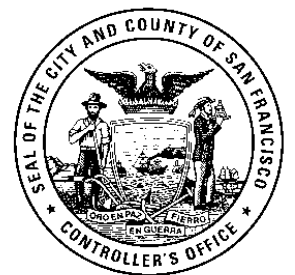


Two of the Three Prime Contractors and One of the Two Joint Ventures Audited Did Not Fully Comply With Certain Provisions of Chapter 14B, the Local Business Enterprise Ordinance

Contract Monitoring Division



August 8, 2023

City & County of San Francisco
Office of the Controller
City Services Auditor

About the Audits Division

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that voters approved in November 2003. Within CSA, the Audits Division ensures the City's financial integrity and promotes efficient, effective, and accountable government by:

- Conducting performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of service delivery and business processes.
- Investigating reports received through its whistleblower hotline of fraud, waste, and abuse of city resources.
- Providing actionable recommendations to city leaders to promote and enhance accountability and improve the overall performance and efficiency of city government.

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Audit Authority

CSA conducted this audit under the authority of the San Francisco Charter, Section 3.105 and Appendix F, which requires that CSA conduct periodic, comprehensive financial and performance audits of city departments, services, and activities.



OFFICE OF THE CONTROLLER

CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

August 8, 2023

Stephanie Tang, Director
Office of the City Administrator – Contract Monitoring Division
1155 Market Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Tang:

The Office of the Controller (Controller), City Services Auditor (CSA), Audits Division, presents its report on the audit of the contractor compliance with the San Francisco Administrative Code, Chapter 14B, Local Business Enterprise (LBE) Utilization and Non-Discrimination in Contracting Ordinance. The audit, conducted by Sjoberg Evashenk Consulting, Inc., (SEC), meets the ordinance's requirement that the Contract Monitoring Division (CMD) director, in cooperation with the Office of the Controller, randomly audit at least three contractors and 10 percent of joint ventures granted bid discounts in each fiscal year to ensure their compliance with the ordinance. The audit assessed whether the three selected contractors and two joint ventures disclosed all subcontractors, met their LBE participation commitments, submitted all required CMD forms, and whether contracts were adequately monitored for LBE compliance.

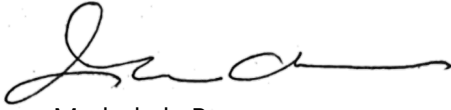
The audit found that all prime contractors and subcontractors were appropriately LBE-certified, as applicable, but two of the three prime contractors and one of the two joint ventures in our sample did not fully comply with certain LBE provisions of Administrative Code Chapter 14B. In particular:

- CMD and the Airport could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract.
- One of the joint ventures did not disclose that non-LBE subconsultants did work under an Airport professional services contract.
- One prime contractor's LBE participation under an Airport construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.
- Another prime contractor's LBE participation under a San Francisco Public Works construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.

The report makes four recommendations for CMD to work with contracting departments to improve compliance with the ordinance. The responses of the departments are attached in the appendix. CSA will work with your department to follow up every six months on the status of the open recommendations made in this report.

CSA and SEC appreciate the assistance and cooperation of all staff involved in this audit. For questions about the report, please contact me at mark.p.delarosa@sfgov.org or 415-554-5393 or CSA at 415-554-7469.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark de la Rosa', with a long horizontal flourish extending to the right.

Mark de la Rosa
Director of Audits

cc: Board of Supervisors
Budget Analyst
Civil Grand Jury
Citizens Audit Review Board
City Attorney
Mayor
Public Library

City and County of San Francisco
Office of the Controller, City Services Auditor

Audit of Contractor Compliance With
Chapter 14B-Local Business Enterprise (LBE) and
Non-Discrimination in Contracting Ordinance



Executive Summary

Purpose of the Audit

As required by the San Francisco Administrative Code, Chapter 14B, *Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance*, the Office of the Controller's City Services Auditor assessed whether the three selected contractors disclosed all subcontractors, met their LBE participation goals, and submitted all required Contract Monitoring Division (CMD) forms, and whether contracts were adequately monitored for LBE compliance.

Highlights

Pursuant to the San Francisco Administrative Code, Chapter 14B, the City and County of San Francisco (City) assists small and micro local businesses to increase their ability to compete effectively for the award of city contracts. The Mayor's Office establishes citywide goals for participation by small and micro local businesses in contracting. The City then provides the bid discounts, set-asides, and subcontracting opportunities set forth in the ordinance, information and training, and other assistance to small and micro local businesses that commit to meeting LBE participation goals.

Based on a sample of five contracts, the audit found:

- CMD and the Airport could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract.
- PGH Wong Engineering, Inc., and MCK Associates Joint Venture did not disclose that non-LBE subconsultants performed work under an Airport professional services contract.
- The LBE participation of Wickman Development & Construction under an Airport construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.
- The LBE participation of Shaw Pipeline, Inc., under a Department of Public Works construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.

Recommendations

The report includes four recommendations for CMD to work with the contracting departments to improve compliance with the provisions of Chapter 14B:

The Contract Monitoring Division should:

1. Work with the relevant departments to develop and implement processes that help ensure prime contractors submit all required CMD forms in a timely manner.
2. Continue efforts to research whether it can assign penalties when contractors certify and submit inaccurate information to CMD.
3. Require departments and prime contractors to indicate on CMD forms, such as forms 7, 8, and 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 at contract closeout to obtain the actual dollar value of non-LBE-eligible work performed to be used in the calculation of final LBE credit to be awarded instead of using the estimated value provided by the contractor from the time of contract award. The new process should include requiring Form 8 information to distinguish between payments received that are associated with LBE-eligible work and those associated with non-LBE-eligible work—for non-LBE-eligible work, require the contractor to specify what portion of the scope of work performed was ineligible.

INTRODUCTION

Audit Authority

The San Francisco Administrative Code (Administrative Code), Section 14B.10, requires the director of the Contract Monitoring Division (CMD), in cooperation with the Office of the Controller (Controller), to randomly audit at least three prime contractors and 10 percent of joint ventures granted bid discounts in each fiscal year to ensure their compliance with the provisions of the *Local Business Enterprise and Non-Discrimination in Contracting* Ordinance. Further, the San Francisco Charter provides the Controller's City Services Audit (CSA) with broad authority to conduct audits. Sjoberg Evashenk Consulting, Inc., conducted this audit on behalf of CSA under these authorities.

Background

Chapter 14B allows the City to help small businesses and prohibit discrimination in the award and administration of city contracts.

The City and County of San Francisco (City) has a long history of working to end discrimination in all aspects of public contracting. In 1984 the City's Board of Supervisors enacted a law (Ordinance No. 139-84) to combat the City's active and passive participation in discrimination against minority- and women-owned businesses, both in its contracting for goods and services and in the private market for such goods and services. However, due to a 2004 court order (*Coral Construction, Inc. v. City and County of San Francisco*), the City was enjoined from enforcing key provisions of that ordinance, codified as Administrative Code Chapter 12D.A, *Minority/Women/Local Business Utilization*. Therefore, in 2006 a replacement ordinance, codified as Administrative Code Chapter 14B, became effective to allow the City to continue to help small businesses and prohibit discrimination in the award and administration of city contracts.

Pursuant to Chapter 14B, the City assists small and micro local businesses to increase their ability to compete effectively for the award of city contracts. The Mayor's Office establishes citywide goals for participation by small and micro local businesses in contracting, then the City provides the bid discounts, set-asides, and subcontracting opportunities set forth in the ordinance, information and training, and other assistance to small and micro local businesses that commit to meeting LBE participation goals. CMD distinguishes between the LBE goal requirement set at the time of bid and the LBE commitment the contractor agrees to achieve during the life of the contract, which may be the same or higher than the set goal.

The certification unit grants three types of certifications.

A business contracting with the City may be eligible for one of three types of certifications:

- Local Business Enterprise (LBE) certification for businesses headquartered in San Francisco,
- Public Utilities Commission Local Business Enterprise (PUC-LBE) certification for businesses headquartered in the "SFPUC Waterway System Area," or

- Nonprofit Enterprise (NPE) certification for nonprofit entities headquartered in San Francisco.

These certifications promote the participation of local businesses in city contracts. Specifically, certified businesses benefit from bid discounts, subcontracting goals, and micro-set asides that are established for most city contracts. To receive these benefits, a business must be certified with the City before the submittal of a bid or proposal. Chapter 14B allows bid discounts to firms certified as a small or micro-LBE: 10 percent bid discount for contracts greater than \$10,000 and less than \$10 million, and two percent bid discount for contracts greater than \$10 million and less than \$20 million. Eligible LBEs are granted certification for one year or three years, depending on several factors, and during the certification period the City retains the right to audit a firm's eligibility to remain certified.

Since 2012, the Contract Monitoring Division has administered Chapter 14B. CMD includes a certification unit, which grants various types of certifications to local businesses.

Organizations that receive city contracts are subject to Chapter 14B's Rules and Regulations. Contractors' monthly billings to each contract-awarding department must include various completed forms to document compliance with the rules, such as Form 7 (Progress Payment Form) and Form 9 (Payment Affidavit). With the final Form 7 submitted, the prime contractor and any LBE subcontractors are required to complete Form 8 (Exit Report and Affidavit), on which the LBE subcontractors are to state how much they were paid and if they subcontracted out any of their work to LBEs or non-LBEs.

Further, if the contract-awarding department has modified a contract by more than 20 percent of its original amount, CMD should receive written notification within 10 days of each modification. The prime contractor is to complete Form 10 (Contract Modification Form) when all amendments, modifications, or supplemental change orders cumulatively increase the original amount by more than 20 percent, and for all subsequent modifications.

Under Chapter 14B, failure to submit any contract forms documenting compliance with the ordinance may result in sanctions, including, but not limited to, withholding of progress payments and final payments.

Objectives

The purpose of the audit was to determine whether the contractors selected for audit complied with the provisions of Chapter 14B. Specifically, the audit determined whether the:

1. Prime contractors that received bid discounts and LBE subcontractors were LBE-certified.
2. Prime contractors disclosed all subcontractors and whether all parties performed the work as detailed in CMD forms.
3. Required CMD forms were submitted and LBE commitments were met.

Scope and Methodology

The audit objectives excluded evaluating CMD's monitoring processes.

The audit covered July 1, 2021, through June 30, 2022. Using a list of contracts active during the audit period from CMD, we stratified the list by department and contract size and selected five contracts from different departments. Exhibit 1 shows the five selected contracts: three prime contractors (construction) and two joint ventures (professional services).

Exhibit 1		The five contracts selected for audit			
Contract Number	Awarding Department	Contract Name	Prime Contractor	Total Contract Payment Amount ^a	LBE Commitment
1000013160	AIR	Materials Testing Lab	Wickman Development & Construction (Wickman)	\$5,224,474	26.59%
1000000981	DPW	Masonic Avenue Streetscape Improvement	Shaw Pipeline, Inc. (Shaw)	\$17,912,296	40.33% ^b
1000019373	PUC	STS Combined Sewer Discharge	Trinet Construction, Inc.	\$3,967,816	14.15%
1000006305	AIR	Project Management Support Services for Airport Hotel Program	PGH Wong-MCK Joint Venture	\$14,392,071	22.00%
1000021473	PUC	Construction Management Services for the East Bay Region	Cooper Pugeda Management/CM Pros Joint Venture	\$1,238,857	17.00%

Legend: AIR = Airport; DPW = Department of Public Works; PUC = Public Utilities Commission

Notes:

^a Per department accounting records.

^b CMD award memo incorrectly reflected a LBE participation commitment of 35.76% for this project.

Where available, we reviewed required CMD forms for documentation of compliance and tested available contractor-submitted invoices for accurate and detailed supporting documentation. To understand the monitoring process, including internal controls over payments, we interviewed the departments' project managers and CMD staff, including the contract compliance officer assigned to those contracts, when available. We reviewed documentation retained by CMD, departments, and contractors, including invoices, receipts, schedule of values, and certified payroll reports, to determine whether the LBE subcontractors performed the work assigned to them. We also reviewed CMD-maintained documentation showing that contractors were certified as LBEs.

Statement of Auditing Standards

Sjoberg Evashenk Consulting, Inc., conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

Summary

Although all prime contractors and subcontractors were appropriately LBE-certified as applicable, two of the three prime contractors and one of the two joint ventures in our sample did not fully comply with certain LBE provisions of Administrative Code Chapter 14B. Specifically, we found:

- CMD and the Airport could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract.
- PGH Wong Engineering, Inc. and MCK Associates Joint Venture did not disclose that non-LBE subconsultants performed some work under an Airport professional services contract.
- The LBE participation of Wickman Development & Construction (Wickman) under an Airport construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.
- The LBE participation of Shaw Pipeline, Inc., (Shaw) under a DPW construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.

Finding 1

CMD and the Airport could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract.

During the life of a contract, contractors must submit certain payment monitoring forms to the awarding department and CMD:

- Form 7—CMD Progress Payment Request Form. This form requests payment from the department. Prime contractors must complete it and submit it to the department and CMD. The form requires the prime contractor to list the amount that subcontractors invoiced the prime contractor during the reporting period.
- Form 9—CMD Payment Affidavit. This form lists actual payments made to subcontractors during each reporting period. The prime contractor must complete and submit it to the department and CMD within ten days of being paid by the City. The amounts reflected on the Form 9 should match or be reasonably close to the amounts reflected on Form 7 for the relevant reporting period because the amounts the subcontractors invoice should match the payment amounts reflected in the prime contractor's accounting records.
- Form 8—CMD Exit Report and Affidavit. This form summarizes and finalizes the total amounts of progress payments made to the LBE subcontractors. The subcontractor must complete it, and the prime contractor must submit it to the department and CMD. The amounts

reflected on the Form 8 should match or be reasonably close to the cumulative amounts reflected on Form 9 as actual payments to the subcontractors and should also match the amounts reflected in the prime contractor’s accounting records as paid to the subcontractors.

- Form 10—CMD Contract Modification Form. The prime contractor must complete this form and submit it to CMD when contract amendments, modifications, or change orders cumulatively increase the original contract amount by more than 20 percent.

The three departments we reviewed were able to provide Form 8 and Form 10 information for each project tested, as applicable, but neither CMD nor the Airport could provide Form 7 or Form 9 payment information submitted on two contracts tested, as shown in Exhibit 2.

Exhibit 2. Completeness of Form 7 and Form 9 information by departments reviewed

Contract Number	Awarding Department	Contract Title	Number of Payments Made to Prime Contractor	Form 7	Form 9
1000013160	AIR	Materials Testing Lab	25	●	●
1000006305	AIR	Project Management Support Services for The Airport Hotel Program	58	●	●
1000000981	DPW	Masonic Ave Streetscape Improvement	30	●	●
1000019373	PUC	STS Combined Sewer Discharge	12	●	●
1000021473	PUC	Construction Management Services for the East Bay Region	62	●	●

Legend:

- 55% or less of the form information available and complete
- 90% of the form information available and complete
- All form information available and complete

The City’s financial system, which is used to manage Form 7 and Form 9 submissions, includes a module for prime contractors to directly submit Form 7 and Form 9 payment information and for subcontractors to confirm that payments were received. Before July 2017, when the City’s current financial system was implemented, Form 7 and Form 9 payment information was submitted to departments and CMD via paper forms or was entered into the City’s Elations system. Although most departments have relied on the City’s financial system post go-live, PUC also required its contractors to put the data directly into its contract invoicing and reporting subsystem, SOLIS. This may

explain how another department tested, PUC, successfully maintained pre-2018 Form 7 and Form 9 information.

For the remaining department tested, DPW cited technical issues, at the time, with the City's financial system prevented its prime contractors and subcontractors from entering Form 7 or Form 9 payment information directly into the system as envisioned, so had to continue submitting Form 7 and Form 9 payment information to DPW via paper copies with their payment packages. DPW stated that the resulting confusion caused a few of the Form 7 and Form 9 copies for its Masonic Ave Streetscape Improvement contract not to be submitted or to have gone missing.

According to the Airport, timing and technical issues, at the time, with the City's financial system created problems in collecting Form 7 and Form 9 information on the two Airport contracts we tested. Specifically:

- The Airport Hotel contract started several years before the City's current financial system was implemented, and during this time the Airport did not collect Form 7 or Form 9 information because it was collected by CMD through its Elations system processes. However, CMD could not provide any of the missing Form 7 or Form 9 information for the 27 progress payments submitted before the implementation of the City's current financial system. After the system was implemented, the Airport required contractors to submit paper copies of Form 7 and Form 9 due to the same financial system technical issues described by DPW. The Airport was able to provide most, but not all, of Form 7 and Form 9 information beginning with progress payment 30.
- The Materials Testing Lab contract started just after the City's current financial system was implemented, and the Airport required contractors to submit paper copies of Form 7 and Form 9 due to the financial system's technical issues. However, the Airport was only able to provide Form 7 and Form 9 payment information for just a few of the progress payments made under the contract.

If complete Form 7 and Form 9 information is not collected, the awarding departments cannot properly monitor LBE subcontractor payment information to ensure that LBE subcontractors are paid the amounts reflected on payment request forms and subcontractor invoices and are paid within required time limits. Although several representatives of the departments stated that subcontractors alert the departments if they have not been paid, waiting for subcontractors' complaints is a reactive process and defeats the purpose of collecting the information on Form 7 and Form 9 for oversight and monitoring.

Finding 2

PGH Wong Engineering, Inc., and MCK Associates Joint Venture did not disclose that non-LBE subconsultants performed work under the Airport professional services contract.

As shown in Exhibit 3, PGH Wong Engineering, Inc., and MCK Associates Joint Venture (PGH Wong-MCK JV), the prime contractors on the tested Airport’s professional services contract, which was executed in June 2015, committed to providing a combined 22 percent of the project work to LBE subcontractors.

Exhibit 3. PGH Wong-MCK JV contract award and LBE Commitment

Prime Contractor / Project	Contract Award	LBE Portion of Contract Award	LBE Commitment
PGH Wong-MCK JV – Project Management Support Services for Airport Hotel Program	\$2,938,000	\$646,360	22%

As shown in Exhibit 4, PGH Wong-MCK JV achieved the 22 percent LBE subcontractor participation commitment set for the project.

Exhibit 4. PGH Wong-MCK JV LBE participation credit

PGH Wong-MCK JV Total Project Payments	CMD Close-Out Memo		Auditor Adjustment	
	Final LBE Participation	Final LBE Participation Credit	Final LBE Participation	Final LBE Participation Credit
\$14,392,071	\$3,768,652	26.19%	\$3,552,444	24.68%

In determining whether PGH Wong-MCK JV met its LBE commitment, CMD’s contract close-out memo notes that the joint venture’s LBE subcontractors were paid a combined \$3,768,652 of the \$14,392,071 contract total and awards the joint venture a final LBE participation credit of 26.19 percent. However, auditors reduced the joint venture’s final LBE participation by \$216,208, bringing it to \$3,552,444, which lowered the final LBE participation credit to 24.68 percent—although they still exceeded their LBE participation commitment of 22 percent. The adjustment was necessary for the following reasons:

- Subcontractor Did Not Disclose That Non-LBE Lower-Tier Subcontractor Performed Some Work.** The final LBE participation credit of 26.19 percent CMD awarded relied on payment information reflected on Form 8, which requires subcontractors to indicate if they further subcontracted out any of their work. For this project, all subcontractors indicated that no work was subcontracted. However, testing of LBE subcontractor invoices to validate that subcontractors and their employees performed work on the project revealed that APEX Testing Laboratories (APEX) did not disclose on its Form 8 that a lower-tier subcontractor, REAX, performed work for which APEX was

paid by PGH Wong-MCK JV. Specifically, PGH Wong-MCK JV., paid \$92,937 to APEX for the work and the full amount was applied toward the LBE participation credit. Emails suggest the prime contractor and the Airport knew the work was subcontracted, but the Form 8 does not require either the prime contractor or the department to verify the accuracy of the information reported by the subcontractor on the form. No evidence was provided that REAX is an LBE subcontractor whose work would otherwise qualify for LBE participation. Although REAX received only \$77,447 of the \$92,937 and the remaining \$15,490 was APEX's fee for managing the non-LBE eligible work, the full \$92,937 should be reduced from the LBE participation of PGH Wong-MCK JV because the work was not performed by a certified LBE.

- **Inaccurate Payment Amount in CMD's LBE Credit Calculation.** CMD calculated the final LBE participation based on APEX's final contract amount of \$1,787,261, as reflected on the Form 8. However, APEX was paid a total of only \$1,663,990 because the full contract amount was not realized. Thus, \$123,271 should be reduced from the LBE participation of PGH Wong-MCK JV.

Also, when the contract was awarded, the joint venture received a 7.5 percent rating bonus for committing to providing the LBE joint venture partner, MCK, 40 percent of the work anticipated to be performed by the joint venture partners. In determining whether the joint venture provided 40 percent of the final contract value to MCK, CMD's contract close-out memo only notes that MCK received 46.15 percent of the joint venture total payments but does not indicate the amount of total joint venture payments received. Thus, it is difficult to understand the memo's percentage calculation. Using the amounts of the payments made to the joint venture shown on the final versions of Form 7 and Form 8, MCK received \$4,764,400, or 44.7 percent, of the total \$10,657,646 joint venture payments. However, an adjustment was necessary as described in the bullet that follows:

- **MCK Did Not Disclose That Subcontractors Performed Some Work.** On its Form 8, MCK indicates that it did not subcontract any of its work on the project. However, we analyzed MCK's subcontractor invoices to determine whether MCK and its employees performed all the work and found that MCK used one non-LBE firm that hired several estimators to supplement its cost estimation department. Subtracting the \$618,914 MCK paid to its non-LBE subcontractors lowers MCK's final share of the joint venture payments to \$4,145,486. As a result, MCK's final LBE participation credit was adjusted to 41.08 percent, which still met the 40 percent LBE joint venture partner participation commitment.

CMD relies heavily on the accuracy of information reflected on Form 8s when determining if LBE participation commitments are met. CMD management expressed concern regarding the revelation that there were two instances on this contract where contractors submitted Form 8s with inaccurate LBE payment information and undisclosed subcontractor activity. CMD management indicated that efforts are underway to determine whether CMD can assign penalties when contractors certify and submit inaccurate information.

Finding 3

Wickman’s LBE participation under the Airport construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.

As shown in Exhibit 5, Wickman, the prime contractor on the Airport Materials Testing Lab construction contract, which was executed in January 2019, committed to providing a combined 26.27 percent of the project work to LBE subcontractors.

Exhibit 5. Wickman contract award and LBE Commitment

Prime Contractor / Project	Contract Award	LBE Portion of Contract Award	LBE Commitment
Wickman— Materials Testing Lab	\$4,905,000	\$1,288,453	26.27%*

Note: * CMD’s award memo incorrectly reflected the LBE commitment as 26.59 percent.

In determining whether Wickman met its LBE commitment, CMD’s contract close-out memo notes that Wickman’s LBE subcontractors were paid a combined \$1,583,217 of the \$5,224,474 contract total and awards Wickman a final LBE participation credit of 30.30 percent. However, we were unable to validate Wickman’s final LBE participation credit for the following reasons:

- Insufficient Evidence of LBE Subcontractors’ Effort.** To validate that the LBE subcontractors and their employees worked on the project, we asked to review invoices totaling \$610,512 for the work performed by five LBE subcontractors associated with 5 of 25 prime contractor payment applications. We also asked to review invoices totaling \$168,224 associated with all work performed by a sixth LBE subcontractor. Wickman provided less than half of the requested documentation.
- San Francisco Office of Labor Standards Enforcement (OLSE) Investigation Remains Unresolved.** In May 2022, OLSE opened an investigation into labor standards concerns on the project associated with one of the LBE subcontractors, TP Windows, Inc., DBA SF Window Factory. Due to the investigation, Wickman did not issue a final payment to the subcontractor of \$45,381 although the City had already paid Wickman all amounts due for the subcontractor’s efforts. As of April 2023, OLSE indicated the case was administratively closed as it

could not be resolved because the subcontractor had not been fully cooperative. The prime contractor indicated that because the investigation was not resolved, the prime contractor has continued to keep the retained funds.

Finding 4

Shaw’s LBE participation under the DPW construction contract could not be validated due to insufficient evidence of LBE subcontractor effort.

According to CMD’s contract award memo, Shaw Pipeline, Inc., the prime contractor on DPW’s Masonic Avenue Streetscape Improvement construction contract, which was executed in February 2016, committed to providing a combined 35.76 percent of project work to LBE subcontractors, as shown in Exhibit 6. However, CMD incorrectly calculated Shaw’s LBE participation commitment. According to cost proposals submitted when the contract was awarded, Shaw committed to providing a combined 40.33 percent of project work to LBE subcontractors.

Exhibit 6. Shaw contract award and LBE Commitment

Prime Contractor / Project	Award	CMD Award Memo		Cost Proposals	
		LBE Portion of Contract Award	LBE Commitment	LBE Portion of Contract Award	LBE Commitment
Shaw – Masonic Avenue Streetscape Improvement	\$18,299,035	\$6,543,935	35.76%	\$7,380,642*	40.33%

Note: * Includes amounts proposed for Esquivel (\$2,433,935), M Squared (\$3,060,000), Phoenix/Reliance (\$1,873,707), and Ron Nelson (\$13,000).

In determining whether Shaw met its LBE commitment, CMD’s contract close-out memo notes that Shaw’s LBE subcontractors were paid a combined \$9,818,854 of the \$17,912,296 contract total and awards Shaw a final LBE participation credit of 50.21 percent. However, using CMD’s prime contractor and subcontractor payment totals, we found the correct calculation is 49.86 percent. Nonetheless, we cannot validate Shaw’s final LBE participation credit for the following reasons:

- Inconsistent LBE Subcontractor Payment Information.** The final LBE participation credit CMD awarded relied on payment information reflected on Form 8, which requires prime and LBE subcontractors to certify total payment amounts made and received. However, we found that the information reflected on the Form 8 submittals was inconsistent with the LBE subcontractor payment information reflected on other CMD forms the prime contractor submitted for the contract. According to DPW, Shaw is no longer in business. Thus, the LBE payment inconsistencies cannot be reconciled. Also, on our behalf, DPW requested information directly from the LBE subcontractors that worked

on this project, but they did not respond.

- **LBE Subcontractor Payment Information Does Not Distinguish Ineligible LBE Work.** Form 8 payment information does not clearly distinguish between LBE-eligible work and Non-LBE work. For example, one subcontractor, Phoenix Electric (Phoenix), submitted a proposal that it would perform work totaling \$1,700,520¹ on the project, but only about 70 percent of Phoenix's work, or \$1,193,307, could be counted toward Phoenix's LBE participation credit. The remaining \$507,213 was associated with work Phoenix was not LBE-certified to perform.

On its Form 8, Phoenix indicated that it received \$1,770,040² from Shaw for work its employees performed on the project. However, the form does not indicate what portion of the total payment should be reduced for the non-LBE-eligible work Phoenix anticipated performing. Rather than determining the actual value of the work that was ineligible for LBE credit, CMD simply deducted the \$507,213 that was initially estimated to be ineligible at the time of the bid award. According to CMD, it would be too difficult to determine the actual value of the non-LBE work performed on the project. However, DPW could require that proposals specify which portion of the scope of work is associated with non-LBE work so that CMD can use the subcontractor's final schedule of values to determine the actual value of the ineligible LBE scope of work.

- **Insufficient Evidence of LBE Subcontractor Effort.** To validate that the LBE subcontractors and their employees performed work on the project, we asked to review all invoices for work performed by LBE subcontractors associated with five of 30 prime contractor payment applications submitted—these tested LBE payments totaled \$2,329,209. We also asked to review invoices associated with all work performed by one of the LBE subcontractors totaling \$670,200. Although DPW was able to provide most of the requested documentation associated with the \$2,999,409 in payments tested, a significant portion of the LBE subcontractor payment support, \$926,714, was unavailable because Shaw is no longer in business.
- **Work Performed by Non-LBE Subcontractor Included in LBE Participation Credit.** The final LBE participation credit of 50.21 percent CMD awarded relied on payment information on Form 8, which requires subcontractors to indicate if they subcontracted any of their work. For this project, one subcontractor, Esquivel Grading and Paving (Esquivel), indicated on its Form 8 that a lower-tier non-LBE

¹ The proposal also indicates that an additional \$680,400 would be further subcontracted out to Reliance Engineering.

² Form 8 also indicates that Phoenix received another \$670,200 that it paid to Reliance Engineering for its work.

subcontractor performed \$26,270 of the \$2,781,248 in work for which Esquivel was paid. However, CMD did not subtract the cost of this non-LBE participation from the LBE credit awarded on this project.

Recommendations

The Contract Monitoring Division should:

1. Work with the relevant departments to develop and implement processes that help ensure prime contractors submit all required CMD forms in a timely manner.
2. Continue efforts to research whether it can assign penalties when contractors certify and submit inaccurate information to CMD.
3. Require departments and prime contractors to indicate on CMD forms, such as forms 7, 8, and 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 at contract closeout to obtain the actual dollar value of non-LBE-eligible work performed to be used in the calculation of final LBE credit to be awarded instead of using the estimated value provided by the contractor from the time of contract award. The new process should include requiring Form 8 information to distinguish between payments received that are associated with LBE-eligible work and those associated with non-LBE-eligible work—for non-LBE-eligible work, require the contractor to specify what portion of the scope of work performed was ineligible.

APPENDIX: DEPARTMENT RESPONSES

Contract Monitoring Division

City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator
Stephanie Tang, Director
Contract Monitoring Division

July 7, 2023

Mark de la Rosa
Department of Audits
City Hall
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

Subject: Contract Monitoring Division Response to the Program Audit of Implementation of the Local Business Enterprise Program

Dear Mr. de la Rosa,

Thank you for the opportunity for the Contract Monitoring Division to review the Audit Report and respond to its finding and recommendations.


We appreciate the time and effort spent by the staff of the Sjoberg Evashenk Consulting, Inc. and the City Services Audit Division to learn about the Local Business Enterprise program.

The CMD concurs with the recommendations of the audit. We will be working with the departments, contractors, and Local Business Enterprise community to include these recommendations and to ensure the efficacy of this small business inclusion program.

Please see attached for CMD Recommendation and Response form.

If you have any questions or need additional information, please contact me at 415-581-2310.

Sincerely,

 Stephanie Tang

Stephanie Tang
Director

Cc: Rachel Cukierman, Deputy City Administrator

Recommendation and Response

For each recommendation, the responsible agency should indicate in the column labeled **Agency Response** whether it concurs, does not concur, or partially concurs and provide a brief explanation. If it concurs with the recommendation, it should indicate the expected implementation date and implementation plan. If the responsible agency does not concur or partially concurs, it should provide an explanation and an alternate plan of action to address the identified issue.

Recommendation	Agency Response	CSA Use Only Status Determination*
The Contract Monitoring Division should:		
1. Work with the relevant departments to develop and implement processes that help ensure prime contractors submit all required CMD forms in a timely manner.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur CMD concurs with the recommendation and will complete the following by the end of fiscal year 2023-2024. <ul style="list-style-type: none"> - At the time of the contract monitoring, CMD will notify all firms of their obligations to complete forms in a timely manner. - Newly executed contracts will require both electronic and paper forms until quality of electronic forms can be verified. 	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
2. Continue efforts to research whether it can assign penalties when contractors certify and submit inaccurate information to CMD.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur CMD concurs with this recommendation and will complete the following in fiscal year 2023-2024. <ul style="list-style-type: none"> - In Spring 2023 CMD sent enforcement notices to firms where inaccurate information was submitted to CMD. - CMD will work with the City Attorney's Office to develop a framework for penalties when contractors willfully certify and submit inaccurate information to CMD. 	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

Recommendation	Agency Response	CSA Use Only Status Determination*
<p>3. Require departments and prime contractors to indicate on CMD forms, such as forms 7, 8, and 9, if they have knowledge of the major trade partner subcontractors who hire lower-tier subcontractors to perform the subcontracted work.</p>	<p><input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur</p> <p>CMD concurs with this recommendation and will complete the following by the end of fiscal year 2023-2024.</p> <ul style="list-style-type: none"> - CMD will complete a review of the paper forms 7, 8, 9 and work with the City Attorney’s Office to clarify the language on the forms. - CMD will collaborate with the Office of the Controller Systems Team to identify development needs for the CMD module. 	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>
<p>4. Work with departments at contract closeout to obtain the actual dollar value of non-LBE-eligible work performed to be used in the calculation of final LBE credit to be awarded instead of using the estimated value provided by the contractor from the time of contract award. The new process should include requiring Form 8 information to distinguish between payments received that are associated with LBE-eligible work and those associated with non-LBE-eligible work—for non-LBE-eligible work, require the contractor to specify what portion of the scope of work performed was ineligible.</p>	<p><input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur</p> <p>CMD concurs with this recommendation and will complete the following by the end of the fiscal year 2023-2024.</p> <ul style="list-style-type: none"> - CMD will develop a procedure to (1) identify contracts where the LBE was credited for less than 100% of the work; (2) review with departments how to validate the exact dollar value for LBE credited and non-credited work; and (3) work with the City Attorney’s Office to clarify the language on the form. - CMD will collaborate with the Office of the Controller Systems Team to identify development needs for the CMD module. 	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>

* Status Determination based on audit team’s review of the agency’s response and proposed corrective action



San Francisco International Airport

July 17, 2023

Mark de la Rosa
Director of Audits
City Hall, Room 476
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Auditor Response to SFO Letter on LBE Audit Report
Two of the Three Prime Contractors and One of Two Joint Ventures Audited Did Not Fully Comply with
Certain Provisions of Chapter 14B, the Local Business Enterprise Ordinance

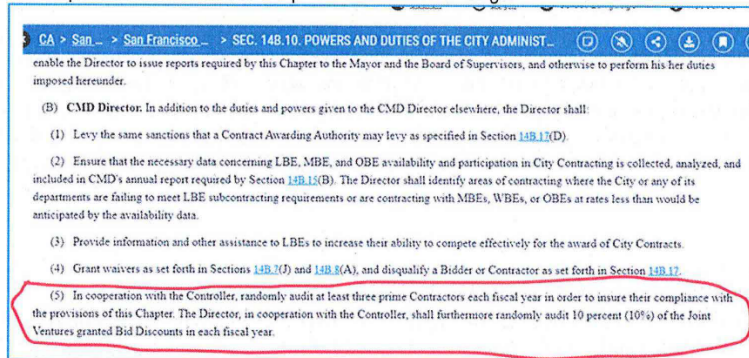
Dear Mr. de la Rosa:

Thank you for the opportunity to review and respond to the Auditor Response to SFO Letter on the LBE Audit Report. We have a few items we would like to respond to, noted in blue text below.

SFO Letter dated June 13, 2023: Airport contracts specify that contractors are required to submit Forms 7 and 9 through a tracking system specified by the Contract Monitoring Division (CMD), and CMD is responsible for reviewing the information. Contractors do not submit these forms to the Airport. The draft audit, in part, appears to focus on requested CMD documentation that the Airport was not able to provide, even though the auditors acknowledge they "excluded evaluating CMD's monitoring process." The Airport has CMD staff dedicated to monitoring Airport contracts and Admin Code Ch. 14B compliance. It is unclear how the audit can perform a comprehensive evaluation of Ch. 14B compliance for Airport contracts without evaluating the monitoring process of CMD staff dedicated to Airport projects.

- Auditor Response: Section 33 (page 13) of this contract requires that the contractor comply with Chapter 14B. Chapter 14B (14.B.10.3) requires the City Administrator (CMD) to "issue forms for the Controller or contract awarding authorities to collect information from contractors as the City Administrator deems necessary to perform its duties under this Chapter." Auditors believe CMD and departments are responsible for collecting information from the contractors. Please note audit recommendations are directed to CMD to improve compliance with the ordinance.

Reviewing CMD monitoring is not required per 14B.10.B.5 section of the audit provision (see excerpt below). The audit scope is to audit the prime contractors to ensure their compliance with 14B. However, the audit has recommendations for CMD to improve their process as it relates to the prime contractor's findings.



AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

MALCOLM YEUNG
PRESIDENT

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VICE PRESIDENT

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IVAR C. SATERO
AIRPORT DIRECTOR

Post Office Box 8097 San Francisco, California 94128 Tel 650.821.5000 Fax 650.821.5005 www.flysfo.com

- **SFO Response:** SFO attempted to satisfy 14B.10(3) and the issue raised in this audit finding through its Memorandum of Understanding ("MOU") by which SFO budgeted payment to CMD and through which CMD expressly agreed to: "provide full time staff. . . to handle contract compliance related to Ch. 14B;" to "monitor LBE participation requirements;" and "track and audit contractor compliance to ensure payments are entered into the new Local Business Enterprise Utilization Tracking System (LBETUS) or any (as directed by CMD) successor system...." At no time did CMD inform SFO that CMD failed to fully perform its obligations under the MOU.

SFO appreciates the audit findings and the suggestions to better serve the public. SFO also agrees with the audit's conclusion that 14B.10(B)(5) allows the CMD Director "to audit the prime contractors to ensure their compliance with 14B." However, this item in the audit is not the result of auditing prime contractors. Rather, it arises from an audit of SFO. An audit of contractor records may yield the records this audit states SFO did not possess.

SFO Letter dated June 13, 2023:

1. Report Pages 5-7 (pdf Pages 10-12): Finding 1.
CMD and the Airport could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract."

PGH Wong-MCK Joint Venture, Project Management Support Services for Airport Hotel Program

As the Report correctly explains, at the time the Airport awarded this Contract, CMD required contractors to submit LBE reporting through LBEUTS, a web-based tracking system. The Report fails to recognize that the Contract did not require that the contractor submit paper copies of Form 7 and Form 9. The Contract clearly states that CMD will monitor compliance with the 14B LBE Ordinance by the information submitted in LBEUTS (AIR-500, Paragraph 33.3). The Airport had no reason to request separate paper copies of Form 7 or 9 when LBEUTS was in use for Payments 1 through 27.

The Airport recommends revising the Finding Title to: "CMD could not provide Form 7 or Form 9 payment information submitted on a construction contract and a professional services contract."

- **Auditor Response:** No change. Section 33 (page 13) of this contract requires that the contractor comply with Chapter 14B. Chapter 14B (14.B.10.3) requires the City Administrator (CMD) to "issue forms for the Controller or contract awarding authorities to collect information from contractors as the City Administrator deems necessary to perform its duties under this Chapter."

https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-9639#JD_14B.10

- **SFO Response:** SFO attempted to satisfy 14B.10(3) and the issue raised in this audit finding through its Memorandum of Understanding ("MOU") by which SFO budgeted payment to CMD and through which CMD expressly agreed to: "provide full time staff. . . to handle contract compliance related to Ch. 14B;" to "monitor LBE participation requirements;" and "track and audit contractor compliance to ensure payments are entered into the new Local Business Enterprise Utilization Tracking System (LBETUS) or any (as directed by CMD) successor system...." At no time did CMD inform SFO that CMD failed to fully perform its obligations under the MOU.

SFO Letter dated June 13, 2023:

2. Report Pages 8-9 (pdf Pages 13-14): Finding 2.
"PGH Wong Engineering, Inc. and MCK Associates Joint Venture did not disclose that non-LBE subconsultants performed work under the Airport professional services agreement."

Draft audit Finding 2 acknowledges CMD Form 8 "requires subcontractors to indicate if they further subcontracted out any of their work" and that "all subcontractors indicated that no work was subcontracted." But the finding continues to summarily conclude that "the Airport appeared to know the work was subcontracted" without stating any factual basis for the Report's conclusion that the Airport knew the submitted Form 8s were inaccurate. Subsequently, the Report appears to excuse CMD's apparent failure to discover the inaccuracies in the submitted Form 8s because "CMD relies heavily on the accuracy of information reflected on Form 8s." It is unclear how the Report reconciles that it is acceptable for CMD to rely upon the information reflected in Form 8, but the Airport is not entitled to the same reliance.

- **Auditor Response:** Please note audit recommendations are directed to CMD to improve compliance with the ordinance.
- **SFO Response:** SFO acknowledges it knew APEX retained REAX as lower-tier subcontractor and that APEX's Form 8 failed to disclose this. However, SFO was not aware MCK had retained multiple independent contractors and passed off those contractors as MCK employees.

We appreciate the opportunity to review and respond to Auditor Comments to the draft audit report. If you have any questions or require further information regarding the contents of this response, please contact me.

Sincerely,



Judi Mosqueda
Chief Development Officer
San Francisco International Airport

Cc: Ivar Satero, Kevin Kone

San Francisco Public Utilities Commission



525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

June 15, 2023

Mark de la Rosa
Director of Audits
City Hall, Room 476
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Subject: Two of the Three Prime Contractors and One of Two Joint Ventures Audited Did Not Fully Comply With Certain Provisions of Chapter 14B, the Local Business Enterprise Ordinance

Dear Mr. de la Rosa,

Thank you for providing us the opportunity to review the audit report, *Two of the Three Prime Contractors and One of Two Joint Ventures Audited Did Not Fully Comply With Certain Provisions of Chapter 14B, the Local Business Enterprise Ordinance*, prepared by the Controller’s Office City Services Auditor.

We appreciate the time your staff dedicated to this audit and are pleased that there are no findings related to the administration of SFPUC contracts. We are also pleased that the report recognizes SFPUC’s SOLIS system as a safeguard against Form 7 and Form 9 noncompliance.

If there are any questions or additional information is needed, please do not hesitate to contact me at 415-554-1600.

Sincerely,

Dennis Herrera
General Manager

CC: Ronald Flynn, Deputy General Manager
Nancy Hom, AGM Business Services/CFO
Irella Blackwood, Audit Director

- London N. Breed**
Mayor
- Newsha K. Ajami**
President
- Sophie Maxwell**
Vice President
- Tim Paulson**
Commissioner
- Anthony Rivera**
Commissioner
- Kate H. Stacy**
Commissioner
- Dennis J. Herrera**
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



San Francisco Public Works

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Carla Short, Interim Director | Director's Office

carla.short@sfdpw.org | T. 628.271.3078 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

June 16, 2023

Mr. Mark de la Rosa
Director of Auditors
City Services Auditor Division
City Hall, Room 382
1 Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Response to Contract Monitoring Division (CMD) Report of Contractor Compliance

Dear Mr. de la Rosa,

Thank you for providing Public Works a draft copy of your report on the audit of the contractor compliance with the San Francisco Administrative Code, Chapter 14B, Local Business Enterprise (LBE) Utilization and Non-Discrimination in Contracting Ordinance. We appreciate the opportunity to review and respond.

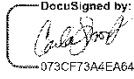
The finding on the Public Works contract with Shaw Pipeline is for insufficient evidence of LBE subcontractor effort. The recommendations are directed to the City's Contract Monitoring Division (CMD) to develop and implement processes to ensure prime contractors submit all required CMD forms timely. The process of validating and calculating LBE participation commitment is outside Public Works' area of responsibility and falls under CMD. Public Works will continue to collaborate, provide support and partner with CMD as they implement procedures to address the audit findings and improve LBE tracking and reporting. Public Works has discussed these issues with CMD in the past and our team is looking forward to our continued collaboration to ensure full compliance with Administrative Code 14B.

We appreciate the time spent by your staff and contractor reviewing the CMD and department information regarding Administrative Code 14B requirements. Please feel free to contact Bruce Robertson, Deputy Director of Finance and Administration, should you need additional information.

London N. Breed, Mayor | sfpublicworks.org | [@sfpublicworks](https://twitter.com/sfpublicworks)

City Services Auditor – Administrative Code 14B Audit Response Memo
June 16, 2023
Page 2

Respectfully,

DocuSigned by:

073CF73A4EA6486...

Carla Short
Interim Director
San Francisco Public Works

CC: Bruce Robertson, Deputy Director Finance and Administration, San Francisco Public Works
Albert Ko, City Engineer, San Francisco Public Works
Michelle Woo, Project Manager, San Francisco Public Works