



**San Francisco Office of the City Administrator**

# LBEAC Director's Report

October 5, 2023

## Agenda

- 1) Introduce CMD staff assigned to Private-Public Projects
- 2) Chapter 14B Audit
- 3) Understanding LBE Enforcement
- 4) Code Change Updates
- 5) Updates

## Priorities

Activate public purse and role to create economic opportunity

Nurture ecosystem of diverse local businesses

Lead equity in contracting practices

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## CMD Audit

- Authorized in 14B.10 to annually randomly audit three prime contractors and 10% of joint ventures granted bid discount.
- Audit published August 8, 2023
- Auditor sample of 5 contracts
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- Efforts included review of LBE certifications, CMD memos, CMD forms, and other documentation such as invoices (including request for contractor and subcontractor invoices)

## Audit Findings

- ✓ All firms receiving LBE bonus were certified at time of bid
- ✓ LBE bid discounts/rating bonus properly applied
- ✓ No findings on PUC contracts
- CMD, Airport and Public Works did not have every CMD Form 7 and Form 9
- Firms did not disclose that non-LBE subconsultants performed work on the contract
- Firms had insufficient evidence of LBE invoices

## Audit Recommendations

1. CMD should work with departments to develop and implement processes that ensure prime contractors submit all required CMD forms in a timely manner
2. Continue efforts to research assigning penalties when contractors certify and submit inaccurate information to CMD.
3. Require forms 7, 8, 9 if they have knowledge of the major trade partner subcontractors who hire lower-tier subcontractors to perform the subcontracted work
4. Work with departments on contract closeout to obtain the actual dollar value of non-eligible work performed

## Director's Comments

- Auditor lens
- Subcontracting, including 1099s, is considered a subcontract. LBEs beware!
- CMD is prioritizing new contracts have documentation in FSP. As of July 1, 2023, newly executed contracts are in FSP. Paper and electronic documentation for first three months to ensure compliance.

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## Enforcement

*“Act of compelling observance of or compliance with a law, rule, or obligation”*

- Oxford Dictionary

*“The act of putting something such as a law into effect”*

- Black's Law Dictionary

## What has CMD been to enforce the small business inclusion programs?

### Certification

- Review of Certification criteria (licensure, ownership, experience, operational independence, size, etc.)
- Site Visits for Offices

### Time of Award

- Document review to comply with LBE subcontracting requirement
- Document review to comply with 14B Good Faith Requirements
- Panel approval and participate in selection process

### Post Award

- Monitor for under/non-utilization of a contract (includes list and dumping)
- Prompt payment
- False or misleading reporting
- Failure to comply with the program (e.g. lack of commercially useful function, back contracting)

## CMD Enforcement Efforts

### CMD Process

- Staff monitor/Intake
- Referral
- Fact Finding
- Technical Assistance
- Facilitated dialogue
- Conference and Conciliation
- Document

### CMD Actions

- Cure and Resolve
- Determine bid/proposals non-responsive
- Withhold contract payments
- Issue formal warning
- Assess penalties
- Debar a bidder under Chapter 28
- Revoke certification

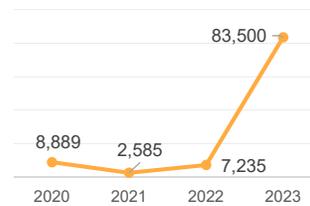
## Post-Contract Enforcement

Total Cases	Fine/ Restitution	Warning	Total
2020	1	10	11
2021	2	4	6
2022	3	4	7
2023 (to date)	2	6	8

Primes	#
LBE Only	4
Joint Venture with LBE Partner	8
Non LBE	18

Type of Contract	Cases
Public Works Construction	7
Public Works Professional Services	13
Chapter 21 – General Services/Non-Construction Professional Services	1
Development Agreement	1

Restitution/Fines in \$



## Director's Enforcement Comments

- System for measuring enforcement actions and impact requires improvement
- Early enforcement results in ability to cure and get people to work
- Need to reset with staff how to approach and negotiate resolutions
- LBE partnership required – especially with fact-finding stage
- Additional focus on Non-Chapter 14B Projects required
- Enforcement portal providing access to firms without relationships

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## Deliverable 1: Expanding MOHCD Opportunities

### Issue

Is the MOHCD program reaching the maximum number of projects?

### Implement

No! MOHCD/CMD collaboration revealed that the MOHCD Small Business Inclusion program could and should be applied to tenant improvement projects.

### Impact

Increases opportunities to LBE community.

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## Code Change Updates

By the Number	#
Future Advertisement	9
Advertised	4
Awarded	6
Cancelled	2

Separate Micro, Small & SBA –LBE Goals	#
Awarded	3 - 1 had to be rebid after Director's reinterpretation of Code
Future Advertisement	4

Pilot Neighborhood LBE Program	#
Awarded with Pilot Program Bid Discount / Rating Bonus	2
Awarded without Pilot Program Bid Discount / Rating Bonus	1 – 97% of the sub team was from 94124 Project Zip Code

Trucking – for CM/GC Contracts	#
Voluntary Commitment	1
Advertised	1
Future Advertisement	1

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## Director Comments

- CMD required to provide update 4 years and 6 months after start of pilot to the City Administrator on the efficacy of the program.
- Initial proposed rules and regulations for year 1 have ended, making project identification a little easier.
- Innovation and creativity required for incorporating these concepts into Development Agreements and projects with already executed contracts

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## Updates

### 1. LBE Directory

Deployment delayed as there are latency (it is moving too dang slow!) and not ready for prime time. **THANK YOU** for getting the word out on data verification. Data verification includes 250 Responses, ~70 additional site visit, and <10 firms that do not have accounts in Supplier Portal

### 2. Forecast Refresh

The refresh of the future City projects forecast is underway and will be published in the near future.

### 4. Contractor Development Program

Health and Safety Plan reviews are available – contact [cdp@imwis.com](mailto:cdp@imwis.com)

### 3. Staffing Updates

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# Questions