

Analysis of the FY 2023–24 Annual LBE Participation Report – Critical Monitoring and Legal Failures of San Francisco Administrative Code Chapter 14B

To: File / E J Mayor’s Office; Board of Supervisors; CMD, City Administrator; City Attorney

From: Oronde Sterling – Hyperlocal Contractors Collective

Re: Analysis of the FY 2023–24 *Annual LBE Participation Report* and Legal Failures under San Francisco Administrative Code Chapter 14B

Date: September 9, 2025

Executive Summary

The *Annual LBE Participation Report* is presented as evidence of the City and County of San Francisco’s progress under **Administrative Code Chapter 14B**, but in practice it **conceals decades of systemic failure** to include minority- and women-owned businesses in meaningful contracting opportunities. Instead of transparency, the Report masks disparities, minimizes accountability, and celebrates outcomes that perpetuate exclusion. See **Exhibit A** as shown below.

At the core of this failure is the **absence of active, on-site monitoring**. Major awarding authorities and prime contractors operate under the entrenched presumption that minority contractors—particularly Black-owned firms—are less qualified than their white counterparts. This bias is reinforced by City agencies that prioritize completing capital projects “on time and on budget” over enforcing equitable participation. As a result, minority contractors are reduced to a **symbolic presence** in City contracting rather than being integrated as equal partners.

City officials further abdicate their responsibility by deferring to lending, bonding, and insurance institutions that systematically deny minority contractors access to capital. Rather than challenging these discriminatory practices, officials outsource “assistance” to ineffective third-party programs that provide little measurable benefit. The **nominal dollar values awarded to minority firms** confirm this ineffectiveness.

The Report also **obscures data** by conflating LBE, MBE, and WBE categories without disaggregating race or gender. It shows that **none of the major contract awards** went to businesses located in San Francisco’s low-income neighborhoods—**Bayview–Hunters Point (94124), Sunnydale (94134), or Potrero Hill (94107)**—even though these areas host significant concentrations of disadvantaged contractors. Instead, more than **70% of contract dollars flowed to firms outside San Francisco**, while programs such as the Mentor-Protégé Program, Bonding and Financial Assistance Program, and Contractor Accelerated Payment Program proved ineffective.

The City justifies this inaction by citing **Proposition 209** and *Coral Construction v. City & Cnty. of San Francisco*, 50 Cal. 4th 315 (2010), which struck down local MBE/WBE preferences. Yet this reliance is misplaced. The **vast majority of capital projects are federally funded**, and federal law explicitly requires the enforcement of DBE/MBE/WBE participation goals. By failing to apply these mandates, and by declining to monitor or sanction prime contractors for noncompliance, the City acts in direct conflict with both **federal law** and the stated purpose of **Chapter 14B**: to advance economic justice and expand opportunity.

I. Issue

Whether the FY 2023–24 *Annual LBE Participation Report* satisfies San Francisco Administrative Code Chapter 14B, and whether the City unlawfully abdicated its duty by failing to apply federal contracting requirements on federally funded projects.

II. Rule

- **San Francisco Admin. Code ch. 14B** – mandates equitable LBE participation, monitoring, and enforcement. *¹
- **Cal. Const. art. I, § 31 (Prop. 209)** – prohibits state/local preferences based on race, sex, ethnicity, or national origin. *
- **Coral Constr., Inc. v. City & Cnty. of S.F.**, 50 Cal. 4th 315, 334 (2010). *
- **City of Richmond v. J.A. Croson Co.**, 488 U.S. 469, 500–08 (1989). *
- **Adarand Constructors, Inc. v. Peña**, 515 U.S. 200, 235 (1995). **²
- **Sherbrooke Turf, Inc. v. Minn. DOT**, 345 F.3d 964, 970–72 (8th Cir. 2003). **
- **W. States Paving Co. v. Wash. State DOT**, 407 F.3d 983, 995–1002 (9th Cir. 2005). **

III. Analysis

A. CMD’s Framing of “Economic Justice”

The CMD report highlights \$528 million (30%) awarded to LBEs and \$455.8 million (18%) paid, with 96 prime awards and 79 micro-prime awards. Yet these figures obscure:

- Lack of racial/gender disaggregation.

¹ Local ban on race, sex, ethnicity, or national origin. (Local or state funded projects.)

² No ban on race, sex, ethnicity, or national origin. (Federally funded capital improvement projects requiring no restrictions). The ruling essentially leaves in place a federal appeals court decision, which backed government anti-discrimination efforts. The 10th US Circuit Court of Appeals ruled last year that the revised program met the Supreme Court’s constitutional test. Congress provided strong evidence that minority businesses suffered intentional discrimination in highway construction bidding, the appeals court said.

- Heavy award concentration outside SF.
- Negligible awards in **94124, 94134, 94107** (low-income neighborhoods).

B. Geographic Disparities by Zip Code

The Report’s **Figures 7 and 8** of the LBE Report confirm that while Bayview, Sunnydale, and Potrero Hill contractors averaged only about **\$132,000 per LBE**, contractors in wealthier districts or outside San Francisco received awards exceeding tens or hundreds of millions of dollars.

EXHIBIT A

Geographic Disparities in Contract Awards (FY 2023–24):

<u>Zip Code / Region:</u>	<u>Total Awards (FY 2023–24):</u>
94124 – Bayview–Hunters Point	≈ \$132,000 avg per LBE
94134 – Sunnydale / Visitacion Valley	≈ \$120,000–\$140,000 avg per LBE
94107 – Potrero Hill / Mission (South)	≈ \$132,000 avg per LBE
94110 – Mission District (Central)	\$25,000,000+
94111 – Financial District / Embarcadero	\$40,000,000+
94133 – North Beach / Telegraph Hill	\$20,000,000+
Outside San Francisco – Suburban Counties	\$200,000,000+

C. Federal Funding Sources Trigger DBE Mandates

- **SFPUC:** Clean Water/Drinking Water State Revolving Funds.
- **SFO:** FAA Airport Improvement Program (49 C.F.R. pt. 26).
- **Public Works/Transit:** U.S. DOT funding.

Federal law requires DBE/MBE/WBE inclusion on these contracts; state restrictions do not apply. *W. States Paving*, 407 F.3d at 995–1002.

D. City Attorney’s Abdication of Duty and the Supremacy Clause

The **Supremacy Clause** of the U.S. Constitution provides: “*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*” U.S. Const. art. VI, cl. 2.

This doctrine establishes the primacy of federal law where conflict exists. The City Attorney, as the chief law enforcement officer of San Francisco, **was obligated to apply federal DBE mandates** under 49 C.F.R. pt. 26 to all federally funded projects, notwithstanding Proposition 209 or *Coral Construction*. By failing to do so, the City Attorney **abandoned his duty to enforce federal law**, permitting City agencies and contractors to operate in open violation of federal supremacy.

Federal courts have made clear that local governments must enforce DBE requirements on federally funded projects even where state law bars race-conscious measures.

- *Sherbrooke Turf, Inc. v. Minn. DOT*, 345 F.3d 964, 970–72 (8th Cir. 2003).
- *W. States Paving Co. v. Wash. State DOT*, 407 F.3d 983, 995–1002 (9th Cir. 2005).
- *N. Contracting, Inc. v. Illinois DOT*, 473 F.3d 715, 722–24 (7th Cir. 2007).

Thus, San Francisco’s reliance on Proposition 209 was not only misguided but **legally untenable** under the Supremacy Clause.

E. Other Cities and States That Prevailed

- **Washington State** – *W. States Paving* compelled enforcement of federal DBE mandates despite affirmative action restrictions.
- **Minnesota** – *Sherbrooke Turf* upheld federal DBE goals against state-level objections.
- **Illinois** – *Northern Contracting* confirmed federal supremacy over local restrictions.

These cases demonstrate that states with restrictions comparable to Proposition 209 were nonetheless compelled by federal courts to **enforce DBE/MBE/WBE participation goals**.

F. Antithesis to Chapter 14B

- **No enforcement or sanctions** despite statutory authority.
- **Data conflation** to hide racial disparities.
- **Geographic exclusion** of minority neighborhoods.
- **Failure to apply federal law** where applicable.

Thus, acceptance of this Report by the Board of Supervisors ratifies conduct that is on its face **antithetical to the purpose of Chapter 14B**.

Conclusion

The FY 2023–24 Report does not reflect compliance, but **systemic exclusion masked as progress**. San Francisco’s reliance on Proposition 209 to avoid enforcing federal DBE/MBE/WBE participation requirements is unlawful. The City Attorney’s abdication of duty perpetuates discriminatory contracting practices that directly harm minority and women contractors.

Corrective measures must include:

1. New disparity studies.
2. Disaggregated award data by race/gender.
3. Enforcement of sanctions for noncompliance.
4. Reconstitute the Human Rights Commission previously dismantled under prior administration to police contracting and employment discrimination pursuant to Chapters 14(D) and 14(B) of the San Francisco Administrative Code, as amended.
5. Application of federal DBE mandates on federally funded projects.

Respectfully submitted,

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