

FILE NO. 011675

ORDINANCE NO. 7-02

[Administrative Code Chapter 6 – technical amendments and amendments to procedures for investigations and grounds for administrative debarment or other penalties.]

Ordinance amending Administrative Code Chapter 6 to clarify and update requirements for the solicitation of quotes under subsection 6.21(B); to clarify requirements for modifications to construction contracts under subsection 6.22(H); to add a nonabrogation clause to subsection 6.22(M); to correct the statutory references in section 6.40; to add a nonabrogation clause to subsection 6.42(E); to add a new section 6.8 severability clause; to add a new subsection 6.42(F), requiring that modifications for professional service contracts be in writing; to add an investigation requirement for violations of Chapter 6; and to extend the grounds upon which the City and County may determine a contractor to be nonresponsible to civil or criminal violations against any government entity relevant to the contractor's ability to comply with or perform under the terms and conditions of its contract with the City and County.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Subsection 6.21(B), Subsections 6.22(H) and 6.22(M), Section 6.40 and Subsection 6.42(E), to read as follows:

SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.

...

(B) **Quotes.** All requests for quotes for construction contracts less than or equal to the Threshold Amount shall be posted with three-day^{ss} notice. Such requests shall at a

1 minimum require a contractor's license, qualifications, a Business Tax Registration Certificate,
2 ~~participation in an apprenticeship program~~ participation in an apprenticeship program and
3 compliance with subcontractor listing laws, all in accordance with the ~~above~~-listed provisions
4 of this Sections 6.21 and 6.22.

5 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
6 **CONDITIONS.**

7 . . .

8 (H) **Modifications—General Requirements.** If it becomes necessary in the
9 prosecution of any public work or improvement under contract to make alterations or
10 modifications or to provide for extras, such alterations, modifications or extras shall be made
11 only on written recommendation of the department head responsible for the supervision of the
12 contract, together with the approval of the Mayor or the Mayor's designee or the board or
13 commission, as appropriate to the department, and also the approval of the Controller, except
14 as hereafter provided. The Mayor or the board or commission, as appropriate to the
15 department, may delegate in writing the authority to approve such alterations, modifications or
16 extras to the department head, *except as provided below*. The Controller may delegate in
17 writing the authority to encumber funds from prior appropriations for such alterations,
18 modifications or extras to the department head prior to the certification for payment. Such
19 authority, when granted, will clearly state the limitations of the changes to be encompassed.

20 (1) **Increasing or Decreasing Price.** Alterations, modifications or extras in any contract,
21 which will increase or decrease the contract cost or scope, may be made or allowed only on
22 the written recommendation of the department head responsible for the supervision of the
23 contract stating the amount and basis for such increase or decrease. For any cumulative
24 increase or decrease in price in excess of ten percent of the original contract price or scope,
25 the department head shall obtain the approval of the Mayor or Mayor's designee or the board

1 or commission as appropriate and also the approval of the Controller notwithstanding any
2 delegation provided for above.

3 (2) Extensions of Time. Upon finding that work under a construction contract cannot be
4 completed within the specified time because of an unavoidable delay as defined in the
5 contract, the department head may extend the time for completion of the work. If the
6 cumulative extensions of time exceeds ten percent of the original contract duration, the
7 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
8 commission, as appropriate to the department, notwithstanding any delegation provided for above.
9 All time extensions shall be in writing, but in no event shall any extension be granted
10 subsequent to the issuance of a certificate of final completion.

11 (a) Time Extension Not Waiver of City's Rights. The granting of an extension of time
12 because of unavoidable delays shall in no way operate as a waiver on the part of the City and
13 County or the department head, Mayor, board or commission of the right to collect liquidated
14 damages for other delays or of the right to collect other damages or of any other rights to
15 which the City and County is entitled.

16 (b) No Extension Granted When Contract Based on Time Estimates. When any award
17 of contract has been made in consideration, in whole or in part, of the relative time estimates
18 of bidders for the completion of the work, no extension of time may be granted on such
19 contract beyond the time specified for completion, unless the liquidated damages for each day
20 the work is uncompleted beyond the specified time shall be collected; provided, however, that
21 this shall not apply to unavoidable delays due to acts of God.

22 (c) Avoidable and Unavoidable Delay; Limitation of Damages for Delay. The
23 department head administering the public work shall have the authority to specify in the
24 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall
25 not pay damages or compensation of any kind to a contractor because of delays in the

1 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
2 the City and County may pay for (1) delays caused to the contractor by the City and County;
3 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
4 delays will be compensated for only under the conditions specified in the contract.

5 (d) Notice of Delay Required. The contractor shall promptly notify the department head
6 in writing, of all anticipated delays in the prosecution of the work and, in any event, promptly
7 upon the occurrence of a delay, the notice shall constitute an application for an extension of
8 time only if the notice requests such extension and sets forth the contractor's estimate of the
9 additional time required together with a full recital of the causes of unavoidable delays relied
10 upon. The department head may take steps to prevent the occurrence or continuance of the
11 delay, may classify the delay as avoidable or unavoidable and may determine to what extent
12 the completion of the work is delayed thereby.

13 . . .

14 (M) **Violations of Chapter 6; False Claims.** Every public work contract performed at
15 the expense of the City and County of San Francisco, or the cost of which is paid for out of
16 monies deposited in the treasury of the City and County, whether directly awarded or
17 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
18 other arrangement whatsoever, shall *contain a clause incorporating the provisions of Section 6.80*
19 *incorporate the provisions of Article V (commencing at Section 6.80) of this Chapter, relating to*
20 *administrative debarments and false claims. The failure to include such reference or incorporation*
21 *shall not in any way abrogate the rights of the City and County under Article V of this Chapter.*

22 **SEC. 6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR**
23 **PUBLIC WORK PROJECTS.**

24 Notwithstanding any other provision of this Administrative Code, when a department is
25 seeking outside temporary professional design, consultant or construction management

1 services for a public work project, where the fee for such services shall exceed the minimum
2 competitive amount, as defined below, the department shall procure such services through a
3 competitive process based on qualifications.

4 A.(A) **Minimum Competitive Amount.** The minimum competitive amount for
5 temporary outside professional service contracts shall be \$25,000. On January 1, 2005, and
6 every five years thereafter, the Controller shall recalculate the minimum competitive amount to
7 reflect any proportional increase in the Urban Regional Consumer Price Index from January 1,
8 2000, rounded to the nearest \$1,000.

9 B.(B) **Selection Process.** For professional services contracts in excess of the
10 minimum competitive amount, the department head for the department empowered to
11 contract for the public work shall designate one or more panels to review proposals and
12 interview and rate respondents with respect to a request for proposals or qualifications for a
13 professional services contract. A panel shall consist of not fewer than two persons. The
14 department head may establish a multi-tier selection process whereby, for example, a
15 technical panel recommends a shortlist of qualified respondents and a second panel ranks the
16 shortlist.

17 The department head shall ensure that all panel members are impartial and that all
18 respondents are treated fairly. The panel members rating the respondents shall do so
19 according to their independent assessment of the respondent's qualifications for the public
20 work project; questions relating to a respondent's expertise, qualifications and experience
21 shall remain within the sole purview of the panel members.

22 Any rating sheet completed by any panel member may be considered a matter of
23 public record, but the names of the individual panel members shall not. Any name appearing
24 on a rating sheet produced in accordance with the Public Records Act or the San Francisco
25 Sunshine Ordinance shall be redacted.

1 ~~(C)~~ **Negotiation.** Following the selection process outlined in Subsection 6.40(A)above,
2 and should the department concerned desire to enter into a contract, the department head
3 shall invite the highest-ranked qualified respondent to negotiate a professional services
4 agreement. In the event that the department head determines, in the department head's sole
5 discretion, that negotiations are unfruitful, the department head shall terminate negotiations in
6 writing and may then invite the next-ranked respondent to negotiate a contract. In such event,
7 the department head shall as soon as practicable make a report to the Mayor, board or
8 commission as appropriate to the department.

9 **SEC. 6.42. PROFESSIONAL SERVICES CONTRACT TERMS.**

10 . . .

11 **(E) Violations of Chapter 6; False Claims.** Every public work contract performed at
12 the expense of the City and County of San Francisco, or the cost of which is paid for out of
13 monies deposited in the treasury of the City and County, whether directly awarded or
14 indirectly by or under subcontract, subpartnership, subconsultancy or any other arrangement
15 whatsoever, shall ~~contain a clause incorporating the provisions of Section 6.80~~incorporate the
16 provisions of Article V (commencing at Section 6.80) of this Chapter, relating to administrative
17 debarments and false claims. The failure to include such reference or incorporation shall not in any
18 way abrogate the rights of the City and County under Article V of this Chapter.

19 Section 2. The San Francisco Administrative Code is hereby amended by adding
20 Section 6.8 and Subsection 6.42(F), to read as follows:

21 **SEC. 6.8. SEVERABILITY.**

22 If any provisions of this Chapter or any application thereof to any person or circumstances is
23 held invalid, such invalidity shall no affect other provisions or application of this Chapter which can be
24 given effect without the invalid provision or application, and to this end the provisions of this Chapter
25 are declared to be severable.

1 **SEC. 6.42. PROFESSIONAL SERVICES CONTRACT TERMS.**

2 . . .

3 (F) Modifications. Professional service contracts may be modified only by written instrument,
4 granted and approved by the City and County in the same manner the underlying contract was
5 awarded.

6 Section 3. The San Francisco Administrative Code is hereby amended by amending
7 Section 6.80 and Section 6.82, to read as follows:

8 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
9 **PENALTIES.**

10 Any contractor, subcontractor, supplier, consultant or subconsultants who fails to
11 comply with the terms of its contract with the City and County;~~;~~ ~~or contractor, subcontractor,~~
12 ~~supplier, consultant or subconsultant~~ who violates any provision of Administrative Code Chapter
13 6;~~;~~ or who fails to abide by any rules and/or regulations adopted pursuant to Administrative
14 Code Chapter 6;~~;~~ or who submits false claims; or who has violated against any government entity a
15 civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of
16 its contract with the City and County, may be declared an irresponsible bidder or an unqualified
17 consultant and debarred according to the procedures set forth below. Additionally, any
18 contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim to
19 the City and County may also be subject to monetary penalties, investigation and prosecution
20 as described below.

21 In the event that such a violation of this Chapter, including the submission of one or more false
22 claims, comes to the attention of a board or commission or department head responsible for public
23 work, the department head must investigate the matter. The department head must report the findings
24 of any such investigation by letter to the Board of Supervisors within 30 days of the completion of
25 the investigation. The investigation letter to the Board of Supervisors must state the name of the

1 contractor, subcontractor, supplier, consultant or subconsultant; the nature of the violation; the results
2 of the investigation; and the department head's plan for addressing the violation, if any. A hearing
3 shall also be called in the Audit Committee of the Board of Supervisors to report on this
4 investigation.

5 **SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**

6 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
7 action, the Mayor, board or commission or department head responsible for the public work
8 may bring charges against a contractor, subcontractor, supplier, consultant or subconsultant
9 for violation of a contract, for violation of Chapter 6, for violating against any government entity a
10 civil or criminal law relevant to its ability to perform work for the City and County, for submitting a
11 false claim or for engaging in collusion. The department head, upon approval of the Mayor or
12 the board or commission concerned, as appropriate to the department, shall give written
13 notice to the contractor, subcontractor, supplier, consultant or subconsultant of the charges
14 and of all evidence supporting such charges. The contractor, subcontractor, supplier,
15 consultant or subconsultant, and/or his or her attorney or other authorized representative shall
16 be entitled to offer rebuttal evidence and any other evidence in support of his or her position.
17 The department head or the board or commission, as appropriate to the department, shall
18 conduct a hearing where the charges and all evidence shall be presented. In the alternative,
19 such department head, board or commission may appoint a hearing officer to conduct such a
20 hearing and make written findings of fact to be submitted to the department head, board or
21 commission. For departments under the Mayor, the department head shall then render a final
22 written decision. For departments under boards or commissions, the commission president or
23 his or her designee shall render a written decision which shall become final upon adoption by
24 resolution of the board or commission concerned.

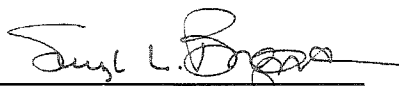
1 Any final written decision by a department head, board or commission that includes a
2 determination of nonresponsibility or disqualification shall provide for a term of debarment. A
3 contractor, subcontractor, supplier, consultant or subconsultant (or any other entity with
4 substantially the same officers, directors, owners or principals) may be debarred for a period
5 of up to five years. During such debarment period, the contractor, subcontractor, supplier,
6 consultant or subconsultant shall not be permitted to act as a contractor or consultant at any
7 tier, directly or indirectly, for any public work or improvement for the City and County.

8 Upon a written determination of nonresponsibility or disqualification, any department
9 head, board or commission may cancel any contract with the nonresponsible or disqualified
10 contractor or consultant or direct the cancellation of the subcontract or subconsultancy. In the
11 event of such cancellation, no recovery shall be had on that contract by the contractor,
12 subcontractor, consultant or subconsultant.

13 Following any decision finding a contractor, subcontractor, supplier, consultant or
14 subconsultant nonresponsible, the department head, board or commission who made the
15 finding of nonresponsibility retains authority to modify the decision.

16
17
18 APPROVED AS TO FORM:
19 LOUISE H. RENNE, City Attorney

20 By:


21 Sheryl L. Bregman
22 Deputy City Attorney
23
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 011675

Date Passed:

Ordinance amending Administrative Code Chapter 6 to clarify and update requirements for the solicitation of quotes under subsection 6.21(B); to clarify requirements for modifications to construction contracts under subsection 6.22(H); to add a nonabrogation clause to subsection 6.22(M); to correct the statutory references in section 6.40; to add a nonabrogation clause to subsection 6.42(E); to add a new section 6.8 severability clause; to add a new subsection 6.42(F), requiring that modifications for professional service contracts be in writing; to add an investigation requirement for violations of Chapter 6; and to extend the grounds upon which the City and County may determine a contractor to be nonresponsible to civil or criminal violations against any government entity relevant to the contractor's ability to comply with or perform under the terms and conditions of its contract with the City and County.

January 7, 2002 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

January 7, 2002 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

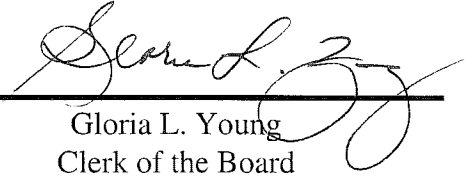
January 14, 2002 Board of Supervisors — FINALLY PASSED
Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Leno, McGoldrick, Newsom, Peskin, Sandoval, Yee
Absent: 1 - Maxwell


File No. 011675

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on January 14, 2002
by the Board of Supervisors of the City and
County of San Francisco.

JAN 25 2002

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.