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*The District expresses its appreciation for representatives of the small business community who worked tirelessly over the past year to assist the District in developing this program.*

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# 1

## *SBE POLICY ON CONSTRUCTION WORK*

It is the policy of the San Francisco Community College District to encourage and facilitate full and equitable business opportunities, specifically in the area of construction contracting, for all small businesses wishing to do business with the District.

District staff will take affirmative steps to encourage Small Business Enterprises (SBEs) to participate on District construction public works projects at both the prime contractor and subcontractor level. Special effort will be undertaken to encourage small businesses to participate in educational opportunities available through the District that enhance their ability to perform work and business success.

Furthermore, it is the policy of the San Francisco Community College District to encourage its Construction and Construction-related Contractors to recruit and hire students/graduates of City College of San Francisco, as well as residents of the City and County of San Francisco as their employees.

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# 2

## *SBE PROGRAM ON CONSTRUCTION*

### *I. DEFINITIONS*

The following is a list of definitions for terms used throughout this SBE Program. The terms are arranged in alphabetical order.

- 1 “Bid” shall mean and include offer by a bidder or contractor to perform or provide labor, materials, or equipment to the District for a price.
- 2 “Bidder” shall mean a person or firm who submits a bid.
- 3 “Construction work” shall mean all public projects as defined by section 22002(b) of the California Public Contract Code, including construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any District-owned, leased, or operated facility. “Construction work” shall also mean maintenance as defined by section 20656 et seq. of the California Public Contract Code, including carpentry, electrical, plumbing, glazing, and other craft work consistent with preserving the District’s facilities in a safe, efficient, and continually usable condition.
- 4 “Contract” shall mean and include any agreement between the District and a person or company to provide labor, materials and/or equipment for construction work.
- 5 “Contractor” (See definition of prime contractor.)
- 6 “District” shall mean the San Francisco Community College District.
- 7 “Goals” shall mean the relevant share of Small Business Enterprise participation required by the District on construction services contracts for the required trades.

- 8 “Joint venture” shall mean an association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills and knowledge. Each party to the joint venture must hold a current, active license in good standing and must share in risks and gains to the extent of the party’s participation in the joint venture. To be counted for the purposes of this program, the individual firms of the joint ventures must be certified by the State of California Department of General Services or City and County of San Francisco’s Contract Monitoring Division (CMD) under section V, below. The District is not governed by the City & County of San Francisco, nor the Contract Monitoring Division. The District is only using the CMD certification as resource, as it is available to any member of the public.
- 9 “Small Business Enterprise” or “SBE” shall mean an independently owned and operated business which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with its affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees. Such firms include any that are certified by the State of California General Services Agency or the City and County of San Francisco’s Contract Monitoring Division.
- 10 “Emerging Small Business Enterprise” shall mean a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer with 25 or fewer employees.
- 11 “Operate” shall mean being actively involved in day-to-day management, and not merely acting as officers or directors.
- 12 “Participation” shall mean that in using one or more SBE firms to satisfy the District’s subcontracting requirements, the contractor may count toward his/her subcontracting goals only those SBE firms that perform a commercially useful function for payment.
- 13 “Prime Contractor” shall mean any person(s), firm, partnership, corporation, or joint venture that submits a bid to perform construction work, and/or enters into a contract with the District.

- 14 “Project” shall mean a contract or series of contracts required to complete construction work that meets prescribed occupancy and use criteria.
- 15 “Subcontractor” shall mean any individual, partnership, corporation or other legal entity entering into a contract with the prime contractor to perform a portion of the work or supply materials and equipment required to complete the project.
- 16 “Supplier” shall mean a firm with the financial and physical capability to purchase, to stock, to distribute, or to sell. The supplier shall stock the types and number of items consistent with the relevant industry practice, and have appropriate invoices and inventory located within the State of California.
- 17 “Target” shall mean the level of small business participation in construction contracts that the District encourages prime contractors to achieve in meeting goals for that project, based upon the types of trades required to perform the work.

## *II. POWERS AND DUTIES OF THE DISTRICT*

In addition to the powers and duties enumerated elsewhere in this Program, District staff will do the following:

The District’s Chancellor or designee shall assume primary responsibility for achieving the goals of this program and shall review, on a continuing basis, all aspects of the Program’s operations to assure that the purpose is being achieved.

When the District determines that it has reason to believe a company has committed fraudulent acts in representing that it is an SBE, the District may exempt the organization from future District contracts, enforce any of the penalties set out in section XVI, below, and/or report such fraudulent companies to the appropriate government authorities for criminal prosecution.

The Compliance Officer will have primary day to day responsibility to implement and enforce compliance with this Program.

The program requirements may be supported by the District hiring staff or by hiring an outside consultant with appropriate experience, as determined by the District.

Where there is any dispute or disagreement over the application, intent, or meaning of this program, the District in its sole discretion shall make the final determination.

III. GOALS AND INCENTIVES

There are two types of subcontracting goals: (1) overall program goals which represent the percentage of SBE subcontracting the District will seek to achieve on an annual basis on construction contracts, (2) construction contract specific SBE subcontracting goals which will be set on a contract-by-contract basis, as reflected below.

	Type of program	Size of Contracts Included
<b>Construction Prime Contracts</b>	SBE bid discounts up to 5%, or a maximum of \$50,000 per project	<i>Projects up to \$5 million</i>
<b>Construction Subcontracts</b>	SBE Subcontracting goals	All projects valued greater than \$250,000 with available subcontracting trades and supplier requirements

Section III.B. below addresses SBE subcontract goals, while section IV addresses prime contractor bid discounts.

A Overall Program Goals and Targets

**1. Overall Goals 45%**

The overall annual minimum SBE participation goal is forty-five (45) percent. This goal represents combined total SBE participation at the prime and subcontracting levels based upon dollars awarded. It is based upon eighteen (18) months (race neutral) historical participation of small local businesses on the District’s construction contracts without goals. This is not higher because the average overall participation of small local businesses tracked under District programs with and without goals is 31.5%. This overall goal may be reviewed and adjusted after additional data is made available from statistical reports for FY 2003/2004 and FY2004/2005.

**2. Construction Subcontracting Goals Minimum 25%**

Construction subcontracting goals will be established only on those contracts that have subcontracting opportunities. However, the minimum subcontracting goal on projects



with subcontracting opportunities shall be 25%. This minimum goal is based upon state guidelines, but as permitted by the Public Contract Code will allow bidders to demonstrate good faith effort if they are unable to meet the subcontracting goal. Depending upon the size of the contract, type of work required and availability of SBEs to perform the particular type of work, actual subcontracting goals will be higher on some contracts. Subcontracting goals will be applied to contracts by size as follows:

- **Emerging Small Business (ESBE) goals**
  - Emerging Small Business goals on contracts over \$250,000 but under \$1 million and those contracts estimated to cost over \$25 million
- **Small Business Enterprise (SBE) goals**
  - Small Business goals on projects over \$1 million

### *B Subcontracting Goals*

The sources used by the District to identify firms in meeting subcontracting goals are certification lists for: 1) the State of California Department of General Services and 2) the City and County of San Francisco's Contract Monitoring Division (CMD). Further information about these certification lists is discussed in section V below. The District accepts all firms certified by the CMD as certified SBE firms, as long as the firm meets the size standards defined in this document (unless otherwise deemed ineligible due to fraud or misrepresentation). This includes firms certified as LBE (Local Business Enterprise).

It is the objective of the District that SBE goals are met on each construction contract awarded. No contract with SBE goals shall be awarded to any contractor who has failed to meet these goals, unless the contractor has made a bona fide good faith effort to meet the goals, but was still not able to do so. Failure to meet subcontracting goals or meet good faith effort requirements may result in forfeiture of a bidder's bid bond.

For projects over \$25 million, second-tier contracting may be used. ESBE or SBE subcontracting may be used to meet the SBE goal through a listed non-SBE firm subcontracting for work in excess of \$1 million. SBE suppliers' participation shall only count at 60 percent of the suppliers' dollar participation amount. Trucking subcontractor participation will count 100 percent for direct services and 60 percent for brokered trucking.

*IV. BID DISCOUNTS*

The District is offering SBE firms an incentive bid discount on *all* construction contracts greater than \$15,000 but less than \$5 million. Bid discounts are intended to counterbalance the competitive disadvantage experienced by small business enterprises. As such, eligible bids will have the bid discount applied to determine the apparent low bid. Bid tabulations will take into account the apparent low bid based upon bid discount adjustments. The contractor receiving the bid discount would still be paid the amount bid, if deemed the lowest responsible bidder.

The discounts will apply as summarized in the following table:

<b>Available Bid Discounts</b>	
<b>Non-SBE Construction Prime Contracts</b>	No SBE Bid Discounts
<b>SBE Construction Prime Contracts</b>	SBE Bid Discounts of 5% or \$50,000 maximum, if the subcontracting goal is met.

**Joint Venture Prime Bid Discounts**

The District would like to encourage SBE firms to bid as prime contractors. As such, the District may extend up to a five percent (5%) discount to a prime contractor that meets the SBE subcontracting goals as an SBE joint venture team. Therefore, the SBE joint venture will be eligible to receive a five percent (5%) deduction from their original bid amount, making their bid more competitive. This bid discount will not affect the amount a contractor will be paid on performance of a contract. The total amount of the discount will not exceed \$50,000 pursuant to state guidelines.

- 1 Joint ventures with SBE participation:
  - i) A two percent (2%) bid discount if SBE participation in the joint venture is more than thirty-three percent (33%) but less than fifty-one percent (51%) and meets the subcontracting goal; or
  - ii) A three percent (3%) bid discount if SBE participation in the joint venture is fifty-one percent (51%) to ninety-nine percent (99%) and meets the subcontracting goal.
  
- 2 A five percent (5%) bid discount to two SBE prime contractors forming a Joint Venture team and meeting the subcontracting goal.

**A joint venture prime contractor may claim no more than one of the above bid discount options.**

## V. *CERTIFICATION OF SBE FIRMS*

### *A Certification Standards*

**Small businesses must be certified prior to the time proposals are due in order to receive credit toward the achievement of the SBE goals.** Firms certified by the City and County of San Francisco's Contract Monitoring Division (CMD), are considered SBEs as long as the firm meets the size standards defined in this document under Definitions Section I. The District may request verification of the size standard being met by requesting documentation such as, but not limited to financial statements or tax returns.

The CMD list of certified firms is located on the Internet at <https://sfgov.org/cmd/>. CMD certification requires demonstration of economic disadvantage. For this reason, CMD certification is accepted by the District.

Firms certified by the State of California Department of General Services (DGS) are also accepted under this program to benefit small business enterprises. These firms are listed on the DGS website at [www.dgs.ca.gov](http://www.dgs.ca.gov).

### *B Investigations and Challenges of SBE Status*

The District may, at its sole discretion, initiate an investigation of a certification if it has reason to believe there is some question regarding the degree of ownership and control, as gross receipts size standard. An investigation may also be initiated if a person, another firm, or an organization protests the certification of a SBE. The protest must be in writing, addressed to the Contract Compliance Officer, and must clearly delineate the character of the protest, and must state the reasons, including any evidence, that the protester questions the validity of a SBE or certification. Such protest based upon SBE eligibility to meet subcontracting goals or receive bid discounts must be made within ten days (10) business days after bid opening.

The District will forward this information to the appropriate agency, and in addition, may independently investigate the complaint. If, upon completion of the investigation, the District determines that the complaint is meritorious, it will not include the challenged firm's participation in its calculation of goal attainment. Furthermore, contract awards

based upon bid discounts will be deemed void. The District may also levy penalties against the challenged firm as described in Part XVI, below.

*VI. CONTRACT SIZE*

The District will use its best efforts to design contracts to most effectively enhance the opportunity for participation by SBE firms to the maximum extent feasible in accordance with applicable law. When feasible, the District will direct its project designers to identify work that could be performed by small businesses. The District will use its best efforts to encourage SBE firms to bid on the smaller units of work. Construction projects which are estimated to cost more than the advertisement threshold for construction work set forth in sections 22002 et seq. and 20656 et seq. of the California Public Contract Code, and which will take place at different locations, may be segmented and awarded separately. In determining whether projects should be divided, the following criteria will be reviewed:

- Whether the project takes place in more than one location;
- The size and complexity of the project;
- The similarity of work involved;
- Difficulty of dividing the project;
- Public safety and convenience; and
- Project segmentation cost.

*VII. PRE-AWARD PROCESSES*

Written SBE procedures will be established for the procurement of construction services. These procedures will guide the implementation of the pre-award process and should be developed within three (3) months of adoption by the Board of Trustees and updated as necessary to assure effective program implementation.

*A Draft Procurement and Contracting Documentation*

District project managers or their designee will include the SBE requirements in their project manual for each contract bid. This documentation will be developed consistent with the District's SBE program, as well as budgetary and other considerations. Upon receipt of draft project manual and bid announcement documentation, the Contract Compliance Officer will review the relevant documents to ensure inclusion of appropriate language to meet SBE requirements. Project manuals can be released after such review by the Contract Compliance Officer and his/her approval of the SBE subcontracting goals.

## *B Good Faith Effort to Attain Goals*

It is the policy of the District to meet its subcontracting goals for SBE participation, where applicable. In order to award a contract to a prime contractor that has failed to meet the SBE subcontracting goals, the District must determine that the prime contractor's efforts were those of a prime contractor actively and aggressively seeking to meet the goals. Efforts that are merely *pro forma* are not good faith efforts to meet the goals. Efforts that could not reasonably be expected to produce a level of SBE participation sufficient to meet the goals are not good faith efforts, even if they are sincerely motivated.

## *C Good Faith Effort Criteria*

The following actions represent to the District a prime contractor's evidence of minimum good faith effort to meet the District's SBE subcontracting goal. A prime contractor must achieve a minimum score of 80 points to demonstrate a bona fide good faith effort:

### **1. Advertising (5 points)**

**Effort:** The contractor shall advertise in the general circulation media, minority focused media, or trade related publications at least twice, 10 days prior to submission, unless the District waives this requirement due to time constraints.

**Documentation:** Copies of the advertisement. The advertisement shall include the name and location of the project, the location where plans and specifications can be viewed, the subcontractor proposal due date, and the items of work or specialties being solicited.

### **2. Bidders Outreach to Identify SBEs (15 points)**

**Effort:** The Contractor shall attempt outreach to small businesses by utilizing the City and County of San Francisco's Contract Monitoring Division and State of California Department of General Services on-line database of certified firms.

**Documentation:** Copies of the letters, faxed telephone logs, etc. used to contact prospective subcontractors. List the name of the organizations or firm, person contacted, and the date of contact. Include copies of correspondence received from any organization or firm responding to the bidder's solicitation or initiating contact for the purpose of seeking subcontracting work. The contractor must contact at least three firms/organizations or an amount sufficient to reasonably result in a viable subcontract.

Bidders must submit documentation of good faith efforts to contract with, or to purchase significant material supplies from, SBE firms within **48 hours** after the bid opening. If a Contractor/bidder fails to meet specified SBE goals in the bid documents, the District must determine that the Contractor has complied with all requirements of the solicitation documents and has made the required good faith effort.

**3. Attending the Pre-Bid Meeting (5 points)**

**Effort:** Attendance is mandatory to comply with the good faith effort requirement. However, attendance may be optional if the SBE participation goal is met.

**Documentation:** The Contractor's name on the pre-bid meeting sign in sheet and representative presence at the pre-bid meeting.

**4. Providing Timely Written Notification (20 points)**

**Effort:** The Contractor will solicit subcontract bids and material quotes from relevant individual SBEs in writing and in a timely manner to reasonably result in the SBE goal being met. Relevant SBEs are firms that could feasibly provide services or supplies required for completing the scope of services provided in the bid document. In soliciting sub-bids, quotes, and proposals, the Contractor will furnish the following information:

- Contractor's name, address, and telephone number;
- Project location and description;
- Solicited items of work services to be subcontracted or materials purchased, including a specific description of the work involved;
- Place where bid documents, plans, and specifications can be reviewed;
- Contractor representative to contact; and
- Date, time, and location when subcontractor/supplier quotes must be received by the Contractor.

**Documentation:** Copies of the written correspondence with the name, address, contact person of the subcontractor, and the date of the written notice. Written notification must be dated as transmitted at least 10 business days prior to the bid due date and include verification of transmission date. Such verification may include copies of certified mail-

return receipts and automated fax journals. An adequate number of SBEs must be contacted in each work category as listed in the following table:

<b>Number of SBEs in Relevant Work Category</b>	<b>Minimum Number of SBEs to be Contacted for Relevant Work</b>
Five or less	All
Six to 10	At least five
11-50	At least 50 percent
51 or more	At least 25

**5. Initial Contact Follow-up (15 points)**

**Effort:** The Contractor shall follow up on initial solicitations by contacting the SBE subcontractors prior to the bid opening to determine with certainty whether the subcontractors were interested in performing specific items of work on the project. Such contact shall be within a reasonable amount of time to allow the prospective SBE subcontractor an opportunity to submit a competitive sub-bid.

**Documentation:** The list of subcontractors who were contacted by telephone including results of that contact documented with a telephone log, e-mail print-out, automated fax journal or fax transmittal documents. Include names of the SBEs, telephone number, contact persons, and dates of contact.

**6. Identifying Items of Work (15 points)**

**Effort:** The Contractor shall identify specific items of the work to be performed by subcontractors. Smaller portions of work or other assistance that could reasonably be expected to produce a level of SBE participation sufficient to meet the goals should be offered to prospective SBE subcontractors.

**Documentation:** The list of the specific items of work solicited including identification of SBE firms in which such work was solicited.

**7. Negotiating in Good Faith (15 points)**

**Effort:** The Contractor shall negotiate in good faith with the SBE, and not unjustifiably reject as unsatisfactory sub-bids, quotes, and proposals prepared by SBEs.

**Documentation:** Written statements of the names, addresses, and telephone numbers of subcontractors contacted by the Contractor to negotiate price or services. Include dates of the negotiations and the results. Document the quotes/proposals received from SBEs. Lack of qualifications or significant price difference (five (5) percent or more) will be

considered just cause for rejecting SBEs. Proof of price differential must be made available.

**8. Offer Assistance in Financing, Bonding, Insurance or to Mentor an Emerging Small Business Enterprise (10 points)**

**Effort:** Where applicable, the Contractor shall advise and make efforts to assist interested SBEs in obtaining bonds, lines of credit, or insurance required by the District. A prime contractor may also receive 10 points for good faith effort by offering mentoring assistance to an Emerging Small Business Enterprise.

**Documentation:** Written statements of the type of assistance offered to SBEs. The Contractor shall provide the name, contact person, and telephone number of the bonding company or financial institution offering assistance.

To claim points for mentoring an Emerging Small Business Enterprise, the prime must submit a mentoring plan that is subject to the District's approval for one or more of the Emerging Small Business firms included on the subcontractor list for the project. There must be at least 20% SBE/Emerging Small Business Enterprise subcontracting participation on the project. The Mentoring plan outcomes, such as enhanced capability to bid projects as a prime, new skills in estimating projects, completing project schedules, hiring subcontractors, acquiring additional licenses or certification, access to capital, additional bonding capacity and etc.

*D Good Faith Effort Review*

If a contractor has not met the goals for SBE participation, the District will review the Good Faith Effort and make a recommendation to the Board of Trustees as to whether the bid should be accepted or rejected. The Compliance Officer will make a determination of whether the contractor made a good faith effort to attain the goals. In addition to other actions in investigating the bid, the Contract Compliance Officer may contact the SBE firms listed on the Good Faith Effort Report to verify the information provided by the contractor. When requested by the District, the contractor will also provide further documentation regarding its efforts to attain SBE participation.

*E Good Faith Effort Appeal of Contract Compliance Officer Decision*

Whenever the Contract Compliance Officer recommends rejection of a bid that has not met the subcontracting goals, the contractor may appeal that denial to the Chancellor or his/her designee. The Chancellor may also review the Contract Compliance Officer's decision to award a contract based on good faith effort when the SBE goal is not met.



The Chancellor or his/her designee may overrule the Contract Compliance Officer's decision to deny an award of a contract to a contractor who has not met the goals only if the Chancellor or designee determines that the contractor took the required steps in making a good faith effort to solicit SBE participation.

The decision of the Chancellor or his/her designee on the contractor's good faith effort shall be final.

## *VIII. TARGETED OUTREACH*

### *A Annual Construction Outreach Meeting*

An annual meeting will be held with the small business community to inform them of contracting opportunities anticipated in the next year.

### *B Public Notice of Contract Opportunities*

Notice of construction request for bids will be provided by the District to SBE contractors and subcontractors. These efforts will include but not be limited to:

- Solicitation notices and information distributed through targeted mailers, faxes, and e-mails to SBE firms
- Solicitation notices and information provided at special outreach events
- Solicitation notices and information published at the District's Contracting Web located at [www.ccsf.edu](http://www.ccsf.edu), and
- Personal contact with firms by District staff to offer general information about advertised and upcoming contracts

In coordination with the Contract Compliance Officer, the Office of Facilities Planning and Construction may provide special forums and targeted outreach activities tailored to larger individual projects 90 days prior to solicitation.

On a regular basis (not less than monthly), the District will distribute announcements on its Web site providing information on upcoming construction opportunities.

### *C Pre-Bid Meetings and Pre-Construction Meetings*

On selected large projects, the District will hold pre-bid meetings to explain the process for meeting the provisions of the SBE Program. Information on the SBE program requirements shall be made available by the District to prospective bidders at the pre-bid

meeting. Attendance at these pre-bid meetings will be mandatory and count toward a consultant's good faith effort to meet the SBE program goals. In addition, information on meeting SBE program requirements will be provided at all pre-construction meetings. All listed subcontractors may be required to attend the pre-construction meeting.

*IX. BID SUBMISSION*

Prime contractors must submit with their bids an Identification Listing for Prime contractors and Subcontractors. This form will identify the particular SBE firms to be utilized in performing the work, specifying for each, the dollar value of the participation, the types of work to be performed, and such information as may reasonably be required to determine the responsiveness of the bid. This form will be available for public review.

Prime contractors must submit with the bid an Affidavit of Non-Disciplinary or Investigatory Action, attesting that no adverse action has been taken against them by the Equal Opportunity Commission, State of California Department of Fair Employment and Housing, or the U.S. Department of Labor Contract Compliance Program. If any action has been taken, the consultants must provide an explanation for any such actions, except where legal action is pending.

*X. CONTRACT IMPLEMENTATION*

During the contract implementation phase, the Office of Facilities Planning and Construction is responsible for contract oversight, with support and assistance from appropriate District offices. The Contract Compliance Officer has authority to monitor compliance and enforce the provisions of this program throughout the contract duration. The Chancellor, and/or designee is the final arbitrator of any and all contract issues.

*XI. DISPUTE RESOLUTION PROCESS*

The District, at its sole discretion, may establish a process for resolving disputes that arise out of this program that occur during the post-award phase of construction contracts.

*XII. CONTRACT COMPLIANCE*

*A Assessing Participation*

The prime contractor is responsible for ensuring that those SBEs committed to perform work under the contract perform a commercially useful function. Failure to fulfill this obligation will be considered a breach of the contract and damages may be assessed.

The prime contractor will be given credit toward the SBE goals only when the SBE performs a commercially useful function. The District will consider that a commercially useful function has been performed when the SBE is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal industry practice, and when the firm receives due compensation as agreed upon for the work performed.

In order to perform a commercially useful function, SBEs must manage the work they have contracted. This management must include scheduling work operations, ordering equipment and materials, preparing the submitted payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees. The SBE must perform the work of the contract with its own workforce. A limited portion of the work may be subcontracted consistent with normal industry practice.

The District will count sixty percent (60%) of the materials, supplies and services purchased from SBE suppliers. A supplier is a firm that owns, operates, or maintains a warehouse or store in which the materials, supplies, or equipment described in the specifications and required under the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

### *B Monitoring Compliance*

Contractors must maintain the SBE percentages indicated at the time the contract is awarded throughout the term of the contract. The only exception is when an amendment expands an area of work where a non-SBE firm is currently providing services on a contract or reduces the scope of work committed to the SBE. Where there has been an amendment adding a new requirement, the prime contractor must maintain the SBE percentages indicated at the time the contract is awarded.

The District will monitor compliance with these requirements during the term of the contract. If there is cause to believe that a contractor or subcontractor has failed to comply with any of the requirements of this Program, or the contract provisions pertaining to small business enterprise utilization, the District will notify the contractor. The District may require such reports, information, and documentation from contractors, subcontractors, and bidders as are reasonably necessary to determine compliance with the requirements.

Firms found to be in violation of these provisions may be subject to penalties described in section XVI, below.

*XIII. SUBCONTRACTOR UTILIZATION*

Compliance, reporting, and tracking for construction contracts require the collection and maintenance of complete contract data. The Contract Compliance Officer, working with the appropriate District Office, will maintain on a centralized database, information about the bid process, award, and implementation, including amendments, actual payments, and subcontractor use. This information gathering is essential to the District's ability to monitor compliance and make improvements in the contracting process. Subcontractors whose scope of work has been reduced will be afforded an opportunity to review the modification with the District. The names of companies listed on the successful bid will be posted.

*A Workforce Compliance*

Prior to being awarded a contract, each firm must submit to the District the following Equal Employment Opportunity Statement on the firm's letterhead:

\_\_\_\_\_, agrees that it shall not discriminate against any employee in the workplace or against any applicant for such employment because of race, religion, sex, color, or national origin, handicap, age, gender identification, or sexual orientation.

As a part of the contract award process, the successful bidder must submit information with its contract to verify compliance with this policy, as well as the District's policy encouraging contractors to hire City College of San Francisco students/graduates and City and County of San Francisco residents.

*XIV. SUBCONTRACTOR SUBSTITUTION*

No substitution can be made of a listed subcontractor without the prior written approval of the District. The subcontractor will be notified in writing of a substitution. In the event a SBE subcontractor is to be replaced, the contractor shall be required to make good faith efforts to replace the original SBE firm with another SBE firm. The procedures for reviewing the contractor's good faith efforts will be as set out above.

*XV. PROMPT PAYMENT*

Contractors submitting invoices are to be paid by the District within 30 days of submitting an approved invoice. Contractors must bill the District on a monthly basis for

all work performed the pervious month.

The District's Project Managers will acknowledge acceptance or disapproval of invoices within five (5) business days upon receipt. The District will pay undisputed invoice items within 30 days upon receipt and acceptance, less up to 10 percent standard contract retention.

The District will process construction change orders promptly. The District will make every effort to submit appropriate construction change orders to the Board of Trustees for approval at the following Board of Trustee's meeting.

The District expects prime contractors to pay subcontractors within 30 business days after submission of an approved invoice. Prime contractors will notify subcontractors within five (5) business days of any disputed amounts and pay all undisputed amounts within 30 days of the subcontractor's invoice submission. Failure to comply with this Public Contract Code requirement may be deemed a material breach of contract.

#### *XVI. ENFORCEMENT PENALTIES*

Legally enforceable penalties will be included in all contract specifications and contracts. During project compliance reviews, if contractors are found to be in non-conformance with program requirements, penalties will be imposed. These penalties may include the District taking the following actions:

- 1 Declaring the contractor non-responsive and ineligible to receive the award of the contract;
- 2 Suspending the contract;
- 3 Withholding funds proportionate to the violation;
- 4 Rescinding the contract based upon a material breach of contract pertaining to SBE utilization; or status; termination of contract;
- 5 Disqualifying a bidder, consultant, or other business from eligibility for providing goods or services to the District for a period not to exceed two years and/or
- 6 Disqualifying a business' status as a SBE under the District's program.

#### *XVII. REPORTING AND TRACKING*

Information on the SBE Program shall be reported to the Board of Trustees at least twice annually. The District will request information on the ethnicity and gender of all businesses utilized on District contracts. This information will be used for tracking and information purposes.

*XVIII. BUSINESS SUPPORTIVE SERVICES*

The District's Small Business Development Center will provide general business assistance information on where to go to obtain business start-up materials, license requirements, general business training and assistance, and financial assistance. The business assistance will be provided in cooperation with public and private agencies, the Small Business Administration, construction and construction-related organizations, and through the District's course offerings and other public and private sources of business training and financing.

The District's Small Business Development Center will refer SBEs to existing training classes. As feasible, customized training classes to enhance the success of small businesses bidding on District construction contracts may be offered in coordination with the District's Contract Compliance Officer.

*XIX. STAFF TRAINING*

A comprehensive staff training program will be provided to all appropriate District personnel. The Program will be designed to ensure that all staff with construction and construction-related professional service contract procurement and project management responsibilities are competent in contract administration, possess skills to evaluate appropriate project size, calculate subcontracting goals, knowledgeable of and committed to District programs aimed at encouraging equal opportunity in contracting. This training will be included in the new employee orientation program and offered as needed.

*XX. PROGRAM REVISIONS*

The Chancellor or designee shall review proposed policy and program changes as well as the performance and outcomes of District contracting. The Chancellor at his/her discretion may establish an appropriate committee to assist with making necessary changes to the program through committee recommendations.

*XXI. PROGRAM REVIEW*

The District will review this program annually. Changes in the program that are required to administer it more effectively may be made by the District at any time.

*XXII. RULES, REGULATIONS, REQUIREMENTS, AND FORMS*

The District shall be authorized to issue rules, regulations, requirements, and forms required to effectively implement this program. The initial Rules, Regulations, Requirements and Forms accompany this program document as a part of the policy approval Board of Trustees action.

*XXIII. SEVERABILITY*

The provisions of this Program are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Program, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Program, nor the validity of its application to other persons or circumstances.