


CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst 

SUBJECT: May 21, 2015 Government Audit and Oversight Committee Meeting

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EXECUTIVE SUMMARY**Item 2
File 15-0175****Departments:**

Public Works, Municipal Transportation Agency, Airport, Port, Public Utilities Commission, Recreation and Park and Controller's Office

Legislative Objectives

- Ordinance amending the Administrative Code to comprehensively revise Chapter 6 regarding Public Works Contracting Policies and Procedures. The body of this report outlines the existing and proposed changes by Code Section.

Key Points

- Chapter 6 specifies a Threshold Amount, which is used to determine (a) whether City employees or contractors can perform public work, (b) whether formal or informal competitive bidding is required, and (c) who has authority to award a contract. The proposed ordinance would increase the Threshold Amount from the current \$440,000 to \$600,000. This change would impact numerous sections of Chapter 6, as outlined below.
- As specified in Chapter 6, the City has multiple methods to procure construction work, including (a) Design-Bid-Build, (b) Integrated Project Delivery, and (c) Design-Build. Under the proposed ordinance, the cost criterion for evaluating Design-Build and Construction Manager/General Contractor (CM/GC) proposals would change from not less than 65% to not less than 40%, to enable qualitative criterion to be more important factors.
- The proposed ordinance would amend the emergency provisions under Section 6.60.
- The proposed ordinance would add a new provision to authorize sole source contracts with no threshold limits under certain conditions.

Fiscal Impact

- If all contracts were noticed via websites, this would result in approximately \$165,000 in annual savings. In addition, there may be more flexibility in financing furniture, fixtures and equipment and bond premium contractor and City administrative savings would be realized.
- While there are likely to be significant fiscal impacts of the proposed Chapter 6 amendments, it is not possible to specifically quantify most financial impacts on the City.

Recommendations

1. The following are policy decisions for the Board of Supervisors:
 - Under Section 6.1 for the definition of Threshold Amount, on page 6, line 5 to change the existing \$440,000 to the proposed \$600,000.
 - Under Section 6.61 for Design-Build, on page 87, line 6, and under Section 6.68 for CM/GC, on page 104, lines 4 and 5, the proposed amendment would change “The cost criterion shall constitute not less than 65% of the overall evaluation” to “The cost criterion shall constitute not less than 40% of the overall evaluation”.
 - Under Section 6.73 to add new sole source construction contracting provisions.
2. Amend the proposed ordinance to:
 - Under Section 6.20(b) on page 11, lines 25 and 26, after “For Contracts for Public Works or Improvements less than or equal to \$10,000, no competitive solicitation is required”, add “however departments are encouraged to solicit written bids or quotes especially from LBEs and select the lowest responsive and responsible bidder”, to be consistent with the City’s existing procedures under Chapter 21 of the Administrative Code.
 - Under Section 6.21(a)(1) on page 15, line 2, change “website of the City’s Office of Contract Administration or the department concerned” to “website of the City’s Office of Contract Administration and the department concerned”.
 - Under Section 6.21(b) on page 18, line 14, change “...Threshold Amount may be posted with three-days’ notice” to “...Threshold Amount shall be posted with three-days’ notice”.
 - Under Section 6.60 regarding Emergency Repairs, Work and Contracts on page 80, lines 13, 15 and 19, change “the Threshold Amount” back to “\$250,000”.
 - Under Section 6.60 regarding Emergency Repairs, Work and Contracts on page 81, lines 1 and 2, delete “and shall notify the Board of Supervisors not more than seven days after work has been commenced” and replace with “The proposed resolution approving the emergency determination shall be submitted to the Board of Supervisors within 60 days of the Department Head’s emergency declaration.”
 - Under Section 6.62 Job Order Contracts on page 93, lines 21 and 22, change “any task order(s) to exceed the Threshold Amount only upon the Department Head’s written justification for” to “any task order(s) to exceed the Threshold Amount only upon the Department Head’s written determination establishing the need for the work and the justification for”.
 - Under Section 6.64, As-Needed Construction Contracts on page 96, line 24, change “establishing the justification for proceeding” to “establishing the need for the work and the justification for proceeding”.
3. Other than the policy decision issues outlined above, approve the proposed ordinance, as amended.

MANDATE STATEMENT / BACKGROUND

Chapter 6 of the City's Administrative Code governs public work or improvement contracting policies and procedures, including the procurement of professional design, consulting, construction management and construction services for public work projects.

Charter Section 2.105 authorizes that all legislative acts must be by written ordinance, subject to approval by the Board of Supervisors.

Background

Construction contracts are not subject to Board of Supervisors review or approval, as specified in Charter Section 9.118¹.

Chapter 6 Contract Departments

In accordance with Section 6.2 of the City's Administrative Code, six City departments are specifically empowered to contract for public works or improvements or professional services related to such public works or improvements. These six City departments are: Department of Public Works (Public Works), Municipal Transportation Agency, Airport, Port, Public Utilities Commission and Recreation and Park Commission. All other City departments or commissions must procure construction or related professional services through Public Works.

Threshold Amount Provisions Under Chapter 6

Chapter 6 specifies a Threshold Amount, which is used to determine (a) whether City employees or contractors can perform public work, (b) whether formal or informal competitive bidding is required, and (c) who has authority to award a contract. Chapter 6 specifies a Threshold Amount of \$400,000, which is increased every five years by the Controller based on cost of living adjustments², such that the Threshold Amount is currently \$440,000. Construction, installation or repair of any public work or improvements estimated to cost less than the Threshold Amount may be performed by City employees or under contract. If contracted out, the department, through informal competitive bidding, must obtain at least three quotes and award the contract to the responsible bidder with the lowest quote. If the department is unable to obtain three quotes, the contract may be awarded based on the quotes received. Department heads can award construction contracts less than or equal to the Threshold Amount.

¹ In accordance with Charter Section 9.118(b), **with the exception of construction contracts**, any contracts or agreements entered into by a department, board or commission with a term over ten years, or requiring anticipated expenditures of \$10,000,000 or modifications to such contracts or agreements of more than \$500,000 are subject to approval by the Board of Supervisors by resolution.

² On January 1, 2015 and every five years thereafter, the Controller recalculates the Threshold Amount based on proportional increases in the Urban Regional Consumer Price Index from January 1, 2010.

If the contracted public work or construction services are estimated to cost more than the Threshold Amount, the services must be contracted out under a more formal competitive solicitation, awarded to the responsible bidder submitting the lowest responsive bid and the contract requires that department's commission approval by resolution, or approval by the Mayor or Mayor's designee, for departments under the Mayor, such as Public Works.

Currently, City departments must seek competitive solicitations on all contracts. Construction contracts must be awarded to the responsible bidder with the lowest responsive quote or bid.

City Procurement Methods

As specified in Chapter 6, the City has multiple methods to procure construction work, including (a) Design-Bid-Build, (b) Integrated Project Delivery, and (c) Design/Build.

Design-Bid-Build Construction Procurement Model

The City typically procures public works construction services through a traditional design-bid-build procurement model. Under this model, the design and construction of the project proceed sequentially. The City initially completes the design and specifications with City employees or selects a design or architect/engineer professional contractor through a specified competitive Request for Proposal (RFP) qualification process. Subsequently, the City selects a separate construction contractor through a competitive bidding process and awards the contract to the lowest responsive bidder. Under this model, the construction contractor is not involved with the design of the project. This model is currently used for most construction projects, Job Order Contracts, or As-Needed contracts in the City.

Integrated Project Delivery Procurement Model

The Integrated Project Delivery Procurement Model, currently codified in Section 6.68 of the Administrative Code, provides that a Construction Manager/General Contractor (CM/GC) is selected during the design phase to review and provide comments on the City Architect/Engineer's design. The CM/GC then constructs the project based on the design developed by the Architect/Engineer.

To select the CM/GC, the City issues a competitive Request for Qualifications (RFQ). Evaluative criteria may include: (1) ability to perform services, (2) financial capacity, (3) experience with similar projects, (4) compliance with Chapters 12 and 14 of the City Administrative Code³, (5) ability to deliver project on time and budget, (6) litigation history, (7) reputation, (8) prior claims, and (9) Human Rights Commission compliance.

³ Chapters 12 and 14 of the City's Administrative Code contain the City's equal benefits and Local Business Enterprise (LBE) requirements respectively.

The City sets objective scoring criteria and designates a panel to review competing responses against the evaluative criteria. The City then issues a RFP to the pre-qualified CM/GCs identified through the competitive RFQ process. The RFP requests cost information, including fees for pre-construction and construction phase services, specifying overhead/profit, general conditions and bond cost. Under these provisions, CM/GCs are awarded contracts based on a combination of cost and qualitative criteria, with the cost criterion representing at least 65% of the RFP evaluation and qualitative criteria up to 35%.

With the exception of 7.5% of the work which may be directly negotiated with the CM/GC, the CM/GC is required to procure subcontracts for trade work⁴ through a pre-qualification and competitive bid process to award subcontracts to the bidder with the lowest responsive bid.

Design/Build Project Delivery Procurement Model

The City may also procure design and construction services through a Design/Build Procurement Model, as specified in Administrative Code Section 6.61. Under this model, the City may create general schematic designs for the project. One design-build entity is then selected to complete both the design and construction of the project. Similar to the CM/GC process identified above, design-build procurement is based on both (a) pre-qualification RFQ qualitative evaluation criteria, and (b) a second RFP cost and qualitative evaluation criteria process for the qualified bidders, with cost representing at least 65% of the RFP evaluation. Section 6.61 (L) specifies that the design-builder must award subcontracts to the responsible bidder with the lowest responsive bid

Chapter 6 Working Group

In June 2014, a Chapter 6 Working Group began meeting to review and update Chapter 6 of the City's Administrative Code. This Working Group was composed of representatives from the above-noted six City departments, plus representatives from the Controller's Office City Services Auditor Division, City Administrator's Office, Office of Contract Administration, City Attorney's Office and Real Estate Division. The Working Group met every two weeks for almost one year to identify, review and vet alternative proposals. Substantial review and amendments to Chapter 6 were implemented in 1999, over 15 years ago. The proposed Chapter 6 amendments are based on the recommendations from this Working Group.

⁴ Trade work refers to all of the actual construction work services, including electrical, mechanical, plumbing, windows, concrete, glazing, heating, ventilation, etc.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would comprehensively amend Chapter 6 of the City's Administrative Code, regarding Public Works Contracting Policies and Procedures. The major changes to Chapter 6 are shown by section in the tables below, with explanations for each of the numbered changes discussed below each table:

Section	Current Provisions	Proposed Provisions
Article I: General Provisions	<ol style="list-style-type: none"> References Human Rights Commission (HRC). Chapter 6 boards or commissions are required to approve Chapter 6 actions over the Threshold Amount. 	<ol style="list-style-type: none"> References Contract Monitoring Division (CMD). Public works actions for non-Chapter 6 departments would require approval by Mayor or Mayor's designee over the Threshold Amount.

- All Chapter 6 functions related to Local Business Enterprises were transferred from the Human Rights Commission (HRC) to the Contract Monitoring Division (CMD) in July 2012, such that this change reflects this previous transfer of functions.
- Currently, the board or commission of each Chapter 6 department must approve the award of public work contracts over the Threshold Amount. According to the City Attorney's Office, the proposed amendment is intended to clarify existing practices that public works projects that are over the Threshold Amount require the approval of the Mayor or the Mayor's designee. Public Works staff advises that prior to beginning a public works project, Public Works enters into Memorandum of Understanding (MOU) with each client department specifying the roles and responsibilities, budget, schedule, scope and reporting formats, which is approved by individual department heads. Then, Public Works deals directly with the head of the client departments or project managers, informing the client department boards or commissions on the status of the projects, as requested.

Sections	Current Provisions	Proposed Provisions
Section 6.1 Definitions	<ol style="list-style-type: none"> Threshold Amount defined as \$400,000. On January 1, 2015 and every five years thereafter, Controller recalculates Threshold Amount based on Urban Regional Consumer Price Index from January 1, 2010, such that Threshold Amount is currently \$440,000. Various definitions. 	<ol style="list-style-type: none"> Increases Threshold Amount to \$600,000 and every five years thereafter, Controller recalculates Threshold Amount based on Urban Regional Consumer Price Index from January 1, 2015. Adds definitions for Award, Core Trade Subcontractor, Quote or Quotation and Integrated Furniture, Fixtures and Equipment.

3. The proposed amendment would increase the City's Threshold Amount from \$440,000 to \$600,000, an increase of \$160,000 or 36%. As discussed above, the Threshold Amount determines (a) whether City employees or contractors perform the work, (b) formal or informal bidding requirements, and (c) who can award the contract. Contracts below the Threshold Amount can use either City employees or contractors, while contracts above the Threshold Amount can only use contractors. Informal bidding, which currently requires 3-day noticing⁵ and three quotes are permitted for contracts below the Threshold Amount. Contracts above the Threshold Amount required formal bidding, which typically includes bid estimates, documentation, bid bonds and not less than ten days of advertising. See Fiscal Impact Section below for further discussion.
4. The only significant new definition is Integrated Furniture, Fixtures and Equipment which would allow furniture, fixtures and/or equipment that require integration with the new building's design due to physical dimension, power connection or data communication to be coordinated with the design and construction of the facility. Given the increasing complexity and sophistication of building technology and the need to integrate electrical and data requirements with interior furnishings and equipment, this new definition seems reasonable.

Section	Current Provisions	Proposed Provisions
Article II: Construction Contracting 6.20(b) Public Works Less Than or Equal to Threshold Amount	5. Currently requires award of contract to the responsible bidder offering the lowest quote.	5. Adds provision to allow departments to award contracts \$10,000 or less without requiring any competitive solicitation.

5. Currently, Chapter 6 departments must seek competitive solicitations on all Chapter 6 construction contracts. Under the proposed change, award of construction contracts of \$10,000 or less would not require any competitive solicitation. Departments are requesting the proposed change, to be consistent with Chapter 21 of the Administrative Code, and because minor construction contracts under \$10,000, such as pothole repairs, tenant improvements and scaffolding often require expedited processes to complete quickly. Sections 21.03(a) and 21.5(a) of the Office of Contract Administration Rules and Regulations⁶ currently state that no bidding is required for City commodities and services up to \$10,000, however departments are encouraged to solicit written bids or quotes especially from LBEs and select the lowest responsive and responsible bidder. To be consistent with Chapter 21 of the Administrative Code, this requested Chapter 6 provision should be amended to add comparable language.

⁵ The existing provision for 3-day noticing would be eliminated in the proposed amendments to Chapter 6.

⁶ City and County of San Francisco, Office of Contract Administration Rules and Regulations pertaining to the San Francisco Administrative Code, Chapter 21, June 2005.

Section	Current Provisions	Proposed Provisions
6.21 Requirements for Bids and Quotes (a)(1) Public Advertisements (a)(8) Business Tax Registration Certificate (b) Quotes	6. Currently requires advertising for competitive bids in at least one local newspaper or periodical of general circulation for not fewer than 10 days prior to bid opening. 7. Currently requires proof of a current Business Tax Registration Certificate within 14 calendar days of bid opening. 8. Currently requires all requests for quotes on construction contracts less than or equal to the Threshold Amount be posted with three days' notice.	6. Add provision to alternatively allow advertising on a publically available website of the City's Office of Contract Administration or the department concerned. 7. Allow bidder to provide proof of current Business Tax Registration Certificate prior to award of contract. 8. Removes the three day posting requirement for quotes on construction contracts less than or equal to the Threshold Amount.

6. This amendment would allow departments to advertise bids on a public website of the City's Office of Contract Administration or the department that is concerned and/or in a local newspaper or periodical. According to City department representatives, given the prevalence of the internet and related technology, prospective contractors primarily identify bidding opportunities through available City websites, rather than newspapers and periodicals. While this amendment seems reasonable, to ensure broader exposure this provision should be amended so that notices are placed on both the City's Office of Contract Administration and the department concerned websites.
7. This amendment would allow contractors to provide proof of their City Business Tax Registration Certificate before being awarded a contract, rather than within 14 days of bidding. For firms outside of San Francisco that do not currently contract with the City, proof of this Certificate is not necessary if the firm is not awarded the contract, such that this amendment may potentially increase the number of bidders on City projects. This amendment seems reasonable as it would also align Chapter 6 provisions with existing Chapter 12B requirements in the Administrative Code.
8. This amendment would eliminate the existing three day posting requirement for informal quotes for construction contracts less than or equal to the Threshold Amount, such that there would be no noticing requirements for these contracts. This provision should be amended so that the existing three day posting requirements is maintained in order to ensure public disclosure and opportunities for maximum bidder solicitation.

Section	Current Provisions	Proposed Provisions
<p>Article III: Professional Services Contracting</p> <p>6.40 Competitive Procurement of Professional Services for Public Work Projects</p>	<p>9. Currently requires professional services contracts greater than \$110,000 (minimum competitive amount) to be selected based on designated review panels and interviews.</p> <p>10. No provisions if departments do not receive any responsive proposals from qualified proposers or when contractor fails to deliver service under contract.</p>	<p>9. Deletes requirement for interviews.</p> <p>10. Adds new subsections (d) and (e) regarding procedures to use for professional services solicitations when there are no responsive proposals from qualified proposers, to allow department to negotiate with any qualified professional services contractor; and if contractor fails to deliver services of quality, quantity or manner in time specified in contract, department may terminate contract and procure services from any source.</p>

9. Under both the existing and proposed ordinance, the professional services minimum competitive amount is \$110,000. Above this threshold, a formal competitive process is required. The proposed amendment would delete the requirement for departments to specifically conduct interviews for professional services contracts greater than \$110,000. While not precluding the ability to conduct interviews, this amendment allows more flexibility for departments to determine the evaluation process for each award, which seems reasonable.
10. This amendment, which specifies how departments are to handle professional services solicitation when there are no responsive proposals, is consistent with existing Administrative Code Section 6.23(c) related to departments receiving no responsive bids for construction contracts greater than the Threshold Amount and Administrative Code Section 21.6 related to acquisition of commodities and services.

Section	Current Provisions	Proposed Provisions
<p>Article IV: Exemptions from and Alternatives to Competitive Bidding</p> <p>6.60 Emergency Repairs, Work and Contracts</p>	<p>11. If the estimated cost of emergency work is less than or equal to \$250,000, the department may proceed with the work without additional approvals. If emergency work is greater than \$250,000, the department must first secure approval of Mayor or president of department's board or commission, plus approval of Board of Supervisors. If required approvals cannot be obtained before work commences, the department must obtain approvals as soon as possible and in any event shall notify Controller immediately and the Board of Supervisors within seven days after work has commenced.</p>	<p>11. Increases the estimated cost of emergency work to the Threshold Amount, or \$600,000 for additional approvals, including the Board of Supervisors. Adds a provision that when department head declares an emergency, the department head must provide immediate notice to President of the Board of Supervisors, Mayor, Controller and board or commission having jurisdiction.</p>

11. The proposed amendment would increase the amount of emergency work a department may authorize without Board of Supervisors approval from \$250,000 to \$600,000, by linking this authorization to the City's Threshold Amount. The proposed change to increase the Threshold Amount would likely provide for a greater number of sole source emergency contracts approved by City departments that would not be subject to Board of Supervisors review and approval. Department representatives now advise that the proposed language should be changed back to the existing \$250,000 threshold that requires Board of Supervisors approval.

In addition, this amendment would add an immediate emergency notification requirement from the department head to the President of the Board of Supervisors, Mayor, Controller and board or commission having jurisdiction. Under the emergency provisions of the Administrative Code, departments can enter into contracts on a sole source basis, without competitive solicitation. Recently, concerns have been raised by members of the Board of Supervisors regarding emergency resolutions that exceeded \$250,000 that were not brought to the Board of Supervisors for review and approval until six months to a year after the emergencies were declared. To address this concern, the proposed ordinance should be amended to require that no later than 60 days after the declaration of emergency; the Department Head should submit the required emergency resolution to the Board of Supervisors to obtain approval of such action.

Section	Current Provisions	Proposed Provisions
6.61 Design-Build	<p>12. Currently, department commissions or City Administrator must approve design-build solicitation, before request for qualifications is issued.</p> <p>13. Award of design-build contract currently requires cost criterion to be not less than 65% of the overall evaluation.</p> <p>14. No current provisions for Fixed Budget Limit Procurement for Design-Build Contracts.</p> <p>15. Currently, Design-build contractors must pre-qualify no less than three bidders for each trade subcontract based on lowest cost.</p> <p>16. Currently, stipends for partial designs are permitted.</p>	<p>12. Allows department heads to approve a design-build solicitations.</p> <p>13. Establishes a more flexible selection process for departments to set selection criteria, prequalify proposers and base awards on a combination of cost and quality, with cost criterion not less than 40% of overall evaluation.</p> <p>14. Provides new Design-Build with Fixed Budget Limit Procurement, which specifies maximum project budget, base scope of work and additional desired project features. Proposals evaluated on qualifications, experience, design, cost and enhancements.</p> <p>15. Adds new sections which allow design-build contractors to select core trade subcontractors based on qualifications, cost or combination of factors. Departments can also direct prime contractors to perform specified work.</p> <p>16. Allows stipends to be paid to contractors for partial designs without needing to issue a contract to pay the stipend.</p>

12. As discussed above, design-build is a methodology to procure both professional design services and general contractor construction services at the same time by a single entity. Public Works representatives advise that when Section 6.61 Design-Build provisions were introduced into Chapter 6 in 1999, this methodology was relatively new, such that additional City review approvals were included. However, the City has now successfully used the design-build methodology on several projects (e.g., Airport Terminal 2 Renovation, West Harbor Marina Project and Air Traffic Control Tower) and design-build has become a mainstream procurement method such that departments can make such determinations themselves. Chapter 6 department commissions and the City Administrator for Public Works projects would still be required to approve the award of the design-build contract.

13. Historically, City construction contracts were awarded to the lowest cost responsive bidder. However, as discussed above, Design-Build and CM/GC contracts are currently awarded based on a combination of at least 65% cost and 35% qualitative criteria. The proposed amendment would provide greater flexibility for departments to set criteria for selecting Design-Build contractors, including reducing the cost criterion for evaluating design-build proposals from not less than 65% to not less than 40%, a reduction of 25%. Department representatives advise that design-build contractors are only bidding on a small percentage of the contract, approximately 10-12%⁷, such that the quality of the design should rank equal if not higher than cost because it is crucial for the City to procure the best design prior to construction. The design-build contractor would still be required to secure subcontractor construction tasks, which comprise the balance of 88-90% of the project costs, based on lowest bids. In addition, department representatives report that awarding contracts based primarily on cost present risks as lower-performing contractors submit lower bids to compensate for suboptimal designs that can cause costly problems during construction. However, as described in the Background Section above, design-build procurement already provides for both (a) pre-qualification RFQ non-cost evaluation criteria process, and (b) a second RFP cost evaluation criteria process for the qualified bidders, with cost representing at least 65% of this evaluation.
14. Under this new provision, as an alternative to competitive price bids, departments could issue a Request for Proposal with a Fixed Budget Limit Procurement, such that Design-Build contractors would bid on a maximum project budget, which specifies the required scope of work and identifies additional desired enhancements for the project. Bidders would submit fixed cost proposals, with identified additional enhancements, that could not exceed the Fixed Budget Limit, such that the department would evaluate and select the fixed price bidder based on the stated criteria, including qualifications, experience, design proposals, cost and the value of the enhancements.
15. The proposed change would allow City departments to direct Design-Build contractors to perform a portion of the work themselves and select core trade subcontractors, that would be brought into the pre-construction and design phase early, based on quality of services and cost factors. The cost for individual core trade subcontractors could not exceed 3% of the independent estimate, otherwise, the subcontract would be competitively bid.
16. Currently departments are allowed to pay partial design stipends. The proposed amendment would allow departments to pay such stipends without a contract. The requirements for such stipends would be specified in the RFQ/RFP, and depending on the complexity and budget for the project, the amount of the stipends would vary. Department representatives indicate it is timely and costly to contract with Design-Builders to develop partial designs, which can be an integral part of the Design-Build

⁷ Design-build contractors are typically only bidding on pre-construction design services based on hourly rates, their fees, as a percent of the direct project costs, bonds and insurance as a percent of construction costs and general conditions based on monthly fees to oversee the project.

review process, without securing sole source waivers, or Administrative Code 12B or 14B waivers, that would be required for a City contract.

Section	Current Provisions	Proposed Provisions
6.62 Job Order Contracts	<p>17. Currently contractors must include subcontractor list at time of bid.</p> <p>18. Job Order Contracts cannot exceed five years, with no new task orders after three years from contract award.</p> <p>19. No task order can exceed \$400,000.</p> <p>20. Department head can modify task orders that exceed \$400,000 based on written determination of the urgency of the work.</p> <p>21. Job Order Contracts (JOC) contractor with a particular City department cannot submit a bid on a subsequent JOC contract by the same City department during the term of the contract, with limits.</p> <p>22. No non-standard bonding requirement specific to JOC contractors.</p>	<p>17. Would allow contractors to list subcontractors at time of bid or task order.</p> <p>18. Job Order Contracts cannot exceed five years, with no new task orders after four years from certification by Controller.</p> <p>19. No task order can exceed the Threshold Amount, or \$600,000.</p> <p>20. Department head can modify task orders that exceed \$600,000 based on reasons other than urgency.</p> <p>21. Allows JOC contractors to bid on more than one contract within a department if contracts are funded with different sources of federal or state funds.</p> <p>22. New section authorizes prime JOC contractors to bond a minimum of 25% of the contract prior to execution of any task order or 100% of task order, whichever is greater, up to value of contract.</p>

17. Would allow subcontractors to be listed at time of bid or at time of issuance of a task order under a Job Order Contract⁸, which seems reasonable because specific scopes of work and thus the required subcontractors are not defined until task orders specified.
18. Maintains the same five year maximum term for Job Order Contracts, but allows departments to issue new task orders up to four years, instead of three years, an additional one year, which will allow departments to maximize the authorized five-year contract capacity. In addition, specifies date of certification by Controller, which is when task orders can commence, rather than date of contract award.

⁸ In accordance with Section 6.62, Job Order Contracts (JOCs) provide an indefinite quantity contract with predefined bid items that are assigned on a periodic or task order basis for maintenance, repair and minor construction projects.

19. This provision would tie JOC task orders to the Threshold Amount, rather than a specific \$400,000 amount. This change would provide consistency in Chapter 6, as the Threshold Amount increases every five years based on cost of living adjustments.
20. This provision removes requirement for Department head to determine urgency of the work and allows other criteria, such as cost, unsuccessful bids, inability to produce bid documents, and time considerations, to modify task orders that exceed the Threshold Amount. Department representatives advise that it is difficult to define “urgency” and the proposed language provides alternative language to allow modifications to task orders. In order to clarify that the department would still be required to establish the need for this work, amend the proposed language to add “need for the work”. The proposed change is consistent with recommendations under Section 6.64, As-Needed Contracts.
21. This provision would enable departments to have the same contractor performing JOC tasks under more than one contract at the same time, if different sources of federal and/or state funds are used. This provision seems reasonable given the limited number of JOC contractors available for specified SFMTA work, which limits the available pool of contractors for SFMTA, which receives significant federal and state funds, mandating separate contractor requirements.
22. This change allows for performance and payment bonds to incrementally increase over the term of the JOC, saving costs for both the contractor and the City to pay for such bonds before the work commences. The City’s Risk Manager also supports the proposed change because it will allow JOC contractors to obtain bonds when the work tasks are required, cumulative up to the full value of the contract.

Section	Current Provisions	Proposed Provisions
Article IV: Exemptions from and Alternatives to Competitive Bidding 6.63 Hazardous Materials Abatement Work	23. When the Director of Public Works determines (1) hazardous materials must be expeditiously abated and (2) there is inadequate time to issue advertisement for bids, DPW can advertise, receive proposals from qualified contractors and select qualified contractors to perform abatement work for one or more years and enter into master agreements on an as-needed basis.	23. When Department Head(s) determine (1) hazardous materials must be expeditiously abated, and (2) there is inadequate time to issue an advertisement for bids, and (3) department personnel who will manage work have appropriate training, then department(s) can use existing procedures to procure hazardous materials abatement contractors.

23. Current provisions only allow Public Works to procure hazardous materials abatement contractors. Proposed provisions would enable all Chapter 6 departments to procure hazardous materials abatement contractors, if their staff is adequately trained, using the same procedures as currently specified. This seems reasonable as Airport and possibly other Chapter 6 departments, such as the PUC, can require the need for hazardous material abatement contractors.

Section	Current Provisions	Proposed Provisions
Article IV: Exemptions from and Alternatives to Competitive Bidding 6.64 As-Needed Contracts	<p>24. Department Head may issue advertisement for bids for construction or RFP for qualifications for professional services for as-needed contracts for up to five years, with no new contract service orders after three years. Requires prime contractors to list subcontractors at time of bid.</p> <p>25. No contract service order(s) can cumulatively exceed \$200,000. For departments with capital programs over \$1 billion, no contract service order(s) can cumulatively exceed \$400,000.</p> <p>26. A department may exceed above-noted contract service order limits if department head determines the urgency of the work and justification rather than undertaking formal competitive process.</p> <p>27. No current provisions.</p>	<p>24. Department Head may issue advertisement for bids for as-needed construction services for up to five years, with no new task orders after four years from certification by Controller and allows prime contractors to list subcontractors at time of bid or contract service order.</p> <p>25. Increases all department contract service order(s) to Threshold Amount, or \$600,000.</p> <p>26. Removes requirement to establish urgency for department heads to approve contract service orders that exceed the Threshold Limit.</p> <p>27. Adds a new subsection (b) Master As-Needed Agreements to allow department heads to procure as-needed contracts for up to five years based on experience, expertise and quality of work. For specific tasks, department will seek quotes from at least three as-needed contractors, and issue contract service orders to contractor submitting lowest quote. Allow for less than three quotes and to reject quotes.</p>

24. Similar to JOCs amendments discussed above, which seem reasonable, these provisions will allow departments to issue new contract service orders for up to four years, instead of three years, an additional one year, specify the date of certification by the Controller, rather than current required date of contract award and allow prime contractors to identify subcontractors when contract service order is awarded.
25. This provision would increase contract service order limits from \$200,000 to the Threshold Amount, (requested \$600,000) for departments with capital programs under \$1 billion and increase contract service order limits from \$400,000 to the Threshold Amount (requested \$600,000) for departments with capital budgets over \$1 billion. Departments with capital budgets over \$1 billion are: Airport, PUC, Public Works and SFMTA. It is reasonable to have consistent contract service order limits for all City departments.

26. Provides greater flexibility for department heads to justify not undertaking formal competitive process, even if urgency of the work is not a factor. In order to clarify that the department would still be required to establish the need for this work, amend the proposed language to add “need for the work”. The proposed change is consistent with recommendations under Section 6.62, Job Order Contracts.
27. Proposed new section would not specify costs as a factor for departments to award a master as-needed agreement to single trade contractors (i.e., plumber, electrician), but would be based on experience and qualifications. This provision allows departments to create prequalified pools of as-needed contracts for multiple trades, to provide more expeditious work being completed as needed. Such contractors are not guaranteed award of any work. Each project would be bid competitively among prequalified master-as-needed contractors.

Section	Current Provisions	Proposed Provisions
Article IV: Exemptions from and Alternatives to Competitive Bidding 6.65 Contracting for Equipment and Systems, Inspection, Maintenance and Repair Work	28. Departments are authorized to award master agreements on an as-needed basis based on experience, expertise and quality of work for inspection, maintenance and repair to elevator, escalator, security, fire protection or fire alarms.	28. Departments would also be authorized to award master agreements on an as-needed basis for power distribution, chillers, pumping, heating, ventilation and air conditioning, supervisory control and data acquisition, public address, airfield drainage, sewage and freshwater systems.

28. Updates and expands equipment, systems and maintenance covered for as-needed master agreement awards based on experience, expertise and quality of work to allow departments to have master agreements with qualified maintenance work contractors that can respond quickly to needed repairs. All work would be based on quotes from at least three contractors with master agreements and work would be awarded based on lowest bid.

Section	Current Provisions	Proposed Provisions
Article IV: Exemptions from and Alternatives to Competitive Bidding 6.68 Integrated Project Delivery	29. Integrated Project Delivery requires approval by department head before request for qualifications are issued and commission approval, if under jurisdiction of commission. 30. Among selection criteria, allows a proposers' commitment to comply with goals and requirements of Administrative Code Chapters 12 and 14. Also requires departments to conduct proposer interviews during the pre-qualification stage. 31. Provisions currently provide for cost criteria not less than 65%. 32. No CM/GC Team Best Value Procurement.	29. Changes "Integrated Project Delivery" to "Construction Manager/General Contractor" (CM/GC) and department head(s) would be authorized to procure such services. 30. Removes proposers' commitment to Administrative Code Chapters 12 and 14 among the allowed selection criteria and makes interviews optional. 31. Adds Best Value Procurement Provision to procure CM/GC with cost criteria a minimum of 40%, instead of 65% of the evaluation. 32. Adds a new (b)(3) CM/GC Team Best Value Procurement to allow departments to select a CM/GC team through either a pre-qualification process or combined RFQ/RFP process, with the award to the highest ranked team.

29. Changes the title of the subsection from "Integrated Project Delivery" to "Construction Manager/General Contractor" to better describe the provision and eliminates initial approval of procurement method by commissions as departments now have expertise to appropriately select CM/GC. The department's commission or board and/or the Mayor, if DPW, would still require approval for award of the contract.
30. Removes respondents' commitment to Administrative Code Chapters 12 and 14 among the list of allowed selection criteria, because all contractors are now required to comply with Chapters 12 and 14.
31. Historically, construction contracts were awarded to the lowest cost responsible bidder. As discussed in the Design-build section above, this amendment would allow departments to have significantly greater flexibility to set selection criteria for contractors, including reducing the cost criterion for evaluating CM/GC proposals from not less than 65% to not less than 40%, a reduction of 25%. Department representatives advise that CM/GC contractors are only bidding on a small percentage of the contract, approximately 10-12%⁹, such that the quality of the contractors should rank equal if not higher than cost because it is crucial for the City to procure the best contractor prior to construction. The

⁹ CM/GC contractors are typically only bidding on pre-construction services based on hourly rates, their fees, as a percent of the direct project costs, bonds and insurance as a percent of construction costs and general conditions based on monthly fees to oversee the project.

CM/GC contractor would be required to secure all trade construction services, which comprise the balance of 88-90% of the project costs, based on lowest bids. In addition, department representatives report that awarding contracts based primarily on cost present risks as lower-performing contractors may submit lower bids to initially secure the work and then submit costly change orders such that the final cost of the project is significantly greater than the amount originally bid. As described in the Background Section above, CM/GC procurement already provides for both (a) pre-qualification RFQ non-cost evaluation criteria process, and (b) a second RFP cost evaluation criteria process for the qualified bidders, with cost representing at least 65% of the evaluation.

32. This proposed Best Value Procurement core trade subcontractor methodology allows for the earliest practical engagement between the CM/GC and the core trade subcontractors who will perform a large portion of the construction work. San Francisco General Hospital Rebuild Project is an example of this methodology.

Section	Current Provisions	Proposed Provisions
Article IV: Exemptions from and Alternatives to Competitive Bidding 6.72 Rail Grinding	33. No current provisions	33. Authorizes SFMTA Director of Transportation to issue RFPs for rail grinding and related services, to evaluate based on qualifications, costs and any other criteria specified in RFP and negotiate with highest ranking proposers to seek final offers to determine best value to City.

33. Authorizes the SFMTA Director of Transportation to procure rail grinding and related services through a negotiated project delivery method due to the unique nature of rail grinding services. Negotiated procurement is not explicitly prohibited or allowed in Chapter 6, and would not be permitted for any other departments. Currently Chapter 21 allows for the negotiated procurement of rolling stock (buses, trains, street cars) and Federal regulations allow for negotiated procurement.

Section	Current Provisions	Proposed Provisions
<p>Article IV: Exemptions from and Alternatives to Competitive Bidding</p> <p>6.73 Other Procurements</p>	<p>34. No current provisions.</p>	<p>34. Adds new section to authorize department heads to award sole source contracts, with approval by resolution of department's commission, or for departments with no commission, approval of Mayor or Mayor's designee. Department head could make written justification of sole source award for two years based on (1) only one source available; (2) proprietary system; (3) follow-on contract for continued work, when award to other contractor would result in (a) substantial duplicated cost, (b) unacceptable delays, or (c) loss of warranty; (4) required by statute or government regulation; or (5) expedited process to use State or Federal funding available. Written justification by department head must address: (1) work required and estimated value; (2) contractor's unique qualifications to perform work and why required procurement through sole source; (3) anticipated cost and how such cost is in best financial interest to City; (4) why issuing competitive solicitation is impractical; and (5) if follow-on contract work, citing specific provisions. If Federal or State funds provided, all such Federal and/or State laws would prevail.</p>

34. This new provision would authorize sole source contracts with no threshold limits under certain conditions. Currently, sole source awards for construction contracts can only be awarded in emergency contract situations. Otherwise, departments must seek approval from the Board of Supervisors with an ordinance to waive competitive bidding requirements to sole source contracts for specific construction contracts. For example, in June 2014 the Board of Supervisors approved an ordinance to allow SFMTA to sole source the train control system for the Central Subway Project because the system is proprietary to one contractor. Department representatives advise that Federal procurement rules allow sole source contracting and the City's Administrative Code Section 21.5(b) allow sole source contracts for commodities or services under similar conditions as proposed for Chapter 6 construction related contracts. Given that this is a significant new provision to allow for award of sole source construction contracts, approval is a policy decision for the Board of Supervisors.

FISCAL IMPACT

The Chapter 6 amendments which would result in specific fiscal impacts are:

- Section 6.20(a)(1) currently requires advertising for competitive bids in at least one local newspaper or periodical of general circulation for not fewer than ten days prior to bid opening. The proposed amendments would allow City departments to advertise on a publically available website of the City's Office of Contract Administration or the department concerned. Based on an estimated 250 contracts¹⁰ per year and the department's estimated cost of approximately \$660 general circulation advertising cost per contract, if all contracts were noticed via websites, this would result in approximately \$165,000 in annual savings.
- Currently, furniture, fixtures and equipment are not eligible to be funded with General Obligation bond funds, which are often used as one source to finance the costs of new major capital improvement projects. The new definition for Integrated Furniture, Fixtures and Equipment would allow furniture, fixtures and/or equipment to be integrated with the building's design and construction. Integrating furniture, fixtures and equipment into the building may enable the City to allow such costs to be paid with bond proceeds, which would be considered on a case-by-case basis, depending on various factors, including the lifecycle costs of the assets.
- Allowing Job Order Contractors and As-Needed Contractors to bond a minimum of 25% of the contract prior to execution of any task order and to incrementally increase the performance and payment bonds up to the full value of the contract will result in savings to both the contractor and the City, as contractors will not be required to pay for the bond premiums prior to having work assigned. This change is likely to encourage more contractors to bid, potentially increasing competition and reducing bid costs as well as unspecified administrative savings for the City.

Cost Criterion Changes for Design-Build and CM/GC Projects

While acknowledging that there are likely to be significant fiscal impacts of the proposed Chapter 6 amendments, it is difficult to quantify the specific financial impacts on the City. For example, reducing the cost criterion from a minimum of 65% to a minimum of 40% of the total evaluation score for Design-Build and CM/CG contracts could result in increased costs to the City. However, if more contractors bid on a project due to the greater flexibility proposed, increased competition could result in lower bids and costs. In addition, if higher quality Design-Build and CM/CG contractors are able to complete projects more quickly or efficiently, it may result in total project savings. Construction cost increases or decreases can be caused by the number of factors, including the (a) timing of the project, (b) general economic climate in the Bay Area, (c) type and skills required for a specific project, (d) the number of bidders, (d) actual

¹⁰ Based on an annual estimated 120 contracts for DPW, 50 contracts for PUC, 60 contracts for Airport, and 20 contracts combined for the Port and Recreation and Park Department, or a total of approximately 250 contracts that require advertising per year.

bids submitted, (e) evaluation criteria, (f) change orders, (g) length of the project and (h) lawsuits.

Various City departments advise that under the current City practice of awarding public work construction contracts based primarily on cost criterion, contractors know to bid the lowest initial price to secure the award, then later submit numerous change orders or price increases, once the project is implemented, knowing it will be difficult for the City to change contractors at a much later date. In addition, City staff report that weighting cost higher than quality gives contractors the incentive to propose their less expensive and less qualified staff. In addition, City staff state that the proposed lower weighting of cost criterion would only be for design-build and CM/GC contractors, who receive 10-12% of the total construction contract, with the remaining 88-90% of the contract obtained on a lowest cost basis.

On May 20, 2014, the Controller's City Services Auditor Office issued a report entitled "Citywide Construction: Adopting Leading Practices Could Improve the City's Construction Contractor Bid Pool". This report found that City departments do not adequately assess contractor performance and do not consider past performance in the construction contract award process. Without considering past performance in the contract award process, contractors that have performed poorly in the past can continue to secure City construction contracts. Four of the five surveyed jurisdictions (Cities of Los Angeles, New York, Philadelphia and Seattle and Federal agencies) that have implemented performance evaluations indicated that doing so has positively impacted their jurisdictions construction bid pool by attracting high-quality contractors and discouraging poor performing contractors from bidding on projects. The Controller's report recommended that the City amend Chapter 6 to require completion of contractor performance evaluations and consideration of evaluations in the contract award process. While the proposed amendment would weight quality higher than costs, the proposed changes to Chapter 6 do not address these specific recommendations. According to department representatives, Public Works has recently hired a performance evaluation staff person to begin to develop construction performance evaluation criteria to address this recommendation.

In addition, the recent examples of Design-Build and CM/CG projects, such as the Public Safety Building, Veterans Building, Cruise Ship Terminal and Office of the Medical Examiner, which used the existing 65% weighting of cost and 35% of other quality criterion have thus far been delivered successfully and/or are tracking to budget and schedule. Therefore, approval of this amendment to reduce the cost criterion from a minimum of 65% to a minimum of 40% for Design-Build and CM/CG contracts is a policy decision for the Board of Supervisors.

Increase in the Threshold Amount

As discussed above, the City's construction contracting threshold is currently \$440,000. While all construction contracts must be competitively bid, the Threshold Amount determines (a) whether City employees or contractors perform the work, (b) formal or informal bidding requirements, and (c) who can award the contract. Construction projects under \$440,000 can be completed by City staff or awarded through an informal competitive process, such that Chapter 6 authorizes only three days of advertising, less formal quotes and department heads can award such contracts. Contracts greater than \$440,000 must be contracted through a formal competitive process and require at least ten days of advertising, formal bids and award

by the department's board or commission, or by the Mayor or Mayor's designee for Public Works. The proposed ordinance would increase the threshold from the existing \$440,000 to \$600,000, an increase of \$160,000 or 36%. The proposed ordinance would also apply this higher threshold amount of \$600,000 in various sections of Chapter 6, as described above.

Based on contract data collected for Public Works, PUC and the Airport, the following table summarizes the impacts of the proposed change. As shown in the table below, 31 contracts by Public Works, PUC and the Airport, totaling \$6,472,811 or 1.36% of all contract value were less than or equal to \$440,000, the current threshold limit. If the threshold limit is increased to \$600,000, based on the actual number and value of contracts in 2014, an additional 9 contracts valued at \$4,675,630 would be under the threshold limit.

Departments	Total (Number) and Value of Construction Contracts in 2014	Total Number and Value of Contracts under \$440,000	% of Total Value under \$440,000	Total (Number) and Value of Contracts \$440,000 to \$600,000	% of Total Value between \$440,000 to \$600,000	% of Total Value less than \$600,000
DPW	(67) \$163,267,200	(20) \$4,299,200	2.63%	(5) \$2,635,000	1.61%	4.24%
PUC	(43) \$162,698,085	(5) \$756,800	0.47%	(2) \$1,040,630	0.64%	1.11%
Airport	(28) \$149,291,799	(6) \$1,416,811	0.95%	(2) \$1,000,000	0.67%	1.62%
Total	(138) \$475,257,084	(31) \$6,472,811	1.36%	(9) \$4,675,630	0.98%	2.34%

However, there is a significant difference in the value versus the number of contracts below these thresholds. Currently, only \$6,472,811 or 1.36% of the value of contracts is under the current threshold. This would increase by \$4,675,630 for a total of \$11,148,441 or 2.3% of the value of contracts would be under the proposed \$600,000 threshold. In contrast, 31 contracts or 22% of all contracts are under the \$440,000 limit. The proposed \$600,000 threshold would enable 40 projects (31 + 9), or approximately 29% of the total 138 projects to be completed by City staff or informally bid and approved.

In addition, in accordance with Chapter 14B of the Administrative Code, at least 50% of all construction contracts estimated to cost between \$10,000 and the Threshold Amount must be procured under Chapter 14B's micro-LBE set-aside program. Therefore, increasing the Threshold Amount would result in more projects being completed by City employees, more informal bids on contracts and provide more opportunities for micro-LBE set-aside participation on City construction contracts.

However, City Administrative Code Chapter 21, regarding the Acquisition of Commodities and Services currently defines \$110,000 as the Minimum Competitive Amount for the procurement of commodities and professional services and \$440,000 for the procurement of General Services, consistent with the existing provisions of Chapter 6. Under the current provisions, there is already a mechanism for increasing the threshold based on the CPI, such that the

\$400,000 Threshold Amount established in 2010 is now \$440,000. Given the various pros and cons of the proposed increase in the Threshold Amount, approval of the requested increase in the Threshold Amount from \$440,000 to \$600,000 is a policy decision for the Board of Supervisors.

RECOMMENDATIONS

1. The following are policy decisions for the Board of Supervisors:
 - Under Section 6.1 for the definition of Threshold Amount, on page 6, line 5 to change the existing \$440,000 to the proposed \$600,000.
 - Under Section 6.61 for Design-Build, on page 87, line 6, and under Section 6.68 for CM/GC, on page 104, lines 4 and 5, the proposed amendment would change “The cost criterion shall constitute not less than 65% of the overall evaluation” to “The cost criterion shall constitute not less than 40% of the overall evaluation”.
 - Under Section 6.73 to add new sole source construction contracting provisions.
2. Amend the proposed ordinance as follows:
 - Under Section 6.20(b) on page 11, lines 25 and 26, after “For Contracts for Public Works or Improvements less than or equal to \$10,000, no competitive solicitation is required”, add “however departments are encouraged to solicit written bids or quotes especially from LBEs and select the lowest responsive and responsible bidder”, to be consistent with the City’s existing procedures under Chapter 21 of the Administrative Code.
 - Under Section 6.21(a)(1) on page 15, line 2, change “website of the City’s Office of Contract Administration or the department concerned” to “website of the City’s Office of Contract Administration and the department concerned”.
 - Under Section 6.21(b) on page 18, line 14, change “...Threshold Amount may be posted with three-days’ notice” to “...Threshold Amount shall be posted with three-days’ notice”.
 - Under Section 6.60 regarding Emergency Repairs, Work and Contracts on page 80, lines 13, 15 and 19, change “the Threshold Amount” back to “\$250,000”.
 - Under Section 6.60 regarding Emergency Repairs, Work and Contracts on page 81, lines 1 and 2, delete “and shall notify the Board of Supervisors not more than seven days after work has been commenced” and replace with “The proposed resolution approving the emergency determination shall be submitted to the Board of Supervisors within 60 days of the Department Head’s emergency declaration.”
 - Under Section 6.62 Job Order Contracts on page 93, lines 21 and 22, change “any task order(s) to exceed the Threshold Amount only upon the Department Head’s written justification for” to “any task order(s) to exceed the Threshold Amount only upon the Department Head’s written determination establishing the need for the work and the justification for”.

- Under Section 6.64, As-Needed Construction Contracts on page 96, line 24, change “establishing the justification for proceeding” to “establishing the need for the work and the justification for proceeding”.
3. Other than the policy decision issues outlined above, approve the proposed ordinance, as amended.