

CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



CMD ATTACHMENT 1

Requirements for Construction Contracts

**For Contracts equal or greater than 50% of the Threshold Amount
and that are Advertised on or after July 1, 2022**

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

- A. To be eligible for this contract award, Bidders must agree to comply with the Local Business Enterprise ("LBE") requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4, and Chapter 14B (where applicable), and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division ("CMD").
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any Bidder or Contractor to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website <http://www.sfgov.org/cmd>.
- C. Chapter 14B allows for bid discounts for CMD certified firms, subject to certain limitations and exceptions. The Certification application is available on the CMD website at <http://www.sfgov.org/cmd>.

IMPORTANT NOTICE: In this CMD Attachment 1, the term "LBE" refers to only San Francisco ("SF") CMD Certified LBEs and NPEs and, therefore, does not include PUC LBEs.

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



1.02 SUBMISSION OF CMD FORMS – PRE-AWARD

- A. Failure to complete or submit any of the forms may cause the Bidder to be deemed non-responsive and ineligible for contract award. For negotiated contracts: The schedule for the submission of forms will be established by the CMD in conjunction with the Contract Awarding Authority on a contract-by-contract basis. Please see Part III for more information regarding LBE sub participation.
1. **SECTION 00 43 36 or Equivalent Form:** In addition to meeting the requirements of the "Subletting and Subcontracting Fair Practices Act," Bidder shall list on Section 00 43 36 or equivalent City provided form ALL LBE subcontractors, suppliers, and service contractors (such as truckers), including their respective subcontract dollar amounts and portion of work to be performed, that it will utilize toward the Contract's LBE sub participation requirement(s). Failure to include this information may make it impossible for the City to determine whether or not Bidder has met the LBE sub participation requirement(s), and the Bid may be deemed non-responsive.
 2. **SECTION 00 43 37 or Equivalent Form:** If applicable, for alternate bid items/work, Bidder must complete and submit Section 00 43 37 or equivalent City provided form with its Bid. Compliance with the LBE sub participation requirement(s) is determined on the amount of the base bid. LBEs that are listed on the base bid should be listed again on Section 00 43 37 or equivalent City provided form for each alternate on which they will be utilized. Bidders entering "To Be Determined" ("TBD") instead of a specific dollar amount/percentage on Section 00 43 36 or Section 00 43 37 or equivalent City provided form may lead to a non-responsive Bid.
 3. LBE Bidders and LBE subcontractors must be certified as LBEs on the bid due date to qualify for the bid discount or to qualify to meet the LBE sub participation requirement(s).
 4. The bid specifications will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s).
 5. Any Bidder or subcontractor who is in the process of appealing the Director's denial of certification or revocation of certification shall not be considered an LBE.
- B. Submit the following CMD forms with the Bid:
- FORM 2B: CMD "Good Faith Efforts" Requirements Form:** This form must be submitted for every solicitation that requires LBE sub participation. Bidder shall meet the specified LBE sub participation requirement(s) and shall complete and submit Form 2B in accordance with Form 2B instructions. Failure to meet the LBE sub participation requirement(s) AND demonstrate/document adequate good faith efforts shall cause the Bid to be determined non-responsive and rejected. Please see Part IV for further information. Bidders are required to sign this form under penalty of perjury.
- C. The apparent low Bidder must submit the following documentation and forms by 5:00 p.m. on the fifth business day following Bid opening. No extensions of time to submit the documentation are permitted unless approved by CMD. If the CMD determines that the Bidder is not acting in good faith in the timely and accurate submission of these forms, the Bid may be determined non-responsive and rejected.
1. **FORM 3: CMD Compliance Affidavit:** Must be signed by the Bidder under penalty of perjury.
 2. **FORM 6: CMD LBE Subcontractor Participation Affidavit:** Completed copies of Form 6 and subcontractors' bid quotations must be submitted from all LBE subcontractors, suppliers and truckers listed to meet the LBE sub participation requirement(s), regardless of whether the participation is as a first-tier, or lower-tier subcontractor, supplier or trucker. Subcontractors are required to sign this form under penalty of perjury.



3. **FORM 6A: CMD LBE Trucking Form:** Bidder shall submit Form 6A if truckers are being used to meet the LBE sub participation requirement(s). Only CMD certified LBE truckers can be utilized to meet the LBE sub participation requirement(s).

1.03 CMD LBE CONTRACT PERFORMANCE FORMS—POST AWARD

A. LBE Utilization Tracking

1. **FORM 7: CMD Progress Payment Form:** The Bidder awarded the Contract shall submit online using the Contract Awarding Authority's City approved system with each payment request. Failure to upload this information with each payment request may delay progress payment processing. Upon request from CMD, the Contractor must provide copies of certified payrolls for itself and all subcontractors. For any Other Direct Costs ("ODC") or direct reimbursable expenses/items, CMD will review and determine whether it is eligible for LBE sub participation credit.
 2. **FORM 9: CMD Payment Affidavit:** Following receipt of each progress payment from the Contract Awarding Authority, a Form 9 (or the information on Form 9) must be submitted online using the Contract Awarding Authority's City approved system with the next progress payment request. Subcontractors are then required to acknowledge payment from Contractor online using the Contract Awarding Authority's City approved system. Failure to submit required information may lead to partial withholding of progress payment, even if there are no subcontractor payments for the reporting period.
- B. **FORM 8: CMD Exit Report and Affidavit:** Submit with final Form 7. A separate Form 8 must be completed for each LBE subcontractor and supplier (including lower-tier subcontractors & suppliers).
- C. **FORM 10: CMD Contract Modification Form:** This form shall be completed by the Prime Contractor when any (all) amendments, modifications, or supplemental change orders cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CMD approved value by 20%.
- D. Failure to submit all required information under Section 1.03 as specified by the City may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

PART II. BID DISCOUNT

2.01 APPLICATION

- A. Eligibility for the LBE bid discount: CMD certified Micro, Small, and SBA-LBEs, including certified non-profit organizations, are eligible for an LBE bid discount (as applicable under Section 14B.7 of the Ordinance) if the LBE is CMD certified in the type of work that is specified for the Bidder by the Contract Awarding Authority. A Bidder that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the Bid is due IS NOT an LBE and IS NOT eligible to receive the bid discount even if the firm is later certified or ultimately prevails in its appeal. Contract Awarding Authorities shall apply these bid discounts to each evaluation stage of the selection process, as applicable.

The Discounts provided under Section 2.01(B) through (E) can be combined with each other. A Bidder may receive up to a maximum bid discount of 13% depending on the particular application listed below. A Bidder may only claim one bid discount under each of the following subsections:

- Section 2.01(B) **Standard bid discount**
- Section 2.01(D) **Prime Neighborhood/Zip Code LBE bid discount**
- Section 2.01(E) **Subcontracting Neighborhood/Zip Code LBE bid discount**



Note 1: The bid specifications and contract documents will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project.

Note 2: The Mentor Protégé bid discount/rating bonus, Section 2.01(F), cannot be combined with any of the bid discounts/rating bonuses from Sections 2.01(B) through (E).

B. Application of the **Standard bid discount** shall be as follows:

1. **Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal to \$400,000.** A 10% bid discount will apply to any Bids submitted by CMD certified Small or Micro-LBEs. SBA-LBEs are not eligible for a bid discount OR
2. **Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal to \$10,000,000.** A 10% bid discount will apply to any Bids submitted by CMD certified Small or Micro-LBEs. If, after the application of the 10% bid discount to Bids submitted by Small or Micro-LBEs, the apparent low Bidder is not a Small or Micro-LBE, a 5% bid discount will be applied to any Bid from an SBA-LBE in accordance with the procedures and limitations set forth in Section 14B.7(E) of the Ordinance OR
3. **Contracts with an Estimated Cost in Excess of \$10,000,000 and Less Than or Equal to \$20,000,000.** Only the 2% bid discount will apply to any Bid submitted by a Small LBE, Micro LBE and SBA-LBE OR
4. **Contracts with an Estimated Cost in Excess of \$20,000,000.** The bid discount for LBEs does not apply to Contracts estimated by the Contract Awarding Authority to exceed \$20,000,000.
5. Bid discounts are not applicable to Contracts awarded by private non-profit agencies, regardless of whether or not government funding is involved, or whether or not the firms competing for Contracts are for-profit businesses.

C. **Pilot Neighborhood/Zip Code LBE Program**

This pilot program is a hyper-local preference program that is to encourage participation by neighborhood businesses on City public works projects located in their neighborhood. This program may apply to Administrative Code Chapter 6 Contracts for projects located within the jurisdictional boundary of San Francisco estimated to cost in excess \$10,000 and less than or equal to \$10,000,000. The bid specifications and contract documents will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project. The Pilot Neighborhood/Zip Code LBE Program bid discount does not apply for Contracts estimated by the Contract Awarding Authority to exceed \$10,000,000. The program shall not apply to Job Order Contracts (JOC), As-Needed Contracts, or other Contracts where no specific project location is specified at the time of bid.

The program preferences shall be available to LBEs who meet one or both of the following criteria:

1. **Neighborhood LBE.** A "Neighborhood LBE" means a CMD certified Small or Micro-LBE whose principal place of business is located in the same Neighborhood as the Neighborhood in which the project is located, where "Neighborhood" is defined as any one of the 11 Supervisorial Districts as defined and established in the San Francisco Charter, Appendix E at the time of bid. In order to facilitate this, the Contract Awarding Authority is required to identify the specific address/Neighborhood(s) where the project will be located on all bid specifications and contract documents.
2. **Project Zip Code LBE.** A "Project Zip Code LBE" means a CMD certified Small or Micro-LBE whose principal place of business is located in the same zip code as the zip code in which the project is located; In order to facilitate this, the Contract Awarding Authority is required to identify the specific address/Neighborhood(s) where the project will be located on all bid specifications and contract documents.

D. Application of the **Prime Neighborhood/Zip Code LBE bid discount:**



1. A 1% bid discount to Bids from a Neighborhood LBE when bidding on a Contract where the project is located in the same Neighborhood as the Neighborhood LBE's principal place of business OR
 2. A 1.5% bid discount to Bids from a Project Zip Code LBE when bidding on a Contract where the project is located in the same zip code as the Project Zip Code LBE's principal place of business.
- E. Application of the **Subcontracting Neighborhood/Zip Code LBE bid discount**:
1. A 0.5% bid discount to Bids from any Bidder if the LBE sub participation in the submitted Bid includes participation by Neighborhood LBEs of at least 50% of the sum of all the LBE sub participation requirements OR
 2. A 1.5% bid discount to Bids from any Bidder if the LBE sub participation in the submitted Bid includes participation by Zip Code LBEs of at least 50% of the sum of all the LBE sub participation requirements.
- F. Application of the **Mentor Protégé bid discount**:
- A 1% bid discount to Bids from any Bidder who has been deemed by CMD to qualify for the bid discount. The discount shall not exceed \$300,000 and will not be applied if it results in an LBE losing status as the apparent low Bidder or highest ranked Proposer.

PART III. LBE SUBCONTRACTOR/SUBCONSULTANT PARTICIPATION

3.01 LBE SUBPARTICIPATION REQUIREMENT(S)

A. General

All Bidders must meet the LBE sub participation requirement(s) and undertake adequate good faith efforts as set forth in Section 14B.8 of the Ordinance to select subs to meet the LBE sub participation requirement(s). The bid specifications will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s). If awarded the Contract, a Bidder's failure to achieve their respective LBE sub participation requirement(s) shall subject the Bidder to sanctions as described in Section 14B.17 of the Ordinance. For a directory of certified LBEs, please go to: <http://www.sfgov.org/cmd>.

Bids that do not meet the LBE sub participation requirement(s) set under Section 14B.8(A) of the Ordinance will be rejected as non-responsive pursuant to Chapter 14B and its accompanying Rules and Regulations.

1. Bidders must identify on **Section 00 43 36** (Subcontractor List) or equivalent City provided form the particular LBE subcontractors to be used in performing the contract work, including first and lower tier subcontractors, suppliers, or service contractors such as truckers, and specify for each the dollar amount of each subcontract and the portion of work to be performed. An LBE subcontractor must be CMD certified in the scope of work/trade(s) that the Bidder is listing the LBE subcontractor to perform in order to receive LBE credit.
2. A Bidder must contact an LBE before listing that LBE as a sub in the Bid. A Bid that fails to comply with this requirement will not receive LBE credit for the referenced LBE. LBEs must be certified with the CMD on the bid due date to receive LBE credit. Additionally, a sub(s) may be listed by more than one Bidder.
3. Bidders are responsible for verifying the LBE status of a subcontractor, supplier, or service contractor prior to submitting a Bid. A subcontractor that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the Bid is due is not an LBE and cannot



be counted as an LBE for purposes of meeting the LBE sub participation requirement(s) even if the firm is later certified or ultimately prevails in its appeal.

4. CMD may require the successful Bidder to submit performance reports (e.g., Form 7, etc.) on actual LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and CMD.

B. Determination and Calculation of LBE Subcontractor/Subconsultant Participation

General Rules and Commercially Useful Function

1. All LBE Bidders must meet the LBE sub participation requirement(s). Any LBE Bidder (including SBA-LBE Bidder) may not count its participation towards meeting the LBE sub participation requirement(s). If a Bidder owns or controls more than one business that is CMD certified as an LBE, the Bidder will not receive LBE credit if it lists its other firm(s) to meet the LBE sub participation requirement(s) when submitting as a Bidder. In determining ownership of a business, a business owned by Bidder's spouse or domestic partner shall be deemed to be owned by the Bidder.
2. For a Bidder to receive credit toward the LBE sub participation requirement(s), a listed LBE subcontractor must be CMD certified in the scopes of work/trade(s) listed on Section 00 43 36 or equivalent City provided form. The LBE subcontractor shall be listed to perform scope(s) of work, which is described in the bid specifications.
 - a. The LBE subcontractor must be utilized on the Contract to perform a Commercially Useful Function. 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. For example, for any subcontract involving LBE subcontractors providing construction laborers, the LBE subcontractor must be responsible for the labor and supervision for its listed scope of work at the time of bid, if applicable. CMD reserves the right to request and review such information during the course of the contract and, upon request, the Bidder shall submit the requested information to CMD within 10 days.
 - 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. No credit will be given for an LBE that services as a pass-through.
3. Only the dollar amount of work to be performed by the LBE subcontractor will be credited toward meeting the LBE sub participation requirement(s).
 - 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 sub participation requirement(s).

4. All work performed by lower-tier LBE subcontractors will be credited toward meeting the LBE sub participation requirement(s) provided that the lower-tier subcontractor was listed on **Section 00 43 36** or equivalent City provided form (or **Section 00 43 37** or equivalent City provided form, 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 sub participation requirement(s), provided that the lower-tier LBE subcontractor was listed on Section 00 43 36 or equivalent City provided form at the time of bid.

Deletable Bid Items, Allowances, Contingency/Conditional & Alternate Bid Items

5. The CMD will calculate compliance with the LBE sub participation requirement(s) 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). In addition, a Bidder must demonstrate good faith efforts to meet the LBE sub participation requirement(s) through LBE participation on the base bid. If a Bidder lists an LBE subcontractor on Section 00 43 36 or equivalent City provided form and intends to use that LBE subcontractor for alternate work, the Bidder must separately list the LBE subcontractor on Section 00 43 37 or equivalent City provided form for each alternate on which the subcontractor will be used.
6. For purposes of determining compliance at the time of bid, a Bidder shall not use deletable bid items, allowances or contingency/conditional bid items to meet the LBE sub participation requirement(s).

LBE Construction Subcontractors

7. Bidders may receive 100% credit for CMD certified LBE construction subcontractors that perform a Commercially Useful Function by supplying labor, materials and supplies for a discrete portion of the contract work performed in accordance with normal industry practice. To receive credit towards the LBE sub participation requirement(s) with respect to materials and supplies used for 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 materials and supplies, selecting a supplier or dealer from those available, installing the materials, and paying for the materials and supplies. To receive LBE sub participation credit, the Bidder must list the LBE construction subcontractor on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
8. Bidders may receive 100% credit for LBE construction subcontractors that perform a Commercially Useful Function by supplying labor only for a discrete portion of the contract work in accordance with normal industry practice. To receive LBE sub participation credit, the Bidder must list the LBE construction subcontractor on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).

LBE Manufacturers

9. 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 sub participation requirement(s), 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 sub participation credit, the Bidder must list the LBE manufacturer on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).

LBE Suppliers

10. 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 sub participation requirement(s) 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 sub participation 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 sub participation credit, the Bidder must list the LBE supplier on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
11. 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 sub participation requirement(s). No LBE sub participation 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 sub participation credit, the Bidder must list the LBE supplier/broker on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
12. 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 sub participation requirement(s). To receive LBE sub participation credit, the Bidder must list the LBE equipment rental firm on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).

Specially Manufactured Items

13. 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 sub participation requirement(s). 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.
14. If the bid specifications or contract documents expressly identify one or more Specially Manufactured Items, CMD will calculate LBE sub participation credit for such items according to the following rules:
 - a. If a Specially Manufactured Item is manufactured by and purchased from a CMD- certified LBE manufacturer, 100% of the purchase order amount will be credited towards meeting the LBE sub participation requirement(s), regardless of who installs the item. To receive LBE sub participation credit, the Bidder must list the LBE manufacturer on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
 - b. If a Specially Manufactured Item is purchased from a CMD certified LBE supplier, only 5% of the purchase price of the item will be credited towards meeting the LBE sub participation



- requirement(s). No LBE sub 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 sub participation credit, the Bidder must list the LBE supplier on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
- c. If a Specially Manufactured Item is supplied and installed by a 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 sub participation requirement(s), provided that installation by the construction subcontractor reflects normal industry practice. To receive LBE sub participation credit, the Bidder must list the LBE construction subcontractor on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
 - d. A Bidder may receive full (100%) LBE sub participation 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 a CMD certified construction subcontractor in accordance with normal industry practice. To receive LBE sub participation credit, the Bidder must list the LBE construction subcontractor on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).

LBE Truckers

- 15. CMD will count 100% credit toward the LBE sub participation requirement(s) when an LBE-owned trailer is pulled by an LBE-owned cab and the driver of the cab is an employee/ owner of the LBE trucking firm that owns the cab. CMD will count 60% credit toward the LBE sub participation requirement(s) when an LBE-owned trailer is pulled by a non- LBE owned cab. CMD will count 0% credit toward the LBE sub participation requirement(s) when a non-LBE owned trailer is pulled by a non-LBE owned cab. To receive LBE sub participation credit, the Bidder must list the LBE trucking firm on Section 00 43 36 or equivalent City provided form (and Section 00 43 37 or equivalent City provided form, if applicable).
- 16. In order to receive LBE sub participation credit for Trucking and Hauling, the LBE must own the cab or trailer at the time of bid and be certified under the category "Trucking and Hauling" with the CMD's Certification Unit. The following items fall under the "Trucking and Hauling" category: cabs and trailers. Prior to the bid due date, the LBE must have provided ownership information and all necessary permits and registration for the Trucking and Hauling items that will be utilized for the project to CMD's Certification Unit which will verify and add this information to the certification file. During the course of the Contract the CMD Director may authorize LBE sub participation credit for vehicles or equipment purchased or leased after the time of bid on a case by case basis.

Construction Equipment

- 17. Construction Equipment firms are firms that sell and/or rent construction equipment. For example, items such as storage tanks, grit separators, debris boxes, etc. are considered Construction Equipment and not under the "Trucking and Hauling" Category. If these items are utilized in conjunction with trucking and hauling operations, they are still classified in the Construction Equipment Category. In order to receive LBE sub participation credit for these types of items, the LBE must be certified under the category of "Construction Equipment" with the CMD's Certification Unit at the time of bid.

Note: LBE firms in the "Construction Equipment" category are equipment sales and rental firms. For CMD certified LBE equipment rental firms, only 60% of the equipment rental fee (current market rate) will be credited towards the LBE sub participation requirement(s).



3.02 SUBSTITUTION, REMOVAL, OR CONTRACT MODIFICATION OF LBE

No LBE subcontractor, supplier, trucker or vendor listed on Section 00 43 36 or equivalent City provided form (or Section 00 43 37 or equivalent City provided form) shall be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement modified in any way without prior CMD approval. Contractor must conduct good faith efforts to replace an LBE subcontractor with another LBE subcontractor to comply with the LBE sub participation requirement(s). Additionally, no new subcontractors shall be added without prior CMD approval.

PART IV "GOOD FAITH OUTREACH" REQUIREMENTS

All Bidders shall undertake adequate good faith outreach as set forth in Section 14B.8 of the Ordinance.

Under Section 14B.8(C) of the Ordinance, proposals that do not meet the LBE sub participation requirement(s) will be rejected as non-responsive pursuant to Chapter 14B and its accompanying Rules and Regulations.

Bidders must perform at least one of the three good faith efforts approaches outlined on Form 2B (35% Approach, Inclusion of Micro-LBE Approach and/or the Good Faith Negotiation(s) Approach). Note: A Bidder may be waived from the good faith efforts if it has been deemed by CMD to have met the requirements in the Mentor Protégé Program. A Bidder shall provide the CMD proof of eligibility.

The instructions for the Inclusion of Micro-LBE Approach and the Good Faith Negotiation(s) Approach are clearly outlined on Form 2B. Bidder must submit all good faith documentation as specified on Form 2B. For the 35% Approach listed above, if a Bidder demonstrates in its Bid that it exceeds the sum of all the established LBE sub participation requirement(s) by 35% or more, such Bidder is not required to conduct the other good faith efforts approaches.

Example: The sum of all the LBE sub participation requirement(s) is 10%. Good faith efforts requirements will be met if the Bidder:

- 1) Meets the LBE sub participation requirement(s);

AND

- 2) Has a total LBE participation that equals or exceeds 13.5% of the bid amount. The 13.5% represents the 10% LBE sub participation requirement plus 35% of that 10% sub participation requirement.

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|---|--------------|
| The sum of all LBE sub participation requirement(s) set for | 10.0% |
| 35% of the 10% LBE sub participation requirement(s): | 3.5% |
| Total LBE participation must equal or exceed: | 13.5% |

A Small or Micro-LBE Bidder/Proposer may count its own contract work toward the 35% good faith outreach exception portion, but may not count its own contract work toward the LBE sub participation requirement portion. An SBA-LBE Bidder/Proposer may not count its own contract work towards the LBE sub participation requirement portion or the 35% good faith outreach exception portion. SBA-LBE subs may count towards the 35% good faith outreach exception portion if the Director permitted Bidders/Proposers to list SBA-LBE firms to satisfy the LBE sub participation requirement.



PART V NONCOMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing Rules and Regulations.
 - a. If the CMD Director determines that there is cause to believe that a Contractor has failed to comply with any of the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, the CMD Director shall notify the Contract Awarding Authority and attempt to resolve the non-compliance through conference and conciliation.
 - b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the Contractor acted in good faith or whether noncompliance was based on bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the Contractor acted in good faith, after affording the Contractor notice and an opportunity to be heard, the Director shall recommend that the Contract Awarding Authority take appropriate action. Where the Director finds bad faith noncompliance, the Director shall impose sanctions for each violation of the Ordinance, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, which may include:
 - a. Issuing an Order of Debarment prohibiting the Contractor and affiliates from participating in City Contracting for a period not to exceed five years and terminating any existing Contracts or Subcontracts with the debarred Contractor, in accordance with the Administrative Debarment provisions and procedures set forth in Administrative Code Chapter 28.
 - b. Determining that the Contractor has failed to comply with the provisions of Chapter 14B, sanctions are as follows:
 - i) suspend a Contract;
 - ii) withhold funds;
 - iii) assess penalties;
 - iv) debarment;
 - v) revoke CMD certification; or
 - vi) pursuant to 14B.7(H)(2) of the Ordinance, assess liquidated damages in an amount up to 25% of the total amount of the Contract or subcontract, as applicable, or \$1,000, whichever is greatest as determined by CMD.
3. The Director's determination of non-compliance is subject to appeal to the City Administrator pursuant to CMD Rules and Regulations.
4. An appeal by a Contractor to the City Administrator shall not stay the Director's findings.
5. The CMD Director may require such reports, information and documentation from contractors, subcontractors, Contract Awarding Authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.



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

1. The CMD Director shall send a written notice to the Controller, the Mayor and to all Contract Awarding Authorities or City and County department officials overseeing any Contract with the Contractor that a determination of non-compliance has been made and that all payments due the Contractor shall be withheld.
2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.