

A Report of the 2004-05 Civil Grand Jury
For the City and County of San Francisco

City Contracting and Affirmative Action

Pursuant to State law, reports of the Civil Grand Jury do not identify the names or identifying information about individuals who provided information to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of the Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, sec. 933, 933.05)

Recommendation

The City should immediately eliminate explicit and implicit preferences based on race, sex, color, ethnicity or national origin from City contracting rules, publications, policies and practices.

Glossary

DBE – Disadvantaged Business Enterprise – Chapter 14A Administrative Code

HRC - Human Rights Commission

LBE - Local Business Enterprise – Chapter 12B Administrative Code

MBE - Minority-Owned Business Enterprise

PROPOSITION 209 - Voters of California amended the State Constitution (Article 1, Section 31) to prohibit preferential treatment on the basis of race, sex, color, ethnicity or national origin in public employment, public education, and public contracting.

WBE - Woman-Owned Business

Introduction

The Civil Grand Jury began this investigation to determine whether the current contracting policies and procedures of the City and County of San Francisco (City) comply with the constitutional prohibition against preferential treatment in public contracting on the basis of race, sex, color, ethnicity or national origin set forth in Article 1, Section 31 of the California Constitution.

Background

In 1998 the Board of Supervisors adopted an ordinance granting preferences to local businesses owned by minorities (MBEs) and women (WBEs) competing for City contracts. These race and gender-based preferences took the form of discounting the bids of MBEs and WBEs by 10%. The ordinance also imposed sanctions on prime contractors who, once awarded a contract, failed to meet hiring goals for minority and women employees and subcontractors. These preferences and contract requirements for MBEs and WBEs were set forth in Chapter 12D.A of the San Francisco Administrative Code. The Human Rights Commission was responsible for administering and enforcing the City's race and gender-based contracting programs.

On November 6, 1996, the voters approved Proposition 209, the “California Civil Rights Initiative.”¹

The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of ... public contracting.

Coral Construction Inc., a firm competing for airport construction contracts, challenged the City's racial and gender preferences in Chapter 12D.A. In July 2004 the Superior Court ruled

¹ California Constitution Article I, Section 31(a)

that the preferences for MBEs/WBEs violated the constitutional ban on race and gender preferences in public contracting.² The Court rejected the City's argument that a disparity between the percentages of available MBEs/WBEs and the percentage of City contract dollars awarded to minorities and women demonstrated past illegal discrimination that could be remedied by race and gender-based preferences.

The Court prohibited the City from enforcing or attempting to enforce the race and gender conscious provisions of the MBE/WBE Ordinance:

Defendants City and County of San Francisco...shall cease and desist from, and are permanently enjoined and prohibited from, enforcing or attempting to enforce, directly or indirectly, except as exempted by Article 1, Section 31(e) of the California Constitution, Sections 12D.A.6...12D.A.10, 12D.A.14, and 12D.A.17 of the Administrative Code of the City and County of San Francisco, which discriminate against or grant preferential treatment to individuals or groups on the basis of race, sex, color, ethnicity or national origin in the operation of public contracting. The City is further enjoined from enforcing or attempting to enforce the race, sex, color, ethnicity or national origin preferential provisions of any ordinance enacted after July 26, 2004, to the extent that those provisions are the same as or substantially similar to the provisions of 12D.A that are enjoined herein.³

The City is appealing the Superior Court's decision.⁴ However, based on our review of much of the record and the California Supreme Court's decision striking down a similar race and gender-based contracting program in San Jose, the Civil Grand Jury finds no reason to expect the City's appeal to succeed.⁵

In August 2004, in response to the decision invalidating the contracting preferences for MBEs and WBEs, the City also passed an emergency ordinance suspending Administrative Code 12D.A and establishing the temporary Disadvantaged Business Enterprise (DBE) program set forth in Administrative Code Chapter 14A. The emergency DBE program discounts the bids of local businesses considered to be economically disadvantaged by 10%. Unlike the MBE and WBE programs struck down in *Coral Construction*, which gave preference in contracting to minorities and women, there are no gender or race preferences in the emergency DBE ordinance. Supervisor Fiona Ma introduced legislation on May 3, 2005 to establish a permanent DBE program to replace the emergency DBE ordinance.⁶ The Civil Grand Jury has been assured that the ordinance will not contain racial, gender or other illegal preferences.⁷

² *Coral Construction, Inc. vs. City and County of San Francisco*, Superior Court Case No. 421249

³ *Ibid.* The Court did not invalidate provisions of Chapter 12D.A that contain definitions, post-award monitoring, and other contracting provisions unrelated to gender and race preferences.

⁴ California Court of Appeal, First District, Case No. A107803.

⁵ *Hi-Voltage Wire Works v. City of San Jose* (2000) 24 Cal. 4th 537

⁶ Board of Supervisors File No. 050784.

⁷ Under the proposed legislation bid discounts and set-asides are to be offered, and sub-contracting goals to be mandated for certified local business enterprises (LBEs). There are to be three categories of certified LBEs: MBEs (firms owned and controlled by minority persons); WBEs (firms owned and controlled by women); and OBEs ("other" business enterprises not owned and controlled by women or minority persons). None of these three

However, as we explain below, the Human Rights Commission (HRC) continues to require illegal racial and gender preferences in construction contracts and contracts for professional and other services awarded by the City. A new DBE ordinance without race and gender preferences will not bring the City into full compliance with the State Constitution if those charged with implementing the City's contracting policies persist in giving illegal preferences on the basis of race and gender.

Administration of Contracting Policies by the Human Rights Commission

In July 1964, Mayor John F. Shelley signed an ordinance establishing the Human Rights Commission (HRC). Among other duties, the HRC

...works to provide leadership and advocacy to secure, protect and promote human rights for all people...and has broad powers [including] enforcement of local anti-discrimination laws and affirmative action monitoring.⁸

The HRC is responsible for establishing and enforcing contracting requirements in accordance with the City Charter and Administrative Code. The HRC requires that certain forms be completed by those seeking a contract which, if awarded, become part of the contract with the City.

During our investigation, the Civil Grand Jury identified recently revised HRC contracting forms that continue to grant preferences for women and minorities. The HRC forms assert that preferences in City contracting for minorities and women are authorized under Administrative Code Chapters 12B and 14A. Chapter 12B (Nondiscrimination in Contracts), however, is wholly prohibitive, that is, it prohibits discrimination **against** women, minorities and other protected classes. It neither offers nor provides **preferences** to any individual or class. Similarly, Chapter 14A, the temporary DBE program adopted shortly after the decision in *Coral Construction*, gives preferences to local disadvantaged business owned by women and minorities that are no different than the preferences given to local disadvantaged businesses owned by Caucasian men. Accordingly, the Civil Grand Jury finds that Administrative Code Chapters 12B or 14A do not justify HRC's continuing enforcement of race and gender-based preferences in City contracting.

Specific HRC Forms Require Preferences on the Basis of Race and Gender

The following are examples of HRC's contracting requirements that contain race and gender preferences the Civil Grand Jury believes to be unconstitutional.

FORMS AND INSTRUCTIONS FOR ARCHITECTURE AND ENGINEERING CONTRACTS

categories of LBEs will either receive or be denied any benefit offered to any other category: status and benefits are to be identical. The new ordinance, projected to be in force on September 1, 2005, is entitled "Local Business Enterprise and Non-Discrimination in Contracting Ordinance".

⁸ San Francisco City Charter, Section 3.699-5

Forms and instructions for Architecture and Engineering Contracts⁹ and Professional Services Contracts¹⁰ (revised in September 2004) impose “Trainee Requirements” and mandate goals “for hiring disadvantaged minorities, women and disabled persons as on-the-job trainees”. A “trainee” is defined as “a woman or a minority person or person with a disability.”¹¹ (See Appendix C) Depending on the size of the project the contractor must hire one or more trainees. According to the HRC, refusing to hire trainees makes the firm ineligible for a City contract.

Number of Trainees

Project Fees	To be Hired
\$0 - \$499,999	0
\$500,000 - \$899,999	1
\$900,000 - \$1,999,999	2
\$2,000,000 - \$4,999,999	3
\$5,000,000 - \$7,999,999	4
\$8,000,000 - \$10,999,999	5
\$11,000,000 - \$13,999,999	6
>= \$14M, for each additional \$3 million in subconsultant fees	Add one additional trainee

The California Supreme Court in *Hi-Voltage* and the Superior Court in *Coral Construction* have found that requiring race and gender-based participation by subcontractors or preferential hiring of minority and female employees violates the State Constitution.¹²

FORMS AND INSTRUCTIONS FOR CONSTRUCTION CONTRACTS

Chapter 6, Section 6.22(g) of the San Francisco Administrative Code provides that preference must be given to minorities and women in construction contracts.¹³ HRC revised forms and

⁹ “Interim HRC Attachment 2. Requirements for Architecture and Engineering Contracts”, Human Rights Commission, 9/2/04.

¹⁰ “Interim HRC Attachment 3. Requirements for Professional Services Contracts”, Human Rights Commission, 9/2/04.

¹¹ *Ibid*, page 11

¹² See *Hi-Voltage*, 24 Cal. 4th at 563. “The participation component authorizes or encourages what amounts to discriminatory quotas or set-asides, or quotas or at least race and sex-conscious numerical goals. A participation goal differs from a quota or set-aside only in degree: by whatever label it remains ‘a line drawn on the basis of race and ethnic status’ as well as sex [citations omitted]. Thus understood, such a goal plainly runs counter to the express intent of the historic Civil Rights Act and, concomitantly, the intent of Proposition 209.”

¹³ Cf. San Francisco Administrative Code, Chapter 6, Sec. 6.22 Public Work Construction Contract Terms and Working Conditions, (g) Local Hiring Contract Requirements.

All construction contracts for public works or improvements to be performed within the boundaries of the City and County of San Francisco shall contain the following provisions: Contractor agrees to make a good-faith effort, with the assistance of community organizations designated by the City or local labor union hiring halls, to hire qualified individuals who are residents of the City and County of San Francisco to comprise not less than 50% of each contractor’s total construction work force, measured in labor work hours, **and contractor promises to give special preference to minorities, women and economically disadvantaged individuals.** (emphasis added)

instructions for Construction Contracts¹⁴ in September 2004 to enforce the following “Employment goals for Minorities and Women.”¹⁵ (See Appendix D)

Trade	Minorities	Women
Boilermaker	44.0%	All Trades Listed 10%
Bircklayers/Stone Masons	27.4%	
Carpenters	33.8%	
Carpet/Soft Title [sic] Workers	56.4%	
Cement Masons	61.9%	
Construction Teamsters	46.1%	
Drywall Installers	48.4%	
Electrical Workers	46.4%	
Elevator Constructors	46.7%	
Glaziers	50.0%	
Hod Carriers	50.0%	
Iron Workers, Re-Bar & Structural	46.0%	
Laborers	61.9%	
Lathers	36.6%	
Millwright	25.0%	
Operating Engineers	61.7%	
Painters/Tapers	47.0%	
Pile Drivers	33.8%	
Plasterers	47.7%	
Plumbers/Steam Fitters	48.1%	
Roofers	56.7%	
Sheet Metal Workers	41.2%	
Sprinkler Fitters	48.1%	
Terrazzo Mechanics	61.9%	
Tile Setter	56.3%	
Apprentices (all trades)	50.0%	

The instructions for construction contracts continue:

Whenever possible, contractor and its subcontractors shall take affirmative action to employ persons from each ethnic group, both male and female, and to employ minority women among the women employed. Consequently, **contractor or its subcontractors may be in violation of Chapter 12B if a particular ethnic group is employed in a substantially disparate manner.**¹⁶ (emphasis added)

¹⁴ “Interim HRC Attachment 1. Requirements for Construction Contracts”, Human Rights Commission, 9/2/04.

¹⁵ HRC instructions and forms for establishing minority goals are based on the 1990 Census/EEO Special File on Construction Occupations for the City and County of San Francisco. [The Civil Grand Jury fails to understand the basis for the 10% goal for women in all trades.]

¹⁶ Cf. *Hi-Voltage* at 563. San Jose’s contracting requirements “essentially places on a contractor the burden of proving a negative...a contractor may show nondiscrimination ... either according to a fixed or by prescribed outreach to MBEs and WBEs ... it can only prove it does not discriminate against minorities and women by discriminating or granting preferences in their favor”

REQUEST FOR PROPOSAL FOR GENERAL SERVICES CONTRACT

The HRC revised forms and instructions for responding to a Request for Proposal for General Services in December 2004.¹⁷ (See Appendix E) One form begins with the sentence, “To be eligible for award of this contract, each proposer must agree to comply with the following affirmative action requirements...and their implementing Rules and Regulations.” Responders to requests for proposals are required to complete all HRC forms regardless of whether or not they are applying for the bid discounts as DBEs. These forms and attachments constitute part of the contract with the City.

The Non-Discrimination Provisions for general services contracts include the requirement that “Businesses must further maintain an **ethnic balance** throughout all levels of its staff that reflects the statistical makeup of 2000 census data.”¹⁸ (emphasis added) Such a requirement entails hiring from particular ethnic groups to be eligible to contract with the City.

Conclusions

The HRC is charged with a public trust to respect the rule of law and vigilantly exercise that trust. We are concerned that the constitutional violations addressed in this report are readily apparent on HRC’s contracting forms and should not have been overlooked by those responsible. We acknowledge that a majority of San Franciscans voted against Proposition 209 and might well endorse affirmative action policies. We also realize that the line between discrimination *against* and discrimination *in favor of* persons on grounds of race or gender may not always be clear, and that artful legislation may blur that line. But there is no such ambiguity here. The Civil Grand Jury believes the HRC’s contracting practices violate the State Constitution owing to its continuing enforcement of racial and gender preferences.

There are substantial costs to the City associated with litigation such as *Coral Construction*. The City paid outside counsel \$288,998 for its participation in the *Coral* case. These costs are in addition to the opportunity costs of foregone alternative uses of the time of the City Attorney’s Office. The City is now incurring more costs for the appeal of the *Coral* decision. In addition, the City will probably be assessed attorneys’ fees to compensate *Coral*’s attorneys if *Coral* is the prevailing party on appeal. Meanwhile, the City risks further litigation by continuing the illegal contracting practices described above.

Findings and Recommendation

Findings

1. Racial and gender preferences in City public contracting have been judicially declared to violate the Constitution of the State of California.

¹⁷ “Interim HRC Attachment 4A. Requirements for General Services Request for Proposals”, Human Rights Commission, 12/1/04

¹⁸ Ibid., 4.03.B.1.

2. Forms being used by the City to establish eligibility for contracting with the City of San Francisco contain race and gender preferences in violation of the law.
3. Chapter 6 of the City's Administrative Code encourages preferences to minorities and women in construction contracts in violation of the law.
4. Continued violation of the law is unwarranted and exposes the City to legal and financial risks.

Recommendation

The City should immediately eliminate explicit or implicit preference based on race, sex, color, ethnicity or national origin from City contracting rules, publications, policies and practices.

Board of Supervisors – 90 days
City Attorney – 60 days
City Controller – 60 days
Human Rights Commission – 60 days
Mayor – 60 days

Investigative Scope and Process

Documents

California Constitution, Article 1, Section 31(a) (1996)
Hi-Voltage Wire Works, Inc. v. City of San Jose (2000) 24 Cal. 4th 537
Connerly v. State Personnel Board (2001) 92 Cal App. 4th 16

Emergency Ordinance Amending San Francisco Administrative Code by Adding Ch 14A to Establish a DBE Program and Suspend Chapter 12D.A

HRC documents and publications:

Attachment 1 Requirements for Construction Contracts (09/02/04)
Attachment 2 Requirements for Architecture and Engineering Contracts (09/02/04)
Attachment 3 Requirements for Professional Services Contracts (09/02/04)
Attachment 4A Requirements for General Services Request for Proposals (12/1/04)
Miscellaneous HRC publications

Opening Brief in Court of Appeal of State of California, 1st Appellate District, Division 4, Attorneys for Defendants and Appellants, City and County of San Francisco (02-16-05). Respondents' Brief (04-15-05). Case No A 107803.

Report of the 2002-2003 SFCGJ, "The Human Rights Commission and the Minority Business Ordinance: Statistics but No Specifics to Support City Claim it Discriminates."
Controller's Response to SFCGJ report

San Francisco Administrative Code

Chapter 6, Sec. 6.22
Chapter 12.A Human Rights Commission
Chapter 12.B Nondiscrimination in Contracts
Chapter 12.C Nondiscrimination in Property Contracts
Chapter 12.D Minority/Women/Local Utilization Ordinance
Chapter 14.A. Disadvantaged Business Enterprise Ordinance

White Paper, Office of the Controller, "From Hindering to Helping: Transforming the City's Contracting Process", January 26, 2004

Interviews with representatives of:

Board of Supervisors
Office of the City Attorney
Human Rights Commission

Appendix B**SEC. 12B.4. NONDISCRIMINATION GUIDELINES.**

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any

other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Chapter. (Amended by Ord. 498-75, App. 1/5/75; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

CITY & COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



INTERIM HRC ATTACHMENT 2 *Requirements for Architecture and Engineering Contracts* FOR CONTRACTS \$25,000 AND OVER

PART I. GENERAL

1.01 PURPOSE

- A. To be eligible for award of this contract, each proposer must agree to comply with the following Disadvantaged Business Enterprise (DBE) requirements authorized by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14A(where applicable), and their implementing Rules and Regulations.
- B. Chapters 12B and 14A of the San Francisco Administrative Code and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14A and their implementing rules and regulations are available upon request by calling the HRC office at (415) 252-2500 or on the HRC website at: www.sfhrc.org
- C. For assistance regarding Attachment 2 and the accompanying forms for Architect and Engineering contracts contact the following number(s):

Human Rights Commission Main Office (415) 252-2500
DBE Certification (415) 252-2537 or (415) 252-2530

For all other city departments and compliance with the Equal Benefits Program, please contact the HRC Main Office.



mere conduit or pass-through function.

10. Where there are DBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make good faith efforts to make portions of such work available for DBEs.

11. A DBE Prime poposer cannot count itself to meet the DBE subconsultant goal

C. Substitution, removal or contract modification of DBE: No DBE subconsultant or other business listed on HRC Form 2A (DBE Subconsultant Participation) shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval.

PART IV. EMPLOYMENT NON-DISCRIMINATION PROVISIONS.

4.01 GENERAL

The provisions of this section shall constitute the consultant's and subconsultant's affirmative action in employment nondiscrimination obligations required by Chapter 12B of the Administrative Code as a condition of contract award.

4.02 NONDISCRIMINATION PROVISIONS

A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.

B. The consultant and subconsultant on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation or disability. This includes employment, upgrading, demotion or transfer, recruitment, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Trainee Requirements:

1. The goal listed below are for hiring disadvantaged minorities, women, and disabled persons as on-the-job trainees during this project. Trainees may be obtained through various employment and job training agencies/organizations. A list may be obtained from the HRC.

Number of Trainees	
Project Fees	To Be Hired
\$0 - \$499,999	0
\$500,000 - \$899,999	1
\$900,000 - \$1,999,999	2
\$2,000,000 - \$4,999,999	3
\$5,000,000 - \$7,999,999	4
\$8,000,000 - \$10,999,999	5



\$11,000,000 - \$13,999,999	6
> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

2. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
3. No trainee may be counted towards meeting more than one contract goal.
4. A trainee must be a San Francisco resident and must meet qualifications for enrollment similar or equal to the standards established and implemented by the Private Industry Council (PIC) and other similar programs that work with low-income individuals. The training agency will document that the candidate meets these standards and submit documentation to that effect to HRC staff for their review prior to the candidate's enrollment.
5. On-the-Job Training (to be provided by the consultant):
 The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval from the HRC, offering him/her on-the-job training which allows the trainee to progress on a career path. The following shall be included in the on-the-job training.
6. A summary of a job description and training for the trainee with the rate of pay (HRC recommends no less than MCO requirement) should be submitted to HRC for approval.
7. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the A/E firm, which is appropriate for the trainee's skill development.
8. A trainee is defined as a woman or minority person or person with a disability who:
 - a. Will receive training in a technical (A&E related) field, e.g. drafting, inspection, etc. for a period of at least 12 months full-time. Any change in the length of the training period must be negotiated with HRC on a case-by-case basis;
 - b. Has not had more than one year's continuous work experience in the United States in the last five years in an A&E related field.
 - c. A person who has a recognized college degree in an A & E related field and has no previous A&E experience other than a displaced worker is eligible to be a trainee.

4.03 COMPLIANCE/NON-COMPLIANCE

A. Compliance

1. The Director shall determine whether a proposer has met the post-award trainee requirements. The Director's decision shall be final.
2. The HRC staff shall inform the awarding department of the proposers that have met the requirements and are eligible for contract close-out.



3. Substitution or addition of subconsultants: HRC must be informed by the prime consultant of any subconsultant that is replaced or added during performance of the contract. All new subconsultants with contracts of \$25,000 or more must submit HRC Form 5 (Architecture and Engineering Contracts Employment Affirmative Action Requirements and Non-Discrimination Provisions) within 15 days of award of the subcontract.

B. Non-Compliance With Chapter 12B:

1. A complaint of discrimination or non-compliance in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
2. A finding of non-compliance may result in imposition of appropriate sanctions, including:
 - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
 - b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
 - c. The consultant or subconsultant may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.



**HRC FORM 5 (PRIME ONLY)
EMPLOYMENT INFORMATION**

To be completed by the proposer and submitted with the proposal. If the form is not returned with the proposal, the proposal may be determined non-responsive and rejected.

1. Indicate key personnel designated to work on this project for the entire project team (prime consultant, joint venture partners, subconsultants).

The employees listed should include all those listed in descriptions of key personnel in other sections of the proposal, if this form is submitted in response to an RFP.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

2. Indicate the Number of disadvantaged minority or women that will be hired as on -the-job-trainees by the entire project team. See page 10, Attachment 2.

a. Estimated Project Fee:	\$
b. HRC on-the-job training goal:	
c. Number of on-the-job-trainees that will be hired by the project team:	

d. If less than HRC goal, explain:

e. Length of training:

If less than 12 months, explain:

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date

CITY & COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



INTERIM HRC ATTACHMENT 1 *Requirements for Construction Contracts* **FOR CONTRACTS \$50,000 AND OVER**

PART I. GENERAL

1.01 PURPOSE

- A. To be eligible for any City contract award, each bidder shall agree to comply with disadvantaged business requirements contained in this HRC Attachment 1 as authorized by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14A and their implementing rules and regulations. These requirements are in addition to the bidding requirements set forth elsewhere in the contract documents.
- B. Chapters 12B and 14A of the San Francisco Administrative Code and their implementing rules and regulations are incorporated by reference as though fully set forth herein. These ordinances and regulations provide in part that the failure of any contractor to comply in good faith with the DBE requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14A and their implementing rules and regulations are available upon request by calling the HRC office at (415) 252-2500.
- C. For assistance regarding Attachment 1 and the accompanying forms for construction contracts contact the following number(s):
 - Human Rights Commission Main Office (415) 252-2500**
 - DBE Certification (415) 252-2537 or (415) 252-2530**

For all other city departments and compliance with the Equal Benefits Program, please contact the HRC Main Office.



4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, contractor shall agree in its bid that it does not, and will not, during the time of the contract or any contract modification, discriminate in the provision of benefits between its employees with spouses and its employees with domestic partners.
- B. Contractor in its bid on this contract shall agree that it will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, height, weight, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. This includes employment, upgrading, demotion, transfer, recruitment advertising or recruitment, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contracts shall place the same requirements in its subcontracts.
- C. Contractor and its subcontractors shall send to each labor union with which they have a collective bargaining agreement a notice advising the union of their commitment under Article 3.02 and shall post copies of this notice in conspicuous places available to employees and applicants for employment. An HRC poster is available for this purpose and can be obtained from the HRC office (refer to page 1).
- D. Prior to the award of the contract, contractor and its subcontractor shall agree that they will comply fully with the non-discrimination in employment provisions of Chapter 12B.

4.03 EMPLOYMENT NON-DISCRIMINATION PROVISIONS

- A. The apparent low bidder and each of its subcontractors with a listed subcontract that equals or exceeds \$50,000 shall submit HRC Form 5. This form shows the estimated participation rate of minorities and women on the city contract in each trade, sales, service or administrative job category.
- B. The apparent low bidder is required to show on HRC Form 5 the estimated number of hours to be worked in each trade on the contract as reflected in its bid proposal. The bidder is further required to estimate the number of hours to be worked by minorities and women in each trade in order to meet HRC's employment goals listed below in Paragraph 4.03.H.
- C. Contractor shall inform the HRC contract compliance staff of any subcontractor who is replaced during performance of the contract. All replacement subcontractors must submit HRC Form 5 within 15 days of award of the subcontract.
- D. The bidder and its subcontractors must be in good faith compliance with the provisions of Chapter 12B and Chapter 12D.A. or Chapter 14A. as applicable, on all existing City contracts prior to award of this contract. This provision is pursuant to Chapter 6.5 of the San Francisco Administrative Code.
 1. Prior to the award of any City contract, the HRC shall review the contract to ensure compliance with Chapter 12B.



2. If the HRC determines that there is cause to believe that a bidder or proposed subcontractor does not comply with Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.
 3. If the non-compliance cannot be resolved, the HRC shall submit to the bidder or subcontractor and the contract awarding authority a written Finding of Non-compliance.
 4. The HRC shall give the bidder or subcontractor an opportunity to appeal the Finding.
 5. The HRC may stay the award of any contract that is the subject of an investigation by written notice to the contract awarding agency.
- E. If the bidder or any of its subcontractors submits an HRC Form 5 indicating that the bidder or any of its subcontractors will be unable to meet the HRC employment goals for minorities and/or women on this contract, then the bidder will be required to make the following additional good faith efforts prior to award of the contract:
1. Documentation of timely requests to appropriate local, community employment outreach groups for assistance in meeting the project goals. This will include the timely submission of hiring needs on a trade-by-trade basis throughout the project (only where applicable under union rules).
 2. Documentation of placement of timely advertisements in minority-focus and/or women interest media seeking applicants for the project (only where applicable under union rules).
 3. Documentation of written notification to all applicable unions of the employment goals and a request for assistance and cooperation.
 4. Documentation of management meetings at which the importance of complying with all affirmative action provisions was stressed and the line of responsibility for compliance clearly defined within the company.
 5. Submission of the HRC Workforce Form on a weekly rather than a monthly basis as specified in subparagraph 1.03A above.
 6. Attendance at HRC compliance meetings. This must include attendance by a duly authorized company representative with the authority to commit the organization. Contractor is responsible for notifying and requiring attendance of its subcontractors and suppliers at such meetings.
 7. Maintaining a current file of the names, addresses, and telephone numbers of each off-the-street minority or woman applicant and each minority or woman referral from a union, recruitment source or outreach group and of what action was taken with respect to each such individual. If any female or minority applicant is rejected for employment, a complete and thorough explanation of the reason or reasons for such rejection must be provided.
- F. The determination of whether or not the bidder has submitted sufficient documentation as required above, is acting in good faith and is eligible for contract award shall be made by the HRC Director prior to award of the contract.



The Director's decision shall be final. The contract cannot be awarded until the HRC Director informs the awarding department that the bidder is eligible for contract award.

- G. Contractor and any of its subcontractors that fail to make every good faith effort to meet their employment goals for minorities and/or women during the term of the contract will also be required to make the above good faith efforts.
- H. Employment Goals for Minorities and Women: Contractor is reasonably expected to achieve the following hourly goals for minority and female utilization.
These goals will be applied to:
 - 1. The workforce at the job site of contractor and each of its subcontractors.
 - 2. The total administrative staff employed by contractor and each of its subcontractors.
- I. Work force hours for women craft workers on the contract will be reported toward the work force goal for women regardless of ethnicity.
- J. Reporting the work force hours for women and the same hours for minorities will be considered as double counting of work force hours and will not be allowed.

NOTE:

- The basis used in the establishment of minority employment goals for all listed trades is from the 1990 Census/EEO Special File on Construction occupations for the City and County of San Francisco.
- Exceptions to these goals must be approved by HRC in writing.
- Minority and women employment goals for trades not listed above will be negotiated on a case-by-case basis.
- Jobs with very few workers in each trade will be required to meet the goals in half of the trades. This will be evaluated on a case-by-case basis by the HRC staff prior to contract award.



<u>TRADE</u>	<u>MINORITIES</u>	<u>WOMEN</u>
Boilermaker	44.0%	All Trades Listed 10%
Bricklayers/Stone Masons	27.4%	
Carpenters	33.8%	
Carpet/Soft Title Workers	56.4%	
Cement Masons	61.9%	
Construction Teamsters	46.1%	
Drywall Installers	48.4%	
Electrical Workers	46.4%	
Elevator Constructors	46.7%	
Glaziers	50.0%	
Hod Carriers	50.0%	
Iron Workers, Re-Bar & Structural	46.0%	
Laborers	61.9%	
Lathers	36.6%	
Millwright	25.0%	
Operating Engineers	61.7%	
Painters/Tapers	47.0%	
Pile Drivers	33.8%	
Plasterers	47.7%	
Plumbers/Steam Fitters	48.1%	
Roofers	56.7%	
Sheet Metal Workers	41.2%	
Sprinkler Fitters	48.1%	
Terrazzo Mechanics	61.9%	
Tile Setter	56.3%	
Apprentices (all trades)	50.0%	

- K. Whenever possible, contractor and its subcontractors shall take affirmative action to employ persons from each ethnic group, both male and female, and to employ minority women among the women employed. Consequently, contractor or its subcontractors may be in violation of Chapter 12B if a particular ethnic group is employed in a substantially disparate manner.
- L. Neither the provision of a collective bargaining agreement nor the failure of a union with whom contractor has a collective bargaining agreement to refer either minority group persons or women shall excuse contractors' or its subcontractors' obligations under these provisions.



- M. Contractor and its subcontractors shall ensure that all forepersons, superintendents and other on-site supervisory personnel maintain a working environment free of harassment, intimidation, and coercion, with specific attention given to minority employees and women. In this regard, contractor, whenever possible, will assign two or more women to a job site.
- N. Contractor and its subcontractors shall ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and changing facilities shall be provided to accommodate all workers.
- O. Contractor will utilize the HRC designated outreach groups that recruit minorities and women for apprenticeship training as its recruiting source for apprentices on this job to the fullest extent permitted by any collective bargaining agreement or other contract or understanding to which contractor is a party, and will so notify every Joint Apprenticeship Committee (JAC) covering its workforce.
- P. Contractor agrees that the ratio of apprentices to journeypersons employed by contractor on this job will comply with the ratio required on public works projects by California Labor Code section 1777.5.
- Q. An authorized representative of contractor, its subcontractors and suppliers will actively participate in periodic compliance review meetings with a representative of the HRC to review progress and problems concerning the implementation of these requirements. The authorized representative of the company in attendance must have authority to commit the organization. Contractor shall be responsible to notify and to require the attendance of its subcontractors at such meetings.
- R. On the request of the HRC, contractor and its subcontractors shall permit access to all records that may be pertinent to minority and female workforce participation on the contract. Such information will be safeguarded.
- S. Non-Compliance and Sanctions:
 - 1. A complaint of discrimination or non-compliance in employment initiated by any party after contract award will be processed in accordance with the HRC Rules of Procedures, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
 - 2. A finding of non-compliance may result in imposition of financial penalties and debarment from City contracting.

4.04 LOCAL HIRING REQUIREMENT

- A. Pursuant to San Francisco Ordinance No. 134-03 (5/14/03), contractor promises to make good faith efforts, with the assistance of community based organizations designated by the City or local labor union hiring halls, to hire qualified disadvantaged residents of the City and County of San Francisco to comprise no less than 50% of contractor's total construction work force, measured in labor force work hours.
 - 1. Contractor shall keep, and provide to the City, an accurate record showing the name, place of residence, hours employed and per diem pay of each person employed by contractor, including full-time, part-time, permanent and temporary employees.



2. Contractor shall keep, and provide to the City, an accurate record describing in detail contractor's good-faith efforts to secure employment of residents of the City and County of San Francisco.
3. Failure to abide by these contract provisions may result in the imposition of sanctions and penalties, including those enumerated in the San Francisco Administrative Code sections 6.58 and 6.60.
4. The HRC will monitor and enforce the provisions of said ordinance which are applicable to this contract.

B. Definitions:

1. "Qualified individual" shall mean an individual who:
 - a. is eligible for certified apprenticeship program in an applicable trade,
 - b. has completed certified apprenticeship program in an applicable trade, or
 - c. has completed comparable time in an applicable trade.
2. "Resident of the City and County of San Francisco" shall mean an individual who is domiciled, as defined by section 200(b) of the California Election Code within the boundaries of the City and County during the entire time of the performance of the contract and who can verify his or her domicile, upon request of contractor or the City, by producing documentation such as:
 - a. A rent/lease agreement.
 - b. Telephone and utility bills or payment receipts.
 - c. A valid California driver's license or identification card.
 - d. Any other similar reliable evidence that verifies that the individual is domiciled within the City and County of San Francisco.
3. "Disadvantaged individual" shall mean an individual who has been unable to secure employment in his or her trade for more than 20 working days in the past six months, or whose annual maximum income falls within the income limits established by the Mayor's Office of Community Development Block Grant programs.



2. Pursuant to San Francisco Ordinance No. 134-03 (5/14/03), contractor promises to make good faith efforts, with the assistance of community based organizations designated by the City or local labor union hiring halls, to hire qualified disadvantaged individuals who are residents of the City and County of San Francisco to comprise no less than 50% of contractor's total construction work force, measured in labor force work hours.
3. Explain in detail your method of hiring and the provisions of your collective bargaining agreement (if applicable) that concern hiring procedures. This explanation should make quite clear the procedures to be followed when job applicants are referred to your company.

4. List below how many people you will assign to this project and in what trades (contractors only). Instructions for completing the tabulated data below are as follows:
 - a. Obtain HRC goals from Paragraph 4.03H (p.14)
 - b. Multiply column 4 by column 6 and place result in column 7
 - c. Multiply column 5 by column 6 and place result in column 8

Trade	Number of People	Number of Estimated New Hires	HRC Goal for Minority Participation (%)	HRC Goal for Women's Participation (%)	Total Hours Estimated in Each Trade	# Minority Hours	# Woman Hours
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			
			%	%			

SECTION III

I will ensure that my firm complies fully with the provisions of Chapter 12B of the San Francisco Administrative Code.

I acknowledge and am hereby advised that upon a finding of non-compliance with the provisions of Chapter 12B, the City is authorized to impose penalties which may include financial penalties and disqualification from providing goods and services to the City and County of San Francisco for a period not to exceed two years.

I declare that the above provisions are attested to under penalty of perjury under the laws of the State of California.

Owner/Authorized Representative (Signature)	Name of Firm, Partnership or Joint Venture
Name and Title (Print)	Date



HUMAN RIGHTS COMMISSION
CODES FOR CONSTRUCTION MONTHLY WORKFORCE TRACKING FORM

TRADE CODES		CLASS CODES		RACIAL DESIGNATIONS CODE			
1301	ASBESTOS WORKER	1212	MILL WORKER	01	Superintendent	A	Asian/Pacific Islander
1101	BOILERMAKER	1104	MILLWRIGHT	02	Foreperson	B	Black
1201	BRICKLAYER	1213	OPERATING ENGINEER	03	Journey Person	F	Filipino
1202	CARPENTER	1214	PAINTER	04	Apprentice	H	Hispanic
1203	CARPET WORKER	1223	PILE BUTT	05	Teamster	N	Alaskan/American Native
1302	CEMENT MASON	1105	PILE DRIVER	06	Admin Staff	O	Other
2223	CONSTRUCTION TEAMSTER	1211	PLASTERER	07	Laborer	U	Unknown
1204	DRYWALL INSTALLER/GYPSUM	1106	PLUMBER			W	White
1102	ELECTRICAL WORKER	1303	ROOFER				
1103	ELEVATOR CONSTRUCTOR	1402	SANDBLASTER				
2502	FIELD OFFICE	1215	SHEET METAL WORKER				
2503	FIELD SUPERVISOR	1216	SOFT TILE WORKER- LINOLEUM/FLOOR ASPHALT				
1205	GLAZIER	1107	SPRINKLER FITTER				
1401	GUNITTE WORKER	1108	STEAM FITTER				
1206	HOD CARRIER - BRICKLAYER	1217	STONE MASON				
1207	HOD CARRIER - PLASTERER	1218	TAPER-DRYWALL				
1209	IRON WORKER - REBAR	2224	TEAMSTER FOREMAN				
1208	IRON WORKER - STRUCTURAL	1219	TERRAZZO MECHANIC				
2403	LABORER	1221	TILE HELPER - MARBLE OR TILE FINISHER				
2501	LABORER FOREMAN	1222	TILE SETTER				
1210	LATHER						

CITY & COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



INTERIM HRC ATTACHMENT 4A *Requirements for General Services Request for Proposals* **FOR CONTRACTS \$25,000 AND OVER**

PART I GENERAL

1.01 PURPOSE

- A. To be eligible for award of this contract, each proposer must agree to comply with the following affirmative action requirements authorized by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14A (where applicable), and their implementing Rules and Regulations.
- B. Chapters 12B and 14A of the San Francisco Administrative Code and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14A and their implementing rules and regulations are available online at _____ or by calling the HRC office at (415) 252-2500.
- C. For assistance regarding Attachment 4A and the accompanying forms contact the HRC:
 - Human Rights Commission Main Office (415) 252-2500**
 - DBE Certification (415) 252-2537 or (415) 252-2530**
 For compliance with the Equal Benefits Program, please contact the HRC Main Office.



4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, the proposer must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The proposer and subcontractor on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, height, weight or AIDS/HIV status,. This includes employment, upgrading, demotion or transfer, recruitment, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Proposers must be in good faith compliance with the provisions of Chapter 14A and of the HRC Affirmative Action Program on all other currently held City contracts prior to award of this contract. This provision is pursuant to Chapter 6.55 of the San Francisco Administrative Code, which states in part:
 1. Prior to the award of any City contract, the HRC shall review the contract to ensure compliance with Chapter 12B.
 2. The HRC may stay the award of any contract that is the subject of an investigation by written notice to the contract awarding agency.

4.03 NON-DISCRIMINATION PROVISIONS

- A. Key Personnel. The proposing team must make every good faith effort to utilize economically disadvantaged persons as key personnel on this project.
- B. Workforce: HRC Employment Report:
 1. Nondiscrimination employment programs will be established as part of Agreement negotiated between the successful proposer and the Human Rights Commission. Businesses are required to hire, promote, and train disadvantaged persons in each job category. Businesses must further maintain an ethnic balance throughout all levels of its staff that reflects the statistical makeup of 2000 census data.
 2. The City and County recognizes that it has a joint responsibility to cooperate and participate with businesses to achieve the established goal. However, businesses retain the responsibility for showing evidence of compliance. In this regard, if the established goals are not reached, businesses must show the good faith efforts made in attempting to reach the goal. Use of non-traditional techniques in recruitment and hiring, e.g. community resource groups, DBE organizations, may prove to be useful tools and may be required in the achievement of these goal. HRC goal shall be negotiated in the following areas:
 - a. Full-time employment of disadvantaged persons in all job categories;
 - b. Employment of disadvantaged persons in management and decision-making positions. Part-time and/or summer employment as well as on-the-job training may also be negotiated as part of the agreement.