

CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



CMD ATTACHMENT 6

Requirements for SFPUC Regional Construction Contracts

For Contracts \$300,000 & over that are Advertised on or after August 1, 2016

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”).

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 websites at <http://www.sfgov.org/cmd>.

Chapter 14B allows for a bid discount 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>.

B. SFPUC LBE Certification

Under Chapter 14B, Section 14B.5 PUC-LBE Certification, established small public works/construction firms, construction materials suppliers, and construction equipment rental and trucking firms that are located within the SFPUC water system service area with average gross annual receipts in the prior three fiscal years that meet the requirements of Section 14B.3(B) or Section 14B.3(C) for Small LBEs, or Micro-LBEs respectively may be certified as SFPUC-Small LBEs or SFPUC-Micro LBEs.

***IN THIS CMD ATTACHMENT, THE TERM “LBE” REFERS TO
BOTH CMD CERTIFIED LBEs AND SFPUC-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***



C. SFPUC LBE Certification

In addition to CMD Certified San Francisco ("SF") LBEs/NPEs, SFPUC LBEs are also eligible to bid on these contracts provided they meet the following funding source requirements:

- 1) It is a PUC Regional Project that is to be performed outside of the jurisdictional boundaries of San Francisco that is identified as regional project and included in the formally approved Capital Improvement Program of the SFPUC's approximately \$4.6 billion project to seismically reinforce and otherwise enhance the Hetch Hetchy water supply system, also known as the Water System Improvement Program ("WSIP"), as it may be amended from time to time.
- 2) It is a PUC Regional Project that will be performed exclusively 70 miles or more beyond the jurisdictional boundaries of San Francisco
- 3) It is a PUC Regional Project that will be exclusively outside the jurisdictional boundaries of San Francisco for which some or all of the cost will be shared by members of BAWSCA

IMPORTANT NOTICE: As a point of clarification, the SBA-LBE classification applies only to SF LBEs. **There are no CMD certified PUC-SBA-LBEs.**

1.02 SUBMISSION OF CMD FORMS

- 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.

NOTE:

FORM 2A: CMD LBE Subcontractor Participation Form is no longer in use. The information previously required under that form shall be included by the bidder as part of **DOCUMENT 00435** of the Bid Documents.

1. In addition to meeting the requirements of the "Subletting and Subcontracting Fair Practices Act," Bidder shall list on Document 00435 **ALL** LBE subcontractors, suppliers, and service contractors (such as truckers), including their respective subcontract dollar amounts and portion of work to be performed, it wishes to utilize toward the Contract's LBE subcontracting participation requirement. Failure to include this information may make it impossible for the City to determine whether or not Bidder has met the LBE subcontracting participation requirement, and the bid may be deemed non-responsive.
2. Bidders and subcontractors must be certified as LBEs on the bid due date to qualify for the bid discount or to qualify to meet the LBE subcontracting participation requirement.
3. 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.

FORM 2A-A: CMD Construction Alternates Participation Form is no longer in use. The information previously required under that form shall be included by the bidder as part of **DOCUMENT 00435A** of the bid specifications.

Bidder must complete and submit Document 00435A with its bid in order for the bidder to receive credit for LBE participation on alternates. Compliance with the subcontracting participation requirement is determined on the amount of the base bid. However, listed LBE subcontractor participation on City-selected alternates may be credited where the LBE subcontracting participation requirement is not met on the base bid. LBEs that are listed on the base bid should be listed again on Document 00435A for each alternate on which they will be utilized. Failure to list LBEs on Document 00435A may result in their participation not being counted towards meeting the LBE subcontracting participation requirement, even if the alternate is selected by the City.



B. Submit the following CMD form with the bid:

FORM 2B: CMD “Good Faith Outreach” Requirements Form: Bidder shall meet the specified LBE subcontractor participation requirement and shall complete and submit Form 2B in accordance with Form 2B instructions.

In accordance with Section 14B.8(B) of the Administrative Code ("Code"), if a bidder does not demonstrate in its bid that bidder exceeds the established LBE subcontracting participation requirement by at least 35%, such bidder must demonstrate adequate good faith efforts to meet the LBE subcontracting participation requirement. Such bidder must complete and submit Form 2B as required by Form 2B instructions and must submit all good faith documentation as specified in Section B, items numbers 2 and 4 of Form 2B with its bid. Failure to meet the LBE subcontracting participation requirement and demonstrate/document adequate good faith efforts shall cause the Bid to be determined non-responsive and rejected.

If a bidder demonstrates in its bid that it exceeds the established LBE subcontracting participation requirement by 35% or more, such bidder is not required to conduct good faith outreach efforts or to submit evidence of good faith efforts. Such bidder shall complete and submit Form 2B as required by Form 2B instructions. **NOTE: A SMALL OR MICRO-LBE PRIME BIDDER MAY COUNT ITS OWN CONTRACT WORK TOWARD THE 35% GOOD FAITH EFFORTS EXCEPTION.**

- *Example:* The LBE subcontracting participation requirement is 10%. Good faith efforts requirements will be waived if the Bidder:
 - 1) Meets the 10% LBE subcontracting participation requirement;
 - AND**
 - 2) Has total LBE participation that equals or exceeds 13.5% of the base bid amount. The 13.5% represents the 10% LBE subcontracting participation requirement plus 35% of that 10% subcontracting participation requirement.

LBE subcontracting participation requirement set for project	10.0%
35% of the 10% LBE subcontracting participation requirement	3.5%
Total LBE participation must equal or exceed:	13.5%

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. 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.

Note: No extensions of time to submit the documentation are permitted unless approved by CMD.

1. Documentation required under Section B, items 5 and 6 of CMD Form 2B (**unless bidder meets the 35% exception described above and as set forth in Section 14B.8(B) of the Code**):
 - a. Copies of all written bids submitted, including those from non-LBEs;
 - b. If oral bids were received, a list of all such bids, including those from non-LBEs. The trade and dollar amounts for each such bid must be specified; and
 - c. A full and complete statement of the reasons for selection of the subcontractors for each trade. 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.
2. **FORM 3: CMD Compliance Affidavit:** The bidder shall sign the Affidavit under penalty of perjury.



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

1.03 CMD LBE UTILIZATION TRACKING SYSTEM AND CONTRACT PERFORMANCE FORMS:

Upon request from CMD, the Contractor must provide copies of certified payrolls for itself and all subcontractors. Failure to submit all required information in the LBEUTS or Contract Performance Forms as instructed may result in the withholding of progress payments and final payment pursuant to Chapter 14B.

A. LBE Utilization Tracking System

Information regarding the LBE Utilization Tracking System (LBEUTS) can be found at <http://www.sfgov.org/LBEUTS>

1. **FORM 7: CMD Progress Payment Form:** Contractor shall submit online using the LBEUTS with each payment request. Failure to upload this information with each payment request may delay progress payment processing.
 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 LBEUTS with the next progress payment request. Subcontractors are then required to acknowledge payment from Contractor online using the LBEUTS. Failure to submit required information may lead to partial withholding of progress payment, even there are no subcontractor payments for the reporting period.
- C. **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).
- D. **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%.
- E. Failure to submit any contract forms may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

1.04 "GOOD FAITH OUTREACH" REQUIREMENTS

All bidders shall undertake adequate good faith outreach as set forth in Section 14B.8(D) of the Code to select subcontractors to meet the LBE subcontracting participation requirement, unless a bidder qualifies for the exception set forth in Section 14B.8(B) of the Code for bidders that demonstrate



in their bids that they exceed the established LBE subcontracting participation requirement by 35% or more. Please see example in Section 1.02B above.

Under Section 14B.8(C) of the Code, bids that do not meet the LBE subcontracting participation requirement set will be rejected as non-responsive unless the CMD Director finds that the bidder diligently undertook adequate good faith efforts required by Chapter 14B and that the failure to meet the participation requirement resulted from an excusable error.

A bidder must contact an LBE before listing that LBE as a subcontractor in the bid. A bid that fails to comply with this requirement will be rejected as non-responsive. Bidders are required to submit Form 2B and supporting documentation EVEN IF the LBE subcontracting participation requirement has been met.

1.05 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), assess liquidated damages in an amount equal to the contractor's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by CMD.
 - c. The Director's determination of non-compliance is subject to appeal to 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 bidder or contractor that a determination of non-compliance has been made and that all payments due the bidder or 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.

PART II. BID DISCOUNT

2.01 APPLICATION

- A. **Eligibility for the LBE bid discount:** Certified Small or Micro-LBEs, SBA-LBEs, including certified non-profit organizations, are eligible for an LBE bid discount if the LBE is CMD certified in the type of work specified for the prime 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.

Application of the bid discount shall be as follows:

- 1. **Contracts with an Estimated Code 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.
- 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 Code.
- 3. **Contracts With An Estimated Cost In Excess Of \$10,000,000 and Less Than or Equal to \$20,000,000.** A 2% bid discount will apply to any bid submitted by a Small LBE, Micro LBE and SBA-LBE.

Note: Pursuant to Section 14B.5(D), for PUC Regional Projects that will be performed exclusively 70 miles or more beyond the jurisdictional boundaries of San Francisco and, for which no cost will be shared by members of BAWSCA, Contract Awarding Authorities shall only apply bid discounts/rating bonuses to Bids/Proposals from PUC-LBEs for the purpose of determining the apparent highest ranked proposal or the apparent lowest Bid, where application of the bid discount/rating bonus will not adversely impact the ranking for negotiation or award process of a Bid/Proposal submitted by any Micro-LBE, Small-LBE, or SBA-LBE certified under Section 14B.3. For Water System Improvement Program projects, and projects outside of the jurisdictional boundaries of San Francisco where all or some cost is shared by members of BAWSCA, PUC-LBEs shall have the same status as LBEs.

B. Discount not applicable

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.



PART III. LBE SUBCONTRACTOR PARTICIPATION

3.01 LBE SUBCONTRACTING PARTICIPATION REQUIREMENT

NOTE: FOR PURPOSES OF THE LBE SUBCONTRACTING REQUIREMENTS, "LBE" REFERS TO SMALL AND MICRO-LBES ONLY, UNLESS THE BID SPECIFICATIONS EXPRESSLY ALLOW FOR SBA-LBE SUBCONTRACTORS TO COUNT TOWARDS THE LBE PARTICIPATION REQUIREMENT

A. All bidders must meet the LBE subcontractor participation requirement. In addition, all bidders must demonstrate good faith efforts, unless a bidder demonstrates in its bid that it exceeds the LBE subcontractor participation requirement by 35% or more. Please see example in Section 1.02B above.

1. A bidder's failure to meet the LBE subcontractor participation requirement may result in the rejection of its bid as non-responsive. Good faith efforts, if required, will be evaluated based on information submitted on Form 2B and submittal of the required good faith effort documentation.
2. Bidders shall submit the following **with their bids**:
 - a. Document 00435 (Subcontractor List) or Section 00 43 36, including identification of the particular LBE subcontractors to be used in performing the contract work, first and lower tier subcontractors, suppliers, or service contractors such as truckers, and specifying 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 that the prime bidder is listing the LBE subcontractor to perform in order to receive LBE credit.
 - b. Document 00435A (Subcontractor List for Alternate Work) or Section 00 43 37 must be submitted with the bid in order for a bidder to receive LBE subcontracting credit on City-selected alternates. Refer to 3.01B, below, for information regarding alternates and the LBE subcontracting participation requirement.
 - c. Form 2B (Good Faith Outreach Requirements Form) – all bidders must submit. Bidders that do not qualify for the exemption set forth in Section 14B.8(B) of the Code shall submit supporting documentation as defined in Section 14B.8(E) of the Code. Refer to Form 2B for instructions specifying what supporting documentation must be submitted with the bid.
3. **Bidders are responsible for verifying the LBE status of a subcontractor or supplier immediately 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 achieving LBE subcontracting participation requirement even if the firm is later certified or ultimately prevails in its appeal.

B. Calculation of LBE subcontractor participation. The CMD will calculate the participation of an LBE subcontractor toward meeting the specified participation requirement as follows:

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. A Small or Micro-LBE prime bidder may, however, count its own work toward the 35% good faith efforts exception set forth in Section 14B.8(B) of the Code. Refer to Form 2B for instructions.
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 its 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 CMD certified in the scopes of work/trade(s) specified on Document 00435 or Section 00 43 36.
 - 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.
 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 or Section 00 43 36 (or Document 00435A or Section 00 43 37, 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 or Section 00 43 36 at the time of bid.



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

6. The 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). In addition, a bidder must demonstrate good faith efforts to meet the LBE subcontracting participation requirement through LBE participation on the base bid. If a bidder fails to meet the LBE subcontracting participation requirement through its base bid, the CMD will 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 or Section 00 43 37 (for alternates only) and submit the completed Document with its bid. If a bidder lists an LBE subcontractor on Document 00435 or Section 00 43 36 and intends to use that LBE subcontractor for alternate work, the bidder must separately list the LBE subcontractor on Document 00435A or Section 00 43 37 for each alternate on which the subcontractor will be used.
7. If a bidder lists LBE subcontractors on Document 00435A or Section 00 43 37 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.
8. A bidder shall not use deletable bid items, allowances or contingency/conditional bid items to fulfill the LBE subcontractor participation requirement.

LBE Construction Subcontractors

9. 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 subcontracting participation requirement 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 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).
10. Bidders may receive 100% credit for LBE construction contractors 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 subcontracting credit, the bidder must list the LBE construction subcontractor on Document 00435 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).

LBE Manufacturers

11. 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).

LBE Suppliers

12. 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).
13. 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 subcontracting credit, the bidder must list the LBE equipment rental firm on Document 00435 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).

Specially Manufactured Items LBE supplier/broker. To receive LBE subcontracting credit, the bidder must list the LBE supplier/broker on Document 00435 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).

14. 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
15. 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.
16. 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 a 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, 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 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, 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 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, 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 a 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 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).

LBE Truckers

17. CMD will count 100% credit toward the LBE subcontracting participation requirement when an LBE-owned trailer is pulled by a 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 subcontracting participation requirement when an LBE-owned trailer is pulled by a non-LBE owned cab. CMD will count 60% credit toward the LBE participation requirement when a non-LBE owned trailer is pulled by a LBE owned cab. CMD will count 0% credit toward the LBE subcontracting participation requirement when a non-LBE-owned trailer is pulled by a non-LBE owned cab. To receive LBE subcontracting credit, the bidder must list the LBE trucking firm on Document 00435 or Section 00 43 36 (and Document 00435A or Section 00 43 37, if applicable).
18. In order to receive LBE subcontracting 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 subcontracting credit for vehicles or equipment purchased or leased after the time of bid on a case by case basis.

Construction Equipment

19. 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 subcontracting credit for these types of items, a Bidder, at the time of bid, must be certified under the category of "Construction Equipment" with the CMD's Certification Unit.

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 subcontracting participation requirement.

- 3.02 Substitution, removal, or contract modification of LBE:** No LBE subcontractor, supplier, trucker or other business listed on Document 00435 or Section 00 43 36 (or Document 00435A or Section 00 43 37) 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 participation requirements. In addition, any new subcontractors must have CMD's prior approval.



FORM 2B: "GOOD FAITH OUTREACH" REQUIREMENTS FORM

This "Good Faith Outreach" form must be completed and submitted with the bid EVEN IF the LBE subcontracting participation requirement has been met (Section 14B.8 of the San Francisco Administrative Code). Proposers may obtain a list of certified LBEs from the CMD website: <http://www.sfgov.org/cmd>

SECTION A

Under Section 14B.8(B) of the Administrative Code, if a bid demonstrates total LBE participation that exceeds by 35% the established LBE subcontracting participation requirement for the project, the bidder will not be required to conduct good faith outreach efforts or to submit evidence of good faith outreach efforts. Note that a Small or Micro-LBE prime bidder may count its own Contract Work toward the 35% good faith efforts exception. **PLEASE SEE EXAMPLE IN CMD ATTACHMENT 6 SECTION 1.02B.**

Does your bid demonstrate that you have exceeded the established LBE subcontracting participation requirement by 35% or more in accordance with Section 14B.8(B)? YES* NO

If the answer is yes, please check "YES", above, and complete Section C (if applicable) and Section D of this Form. If the answer is no, please check "NO", above, and complete Sections B and D of this Form, and submit all required supporting documentation in accordance with the instructions in Section B.

** Note: An answer of "YES", above, is subject to verification by CMD. If the CMD determines that bidder did not exceed the LBE subcontracting participation requirement by at least 35% and bidder either failed to undertake adequate good faith outreach efforts or failed to submit supporting documentation with its bid as required by Section B, items 2 and 4, below, then bidder's bid will be declared non-responsive and will be rejected.*

**Note: "LBE" refers to Small and Micro-LBEs only, unless the Project Specifications allow for SBA-LBE subcontractors to count towards the LBE participation requirement.*

SECTION B

All bidders that do not qualify for the exception set forth in Section 14B.8(B) of the Administrative Code must complete this Section B and submit supporting documentation as required.

SUPPORTING DOCUMENTATION FOR ITEMS 2 AND 4, BELOW, MUST BE SUBMITTED WITH THE BID. SUPPORTING DOCUMENTATION FOR ITEM 5 AND 6, BELOW, SHALL BE SUBMITTED BY THE APPARENT LOW BIDDER BY 5:00 P.M. ON THE FIFTH BUSINESS DAY FOLLOWING BID OPENING. Bidders may obtain a list of certified LBEs from the CMD website: <http://sfgov.org/CMD>

A bidder must achieve at least 80 points, as determined by CMD, to be deemed compliant with the "good faith outreach" requirements. A bidder who fails to achieve at least 80 points will be declared non-responsive, and the bid will be rejected. Please check "yes" or "no" for each item listed below.

1. Did your firm attend the pre-bid meeting scheduled by the City to inform all bidders of the LBE program requirements for this project? If the City does not hold a pre-bid meeting, all bidders will receive 15 points.	<input type="checkbox"/> Yes (15 Points)	<input type="checkbox"/> No (0 Points)
2. Did your firm advertise, not less than 10 calendar days before the due date of the bid, in one or more daily or weekly newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as: Daily Pacific Builder, Daily Construction Service, San Francisco Builder's Exchange, Small Business Exchange, SFPUC Contracts & Bids website (http://sfwater.org/mc_main.cfm/MC_ID/15 ,) or the Bid and Contracts Section of the Office of Contract Administration's website (http://mission.sfgov.org/OCABidPublication/)? If so, you must <u>enclose a copy of the advertisement with your bid.</u> The advertisement must provide LBEs with adequate information about the plans, specifications, and requirements for the work. If the City gave public notice of the project less than 15 calendar days prior to the bid due date, no advertisement is required, and all bidders will receive 10 points.	<input type="checkbox"/> Yes (10 points)	<input type="checkbox"/> No (0 Points)



<p>3. Did your firm identify and select trades (as categorized in CMD's LBE Directory) to meet the LBE subcontracting participation requirement? If so, please identify the trades below:</p> <p>_____</p> <p>_____</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) identified by trade (see #3 above), not less than 10 calendar days prior to the due date of the bid? If so, you must <u>include such documentation with your bid (i.e. phone logs, emails, faxes and/or etc.) to verify that contacts were made.</u> The purpose of contacting LBE firms is to provide notice of interest in bidding for this project.</p> <p>A bidder who contacts those LBE firms certified in the trades identified, not less than 10 calendar days prior to due date of the bids, will receive up to 45 points. If a bidder does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified trade that is not contacted.</p> <p>a. If there are less than 25 firms within an identified trade, a bidder should contact all of them.</p> <p>b. If there are 25 or more firms within an identified trade, a bidder should contact at least 25 firms within such identified trade.</p> <p>If a bidder does not contact any LBE firms, the bidder will receive no points.</p> <p>When contacting LBEs, you should provide adequate information about the plans, specifications, and requirements for the work.</p> <p>If the City gave public notice of the project less than 15 calendar days prior to the bid due date, the allocation of points above still applies, except that the bidder may contact those LBE firms certified in the trades identified less than 10 calendar days prior to the due date of the bid.</p>	<p><input type="checkbox"/> Yes (Up to 45 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs*? If applicable, your follow-up contact with interested LBEs should provide information on the City's bonding and financial assistance programs.</p> <p><u>The apparent low bidder shall submit with its CMD 5-day submittal package,</u> documentation (i.e. phone logs, emails, faxes and/or etc.) to verify that <u>follow-up</u> contacts were made.</p> <p>For each interested LBE firm that the bidder does not follow-up with, a point will be deducted.</p> <p>A bidder who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>* "Interested LBE" shall mean an LBE firm, contacted by the bidder pursuant to Item #4 above, that expresses interest in being a subcontractor/supplier to the bidder.</p>	<p><input type="checkbox"/> Yes (Up to 20 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>6. The apparent low bidder shall submit the following documentation with its CMD 5-Day Submittal Package:</p> <p>(1) Copies of all written bids submitted, including those from non-LBEs;</p> <p>(2) If oral bids were received, a list of all such bids, including those from non-LBEs. The trade and dollar amounts for each such bid must be specified; and</p> <p>(3) A full and complete statement of the reasons for selection of the subcontractors for each trade. 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.</p> <p>Pursuant to Section 14B.8(E) of the Ordinance, all bidders shall maintain the documentation described under this item for three years following submission of the bid or completion of the contract, whichever is later.</p>		



SECTION C

If a Small or Micro-LBE prime bidder checks "YES" in Section A, above, and is relying on self-performed Contract Work to meet the 35% good faith efforts exception, such Small or Micro-LBE prime bidder should indicate the total value of Contract Work that bidder will perform with its own forces in the space below:

\$ _____

SECTION D

Contract Name: _____

Contract No.: _____

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

E-mail: _____

Date: _____



FORM 3: CMD COMPLIANCE AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. 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.
3. 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.
4. 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): _____

Date: _____



FORM 6: CMD LBE SUBCONTRACTOR PARTICIPATION AFFIDAVIT

This affidavit is to be completed by each LBE subcontractor or supplier (including lower tier subcontractors) and submitted to the apparent low bidder. The apparent low bidder shall submit the completed affidavits and copies of the subcontractors' or suppliers' bid quotations to the CMD no later than 5:00 p.m. on the fifth business day following the Bid opening. Subcontractor may attach additional sheets if more space is needed to provide complete information.

Contract Number: _____ Contract Name: _____

Name of Bidder: _____

Name of LBE Sub or Supplier: _____

License #: _____ Scope of work: _____

1. _____ verify that _____ bid to
Name of LBE Owner/Representative LBE Firm

the above referenced Bidder for subcontracting work in the amount of \$ _____ and have been offered a subcontract in that amount.

2. Please list major vendors/suppliers of goods/services for this project:

Name	Phone	Product(s)	\$ Amount
			\$
			\$
			\$

3. Please describe scope(s) of work:

4. Check one:

We will NOT subcontract out ANY portion of our work to another subcontractor.

We WILL subcontract out _____% of our work to: _____
Firm

in the amount of \$ _____. This business is a: LBE Certified Not LBE Certified.

5. I have enclosed a copy of my Firm's Bid Quotation.

I declare, under penalty of perjury, that the above information is true and correct and that our firm is a bona fide, certified LBE as defined under Chapter 14B of the San Francisco Administrative Code.

 LBE Owner/Authorized Representative (Signature)

 Date

 Name and Title (Print)

 Phone



FORM 6A: CMD LBE TRUCKING FORM

This form is to be completed by apparent low bidder to describe the complete scope of trucking work to be performed for the contract and submitted to the CMD by 5 p.m. on the fifth day following Bid opening.

Contract Number: _____ Contract Name: _____

SECTION 1. TRUCKING ESTIMATE

Products to be Hauled:		
Type of equipment needed/indicate maximum Number of trucks needed per day:		
Quantity of product to be hauled:		
Estimated quantity per truckload:		
Estimated number of truckloads:		
Products to be hauled from (give point of origin):		
Estimated Number of truck hours per trip:		
Trucking Rate:		
Estimate of total trucking (Number of loads times hours per trip times trucking hourly rate):		

If an assigned Trucker is being paid for Administrative Work (i.e. Dispatcher), Describe and State Amount to be Paid: _____

Is this assigned Trucking firm an LBE or Non-LBE firm, specify: LBE Non-LBE

Total Dollar Amount Committed to LBE Truckers: \$ _____

* Disposal fee and equipment rental fee will not be counted towards meeting the LBE trucking dollars amount.

SECTION 2. TRUCKING AND HAULING FIRMS

List below CMD certified LBE trucking and hauling firms that will be utilized on this project. *Photocopy this form for additional truckers and provide the requested information for each LBE trucker.*

Firm Name:	<input type="checkbox"/> LBE <input type="checkbox"/> Non-LBE
Products to be hauled:	
Number of Trucks Needed:	
Type of Trucks Needed:	
Proposed Dollar Amount of subcontract:	



Firm Name:	<input type="checkbox"/> LBE <input type="checkbox"/> Non-LBE
Products to be hauled:	
Number of Trucks Needed:	
Type of Trucks Needed:	
Proposed Dollar Amount of subcontract:	

Firm Name:	<input type="checkbox"/> LBE <input type="checkbox"/> Non-LBE
Products to be hauled:	
Number of Trucks Needed:	
Type of Trucks Needed:	
Proposed Dollar Amount of subcontract:	

Firm Name:	<input type="checkbox"/> LBE <input type="checkbox"/> Non-LBE
Products to be hauled:	
Number of Trucks Needed:	
Type of Trucks Needed:	
Proposed Dollar Amount of subcontract:	

Firm Name:	<input type="checkbox"/> LBE <input type="checkbox"/> Non-LBE
Products to be hauled:	
Number of Trucks Needed:	
Type of Trucks Needed:	
Proposed Dollar Amount of subcontract:	

I declare, under penalty of perjury that I am the owner or authorized representative of this firm and that the foregoing is true and correct.

 Owner/Authorized Representative (Signature)

 Name and Title (Print)

 Firm Name

 Telephone Date



FORM 7: CMD PROGRESS PAYMENT FORM

To be submitted electronically using the LBEUTS. FOR INFORMATION VISIT WWW.SFGOV.ORG/LBEUTS.

TRANSMITTAL

TO: Resident Engineer or Inspector
FROM: _____
COPY: CMD Contract Compliance Officer
Date: _____

SECTION 1. Fill in all the blanks

Contract Number: _____ Contract Name: _____
Reporting Period From: _____ To: _____ Progress Payment No: _____

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

- 1. Original Contract Award Amount: _____ \$
- 2. Amount of Change Orders, Amendments, and Modifications to Date: _____ \$
- 3. Total Contract to Date (Line 1 + Line 2): _____ \$
- 4. Gross Amount Invoiced this submittal period: _____ \$
- 5. All Previous Gross Amounts Invoiced: _____ \$
- 6. Total Gross Amounts of Progress Payments Invoiced to Date (Line 4 + Line 5): _____ \$
- 7. Percent Complete (Line 6 ÷ Line 3): _____ %

Contractor must sign this form

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone Fax

Date



FORM 8: CMD EXIT REPORT AND AFFIDAVIT

Prime Contractor must complete and sign this form (Sections 1 and 4) for each LBE subcontractor (incl. each lower-tier LBE subcontractor), supplier and trucker. All LBEs must complete and sign Sections 2 and 3 of this form. These forms should be submitted to the Contract Awarding Authority and CMD with the final progress payment request.

TRANSMITTAL

TO: Resident Engineer Inspector COPY: CMD Contract Compliance Officer
 FROM (Contractor): _____ Date Transmitted: _____

SECTION 1. Please check this box if there are no LBE subcontractors/suppliers for this contract:

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 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 signed by the LBE:

- I agree
- I disagree

Explanation by LBE if it is in disagreement with the above explanation or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment.

 Owner/Authorized Representative (Signature)

 Name and Title (Print)

 Firm Name

 Telephone

 Date



SECTION 4.

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

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

Date



FORM 10: CMD CONTRACT MODIFICATION FORM

Contractor must submit this form with the required supporting documentation and obtain prior CMD approval when processing the 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: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

1. A list reflecting the new overall contract amounts for the prime contractor, subcontractors, and vendors.
2. 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%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.

 Owner/Authorized Representative (Signature)

 Name (Print) Title

 Firm Name

 Telephone Date