

CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



CMD ATTACHMENT 4

Requirements for Micro-LBE Set-Aside Construction Contracts

**For Contracts less than or equal to 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, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division (“CMD”).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any Bidder or Contractor to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website at <http://www.sfgov.org/cmd>.
- C. Micro-LBE Set-Aside Program

Under Section 14B.7(K)(1) of the Ordinance, the City may set-aside for competitive award to Micro-LBEs any construction contract estimated by the Contract Awarding Authority to be

less than or equal to the Threshold Amount. The Certification application is available on the CMD website at <http://www.sfgov.org/cmd>.

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

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



Contracts that are set-aside for award to Micro-LBEs shall not be subject to the LBE sub participation requirement under Section 14B.8 of the Ordinance. Micro-LBEs that subcontract any portion of a set-aside Contract should subcontract to businesses certified as Micro-LBEs to the maximum extent possible.

Micro-LBEs that subcontract any portion of a set-aside Contract must serve a Commercially Useful Function based on the contract's scope of work.

The Micro-LBE Prime must perform at least 25% of the contract work. Additionally, there should not be any modifications to increase the contract amount unless there is an unforeseen situation—any such modification must have prior CMD approval.

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

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

1.02 SUBMISSION OF 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. Review the specific instructions and requirements on each form.

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 the dollar amount and portion of work to be performed by the Bidder and each subcontractor/supplier including first and lower tier subcontractors/suppliers or service contractors such as truckers.

- B. The apparent low Bidder must submit the following forms by 5:00 p.m. on the fifth business day following Bid opening. No extensions of time to submit the forms are permitted except as specifically 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.

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

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.



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 sub, supplier, and vendor (including lower tiers).**
- C. **FORM 10: CMD Contract Modification Form:** This form shall be completed by the 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 Only the following bid discounts may apply:

A. 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 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 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 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.

B. 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.

PART III. LBE SUBCONTRACTOR/SUBCONSULTANT PARTICIPATION

- 3.01 The LBE sub participation requirement is not applicable to Micro-LBE Set-Aside Contracts.**
- 3.02 Substitution, removal, or contract modification of LBE:** No LBE sub, supplier, trucker or vendor listed on Section 00 43 36 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. In addition, any new subcontractors must have CMD's prior approval.

PART IV. NONCOMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing Rules and Regulations.
 - a. If the CMD Director determines that there is cause to believe that a Contractor has failed to comply with any of the requirements of the Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, the CMD Director shall notify the Contract Awarding Authority and attempt to resolve the non-compliance through conference and conciliation.
 - b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the contractor acted in good faith or whether noncompliance was based on bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the Contractor acted in good faith, after affording the Contractor notice and an opportunity to be heard, the Director shall recommend that the Contract Awarding Authority take appropriate action. Where the Director finds bad faith noncompliance, the Director shall impose sanctions for each violation of the Ordinance, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, which may include:
 - a. Issuing an Order of Debarment prohibiting the Contractor and affiliates from participating in City Contracting for a period not to exceed five years and terminating any existing Contracts or Subcontracts with the debarred Contractor, in accordance with the Administrative Debarment provisions and procedures set forth in Administrative Code Chapter 28.
 - b. Determining that the Contractor has failed to comply with the provisions of Chapter 14B, sanctions are as follows:



- i) suspend a Contract;
 - ii) withhold funds;
 - iii) assess penalties;
 - iv) debarment;
 - v) revoke CMD certification; or
 - vi) pursuant to 14B.7(H)(2) 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.
- c. The Director's determination of non-compliance is subject to appeal the City Administrator pursuant to CMD Rules and Regulations.
 - d. An appeal by a Contractor to the City Administrator shall not stay the Director's findings.
 - e. The CMD Director may require such reports, information and documentation from contractors, subcontractors, Contract Awarding Authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.
- B. Procedure for the collection of penalties is as follows:**
- 1. The CMD Director shall send a written notice to the Controller, the Mayor and to all Contract Awarding Authorities or City and County department officials overseeing any Contract with the Contractor that a determination of non-compliance has been made and that all payments due the Contractor shall be withheld.
 - 2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.



FORM 3: CMD COMPLIANCE AFFIDAVIT

1. Micro-LBE Prime Bidder should specify on the space below the dollar amount and portion of work to be self-performed which shall be consistent with the information provided in **Box A. Bidder's Portion of Work of Section 00 43 36**. If a Bidder fails to submit these forms as required, then the Bidder may be deemed non-responsive and its Bid may be rejected.

\$ _____ and Scope of Work: _____

2. I will ensure that my firm complies fully with the provisions of Chapter 14B and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
3. Upon request, I will provide the CMD with copies of Contracts, subcontract agreements, certified payroll records and other documents requested so the HRC and CMD (as applicable) may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
4. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the CMD shall be payable to the City and County upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any Contract with the City and County of San Francisco.
5. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Email _____

Date: _____



FORM 8: CMD EXIT REPORT AND AFFIDAVIT

Prime Contractor must complete and sign Sections 1 and 4 of this form for each LBE subcontractor/supplier/trucker (including each lower-tier LBE). All LBEs must complete and sign Sections 2 and 3 of this form. Please be sure to keep a copy of your outreach/delivery efforts (e.g., email, USPS certified mail, etc.) to the LBE sub(s). These forms should be submitted to the Contract Awarding Authority and CMD with the final progress payment request if the Contract has an LBE sub participation requirement.

TO: Resident Engineer Inspector
FROM (Contractor): _____

COPY: CMD Contract Compliance Officer
Date Transmitted: _____

SECTION 1.

- Please check this box if there are no LBE subcontractors/suppliers for this Contract.
- Please check this box if the LBE sub fails to complete and sign this form within 5 business days (see Section 3).

Reporting Date: _____

Contract Name: _____

Name of LBE: _____

Portion of Work (Trade): _____

Original LBE Contract Amount:

\$ _____

Change Orders, Amendments, Modifications:

\$ _____

Final LBE Contract Amount:

\$ _____

Amount of Progress Payments Paid to Date:

\$ _____

Amount Owing including all Change Orders, Amendments and Modifications \$ _____

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

SECTION 2. Please check one:

- I did NOT subcontract out ANY portion of our work to another subcontractor.
- I DID subcontract out our work to:

Name of Firm: _____

Amount Subcontracted: \$ _____

Name of Firm: _____

Amount Subcontracted: \$ _____

SECTION 3.

To be completed/signed by the LBE subcontractor/supplier/trucker:

- I agree with the above completed Section 1.
- I disagree with the above completed Section 1.

If "I disagree" is checked above, please explain. LBE sub must address any discrepancies within 5 business days after it has received this form from the Prime Contractor. If the LBE sub fails to submit the form within 5 business days, the Prime Contractor will note this under Section 1 of this form and submit the form as is with the final progress payment.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Email

Date



SECTION 4.

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

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

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Email

Date



FORM 10: CMD CONTRACT MODIFICATION FORM

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

Name of Project/Contract Title: _____

Original Contract Amount: _____

Total Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

New Total Contract Amount after Current Modification Request: _____

REQUIRED INFORMATION:

1. A list of all prior contract amendments, modifications, supplements, and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%. Please list below.

Modification/ Amendment Number	Amount of Modification/ Amendment (If Applicable)	Brief Description of Services/Work

2. A spreadsheet showing each firm’s participation for the overall contract, including each firm’s participation to date and proposed participation under the modification.

PROPOSED CONTRACT VALUE WITH NEW MODIFICATION/AMENDMENT

	LBE Commitment(s) at the Time of Bid	LBE Participation To-Date	Projected LBE Commitment(s) Including This Mod/Amend
Micro-LBE	%	%	%
Small-LBE	%	%	%
SBA-LBE	%	%	%
TOTALS	%	%	%



Firm Name	Commitment made at time of Bid/Proposal	Dollar Invoiced To-Date	Invoiced % To-Date	Projected Overall Dollar Amount with This Mod/Amend	Projected Overall % with This Mod/Amend
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
LBE TOTALS:	%	\$	%	\$	%
TOTALS:	%	\$	%	\$	%

3. A brief description of the work to be performed under this amendment, modification, or change order.



4. For any listed LBE that is currently under its commitment or is not projected to meet its committed percentage of overall work, please provide an explanation as to why this is the case.

LBE Firms Falling Short of Commitment or Not Projected to Meet Their Committed Percentage of Work:	Reason

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone Email Date