

The purpose of this program is to ensure Small Disadvantaged Business Enterprises (“SBEs”) are able to participate on federally funded MOHCD projects and layout broad set of procurement procedures for Developers in order to maximize SBE inclusion.

Small Business Enterprise Program

July 1, 2022– Version 1.5

Contract Monitoring Division

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SMALL BUSINESS ENTERPRISE PROGRAM

I. POLICY

It is the intention of The City to create a level playing field on which Small Business Enterprises (“SBE”) can compete fairly for and win contracts and subcontracts related to the procurement of construction related affordable housing and community facility rehabilitation projects on federally and State of California funded, Mayor’s Office of Housing Community Development Projects (“MOHCD”).

The Mayor’s Office of Housing and Community Development has voluntarily instituted this program to ensure, to the maximum extent possible, that small businesses have an opportunity to compete and participate in all federally and State funded, MOHCD-let projects. This Program is in addition to U.S. HUD Section 3 program, which is administered separately by MOHCD.

OBJECTIVES

The objectives of this program are to:

1. Remove barriers to certified SBEs in the bidding, award and administration of MOHCD federally funded contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in order to comply with Federal contracting Requirements;
4. Ensure that only firms meeting the eligibility requirements are allowed to participate as SBEs;
5. Identify business enterprises that are qualified as SBEs and are qualified to provide MOHCD and its funding recipients with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs with MOHCD/CMD contracting procedures, activities and requirements and allow SBEs to provide MOHCD and their developers with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with MOHCD, their developers and Contract Monitoring Division (“CMD”) so as to facilitate the successful implementation of this Program.
8. MOHCD will internally administer all other HUD Programs

PROGRAM ADMINISTRATION

The Directors of the Mayor’s Office of Housing and Community Development and the Contract Monitoring Division are responsible for adherence to this policy. The Contract Monitoring Division (“CMD”) shall be responsible for the development, implementation and monitoring of the SBE program. All MOHCD personnel and supported developers shall adhere to the provisions and the spirit of the program.

II. DEFINITIONS

"Architect/Engineering Contract" means an agreement for architectural, engineering, or other professional design, consulting, or construction management services for a public work/construction project.

"Back Contracting" shall mean any agreement or other arrangement between a prime contractor and its Subcontractor that requires the prime contractor to perform or to secure the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Such agreements or other arrangements include, but are not limited to, situations in which either a prime contractor or Subcontractor agrees that any term, condition, or obligation imposed upon the Subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Bid" means a quotation, proposal, solicitation, or offer by a Bidder or Contractor to perform or provide labor, materials, equipment, supplies, or services to the City for a price.

"Bidder" means any business that submits a bid or proposal.

"City" means the City and County of San Francisco.

"Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought. When the City and/or developers require and seek specialty products made to order or otherwise seeks products which, by industry practice, are not regularly stocked in warehouse inventory but instead are purchased directly from the manufacturer, no more than five percent of the cost of the product shall be credited towards SBE participation goals. When the Developer requires and seeks products which are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by the listed supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards SBE participation goals. If the listed supplier or distributor does not regularly stock the required product, no more than five percent of the cost of the product shall be credited towards SBE participation goals.

"CMD" means the Contract Monitoring Division.

"Contract" means any agreement between the City, developer and/or a person to provide or procure labor, materials, equipment, supplies, or services to, for a price to be paid out of monies deposited in the City Treasury or out of trust monies under the control of or collected by the City. A "Contract" includes an agreement between a non-profit or public entity and a Contractor for the performance of construction or construction-related services, where the contract is funded by the City.

"Contractor" means any person who enters into a Contract with the City or developer.

"Control" means a person possesses the legal authority to manage business assets, good will, and the day-to-day operations of a business and actively and continuously exercises such authority.

"Developer" means owner of the property/recipient of community facility rehab or housing development projects funded by the City

"Director" means the Director of the CMD, or his or her designee.

"Discount" means a downward adjustment in price or upward adjustment in rating of a proposal, whichever applies.

"General Services Contract" means an agreement for those services that are not professional services. Examples of "general services" include, but are not limited to, janitorial, security guard, pest control, maintenance services (not related to construction).

"Joint Venture" shall mean an association of two or more professional services, architect/engineering or construction contractor businesses acting as a Contractor and performing or providing services on a Professional Services, Architect/Engineering or Construction contract, in which each Joint Venture partner combines property, capital, efforts, skill, and/or knowledge and each Joint Venture partner shares in the Ownership, Control, management responsibilities, risks, and profits of the Joint Venture in proportion to its claimed level of participation.

"Minority Business Enterprise (MBE)" means a business that is owned and controlled by a person defined as Minority under section III (B) 1 through 5 and is currently certified as an MBE under this program.

"MOHCD" refers to the Mayor's Office of Housing and Community Development.

"Other Business Enterprise (OBE)" means a business that is certified as an OBE under this program.

"Owns" or "Ownership" means a person: (a) possesses a record ownership interest, such as partnership interest or stock interest, of at least fifty-one percent (51%) of the business or such lesser amount as the CMD determines, under the circumstances of the particular business's overall ownership and control structure, constitutes a significant ability to influence business operations and a strong personal stake in the business's viability; (b) possesses incidents of ownership, including an interest in profit and loss, equal to at least the record ownership interest; (c) contributes capital to the business equal to at least the record ownership percentage (unsecured promissory notes or notes secured by the business or business assets are not sufficient to constitute capital contributions); and (d) actively and continuously devotes expertise to the operations of the business relevant to the business's "Commercially Useful Function" of a quality and quantity proportionate to the record ownership interest.

"Person" means any individual or group of individuals, including but not limited to partnerships, associations, and corporations.

"Professional Services Contract" means an agreement for services that require extended analysis, the exercise of discretion and independent judgment, or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.

"Small Business Enterprise (SBE)" means a business that is certified as an SBE under this program or the following similar programs and meeting the below economic thresholds (Section III "Economic Size Standards").

NOTE: Website links for finding Certified DBEs/SBEs/LBEs:

- Certified Disadvantaged Businesses Enterprises ("Federal DBE Program")
<https://dot.ca.gov/programs/civil-rights/dbe-search>
- Certified Small Businesses Enterprises ("State Program")
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- For Certified SF GSA Local Business Enterprises ("City Program")
<http://sfgov.org/cmd/directory-certified-lbes>

SBE Participation means the amount of dollars awarded to SBEs as a percentage of the total contract amount.

"Subcontractor" means any person providing goods or services to a Contractor or subcontractor in fulfillment of the Contractor or subcontractor's obligations arising from a Contract with the City and/or developer.

"Threshold Amount" for;

- Construction/general services is the "Threshold Amount" as defined in Administrative Code Section 6.1.
- Professional services and architectural/engineering services is the "Minimum Competitive Amount" as defined in Administrative Code Section 6.40.

These are the amounts at which the Developer would have to follow a formal selection process.

"Woman Business Enterprise (WBE)" means a business that is owned and controlled by a woman and is currently certified as a WBE under this program.

III. Small Business Enterprise (SBE) CERTIFICATION

- A. An SBE is a small business concern with five-year average gross revenues that do not exceed the thresholds set forth below for construction or professional services type work and either: 1) is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the

California Unified Certification Program or 2) has received written confirmation from CMD that it meets the SBE program's eligibility requirements.* A business must complete a bidding form attesting to their economic size standards.

- B. **Please note that firms not certified in at least one of the identified programs must submit a Small Business Verification Form to CMD in order to be determined eligible to meet the SBE Program requirements (e.g., the five-year average gross revenues do not exceed the thresholds in Section III.B). Failure to do so may result in the firm's work not being counted toward the established SBE goal. In addition, professional services firms certified under the State Program should contact CMD in order to verify that their five-year average gross revenues do not exceed the appropriate size standard for the type of work the firm seeks to perform.*

C. Economic Size Standards:

| Industry | Certification Size Standards |
|--------------------------------------------|------------------------------|
| | Economic Size Standards |
| | SBE |
| General Construction (A & B Class) | \$24M |
| Specialty Contractors (C & D License) | \$12M |
| Professional Services (incl. A/Es) | \$5M |
| Good Materials Suppliers, General Services | \$12M |
| Trucking | \$5M |
| | |

- D. CMD shall determine gross receipts according to recognized accounting methodologies that the CMD determines most accurately reflect the actual money that the business received during the relevant period. Any business under common ownership, in whole or in part, with any other business meets the requirements of this subparagraph only if the aggregate gross annual receipts of all of the businesses under such common ownership do not exceed these limits. All businesses owned by married spouses or domestic partners are considered under common ownership unless the businesses are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate either business.

MBE/WBE/OBE Identification

- A. For purposes of ensuring non-discrimination in City contracting and subcontracting, and subject to appropriately promulgated procedures, if any, the Director shall further recognize SBEs as MBEs, WBEs and OBEs according to the ownership and control of the SBE.
- B. MBE Recognition. The Director shall recognize as an MBE any business that is certified as an SBE and is owned and controlled by one or more minority persons. A minority person is a member of one or more of the following ethnic groups (based upon U.S. HUD definitions):
- (1) African Americans

- (2) Asian/Pacific Islander Americans
- (3) Latino Americans/Hispanic
- (4) Native Americans, defined as any person whose ancestry is from any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
- (5) Hasidic Jews

- C. WBE Recognition. The Director shall recognize as a WBE any business that is certified as an SBE and is owned and controlled by one or more women.
- D. OBE Certification. The Director shall recognize as an OBE any business that is certified as an SBE and (i) does not demonstrate to the satisfaction of the Director that it is owned and controlled by one or more women or one or more minority persons or (ii) is not certified as an MBE or a WBE.
- E. Period of SBE Certification. The Director may certify SBEs for a period not to exceed three years provided that businesses must at all times throughout the certification period meet the criteria set forth above. The Director may require certified businesses annually to submit documentation for the purpose of verifying continuing eligibility for any certification hereunder.

IV. RESPONSIBILITIES OF MOHCD

- A. Before MOHCD considers accepting prospective projects for funding, Developers will be notified that part of their development team must include a SBE Architectural firm either in the position of prime or part of a joint venture.
- B. Notice of Funds Availability (NOFA) announcements will include language that requires prospective project proposals to include as part of the initial development team, a SBE Architectural firm either in the position of prime or part of a joint venture. Such inclusion shall serve as part of MOHCDs evaluation/determination process to accept a developer's project for funding.
- C. Require Developers, as part of their loan and/or development agreement, to require contractors to enter payment data into the Elations System and/or as directed by CMD and validate data is up to date upon each pay/draw request to MOHCD.

V. RESPONSIBILITIES OF CMD

- A. When necessary, subpoena persons and records, books and documents for an investigation by the CMD Director or an audit conducted to further the purposes of this Program.

- B. Issue forms for the MOHCD/Developers to collect information from contractors as prescribed by this Program.
- C. Hear appeals challenging: (i) CMD Director's disqualification of a bidder or Contractor, (ii) CMD's denial of an application for or revocation of the certification of a business as a SBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to waive or to reduce subcontractor participation goals.
- D. Require developers and/or contractors to provide to the CMD Director such information as will be necessary to enable the Director to report to the Mayor and the Board of Supervisors at the end of each fiscal year on the progress of each project.
- E. Adopt rules and regulations as deemed necessary by the Director to ensure that the joint venture bid/rating discount is applied only to joint ventures where the SBE has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the SBE.
- F. CMD Director: In addition to the duties and powers given to the CMD Director elsewhere, the Director shall have power to:
 - (1) Certify businesses as SBEs per the requirements of this program.
 - (2) Levy the same sanctions and/or determine breach of SBE program contracting provisions that MOHCD may levy as specified under the City's development agreement and/or loan agreement.
 - (3) Ensure that the developers are collecting and analyzing the necessary contracting data annually and/or more often if the Director deems necessary, by either utilizing the LBEUTS or as directed by CMD in order to submit required reports.
 - (4) Provide information and other assistance to SBEs to increase their ability to compete effectively for the award of City contracts.
 - (5) Take actions to ensure compliance with the provisions of this Program, including, without limitation, intervening in the selection process, by modifying the criteria used for selecting selection panelists or contractors to correct any practices that hinder equal business opportunities for SBEs, MBEs, WBEs, and OBEs.

VI. ENFORCEMENT

- A. CMD shall monitor the Developer's utilization of SBEs on each project. The Developer shall issue an exit report for any contract that includes SBE subcontracting participation and/or SBE prime contract participation as a joint venture partner; CMD shall validate report data. The purpose of this exit report is to ensure that prime contractors have complied with their commitments to use SBE subcontractors and SBEs are performing services as set forth in the bid/proposal and contract documents for the joint ventures.
- B. CMD shall investigate potential violations of this Program.

- C. Developers, Bidders, contractors, subcontractors and SBE certification-applicants shall provide to the City any information that the City deems relevant, and shall cooperate in all other respects with such an investigation. A request for information from a bidder, contractor, subcontractor or applicant shall identify the records required and the time for response. If the Developer, bidder, contractor, subcontractor or applicant fails to respond to the request for information, or otherwise fails to cooperate in the investigation, appropriate sanctions, as provided in this Program, may be imposed. In an investigation of potential discrimination by a prime bidder prior to contract award, if the developer and/or bidder fails to respond to the request for information, or otherwise fails to cooperate in the investigation, The City may determine breach of the contract/loan terms and may move to impose sanctions.
- D. Conference and Conciliation. In the Director's sole discretion, the Director may attempt to resolve noncompliance with this Program by any developer, bidder, contractor, subcontractor or applicant for certification through informal processes, including conference and conciliation.
- E. **Sanctions.** The City, including the Director and MOHCD, as appropriate, may impose any of the following sanctions on a bidder, contractor, subcontractor or applicant for certification who fails to comply with this Program, provided that, any violation related to certification must be based on a finding by the Director:
- (1) Reject all bids/proposals;
 - (2) Declare a developer and/or bid/proposal non-responsive;
 - (3) Suspend a contract;
 - (4) Withhold funds;
 - (5) Assess penalties;
 - (6) Debar a developer and/or bidder;
 - (7) Deny certification;
 - (8) Revoke certification.
- F. Appeals. The Office of the City Administrator (CAO), or designee, shall hear appeals challenging any determination of the Director under this Section. The CAO may sustain, reverse or modify the Director's findings and sanctions imposed, or take such other action to effectuate the purpose of this Program. Unless the CAO so orders, an appeal shall not stay the Director's findings and the imposition of sanctions.
- G. The Director shall attempt to resolve any noncompliance through conference and conciliation.
- H. CMD will report all non-compliance to the Mayor's Office of Housing for reporting to the Mayor and the Board of Supervisors.

VII. RESPONSIBILITIES OF THE DEVELOPER

- A. Responsible for providing CMD all requested information in order for department to (i) provide requisite technical assistance (ii) set SBE goals, (iii) assess SBEs and SBE participation, and (iv) conduct any audits and/or investigations related to compliance/non-compliance with the SBE program.
- B. Provide procurement plan to CMD for review/approval as to how it plans to utilize SBE certified firms during the professional services phase of the project.
- C. Responsible for meeting both the SBE participation goal set by CMD for Professional Services and SBE participation goal set by CMD for Construction. Failure to meet SBE goals shall make the Developer subject to sanctions noted in previous section.
- D. **Prime Contracts** – Unless otherwise provided in this Program, Developers shall apply a ten percent (10%) Bid Discount and/or Ratings Bonus' to any Proposal/Bid from a Certified SBE for all contracts estimated to be between \$10 Thousand and \$10 Million. The Bid Discounts/Ratings Bonus' shall apply to each stage of the selection process, including qualifications, proposals and interviews.
- E. **Joint Ventures** – Unless otherwise provided in the Program, Developers shall apply a Discount and/or Rating Bonus' to any Bid from a Certified SBE in the following breakdown: (1) five percent (5%) to a Joint Venture with SBE prime contractor participation that equals or exceeds thirty-five percent (35%) but is under forty percent (40%); (2) seven and one-half percent (7.5%) to a Joint Venture with SBE prime contractor participation that equals or exceeds forty percent (40%); (3) ten percent (10%) to a SBE prime contractor or a Joint Venture among SBE prime contractors. The Discounts/Ratings Bonus' shall apply to each stage of the selection process, including qualifications, proposals and interviews.
- F. The MOHCD and/or Developer shall apply the Joint Venture Bid/ratings Discount only to a Joint Venture (1) that meets the requirements contained in this Program and (2) when the SBE is an active partner in the Joint Venture, performs work, manages the job, takes financial risks in proportion to the required level of participation stated in the bid documents, is responsible for a clearly defined portion of the work to be performed, and shares proportionately in the Ownership, Control, management responsibilities, risks, and profits of the Joint Venture. The portion of the SBE Joint Venture's work shall be set forth in detail separately from the work to be performed by the non-SBE Joint Venture partner. The SBE Joint Venture's portion of the Contract must be assigned a commercially reasonable dollar value.
- G. Affidavit. Each Bidder, proposer and Contractor shall be required to sign an affidavit declaring under penalty of perjury its intention to comply fully with the provisions of this Program and attesting to the truth and accuracy of all information provided regarding such compliance.

- H. Additional Requirements and Required Contract Terms. MOHCD shall include in all Contracts with their Developers and all Contractors shall include in their Contracts with Subcontractors the following requirements, in addition to other requirements set forth in this Program. For the purposes of this Subsection, "contractor" includes all Subcontractors.
- I. Each Contract shall incorporate this Program by reference, shall require Developers and Contractors to comply with its provisions in awarding and administering such contracts, and shall provide that the willful failure of any Developer, Bidder or Contractor to comply with the requirements of this Program shall be deemed a material breach of contract.
- J. Contracts shall provide that in the event that the Director finds that any Developer, Bidder, Subcontractor or Contractor willfully fails to comply with any of the provisions of this Program, rules and regulations implementing the Program, or contract provisions pertaining to SBE, MBE, WBE, or OBE participation, outreach, or non-discrimination, the Developer, Bidder, Subcontractor or Contractor shall be liable for liquidated damages for each contract in an amount equal to the Bidder's or Contractor's net profit on the Contract, 25% of the total amount of the Contract or subcontract, as applicable, \$1,000, whichever is greatest, as determined by the Director. All Contracts shall also contain a provision in which the Developer, Bidder, Subcontractor or Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Developer, Bidder, Subcontractor or Contractor from any Contract with the City.
- K. Contracts shall require all contractors to maintain records, including such information requested by the Director or Commission, necessary for monitoring their compliance with this Program. Contracts shall require prime contractors to include in any subcontract with a SBE a provision requiring the subcontractor to maintain the same records. Contracts shall require contractors and subcontractors to maintain such records for three years following completion of the project and shall permit the Director, Commission and Controller to inspect and audit such records.
- L. Contracts shall require Developers, during the term of the contract/loan agreement, to fulfill the SBE participation commitments. Willful failure to comply with the level of SBE subcontractor participation specified in the contract shall be deemed a material breach of contract and/or loan terms.
- M. Contracts shall require prime contractors, whenever amendments, modifications, supplements, or change orders increase the total dollar value of the contract, to comply with those provisions of this Program that applied to the original contract with respect to the amendment, modification, supplement or change order.
- N. Contracts shall require prime contractors to submit to the Director for approval all contract amendments, modifications, supplements, and change orders that cumulatively increase by more than twenty percent (20%) the total dollar value of all contracts originally valued at the

Threshold amount or more. The Director shall review the proposed amendment, modification, supplement or change order to correct any contracting practices that exclude any category of SBEs from new contracting opportunities.

- O. Contracts in which subcontracting is used shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this Program, or contract provisions pertaining to SBE utilization.

VIII. PROMPT PAYMENT PROVISIONS

- A. Prompt payment. The City shall pay Developers and any directly contracted SBEs within thirty (30) days of the date on which the City receives an invoice for work performed for and accepted by the City. The Developers are required (as well as prime contracts in which subcontracting is used) to pay its contractors within three working days after receiving payment from the City unless the Developer and/or prime contractor notifies the Director in writing within ten (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor, in which case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The Director may, upon making a determination that a bona fide dispute exists between the prime contractor and subcontractor, waive this three-day payment requirement. In making the determination as to whether a bona fide dispute exists, the Director shall not consider the merits of the dispute. Contracts in which subcontracting is used shall also require the Developer and/or prime contractor, to file with next progress payment, an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.
- B. MOHCD Contracts/Loan agreements shall require Developers/prime contractors to include in any subcontract with a SBE, a provision requiring, the developer/prime contractor to compensate any SBE Subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if the prime contractor willfully fails to comply with its commitment to use the SBE subcontractor as specified in the Bid unless the Director and MOHCD both give advance approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in the Bid documents. This provision shall also state that it is enforceable in a court of competent jurisdiction.

IX. GOOD FAITH EFFORT REQUIREMENTS

Developer and/or its Prime Consultants/Contractors are required to perform these Good Faith Outreach steps:

- A. Small Disadvantaged Business Enterprise (SBE) Participation Requirement. The Developer (or its representative) will work in good faith with the CMD to meet/exceed the SBE

participation requirement. Contractors shall satisfy the SBE subcontracting participation requirement by using SBEs.

- B. **Contract Size.** Where appropriate, The Developer (and/or its representative) will divide the work in order to encourage maximum SBE participation or, encourage joint venturing. The Developer will identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs resources the bidder(s).
- C. **Advertise.** The Developer (or its representatives) will advertise all professional services and contracting opportunities for at least 30 days in media focused on small businesses including the Bid and Contract Opportunities website through the City's [SF City Partner](#) website and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting SBEs to submitting bids to Project Sponsor. Pre-bid/proposal meetings, if held, must be at least 15 days prior to bid/proposal due date.
- D. **Public Solicitation.** For all consulting/contracting opportunities, The Developer will ensure Requests for Qualifications (RFQs) or Requests for Proposals (RFPs) made available to SBEs. It will follow up initial solicitations of interest by contacting SBEs to determine with certainty whether they are interested in performing specific items in a project.
- E. The Developer (or its representatives) will identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs resources the bidder(s).
- F. **Outreach and Other Assistance.** The Developer (or its representatives) will a) provide SBEs with plans, specifications and requirements for all or part of the project; b) notify SBE trade associations that disseminate bid and contract information and provide technical assistance to SBEs. The Developer's designated representative will work with CMD to conduct outreach to SBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.
- G. **Insurance and Bonding.** Recognizing that lines of credit, insurance and bonding are problems common to small businesses, Contractor project management staff will be available to explain The Developer's insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third-party avenues of assistance.
- H. **Focused Meetings.** When deficiencies are noted CMD will work with the responsible staff person to convene a meeting for SBEs focusing on opportunities for particular industries
- I. **Make contacts with SBEs, associations or development centers, or any agencies, which disseminate bid and contract information to SBEs**

- J. Substitution of Subconsultants and Suppliers. The Developer and/or Prime Consultant/Contractor shall not terminate an SBE subconsultant/subcontractor or supplier for convenience and then perform the work with its own forces. The Developer must make good faith efforts to substitute another SBE for an original SBE subconsultant/subcontractor or supplier when the original SBE subconsultant or supplier is terminated or fails to complete the work on the contract. The Developer and/or Prime Consultant/Contractor shall notify CMD in writing of any request to substitute an SBE subconsultant/subcontractor or supplier and provide CMD with any documentation requested to support the substitution. CMD must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by MOHCD.
 - K. Keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.
 - L. Document any other efforts undertaken to encourage participation by SBE.
 - M. Allow CMD to monitor consultant/contractor selection processes and, when necessary, give suggestions as to how best to maximize SBEs ability to complete and win procurement opportunities.
 - N. Incorporation into contract provisions. Developer shall include in prime contracts provisions that require prospective contractors that will be utilizing subcontractors to follow the above good faith efforts to subcontract to SBEs.
 - O. Require all consultants and contractors to utilize the FSP System for tracking SBE participation
- X. REPORTING REQUIREMENTS:**
- A. Developers are responsible for reporting SBE utilization and providing supporting documentation/statistical data to MOHCD and CMD quarterly – or as requested by MOHCD or CMD (Quarterly = following San Francisco’s fiscal calendar). SBE utilization on a project shall be based upon total contract amounts let by the developer.

XI. FORMS

Required Forms (For use by Developers when procuring Consultants and/or Contractors)

PROPOSERS ARE WARNED that failure to comply with the requirements for submission of forms, within the times prescribed, may RESULT IN REJECTION OF THE PROPOSAL, unless a later time is authorized by CMD. The following forms are included in the RFP:

| | FORMS SUBMITTED WITH PROPOSAL | |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------|--|
| SBE Form No. 1 | Consultant/Joint Venture Partner and Subconsultant Participation Spreadsheet | |
| SBE Form No. 2 | SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration | |
| SBE Form No. 3 | Small Business Enterprise Acknowledgment Declaration | |
| SCHEDULE B | Joint Venture Participation Form | |
| | FORMS SUBMITTED POST AWARD | |
| SBE Form No. 4 | Progress Payment Report (Note: T/B used if FSP or other approved online electronic monitoring program is unavailable) | |
| SBE Form No. 5 | Subconsultant Payment Declaration (Note: T/B used if Elations or other approved online electronic monitoring program is unavailable) | |
| SBE Form No. 6 | Exit Report and Declaration | |

Note: The following instructions are included for the convenience of proposers in preparing their proposals and for consultants to monitor SBE participation appropriately. If there are any conflicts between these instructions and the provisions elsewhere in the specifications or with federal, state, or city statutory requirements, the latter will prevail

FORMS SUBMITTED WITH PROPOSAL:

The following forms must be executed in full and submitted with the proposal package, or as otherwise specified; if not, the proposal may be rejected. For the purposes of use of the forms, Contractor and consultant are synonymous.

SBE FORM No. 1 - CONSULTANT/JOINT VENTURE AND SUBCONSULTANT PARTICIPATION REPORT

All proposers are required to complete this form and include the names of the SBEs being used, lower-tier SBEs, as well as non-SBEs and a description of the work they will perform, the services or supplies which will be provided by each and the dollar value of each SBE transaction. (Reminder: Suppliers will be credited no more than 60% of subcontract value toward meeting the SBE participation.)

This completed form must be submitted with the proposal or the proposal shall be rejected.

SBE FORM No. 2 - SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT – GROSS REVENUE DECLARATION

An SBE consultant/joint venture partner and listed SBE subconsultants or suppliers, including lower tier subconsultants or suppliers, must complete this form AND submit listed firm's current SBE certification. The prime shall collect the completed forms and submit them with its proposal on the proposal due date. The SBE consultant and listed SBE subconsultants or suppliers will need to submit this form declaring, under penalty of perjury, that their total average gross revenues for the past five years are equal to or below the applicable income thresholds for the specific category of the contract.

SBE FORM No. 3 - SMALL BUSINESS ENTERPRISE ACKNOWLEDGEMENT DECLARATION (to be submitted by each listed SBE consultant)

Every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the proposers. The proposers shall submit the completed declarations to CMD with the proposal unless an extension of time is granted by CMD.

Schedule B Joint Venture Participation Form (If applicable)

Joint Ventures formed at either the prime consultant level or subconsultant level must submit a Joint Venture Participation Form (Schedule B) plus a joint venture agreement. To obtain this form, please contact CMD.

FORMS SUBMITTED AT POST AWARD**SBE FORM NO. 4 - PROGRESS PAYMENT REPORT`**

This form shall be completed by Consultant, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CMD) with its monthly progress payment applications after award of Contract. Consultants must provide complete information and documentation on SBE FORM No. 4 for the immediately preceding period for SBE joint venture partners and all subconsultants that are utilized on the Contract.

SBE FORM No. 5 - SUBCONSULTANT PAYMENT DECLARATION (Note: T/B used if Elations or other approved online electronic monitoring program is unavailable)

Consultant shall complete SBE FORM No. 5 and submit it to MOHCD Project Manager (copy to CMD) with its next progress payment request to document the prime's compliance with prompt payment requirements: This form shall provide evidence that the Consultant has complied with the prompt payment provisions of the Contract.

SBE FORM No. 6 - EXIT REPORT AND DECLARATION

Consultant, including all joint venture partners, if any, shall complete SBE FORM No. 6 and submit it to the Project Manager (copy to CMD) with its final progress payment application. Consultant must provide complete and accurate information on SBE FORM No. 6 and have it executed by all SBE joint venture partners and all subconsultants.

SBE FORM No. 2 - SBE CONSULTANT/JV PARTNER/SUBCONSULTANT – GROSS REVENUE DECLARATION

To be completed by SBE Consultant/Joint Venture Partner/Subconsultant

An SBE consultant and every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations with its proposal to the Contract Monitoring Division. In order to be counted towards the SBE goal, the SBE must declare, under penalty of perjury, that its total average gross revenues for the past five years are equal to or below the income threshold for the specific category of the contract.

Project Title: _____

SECTION I

Name: _____ Vendor Number: _____

Address: _____

Phone: _____ Type of Consultant's License(s): _____ Federal I.D. No.: _____

SECTION II

(Check Ownership and Certification Type check all that apply)

- Sole Proprietor**
- Partnership**
- Corporation, s-Corp, LLC**
- DBE** (Issued by Calif. Unified Certification Prog.)
- SBE** (Issued by Calif. Dept. of General Services)
- LBE** (Issued by SF General Services Agency)
- Verified as SBE-Eligible by the Contract Monitoring Division** (Confirmation attached)

Income Thresholds For Certain Types of Contracts Please circle the total average gross revenue for the past 5 years equal to or below the following category thresholds:

| Industry | Certification Size Standards |
|--------------------------------------------|------------------------------|
| | Economic Size Standards |
| | SBE |
| General Construction (A & B Class) | \$24M |
| Specialty Contractors (C & D License) | \$12M |
| Professional Services (incl. A/Es) | \$5M |
| Good Materials Suppliers, General Services | \$12M |
| Trucking | \$5M |
| | |

Note: CMD reserves that right to request additional documentation as necessary to validate certification status meets this programs requirements.

DECLARATION

The undersigned declares under penalty of perjury under the laws of the State of California that its total average gross revenues for the past five years are equal to or below the income threshold for the category checked above.

Signature

Date

Name of Firm (print)

Name and Title (print)

Address

Phone Number

Email**END OF FORM**

SBE FORM 3 - SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

This affidavit is to be completed by each SBE subconsultant/contractor or supplier (including lower tier SBEs) and shall be submitted by the Developer’s Prime Consultant/Contractor to validate initial LBE participation. Subcontractor may attach additional sheets if more space is needed to provide complete information.

Project Number: _____ Project Name: _____
 Name of Prime: _____
 Name of SBE Sub or Supplier: _____
 License #: _____ Scope of work: _____

1. _____ verify that _____ bid to
Name of SBE Owner/Representative SBE 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 - if applicable:

| 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 subconsultant/contractor.
- We WILL subcontract out _____% of our work to:

_____ Firm

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

5. I have enclosed a copy of my Firm’s Proposal/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 BBE as defined under this SBE Program.

 SBE Owner/Authorized Representative (Signature)

 Date

 Name and Title (Print)

 Phone

Schedule B – Joint Venture Participation Form

This form must be submitted **ONLY** if the proposer is requesting a Joint Venture partnership with a SBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

SECTION 1: GENERAL INFORMATION

- 1. Name of Contract or Project: _____
- 2. Name of all JV partners: (Check SBE if applicable)

| Name of JV Partners | SBE (Y/N) |
|---------------------|-----------|
| | |
| | |
| | |
| | |

- 3. Attach a copy of Joint Venture Agreement and Management plans.
- 4. The management plan must include the following information:

Describe in detail how decisions will be made for work distribution and compliance of SBE Joint Venture participation.

- a. Provide each Joint Venture partner’s specific duties and responsibilities (include organizational chart)
- b. Identify the Location of Joint Venture Office.
- c. Provide in detail how decision will be made for work distribution to SBE subconsultants and/or vendors.
- d. Submit copies of bank signature cards with authorized names, titles, and address/city of the bank(required after award of contract.)

- 5. Calculation of the Rating Bonus.
 - a. Step 1. Calculate total JV partner tasks = (Total Contract tasks – Total subconsulting work)

- b. Step 2. Calculate SBE JV Partner tasks

| Description of JV partner Scopes of Work (Specific details of work) | JV Partners’ Work as a % of the total project | % of Task by Non-LBE JV Partner | % of Task by SBE JV Partner |
|---------------------------------------------------------------------|-----------------------------------------------|---------------------------------|-----------------------------|
| | | | |
| | | | |
| | | | |
| | | | |

- c. Step 3. Calculate SBE JV Partner as a percentage of total JV work for applicable rating bonus = (Total SBE JV Partner %) ÷ (Total JV %)

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative

Name of Firm

Telephone/Email Address

Owner/Authorized Representative

Name of Firm

Telephone/Email Address

SBE Form 4 - Progress Payment Report (Use Adobe to Download in Excel Format: 

To be completed by contractor and submitted to the Contract Awarding Authority with its monthly progress payment request.

TRANSMITTAL

To: Developer/MOHCD Project Manager

Copy: Contract Compliance Officer

From: _____

Date: _____

Section 1 Fill in all the blanks

Project Number: _____

Project 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.

1. Amount of Prime Contract: _____

2. Amount of Change Orders, Amendments, and Modifications to Date: _____

3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2) _____

4. Gross Amount Invoiced this submittal period: _____

5. All Previous Gross Amounts Progress Payments Requested to Date _____

6. Total Gross Amounts of Progress Payments Requested to Date (Line 4 + Line 5) : _____

7. Percent Complete (Line 6 ÷ Line 3) : _____

Contractor Must Sign This Form

Contractor / Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone Number

Email

SBE FORM No. 5 SUBCONSULTANT PAYMENT DECLARATION

To be completed and submitted by the Prime Consultant/Contractors, including all joint venture partners, if any, and submitted to the MOHCD and Contract Monitoring Division with next progress payment form to document actual payment to subconsultants/contractors. Payments to subconsultant/contractor shall be made no later than 3 working days following receipt of progress payment from Prime and/or higher tier sub. (Note: T/B used if Elations or other approved online electronic monitoring program is unavailable)

TRANSMITTAL TO: Contract Monitoring Division

COPY TO: Project Manager

From: Prime Consultant: _____ **Date Transmitted:** _____

Provide the following information for each progress payment received from CMD. Use additional sheets to include complete payment information for all subconsultants and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.

Project No.: _____ Project Title: _____

Housing Developer: **XXXXXXXXXX**

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

| Prime JV/Subconsultant/ Vendor Name | Amount Paid | Payment Date | Check Number |
|----------------------------------------|----------------|--------------|--------------|
| | | | |
| | | | |
| | | | |
| | | | |

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

Prime Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Print)

Name & Title (Print)

Firm Name

Date

Firm Name

Date

Telephone

Email

Telephone

Email

SBE FORM 6 - CONSULTANT EXIT REPORT AND DECLARATION

To be completed by Consultant, including all joint venture partners if any, with its final progress payment application (transmit and copy to all of the following.)

TRANSMITTAL TO: Project Manager

Copy To: Contract Monitoring Division

From: Consultant: _____ **Date Transmitted:** _____

Project Number: _____ **Project Name:** _____

SECTION 1. Please check this box if there are no SBE subconsultant/contractors/suppliers for this contract:

Reporting

| | |
|-------------------------------------------------------------------------------|---------------------------------------|
| Date: _____ | Contract Name: _____ |
| Name of SBE: _____ | Portion of Work (Trade): _____ |
| Original SBE Contract Amount: _____ | \$ _____ |
| Change Orders, Amendments, Modifications: _____ | \$ _____ |
| Final SBE 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 SBE 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: \$ _____ |

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Print)

Name & Title (Print)

Firm Name

Date

Firm Name

Date

Telephone

Email

Telephone

Email