. Pursuant to Sections 14B.4(C) for a denial of an application for certification or a nonrenewal upon expiration of the certification term, or Section 14B.17(I) for revocations of certification, whenever the Director proposes to deny an application for, suspend, or revoke the certification of a business, the Director shall notify the applicant or certified business in writing of the basis for the denial, suspension, or revocation. For denials and revocations, the Director shall notify the business of the date on which the business will be eligible to reapply for certification. The Director shall provide the applicant or certified business with an opportunity to be heard before a final determination is made. The opportunity to be heard shall be granted only if the business so requests, in writing, within three business days of receipt of the notification of the denial, suspension or revocation of certification. For a denial or revocation, the Director shall require a business to wait at least

six months, but not more than two years before reapplying for certification in the same category.

- B. The City Administrator or hearing officer appointed by the City Administrator shall hear appeals challenging the Director's denial or revocation of LBE certification. Such appeal must be filed with the City Administrator within three business days following the Director's decision. The hearing procedures contained in these Rules shall apply. The City Administrator or Hearing Office appointed by the City Administrator may sustain, reverse or modify the Director's determination, or take such other action to effectuate the purpose of the Chapter. Unless the City Administrator or Hearing Officer so orders, an appeal shall not stay the Director's determination. The City Administrator or Hearing Officer's decision shall be final and shall be made a public record.

XI. JOINT VENTURES FOR PROFESSIONAL SERVICES AND ARCHITECT/ENGINEERING CONTRACTS

- A. Pursuant to Chapter 14B.7(F), for purposes of this Section XI, "LBE" refers to Micro-LBEs and Small-LBEs. SBA-LBEs are not eligible for the bid discount/rating bonus when joint venturing with a non-LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the joint venture will be entitled to the joint venture bid discount/rating bonus only to the extent of the Micro-LBE or Small-LBE participation.
- B. The joint venture bid discount/rating bonus is available only for Professional Services and Architect/Engineering contracts. A business that is bidding or competing for Professional Services or Architect/Engineering contracts may associate with a certified LBE to compete for contracts as a joint venture. Joint Venture partners may be in different industries provided that each joint venture partner meets the minimum qualifications in the bid or proposal, and each is acting as a prime contractor or otherwise meets the definition of a Joint Venture. The LBE joint venture partner must perform Prime Level Work and be CMD certified for the scope of work they are proposing to perform in order to be eligible for the bid discount/rating bonus. Joint ventures receive bid discounts/rating bonuses depending upon the LBE percentage of prime level participation as set forth in Section 14B.7(F).
- C. Each joint venture partner must clearly define the portion of the work it will perform during the project. The work performed by the LBE partner(s) must be the type of work the LBE(s) performs in the normal course of its business and is certified by CMD to perform. The CMD Joint Venture Form must specify which tasks will be performed by each individual joint venture partner.
- D. Each member of the joint venture must perform a "commercially useful function" as that term is defined by Section 14B.2 of the Ordinance. An LBE that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a "commercially useful function."
- E. The following actions are prohibited: i) the non-LBE partner performing work the LBE partner is responsible for; ii) leasing of equipment or property by the LBE partner from the non-LBE partner; and iii) the hiring of the non-LBE partner's employees by the LBE partner.
- F. Responsibilities of the LBE partner:
 - 1. The LBE partner must share in the ownership, control, management responsibilities,

- risks, and profits of the joint venture in proportion to its level of participation in the project.
2. The LBE partner must perform work that is commensurate with its experience and demonstrate that their proposed scope of work would be commensurate with that of prime level work.
 3. The LBE partner must use its own employees to perform its portion of the project and have adequate staffing necessary to perform its share of control of the project..
- G. The joint venture must submit the CMD Joint Venture Form. A joint venture must also submit a joint venture management plan and a joint venture agreement, including but not limited to the following:
1. A detailed explanation of the financial contribution of each partner.
 2. A list of the personnel used by each partner.
 3. A detailed breakdown of the specific duties and responsibilities of each partner (include an organizational chart).
 4. An explanation of how the profits and losses will be distributed.
 5. Any management or incentive fees available for any one of the partners.
 6. A written statement on how decisions will be made for work distribution between and among the partners and subcontractors.
 7. The location of the joint venture office.
- H. CMD must first approve the joint venture management plan before the joint venture is eligible for a bid discount/rating bonus. Any changes in the joint venture management plan must also receive the prior approval of CMD.
- I. A proposer requesting a joint venture bid discount/rating bonus shall supply CMD with all such additional information, as CMD may deem relevant in order to make a determination of the joint venture's eligibility for the bid discount/rating bonus.

XII. PROCEDURES FOR GRANTING OF WAIVERS

- A. **Bid Discount Waivers.** As provided in Section 14B.7(J), the Director may waive the LBE bid discount or rating bonus as applicable under the following circumstances:
1. Sole Source waivers. Whenever the Director finds, with the advice of the Contract Awarding Authority and the Office of Contract Administration, that needed goods or services are available from a sole source, and the sole source is not disqualified from doing business with the City.
 2. For Contracts over \$5,000,000, where the Director finds that application of the Discount would result in significant additional cost to the City.
- B. **LBE Subcontracting Participation Requirement Waiver.** Section 14B.8(A) gives the Director the power to waive LBE subcontractor participation requirement for a Contract where the Contract Awarding Authority anticipates that there are no subcontracting opportunities, or there are not sufficient LBEs available to perform the subcontracting work available on the Contract.

- C. **Procedures.** Contract Awarding Authorities who wish to request a waiver of the Bid Discount or LBE subcontracting participation requirement must adhere to the following procedures:
1. The waiver request must be submitted in writing at least ten (10) days prior to the advertisement or solicitation of Bids.. No waiver will be granted retroactively once a Contract has been awarded.
 2. The waiver request must be submitted on Form , which is available on the City's Intranet. The form must be filled out completely and the requested documentation attached.
 3. CMD shall respond to waiver requests within ten (10) business days after receipt of the request. If CMD has not responded to the Contract Awarding Authority within ten (10) business days, the request will be deemed granted.
- D. For all Contracts where a waiver was granted, the Contract Awarding Authority shall obtain CMD approval prior to any Contract modification. CMD will approve retroactive waivers for modifications only if there was a legitimate timely waiver at the start of the Contract, and there are still valid reasons for the waiver at the time of the modification. CMD strongly encourages Contract Awarding Authorities to submit modification waivers in a timely manner.
- E. The Director shall intervene in the modification process to correct any discriminatory practices if he/she finds that the Contract Awarding Authority is attempting to circumvent the bid discount/rating bonus or subcontracting requirements of Chapter 14B through the modification.

XIII. SETTING AND MEETING THE LBE SUBCONTRACTING REQUIREMENT

- A. Except where CMD determines there are not sufficient Small and Mirco-LBEs available to perform the subcontracting opportunities presented by the scope of the proposed Contract, bidders must list and use only Small and Micro-LBEs to satisfy the LBE subcontracting participation requirements set by CMD. Upon request by the Contract Awarding Authority, where CMD determines that there are not sufficient Small and Micro-LBEs available, CMD may authorize Contractors to satisfy the LBE subcontractors participation requirement by using Small and Micro-LBEs, and for SBA-LBEs.
- B. For each Contract where CMD sets a LBE subcontracting requirement at less than twenty percent, CMD shall prepare a written explanation of the details justifying the LBE subcontracting requirement set. In order to prepare this written explanation, Contract Awarding Authorities must provide CMD with the following information in a standard format:
1. Brief description of the scope of work, including whether any portion of the scope of work is specialized.
 2. Engineers estimate, if any, that includes dollar values or percentages for the scopes of work or required equipment or supplies.

3. For public works construction contracts, any deletable items; Specially Manufactured Items, supplies, mobilization/demobilization cost, and/or alternate bid items.
- C. Excusable Error for Non-Responsive Bids.
1. Non-responsive Bids—LBE Subcontracting Participation Requirements. Bids that do not meet the LBE subcontracting participation requirements set under 14B.8(A) will be rejected as non-responsive unless the Director finds that the Bidder diligently undertook all the good faith efforts required by this Chapter (or that the Bidder is exempt from good faith efforts requirements under Section 14B.8(B)) and that the failure to meet the subcontracting participation requirements resulted from an excusable error. Unless an excusable error is found by the Director, a Bid that fails to document compliance with this requirement will be rejected as non-responsive. The Director has the sole authority in determining whether the error is excusable.
 2. Non-responsive Bids—Good Faith Outreach requirements. Bids that do not meet the good faith outreach requirements set under 14B.8 will be rejected as non-responsive unless the Director finds that the Bidder met the LBE subcontracting participation requirement required by this Chapter and that the failure to meet the good faith outreach requirements resulted from an excusable error. Unless an excusable error is found by the Director, a Bid that fails to document compliance with this requirement will be rejected as non-responsive. The Director has the sole authority in determining whether the error is excusable.

XIV. GOOD FAITH OUTREACH REQUIREMENTS FOR MEETING THE LBE SUBCONTRACTING PARTICIPATION REQUIREMENT

- A. Pursuant to Section 14B.8(D), in addition to meeting the LBE subcontracting participation requirement, all bidders/proposers shall undertake adequate good faith outreach to LBE subcontractors with the following exception:
1. As provided in Section 14B.8(B), if LBE subcontracting participation in the submitted Bid exceeds the LBE subcontracting participation requirement set in the Contract by at least 35%, the bidder or proposer is excused from conducting or documenting its good faith efforts. LBE subcontracting participation shall be determined as the sum of all participation by Small and Micro- LBE prime contractors, Small and Micro-LBE joint venture partners, and Small and Micro- LBE subcontractors and subconsultants. Participation by SBA-LBE subcontractors and subconsultants shall be counted if under subsection 14B(8)(A). the Director permitted use of SBA-LBE firms to satisfy the Contract’s subcontracting participation requirement.
- B. A bidder/proposer must obtain at least 80 points in order to achieve adequate good faith outreach. A bidder/proposer who fails to achieve adequate good faith outreach will be declared non-responsive, and the Bid will be rejected. Points will be allocated as follows:
1. ATTENDANCE AT PRE-BID/PRE-PROPOSAL MEETING. A bidder/proposer who attends the pre-bid/pre-proposal meeting scheduled by the City for the Contract shall receive 15 points. A bidder/proposer who does not attend the pre-bid/pre-proposal meeting will receive no points. If the City does not hold a pre-bid/pre-proposal meeting, all bidders/proposers will receive 15 points.

2. ADVERTISING FOR LBE SUBCONTRACTORS. A bidder/proposer who advertises for LBE subcontractors at least 10 calendar days before the due date of the bid/proposal shall receive 10 points. For example, if a bid or proposal due date is on the 17th of a month, then the last day to complete this task and receive any points is the 7th of the same month. CMD Form 2B provides specific details on advertising requirements. A bidder/proposer who does not advertise will receive no points. If the City gives public notice of the project less than 15 calendar days prior to the bid/proposal due date, all bidders/proposers will receive 10 points. If the bidder or proposer did not post its advertisement on a City website, then the bidder or proposer must enclose a copy of the advertisement with its bid/proposal as proof of this requirement.

3. IDENTIFYING SUBCONTRACTING OPPORTUNITIES. A bidder/proposer who identifies and selects trades/work types (as categorized in CMD's LBE Directory) to meet the LBE subcontracting participation requirement will receive 10 points. A bidder/proposer who does not identify and select trades/work types to meet the LBE subcontracting requirement will receive no points. Please note the following important information: A bidder/proposer should list only the trades/work types that it will ultimately use to meet the LBE participation requirement since bidders/proposers are held responsible for contacting the requisite number of firms (as detailed in #4 below) for each trade/work type they identify in this section.

4. CONTACTING LBE FIRMS TO SOLICIT THEIR INTEREST. A bidder/proposer who contacts those LBE firms certified in the trades/work types identified pursuant to Rule XIV(B)(3) above, not less than 10 calendar days prior to due date of the bids/proposals, will receive up to 45 points. If a bidder/proposer does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified trade/work type that is not contacted. A bidder/proposer must include verifying documentation (i.e. phone logs, emails, faxes and/or etc.) with its bid/proposal.
 - a) If there are less than 25 firms within an identified trade/work type, a bidder/proposer should contact all of them.
 - b) If there are greater than 25 firms within an identified trade/work type, a bidder/proposer should contact at least 25 firms within such identified trade/work type.
 - c) If a bidder/proposer does not contact any LBE firms, the bidder/proposer will receive no points.
 - d) If the City gives public notice of the project less than 15 calendar days prior to the bid/proposal due date, the allocation of points above still applies, except that the bidder/proposer may contact those LBE firms certified in the trades/work types identified pursuant to Rule XIV(B)(3) above, less than 10 calendar days prior to the due date of the bids/proposals.

5. FOLLOWING UP WITH INTERESTED LBE FIRMS. A bidder/proposer who performs follow-up contact with interested LBEs and negotiates in good faith with interested LBEs will receive up to 20 points. An "interested LBE" means an LBE firm

that expresses an interest in being a subcontractor/subconsultant to the bidder/proposer.

- a) The bidder/proposer must include documentation (i.e., phone logs, emails, faxes, etc.) to verify that follow-up contacts were made. For each interested LBE firm that the bidder/proposer does not follow-up with, a point will be deducted.
- b) A bidder/proposer who does not perform any follow-up contact with interested LBEs and does not negotiate in good faith with all interested LBEs will receive no points.
- c) For professional/general services contracts, all proposers must submit the follow-up outreach documentation with its proposal.
- d) For public works/construction contracts, only the apparent low bidder must submit the follow-up outreach documentation with its HRC 5-Day Submittal Package.

6. GOOD FAITH OUTREACH DOCUMENTATION. Pursuant to Section 14B.8(E), bidders and proposers must submit the following documentation:

- a) The dollar amount of each subcontract and a statement of the scope of work to be performed under the subcontract;
- b) The identification of each subcontract awarded to an LBE;
- c) Copies of all written bids submitted, including those from non-LBEs;
- d) If oral bids were received, a list of all such bids, including those from non-LBEs. The trade/work type and dollar amounts for each such bid/proposal must be specified; and
- e) A full and complete statement of the reasons for selection of the subcontractors/subconsultants for each trade/work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue. If the reason is based on the bid amounts, the statement must include the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the bids.
- f) For professional/general services contracts, all proposers must submit the above outreach documentation with the proposal.
- g) For public works/construction contracts, all bidders shall provide the information described in items (a) and (b) of this subsection at the time of bid in Document 00435 (and Document 00435A, if applicable). Only the apparent low bidder need submit items (c), (d) and (e) of this subsection with its CMD 5-Day Submittal Package.

C. **Design-Build or CM/GC Projects.** For Design Build and CM/GC projects, pursuant to Chapter 14B.19, the awarded prime contractor shall perform the Good Faith Outreach steps below for the procurement of their trade packages. The awarded prime who fails to perform one or more of the good faith outreach steps below for any trade package will be declared to have not met the good faith outreach requirements. In this scenario, the prime will be required to stop the current selection process and redo the entire good faith outreach process.

1. **ADVERTISE FOR TRADE SUBCONTRACTORS.** The awarded prime contractor must advertise for Trade Subcontractors, The advertisement must include, at a minimum, the prequalification minimum qualifications, brief description of the scope of work, the LBE participation requirements (if applicable) and bid due date.
2. **CONTACTING LBE FIRMS TO SOLICIT THEIR INTEREST.** The awarded prime contractor must contact those LBE firms certified in the trades/work types identified in the scope of work.
3. **HOLD A PRE-BID/PRE-PROPOSAL MEETING.** The awarded prime contractor shall hold a pre-bid/pre-proposal meeting

XV. DETERMINING LBE SUBCONTRACTING PARTICIPATION CREDIT

CMD will determine the amount of LBE participation that will count towards meeting the contract's LBE subcontracting participation requirement as follows:

A. General Rules; Commercially Useful Function

1. All prime bidders, including LBE prime bidders, must meet the LBE subcontracting participation requirement. An LBE prime bidder cannot count its own work towards meeting the LBE subcontracting participation requirement.
2. If a bidder owns or controls or has any common ownership or control of more than one business, the bidder will not receive LBE subcontracting credit if it lists such other firm(s) to meet the LBE subcontracting participation requirement when bidding as a prime. For purposes of determining ownership of a business, a business owned by the bidder's spouse/domestic partner shall be deemed to be owned by the bidder.
3. For a bidder to receive credit toward the LBE subcontracting participation requirement, a listed LBE subcontractor must be used in the trade(s) for which it is certified by CMD and perform a Commercially Useful Function.
 - a) An LBE subcontractor performs a Commercially Useful Function if it is directly responsible for providing the materials, equipment, supplies or services to the project as required by the bid and contract documents. To perform a Commercially Useful Function, an LBE subcontractor must be solely responsible for execution of a distinct element of the contract work, and must actually perform, manage and supervise the work involved in accordance with normal industry practice.
 - b) To determine whether an LBE subcontractor is performing a Commercially Useful Function, the CMD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the LBE credit claimed for its performance of the work, and other relevant factors. What constitutes a Commercially Useful Function will vary depending on the type of LBE subcontractor (e.g., construction subcontractor, manufacturer, supplier, broker, or trucker).
 - c) An LBE subcontractor does not perform a Commercially Useful Function if its role

is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of LBE participation. In determining whether an LBE is such an extra participant, the CMD will examine similar transactions and determine whether or not non-LBEs would normally participate in such transactions. For these special circumstances or situations, the bidder must seek CMD's prior review and approval.

4. Only the dollar amount of work to be performed by the LBE subcontractor will be credited toward meeting the LBE subcontractor participation requirement.
 - *Example:* Bidder lists an LBE subcontractor for \$1,000,000, but the LBE subcontractor will perform \$510,000 of that amount. The remaining \$490,000 will be further subcontracted out to a lower-tier non-LBE subcontractor. Only \$510,000 will be credited toward the LBE subcontracting participation requirement.
5. All work performed by lower-tier LBE subcontractors will be credited toward meeting the LBE subcontracting participation requirement provided that the lower-tier subcontractor was listed on Document 00435 (and Document 00435A, if applicable) at the time of bid.
 - *Example:* A non-LBE subcontractor is listed for \$1,000,000 and will perform \$800,000 of that amount. The remaining \$200,000 will be further subcontracted out to a lower-tier LBE subcontractor. Only \$200,000 will be credited toward the LBE subcontracting participation requirement, provided that the lower-tier LBE subcontractor was listed on Document 00435 at the time of bid.

B. Deletable Bid Items, Allowances, Contingency & Alternate Bid Items

1. CMD will calculate compliance with the LBE subcontracting participation requirement based on the total amount of a bidder's base bid (including non-deletable bid items, deletable bid items, allowances, and all other items that contribute to the base bid amount), even if alternatives are selected by the City. A bidder shall not use deletable bid items, allowances, contingency or alternate bid items to fulfill the LBE subcontractor participation requirement. In addition, a bidder must demonstrate good faith efforts to meet the LBE subcontracting participation requirement through LBE participation on the base bid.
2. If a bidder fails to meet the LBE subcontracting participation requirement through its base bid, the CMD may at its sole discretion credit listed LBE subcontractor participation for alternates selected by the City for contract award toward the LBE subcontracting participation requirement. To receive LBE subcontracting credit for City-selected alternates, a bidder must separately list LBE subcontractors that it will use for alternate work on Document 00435A (for alternates only) and submit the completed Document with its bid. If a bidder lists an LBE subcontractor on Document 00435 and intends to use that LBE subcontractor for alternate work, the bidder must separately list the LBE subcontractor on Document 00435A for each alternate on which the subcontractor will be used.
3. If a bidder lists LBE subcontractors on Document 00435A to perform certain alternate

work, but the City does not select the applicable alternate(s) for contract award, the bidder will not receive LBE subcontracting credit for the listed subcontractors.

C. LBE Construction Subcontractors

1. Bidders may receive 100% credit for CMD-certified LBE construction subcontractors that perform a Commercially Useful Function by performing labor, supplying materials and supplies for a discrete portion of the contract work performed in accordance with normal industry practice. To receive credit towards the LBE subcontracting participation requirement with respect to materials and supplies used for the applicable portion of the contract work, the material and supplies must be of the type normally provided by the construction subcontractor in accordance with industry practice. In addition, with respect to materials and supplies, the LBE construction subcontractor must be responsible for negotiating price, determining quality and quantity, ordering the material and supplies, selecting a supplier or dealer from those available, installing the materials, and paying for the materials and supplies. To receive LBE subcontracting credit, the bidder must list the LBE construction subcontractor on Document 00435 (and Document 00435A, if applicable).
2. Bidders may receive 100% credit for LBE construction contractors that perform a Commercially Useful Function by performing labor only for a discrete portion of the contract work in accordance with normal industry practice. To receive LBE subcontracting credit, the bidder must list the LBE construction subcontractor on Document 00435 (and Document 00435A, if applicable). Supplying workers to a Bidder/prime or subcontractor does not constitute a Commercially Useful Function.

D. LBE Manufacturers

1. If a bidder obtains materials, supplies, articles or equipment directly from an LBE manufacturer certified by the CMD as a manufacturer of such items, 100% of the cost of the items will count toward the LBE subcontracting participation requirement, regardless of who installs such items. An LBE manufacturer is a firm that performs a Commercially Useful Function by operating or maintaining a factory or establishment that produces on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. To receive LBE subcontracting participation credit, the bidder must list the LBE manufacturer on Document 00435 (and Document 00435A, if applicable).

E. LBE Suppliers

1. If a bidder obtains materials, supplies, articles or equipment from an LBE supplier certified by CMD to supply such items, 60% of the cost of the items will count toward the LBE subcontracting participation requirement if the LBE supplier performs a Commercially Useful Function by taking possession of the items and assuming the risk of their delivery. An LBE supplier is a firm with the financial and physical capability to purchase, to stock, and to distribute or sell the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract consistent with relevant industry practice in the usual course of business. No LBE subcontracting credit beyond 60% of the cost of materials, supplies, articles or equipment will be credited for any claimed services provided by the LBE supplier. To

receive LBE subcontracting participation credit, the bidder must list the LBE supplier on Document 00435 (and Document 00435A, if applicable).

2. If a bidder obtains materials, supplies, articles or equipment from an LBE supplier certified by CMD to supply such items, and the supplier performs a Commercially Useful Function by purchasing and selling the items, but does not take possession of the items and assume the risk of their delivery, then the LBE supplier is serving as a broker or agent, and only 5% of the cost of the materials or supplies will count toward the LBE subcontracting participation requirement. No LBE subcontracting credit beyond 5% of the cost of materials or supplies will be credited for any claimed services (including, but not limited to, costs of insurance, warehousing or general maintenance) provided by the LBE supplier/broker. To receive LBE subcontracting credit, the bidder must list the LBE supplier/broker on Document 00435 (and Document 00435A, if applicable).
3. For CMD-certified LBE equipment rental firms, 60% of the equipment rental fee (current market rate) of equipment owned by the LBE equipment rental firm will be credited towards the LBE subcontracting participation requirement. To receive LBE subcontracting credit, the bidder must list the LBE equipment rental firm on Document 00435 (and Document 00435A, if applicable).

F. Specially Manufactured Items

1. The Instructions to Bidders or the Technical Specifications may list material, articles, equipment or other manufactured items that the City has designated as Specially Manufactured Items for the purposes of the LBE subcontracting participation requirement. A Specially Manufactured Item is an item that is either typically purchased by the prime contractor directly from the manufacturer or not supplied by suppliers or construction subcontractors in the usual course of business.
2. If the bid or contract documents expressly identify one or more Specially Manufactured Items, CMD will calculate LBE subcontracting credit for such items according to the following rules:
 - a) If a Specially Manufactured Item is manufactured by and purchased from an CMD-certified LBE manufacturer, 100% of the purchase order amount will be credited towards meeting the LBE subcontracting participation requirement, regardless of who installs the item. To receive LBE subcontracting credit, the bidder must list the LBE manufacturer on Document 00435 (and Document 00435A, if applicable).
 - b) If a Specially Manufactured Item is purchased from an CMD-certified LBE supplier, only 5% of the purchase price of the item will be credited towards meeting the LBE subcontracting participation requirement. No LBE participation credit beyond 5% of the purchase price will be credited for any claimed services (including, but not limited to, costs of insurance, warehousing, and general maintenance) provided by the LBE supplier. To receive LBE subcontracting credit, the bidder must list the LBE supplier on Document 00435 (and Document 00435A, if applicable).
 - c) If a Specially Manufactured Item is supplied and installed by an CMD-certified LBE construction subcontractor, 5% of the purchase price of the item and 100% of the installation labor cost will be credited towards meeting the LBE subcontracting

participation requirement, provided that installation by the construction subcontractor reflects normal industry practice. To receive LBE subcontracting credit, the bidder must list the LBE construction subcontractor on Document 00435 (and Document 00435A, if applicable).

- d) A bidder may receive full (100%) LBE subcontracting credit for any labor associated with the installation of a Specially Manufactured Item (regardless of the source of supply), provided the installation is performed by an CMD-certified construction subcontractor in accordance with normal industry practice. To receive LBE subcontracting credit, the bidder must list the LBE construction subcontractor on Document 00435 (and Document 00435A, if applicable).

G. LBE Truckers

CMD will count 60% credit toward the LBE subcontracting participation requirement when an LBE-owned trailer is pulled by a non-LBE owned tractor. If the trailer is owned and pulled by an LBE trucker (or its employee), that firm will be credited the full 100% toward the LBE subcontracting participation requirement. To receive LBE subcontracting credit, the bidder must list the LBE trucking firm on Document 00435 (and Document 00435A, if applicable).

XVI. PROCEDURES FOR CONTRACT MODIFICATIONS

- A. Pursuant to Section 14B.13(A)(11), it is the responsibility of the Contract Awarding Authority to provide the Director with written notice of all contract amendments, modifications, supplements and change orders that cumulatively result in an increase or decrease of the contract's dollar amount of more than ten percent (10%). Such notice shall be provided within ten (10) days of each such contract modification.
- B. Pursuant to Section 14B.13(A)(13), the Contract Awarding Authority must obtain CMD prior approval for all contract amendments, modifications, supplements and/or change orders to a Contract originally valued at or above 50% of the Minimum Competitive Amount, that cumulatively increase the Contract's total value by more than twenty percent (20%) of its original or last CMD approved value. The Director shall not approve any proposed amendments, modifications, supplements and/or change orders that unreasonably exclude LBEs from new contracting opportunities. The Department must submit to the Director a CMD Contract Modification Approval Form and include:
 - 1. Copies of all prior contract amendments, modifications, supplements, and/or change orders for the relevant contract; and
 - 2. A spreadsheet with a breakdown of the list of contractors and subcontractors working on the change order with the contract dollars for each individual firm(s).
- C. Upon receipt of all the required documentation, the Director shall provide the requesting Department his/her determination regarding the proposed amendments, modifications, supplements, or change orders within ten (10) business days of CMD's receipt of such documentation. The Director shall impose or increase the subcontracting participation from the proposed amendment, modification, supplement or change order as appropriate.

If the Director fails to respond to the request within the specified time frame, the modification shall be deemed approved.

- D. The Contract Awarding Authority and prime contractor must both obtain CMD approval prior to removing an LBE subcontractor(s) or adding additional subcontractor(s).

XVII. PROGRESS PAYMENTS

Each prime contractor's payment request submitted to the Contract Awarding Authority shall be accompanied by the CMD Progress Payment Form. Within ten (10) days following receipt of a progress payment, the prime contractor shall submit to the Contract Awarding Authority a statement, in a form specified by the Director, attesting that he or she has paid all subcontractors all undisputed amounts from previous City payments.

XVIII. NON-COMPLIANCE BY BIDDERS AND CONTRACTORS

A. Investigations initiated by the Director

Whenever the Director has cause to believe that a bidder, contractor, certified business or applicant for certification has violated any of the requirements of Chapter 14B, these Rules and Regulations, or contract provisions pertaining to LBE participation, the Director shall have authority to (a) resolve the matter through conference and conciliation and/or (b) investigate, issue findings of noncompliance, and impose sanctions.

B. Complaints of Noncompliance Complaints by City Officials or Aggrieved Parties

Any Contract Awarding Authority, agency, board or commission of the City and County of San Francisco, or any persons ("Complainant") claiming to be aggrieved by a bidder, contractor, certified business or applicant for certification or City Department's noncompliance with the Ordinance may request the Director to initiate an investigation (under Rule XVIII.A) by submitting a written complaint setting forth the alleged violations.

1. Form of Complaint

Complaints must be signed by the Complainant or its authorized representative and must contain at least the following information: (a) Complainant's identity and address (including phone number), (b) identity of alleged non-complying party with address and phone number, if known, and (c) a detailed description of the act or acts considered to be a violation.

2. Incomplete Information

Where a complaint contains incomplete information, the Director shall notify Complainant of the necessary missing information. If required information is not furnished or its absence explained to the satisfaction of Director within ten (10) business days of such request, the Director may close the matter without further investigation.

3. Place of Filing

The complaint may be presented in person or delivered by mail addressed to the Director at the Commission office.

4. **Timeliness of Complaint**

Complaints alleging noncompliance must be filed as soon as practicable to enable the Director to investigate and impose appropriate sanctions. The Director may dismiss without investigation any complaint that, in the Director's sole discretion, is untimely, and shall, in any event, dismiss any complaint based on alleged violations occurring more than within ninety (90) days prior to the date of the complaint, unless the Director finds good cause to excuse the delay. The Director shall notify Complainant in writing where the Director has determined to dismiss a complaint as untimely. Complainant may appeal the Director's decision to the City Administrator under Rule XIX.

5. **Withdrawal of Complaint**

A Complainant may withdraw a complaint by submitting to the Director a written declaration, sworn under penalty of perjury, that the complaint is withdrawn. However, withdrawing a complaint does not limit or prevent the Director, where warranted, from investigating the matter under Rule XVIII.A.

6. **Resolution of Complaint**

The Director shall evaluate, resolve through conference and conciliation, and/or investigate each complaint and issue a written determination within ninety (90) days, or such additional time as the Director for good cause shall determine is required, of the date the complaint is filed, or investigation initiated by the Director, as follows:

- a) If the Director determines that the allegations, if true, would not constitute a violation of any of the requirements of the Ordinance, these Rules and Regulations, or contract provisions pertaining to LBE participation, the Director shall promptly so notify any Complainant in writing and summarily close the investigation.
- b) If the Director resolves the matter through conference and conciliation, the Director shall promptly notify any Complainant, with copies to the Department and/or the affected bidder, contractor, certified business or applicant for certification.
- c) If the investigation shows no violation of any of the requirements of the Ordinance, these Rules and Regulations, or contract provisions pertaining to LBE participation, the Director shall promptly notify any Complainant, with copies to the Department and/or the affected bidder, contractor, certified business or applicant for certification.
- d) If the investigation establishes that a bidder, contractor, certified business or applicant for certification violated any of the requirements of the Ordinance, these Rules and Regulations, or contract provisions pertaining to LBE participation, and the Director determines that the matter cannot be resolved through conference and conciliation, or attempts to resolve the matter through conference and conciliation fail, the Director shall promptly so notify any Complainant, affected bidder, contractor, certified business or applicant for certification, with copies to the Department and shall initiate Administrative Sanctions Procedures as provided in Rule XIX.
- e) The Director's decision to close a complaint without imposing sanctions under

Section 7(a) or (c) above may be appealed to the City Administrator or Hearing officer appointed by the City Administrator under Rule XIX. The Director's decision to close a complaint resolved through conference and conciliation under Section (b) or (d) is final and not subject to appeal to the Commission. A Director's determination that a bidder, contractor, certified business or applicant for certification violated any of the requirements of the Ordinance, these Rules and Regulations, or contract provisions pertaining to LBE participation is subject to the Administrative Sanctions Procedures in Rule XIX.

XIX. ADMINISTRATIVE SANCTION PROCEDURES

A. Within twenty (20) days of the completion of an investigation where the Director determines that a bidder, contractor, certified business or applicant for certification violated any of the requirements of Chapter 14B, these Rules and Regulations, or contract provisions pertaining to LBE participation, and the Director determines that the matter cannot be resolved through conference and conciliation, or, if the Director attempts to resolve the violation(s) through conference and conciliation but such attempts fail, within twenty days of such failure, the Director shall issue written Counts and Allegations setting forth the basis for the Director's determination and imposing appropriate sanctions as provided in Chapter 14B.

B. Service of the Counts and Allegations

The Director shall serve the Counts and Allegations on each named individual person or business entity determined to have violated Chapter 14B in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery. The Director may, but is not required to, serve copies of the Counts and Allegations on any Complainant, Contract Awarding Authority, or other interested city official. The Director shall append to the Counts and Allegations a photocopy of this Rule XIX. Failure to append this Rule XIX, however, shall not affect the force or validity of the Counts and Allegations.

C. Request for a Hearing

Within fifteen (15) days after receipt of the Counts and Allegations, any individual person or business entity named in the Counts and Allegations may submit a written request for an administrative hearing. Such a request may be made through counsel or other authorized representative. Any such request shall be filed with the Director.

D. Failure to Respond to the Counts and Allegations

Failure of any individual person or business entity named in the Counts and Allegations to submit to the City a written request to be heard within the time required by this Chapter, or failure of any individual person or business entity named in the Counts and Allegations or that person or entity's representative to appear for a requested hearing that has been

duly noticed, shall be deemed admission by that person or entity to the Counts and Allegations. In accordance with the procedures set forth below, the Director shall present evidence in support of the sanctions imposed to the City Administrator or appointed hearing officer and the City Administrator or hearing officer shall make a determination on such evidence.

E. Hearing by Commission or Hearing Officer

The Director shall promptly notify the City Administrator of a written request for a hearing under Rule XIX.C. The City Administrator shall (a) hold a hearing on the matter, or (b) appoint a hearing officer.

F. Appointment of Hearing Officer

1. Unless the City Administrator hears the matter without a hearing officer, the City Administrator shall appoint a hearing officer no later than fifteen (15) days after the written request for the hearing.
2. The notice of appointment shall include the name of the hearing officer. Each individual person or business entity named in the Counts and Allegations or the Director may object to the appointed hearing officer within five business days of the notification. If the City Administrator appoints a new hearing officer, then the City Administrator shall notify each individual person or business entity named in the Counts and Allegations and the Director as soon as practicable but not more than fifteen (15) days after receipt of the objection.

G. Pre-Hearing Procedure

1. Within fifteen (15) days of his/her appointment, the hearing officer shall notify each individual person or business entity named in the Counts and Allegations and the Director of the scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion, except the hearing must commence within 120 days of the date the Director served the Counts and Allegations. The hearing officer may extend the 120-day period only upon good cause shown; recognizing that proceeding as expeditiously as possible is in the public's best interests.
2. Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative proceeding.
3. The hearing officer may, in his/her sole discretion, direct the persons or business entities named in the Counts and Allegations and the Director to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of noncompliance or sanctions. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

4. If the hearing officer determines, with the written agreement of each individual person or business entity named in the Counts and Allegations and the Director, that the hearing shall be by written presentation, all final writings shall be due no later than 120 days of the date the Director served the Counts and Allegations, unless the hearing officer extends the 120-day period only upon good cause shown.

H. Hearings and Determinations

1. Hearings may occur in person or in writing, as set forth in the foregoing Section XIX.G.4. If the hearing is to occur in person, the hearing officer shall specify the time and place for the Director to present the case and for the persons or business entities named in the Counts and Allegations to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence presented based on relevancy. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.
2. The hearing officer shall consider the evidence submitted by the Director and the persons or business entities named in the Counts and Allegations. Within 15 days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Findings and Recommendations. The hearing officer shall serve the Findings and Recommendations on the Director, the persons or business entities named in the Counts and Allegations and/or their respective counsel or authorized representatives, and shall submit the same to the Commission and, if appointed by the Controller, to the Controller.

XX. CITYWIDE BONDING AND FINANCIAL ASSISTANCE PROGRAM

Pursuant to Chapter 14B.16(A)(6)(b), each department authorized to contract for public works or improvements pursuant to San Francisco Administrative Code Chapter 6 may commit to the Citywide Bonding and Financial Assistance program ("Program") up to ten percent (10%), but not less than one percent (1%), of the budget for every public work or improvement undertaken.

Funding for the Program will be contributed from individual departments on a project-by-project basis. Prior to the advertisement of an individual public works contract, the CMD Director, in consultation with each individual Department and the Program Administrator, shall establish the percentage to be applied to the Department's public works contract using the following criteria:

- a) project budget;
- b) source and flexibility of funding;
- c) size of the project;
- d) scope of work; and
- e) the LBE subcontracting participation requirement.

Participating Departments will include the contribution to the Citywide Bonding and

Financial Assistance Program as part of the contingency budget for its individual projects.

XXI. MENTOR-PROTÉGÉ PROGRAM

A. The City's Mentor Protégé Program provides a platform for successful prime companies to assist CMD Micro-LBE Certified firms in any of the following areas:

- Organizational/Structural Needs
- Leadership Development Needs
- Financial/Business Infrastructure Needs
- Insurance/Bonding Needs
- Networking/Business Community Engagement Needs

B. The Mentor/Protégé program will include the participation of 10 Mentor/Protégé teams, 5 from professional services (A/E) and 5 from public works/Construction. The following represents the steps of the Mentor Protégé Program Team Selection Process:

1. All prospective Mentors or Protégés must first complete and submit an application developed by CMD.
2. The application will be reviewed by CMD.
3. CMD will approve applications that meet the criteria. Only approved Mentor and Protégé applications will be posted on CMDll website. Approved applicants will also be notified via e-mail.
4. Mentors and Protégés will outreach to other approved Mentors/Protégés in order to form their own Mentor/Protégé team.
5. Once a Mentor/Protégé team is formed, the team will submit a letter of interest summarizing the benefits that the Protégé will gain from working with their prospective Mentor.
6. CMD will randomly select ten teams from the pool of proposed teams. There will be five teams selected for construction services and five teams selected for architectural/engineering services.
7. The selected Mentor/Protégé teams from the pool of MOU to the Mentor Protégé teams (MPP) Steering Committee stating the objectives, goals, and deliverables from both the Mentor and Protégé for the duration of the MPP cycle.
8. The Mentor is responsible for submitting quarterly reports or upon request, on the Mentor/Protégé for the duration CMD will waive the Mentor's Good Faith Outreach requirements for two years when bidding as a Prime on City projects.

XXII. DEVELOPMENT AGREEMENTS UNDER SECTION 14B.20

For development agreements pursuant to Chapter 14B.20, the developer, Director, and City department shall negotiate a LBE utilization plan that includes good faith outreach requirements, a LBE participation goal, and reporting requirements. The LBE utilization plan may also include the following:

- A. LBE Liaison. The developer shall identify a “LBE Liaison” as the developer’s main point of contact with CMD for outreach or compliance concerns and to be available to meet with CMD staff as necessary.
- B. LBE Utilization Goal. The developer will work in good faith with CMD to establish an LBE utilization goal for the project. In order to support the developer in meeting the project’s LBE utilization goal, the Director may set individual LBE goals by project phase (e.g. design, construction, etc.) or by individual projects or contracts.
- The developer shall satisfy the LBE utilization goal by using Small and Micro-LBEs. If the Director determines there are not sufficient Small and Micro-LBEs available, the Director may permit the developer to satisfy the LBE utilization goal by also using SBA-LBEs.
 - Where appropriate, the developer will divide the work as practicable in order to maximize LBE participation, including identifying specific portions of work that may be performed by subcontractors.
- C. Advertising. The developer will notify CMD in writing of all upcoming contracting opportunities at least 10 business days before the contract’s advertisement date to allow CMD to review and comment on upcoming solicitation. The developer will hold pre-proposal/pre-bid meetings no less than 15 calendar days prior to the bid, proposal, or solicitation submittal due dates.
- D. Outreach and Other Assistance. The developer will:
1. Provide LBEs with plans, specifications, and requirements for all or part of the work solicited;
 2. Notify LBE trade associations that disseminate bid and/or contract information;
 3. Provide plans or project specifications to the San Francisco Public Utilities Commission Contractors Assistance Center;
 4. Work with CMD to conduct outreach to LBEs for all consulting or contracting opportunities in the applicable trades and services in order to encourage LBE participation on the project; and
 5. Document any efforts taken to encourage participation by LBEs.
- E. Insurance and Bonding. The developer shall make the LBE Liaison available to explain the developer’s insurance and bonding requirements as applicable, answer questions, and work with CMD to suggest governmental or third party avenues of assistance if available.

- F. Data Collection and Reporting. The developer will keep track of the date that each response, proposal, or bid was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected. The developer will further create a reporting method to track LBE participation. The data tracked shall include the following:
- Name/Type of contract or work solicited (e.g. civil engineering, environmental consulting, etc.)
 - Name of prime contractor and whether a certified LBE
 - Name of subcontractors and whether a certified LBE
 - Scope of work to be performed by the LBE
 - Dollar amounts associated with both LBE and non-LBE contractors at both prime and subcontractor levels
 - Total LBE participation as a percentage of Total contract dollars
- G. The developer shall include in all of its contracts, a provision that requires all subsequent contractors or subcontractors to follow good faith efforts to subcontract to LBEs.
- H. Monitor and Enforcement. The developer shall provide a detailed quarterly report on LBE participation based on the total value of contracts awarded and paid to LBEs as a percentage of the total value of project dollars awarded and paid to date. When deficiencies are noted, developer shall meet and confer with CMD to come up with a plan to increase LBE participation.

APPENDIX A

The SFPUC Water System Service Area is defined by defined by the following cities/zip codes and may be amended by the SFPUC from time to time.

Tuolumne County

<u>City</u>	<u>Zip Code</u>
Big Oak Flat	95305
Chinese Camp	95309
Cold Springs	95335
lumbia	95310
Dardanelle	95314
Groveland	95321
Jamestown	95327
Long Barn	95335
Mi Wuk	95346
Moccasin	95347
Pinecrest	95325 / 95364
Sonora	95370 / 95373
Soulsbyville	95372
Standard	95373
Strawberry	95375
Tuolumne	95379
Twaine Harte	95383

Mariposa County

<u>City</u>	<u>Zip Code</u>
Cathay's Valley	95306
Coulterville	95311
El Portal	95318
Hornitos	95325
Fish Camp	93623
Mariposa	95338
Midpines	95345
Tuolumne Meadows	95389
Wawona	95389
Yosemite	95389

Stanislaus County

<u>City</u>	<u>Zip Code</u>
Ceres	95307
Crows Landing	95313
Del Rio	95356
Denir	95316
Empire	95319
Grayson	95363
Gustine	95322
Hickman	95323
Hughson	95326
Keyes	95828
La Grange	95329
Modesto	95350 / 95351 / 95352 / 95353 / 95354 / 95355 / 95356 / 95357 / 95358 / 95397
Newman	95347 / 95350 / 95353 / 95355 / 95358 / 95360

<u>City</u>	<u>Zip Code</u>
Oakdale	95361
Paterson	95363
Riverbank	95367
Salida	95368
Turlock	95380 / 95381 / 95382
Waterford	95386
Westley	95387

San Joaquin County

<u>City</u>	<u>Zip Code</u>
Acampo	95220
Clements	95227
Escalon	95320
Farmington	95230
French Camp	95231
Galt	95632
Holt	95234
Lathorp	95330
Linden	95236
Lockeford	95237
Lodi	95240 / 95241 / 95242
Lyoth	95296
Manteca	95336 / 95337
Mountain House	95391
Ripon	95366
Stockton	95201 / 95202 / 95203 / 95204 / 95205 / 95206 / 95206 / 95207 / 95208 / 95210 / 95211 / 95212 / 95213 / 95215 / 95219 / 95267 / 95269 / 95296 / 95297
Tracy	95304 / 95376 / 95377 / 95378 / 95391
Vernalis	95385
Victor	95253
Woodbridge	95258
Thorton	95686

Alameda County

<u>City</u>	<u>Zip Code</u>
Alameda	94501 / 94502
Castro Valley	94546 / 94552
Fremont	94536 / 94537 / 94538 / 94539 / 94555
Hayward	94540 / 94541 / 94542 / 94543 / 94544 / 94545 / 94557
Livermore	94550 / 94551
Newark	94560
Pleasanton	94566 / 94588
Sunol	94586
Union City	94587

San Mateo County

<u>City</u>	<u>Zip Code</u>
Atherton	94027
Belmont	94002
Brisbane	94005
Burlingame	94010 / 94011
Daly City	94013 / 94014 / 94015 / 94016 / 94017
El Granada	94018

<u>City</u>	<u>Zip Code</u>
Half Moon Bay	94019
La Honda	94020
Loma Mar	94021
Menlo Park	94025 / 94026
Millbrae	94030
Montara	94037
Moss Beach	94038
Pacifica	94044
Pescadero	94060
Portola Valley	94028
Redwood City	94061 / 94062 / 94063 / 94064 / 94065
San Bruno	94066
San Carlos	94070
San Francisco	94128
San Gregorio	94074
San Mateo	94401 / 94402 / 94403 / 94404 / 94497
South SF	94080 / 94083 / 94099

Santa Clara County

<u>City</u>	<u>Zip Code</u>
Alviso	95002
Campbell	95008 / 95009 / 95011
Coyote	95013
Cupertino	95014 / 94015
Los Altos	94022 / 94023 / 94024
Milpitas	95035 / 95036
Mount Hamilton	95140
Mountain View	94035 / 94039 / 94040 / 94041 / 94042 / 94043
Palo Alto	94301 / 94302 / 94303 / 94304 / 94305 / 94306 / 94309
San Jose	95101 / 95103 / 95106 / 95108 / 95109 / 95110 / 95111 / 95112 / 95113 / 95115 / 95116 / 95117 / 95118 / 95119 / 95120 / 95121 / 95122 / 95123 / 95124 / 95125 / 95126 / 95127 / 95128 / 95129 / 95130 / 95131 / 95132 / 95133 / 95134 / 95135 / 95136 / 95138 / 95139 / 95141 / 95148 / 95150 / 95151 / 95152 / 95153 / 95154 / 95155 / 95156 / 95157 / 95158 / 95159 / 95160 / 95161 / 95164 / 95170 / 95172 / 95173 / 95190 / 95191 / 95192 / 95193 / 95194 / 95196
Santa Clara	95050 / 95051 / 95052 / 95053 / 95054 / 95055 / 95056
Stanford	94305
Sunnyvale	94085 / 94086 / 94087 / 94088 / 94089