

SECTION 00 62 20

SUBCONTRACTING PARTICIPATION REQUIREMENTS AND NON-DISCRIMINATION
REQUIREMENTS

1.01 SUMMARY

- A. This Section includes the City's Contract Monitoring Division subcontracting and non-discrimination requirements and compliance provisions as specified in CMD Attachment 1, "Requirements for Construction Contracts". Pursuant to Attachment 1 Subcontracting Participation Requirements for this Contract are specified therein.
- B. Comply with all provisions to the extent necessary to fulfill their intent except where prohibited by state or federal law or regulation.

1.02 SUBCONTRACTING PARTICIPATION REQUIREMENTS

- A. Under Chapter 14B of the Administrative Code, subcontracting participation requirements must be established for every contract on a case-by-case basis.
- B. The LBE subcontractor participation requirement for this Contract is 10.00%.

Pursuant to San Francisco Administrative Code Section 14B.9, Bidders are advised that the availability of Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Other Business Enterprises ("OBEs") to perform subcontract work on this project is as follows:

Micro and Small-LBE subcontracting participation breakdown:

4.30% MBE; 1.50% WBE; 4.20% OBE.

Bidders are further advised that they may not discriminate in the selection of subcontractors on the basis of race, gender, or any other basis prohibited by law, and that they shall undertake all required good faith steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs are not unfairly or arbitrarily excluded from the required steps.

- C. The City will monitor the quantities of Work and amounts paid therefor, dependent upon the method of construction and operations, for compliance with Contractor's LBE subcontracting commitments and employment goals established under the provisions of Part III of CMD Attachment 1.
- D. Bidders are reminded of the rules applicable to subcontracting credit for Specially Manufactured Items; refer to CMD Attachment 1, Part III, Section 3.01B. Refer to Section 01 60 00 for a list of Specially Manufactured Items for this Project, if any.

1.03 REFERENCES

- A. Chapters 12B and 14B of the Administrative Code and the implementing rules and regulations are incorporated herein by reference and made a part of the Contract. Copies of these documents are available upon request at the CMD Office, and at the Web at <http://www.sfgov.org/cmd>.

1.04 SUBMITTALS

- A. LBE Utilization Tracking
 - 1. **FORM 7: CMD Progress Payment Form:** Contractor shall submit online using the SFPUC's approved system with each payment request. Failure to upload this information with each payment request may delay progress payment processing. Upload copies of invoices from all subcontractors.
 - 2. **FORM 9: CMD Payment Affidavit:** Submit online using the SFPUC's approved system within ten (10) business days following receipt of each progress payment from the Contract Awarding Authority. Subcontractors are then required to acknowledge payment from Contractor online using the SFPUC's approved system. Failure to submit required information may lead to partial withholding of progress payment, even when there is 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 (or last CMD approved value) by more than 20%, and then for all subsequent modifications.
- D. Failure to submit any contract forms may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.
- E. Upon request from CMD, the Contractor must provide copies of invoices for itself and all subcontractors. Failure to submit all required information in the SFPUC's approved system or Contract Performance Forms as instructed may result in the withholding of progress payments and final payment pursuant to Chapter 14B.

1.05 REGULATORY REQUIREMENTS

- A. Pursuant to Chapter 14B of the Administrative Code the following requirements are made part of the Contract:

1. Contractor shall sign and submit to the Contract Monitoring Division a declaration, declaring under penalty of perjury, its intention to fully comply with the provisions of chapter 14B. Refer to Form 3 (CMD3).
2. The willful failure of Contractor or its subcontractors to comply with any of the requirements of chapter 14B or to comply with the level of LBE subcontractor participation specified herein shall be deemed a material breach of contract.
3. In the event that the Director of Contract Monitoring Division finds that Contractor or any of its subcontractors willfully fails to comply with any of the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, or Contract provisions pertaining to LBE participation, Contractor or its subcontractor shall be liable for liquidated damages as specified in Section 14B.7(H)(2) of the Administrative Code and CMD Attachment 1, Part V "Noncompliance and Sanctions," which shall be payable to the City upon demand and may be set off against moneys due to Contractor or its subcontractor for any contract with the City. Contractor agrees that progress payments shall be withheld, and Contractor's liability for liquidated damages assessed will be subject to the collection procedures specified in CMD Attachment 1, Part V "Noncompliance and Sanctions."
4. Contractor shall maintain, and shall require its subcontractors to maintain, records including such information requested by CMD necessary for monitoring their compliance with Chapter 14B. Such records shall be maintained for 3 years after the date of Final Completion.
5. Contractor shall fulfill during the term of the Contract its LBE participation commitments submitted with its Bid.
6. Contractor shall compensate a LBE subcontractor if Contractor does not fulfill its commitment during the term of the Contract to utilize the LBE subcontractor. Contractor shall include a contract provision in all LBE subcontracts requiring Contractor to compensate a LBE subcontractor if Contractor fails to comply with its commitment to utilize LBE subcontractors. The forgoing provisions shall be enforceable in a court of competent jurisdiction.
7. Whenever Change Orders are made which cumulatively increase the Contract Sum by more than 10%, Contractor shall comply with all LBE subcontracting provisions of this Section with respect to the Change Order.
8. The contracting authority for this Contract shall submit to the CMD for approval all Change Orders that cumulatively increase the Contract Sum (or last CMD approved value) by more than 20%. The CMD will review the proposed Change Order to correct any contracting practices that exclude LBEs from new contracting opportunities.
9. Back-contracting to Contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of Chapter 14B, rules and regulations

implementing Chapter 14B, or Contract provisions pertaining to LBE participation shall be prohibited.

10. Contractor shall include LBE subcontractor's payment request in any payment application to the City within 30 calendar days of receiving LBE subcontractor's approved invoice.
11. Contractor shall pay its subcontractors within 3 working days after receiving payment from the City unless Contractor notifies the Director of the CMD in writing prior to receiving payment from the City that there is a bona fide dispute between Contractor and the subcontractor. The Director of the CMD may, upon making a determination that a bona fide dispute exists between Contractor and the subcontractor, waive this 3-day payment requirement.
12. Contractor shall file within 10 working days after receiving payment from the City an affidavit, under penalty of perjury, stating that Contractor has paid its subcontractors and providing the names and addresses of its subcontractors and the amount paid to each. Refer to Form 9 (CMD9).

1.06 NON-DISCRIMINATION

- A. Comply with the nondiscrimination provisions as set forth in CMD Attachment 1.

END OF SECTION