

1 [Administrative Code - Chapter 6 Public Works Contracting]

2

3 **Ordinance amending the Administrative Code to comprehensively revise Chapter 6**
4 **(Public Works Contracting Policies and Procedures) to: 1) increase the Threshold**
5 **Amount from \$400,000 to \$600,000; 2) authorize sole source contracts under certain**
6 **conditions; 3) allow procurement of public works construction contracts under \$10,000**
7 **with no competitive solicitation; 4) increase the amount of emergency work a**
8 **department may authorize without Board of Supervisors approval from \$250,000 to**
9 **\$600,000 by linking it to the Threshold Amount; 5) increase the amount of time allowed**
10 **to issue a task order from three to four years, increase the limit of the amount of a task**
11 **order from \$400,000 to \$600,000 by linking it to the Threshold Amount, allow**
12 **subcontractors to be listed at time of bid or at time of issuance of a task order, and**
13 **allow for performance and payment bonds to incrementally increase throughout the**
14 **term of the contracts for Job Order Contracts and as-needed contracts; 6) authorize**
15 **execution of master as-needed construction contracts and master as-needed**
16 **inspection, maintenance and repair contracts of equipment and systems on an if-and-**
17 **as-needed basis; 7) increase the limit of the amount of a task order from \$400,000 to**
18 **\$600,000 by linking it to the Threshold Amount in master as-needed contracts on an if-**
19 **and-as-needed basis for services that the Department of Public Health and the Division**
20 **of Real Estate are authorized to procure; 8) provide greater flexibility and clarify**
21 **requirements for the design-build and construction manager/general contractor project**
22 **delivery methods; 9) authorize the Director of Transportation to procure rail grinding**
23 **and related services through a negotiated project delivery method; 10) allow**
24 **departments to advertise bids on a public website and/or in a local newspaper or**
25 **periodical; 11) add a procedure upon rejection or failure of professional services**

1 proposals and upon professional services contractor's failure to deliver; and 12) make
2 various other changes and clarifications in Chapter 6.

3 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
4 **Additions to Codes** are in *single-underline italics Times New Roman font*.
5 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
6 **Board amendment additions** are in double-underlined Arial font.
7 **Board amendment deletions** are in ~~strikethrough Arial font~~.
8 **Asterisks (* * * *)** indicate the omission of unchanged Code
9 subsections or parts of tables.

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

10 Section 1. The Administrative Code is hereby amended by revising Chapter 6, to read
11 as follows:

12 **SEC. 6.0. SCOPE OF CHAPTER.**

13 Chapter 6 shall govern ~~p~~Public ~~W~~ork or ~~I~~improvement contracting policies and
14 procedures, including the procurement of professional design, consulting and construction
15 management services for ~~p~~Public ~~W~~ork or Improvement projects.

16 **Sec. 6.1. DEFINITIONS.**

17 ~~(A)~~ **Advertisement For Bid.** An Advertisement For Bid is a set of documents which
18 includes without limitation the published ~~a~~Advertisement for ~~b~~Bids on a construction ~~e~~Contract;
19 the forms to be submitted with a ~~b~~Bid, as required by the contracting department and ~~the~~
20 ~~CMD~~Human Rights Commission; the construction ~~e~~Contract general and special conditions; and
21 the plans and specifications for the ~~p~~Public ~~w~~ork or ~~i~~improvement.

22 ~~(B)~~ **Award.** The action taken by the City in conformance with the Administrative Code and
23 the Charter to enter into a Contract pursuant to this Chapter 6. For ~~e~~Contracts in excess of the
24 Threshold Amount ~~as defined below~~, a ~~e~~Contract is awarded by the City ~~and County of San~~
25 ~~Francisco~~ when the following events have occurred:

1 (1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has
2 approved the eContract for aAward and (b) the dDepartment hHead has then issued an order
3 of aAward;

4 (2) For departments empowered to contract for Public Works or Improvements with
5 boards or commissions, (a) the dDepartment hHead has recommended to the board or
6 commission concerned a eContract for aAward and (b) such board or commission has then
7 adopted a resolution awarding the eContract.

8 For eContracts less than or equal to the Threshold Amount ~~as defined below~~, a
9 eContract is awarded when the dDepartment hHead either signs the eContract or issues an
10 order of aAward, whichever occurs first. Pursuant to Charter Section 3.105, all eContract
11 aAwards are subject to certification by the Controller as to the availability of funds.

12 ~~(C)~~ **Bid.** A sealed document submitted in response to an Advertisement For Bids.
13 No Bbid shall be deemed accepted by the City ~~and County of San Francisco~~ until such time as
14 the eContract is awarded in accordance with this Chapter 6.

15 ~~(D)~~ **Bidder.** One who submits a bBid in response to an Advertisement For Bids.
16 City. The City and County of San Francisco.

17 ~~(E)~~ **Construction Manager.** Any individual, firm, partnership, corporation,
18 association, joint venture or other legal entity permitted by law to furnish construction
19 management services to the City ~~and County~~.

20 ~~(F)~~ **Contract.** For the purposes of this Chapter, a eContract is an agreement in
21 writing between the City ~~and County of San Francisco~~ and any party to perform professional
22 design services, consultant services, construction management services or construction
23 services relative to a pPublic wWork or iImprovement. No eContract shall be deemed awarded,
24 effective or binding on the City ~~and County of San Francisco~~ until such time as the requirements
25 for aAward are met, as provided in this Chapter 6.

1 **Contract Monitoring Division (CMD).** *A division of the Office of the City Administrator to*
2 *which the City Administrator has delegated responsibility to implement Administrative Code Chapter*
3 *14B.*

4 ~~(G)~~ **Contractor.** A party who contracts directly with the City ~~and County of San~~
5 ~~Francisco~~ to perform professional design services, consultant services, construction
6 management services or construction services relevant to a ~~p~~Public ~~w~~Work or ~~i~~Improvement.
7 A ~~e~~Contractor performing construction services may also be referred to as a "~~g~~General
8 ~~e~~Contractor" or a "~~p~~Prime ~~e~~Contractor."

9 **Core Trade Subcontractor.** *A subcontractor identified by the City or the Contractor that may*
10 *provide key pre-construction services for a procurement under Section 6.61 or Section 6.68.*

11 ~~(H)~~ **Department Head.** The duly appointed General Manager, Director, or Executive
12 Director of a City ~~and County of San Francisco~~ department authorized to perform ~~p~~Public ~~w~~Work
13 ~~or Improvements~~ under ~~this Chapter~~Section 6.2. For purposes of this Chapter only, an authorized
14 ~~d~~Department ~~h~~Head may designate an individual to execute on his or her behalf any
15 document referenced in this Chapter ~~6~~, including but not limited to Contracts, ~~e~~change
16 ~~o~~rders, ~~M~~odifications, ~~S~~ervice ~~o~~rders, ~~T~~ask ~~o~~rders, approvals, progress payments, and
17 certificates of ~~acceptance~~ ~~completion~~. Such designation shall be in writing and shall identify the
18 individual by name and title and the scope and term of the designation.

19 **Integrated Furniture, Fixtures, and Equipment (IFF&E).** *Furniture, fixtures, and/or*
20 *equipment that require integration that significantly affects the building design and/or the design of*
21 *interior renovation of a Public Work or Improvement due to physical dimension, power connection, or*
22 *data communication, and/or coordination with construction trades, including but not limited to,*
23 *electrical, plumbing, mechanical, or building controls.*

24 ~~(I)~~ **Prevailing Wage or Prevailing Rate of Wage.** ~~The prevailing wage, as used in this~~
25 ~~Chapter, is~~ For purposes of this Chapter 6, the highest general prevailing rate of wage plus "per

1 diem wages" and wages paid for overtime and holiday work paid in private employment in the
2 City ~~and County of San Francisco~~ for the various crafts and kinds of labor employed in the
3 performance of any public work or improvement ~~under this Chapter~~. "Per diem wages" are
4 defined pursuant to Labor Code ~~s~~Section 1773.1, as amended from time to time.

5 ~~(J)~~ **Public Work or Improvement.** ~~A public work or public work or improvement, as~~
6 ~~used in this Chapter, is a~~Any erection, construction, renovation, alteration, improvement,
7 demolition, excavation, installation, or repair of any public building, structure, infrastructure,
8 bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the
9 City ~~and County of San Francisco~~, the cost of which is to be paid wholly or partially out of
10 moneys deposited in the Treasury of the City ~~and County~~. A Public Work or Improvement may
11 include Integrated Furniture, Fixtures, and Equipment.

12 **Quote or Quotation.** A statement or proposal setting out the estimated cost for work or
13 services submitted in response to a request for a quote from a department for work or services on a
14 Public Work or Improvement.

15 ~~(K)~~ **Responsible.** A ~~responsible~~Bidder or ~~e~~Contractor ~~is one~~ who (1) meets the
16 qualifying criteria required for a particular project, including without limitation the expertise,
17 experience, record of prior timely performance, license, resources, bonding and insurance
18 capability necessary to perform the work under the ~~e~~Contract and (2) at all times deals in good
19 faith with the City ~~and County and shall~~ submit ~~s~~ ~~b~~Bids, estimates, invoices, claims, requests for
20 equitable adjustments, requests for change orders, requests for ~~e~~Contract modifications, or
21 requests of any kind seeking compensation on a City ~~e~~Contract only upon a good faith honest
22 evaluation of the underlying circumstances and a good faith, honest calculation of the amount
23 sought.

1 (L) **Responsive.** A ~~responsive~~ Bid or proposal ~~is one~~ that complies with the
2 requirements of the subject Advertisement For Bids or request for proposals and/or qualification
3 without condition or qualification.

4 (M) **Threshold Amount.** The Threshold Amount, for the purposes of this Chapter, is
5 ~~\$400,000~~ \$600,000. On January 1, 2020~~15~~, and every five years thereafter, the Controller shall
6 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
7 Consumer Price Index from January 1, 2015~~0~~, rounded to the nearest \$1,000.

8
9 **SEC. 6.2. DEPARTMENTS OR COMMISSIONS EMPOWERED TO CONTRACT FOR**
10 **PUBLIC WORKS OR RELATED PROFESSIONAL SERVICES.**

11 Except as otherwise provided, the departments or commissions empowered on
12 behalf of the City ~~and County of San Francisco~~ to contract for Public ~~Works~~ or Improvements
13 or professional services related to a Public ~~Work~~ or Improvement are ~~the Department of San~~
14 Francisco Public Works, the Municipal Transportation Agency, and the Airport, Port, Public
15 Utilities, and Recreation and Park Commissions. All other departments or commissions must
16 procure construction or related professional services through ~~the Department of San Francisco~~
17 Public Works.

18
19 **SEC. 6.3. CONTRACTING POWERS AND PROCEDURE.**

20 (Aa) **Public Work or Professional Service Contracts Less Than or Equal to the**
21 **Threshold Amount.** The ~~Department~~ Head may award any construction Contract or
22 professional services Contract of less than or equal to the Threshold Amount. For such
23 Contracts, approval of the Mayor, commission or board concerned is not required.

24 (Bb) **Public Work or Professional Service Contracts in Excess of the Threshold**
25 **Amount.**

1 (1) **Departments under the Mayor.** For departments under the Mayor, the Mayor
2 or the Mayor's designee shall approve for ~~a~~Award all ~~p~~Public ~~w~~Work and professional service
3 ~~e~~Contracts in excess of the Threshold Amount and the ~~d~~Department ~~h~~Head may then issue an
4 order of ~~a~~Award.

5 (2) **Departments under Boards or Commissions.** *For departments empowered to*
6 *contract for Public Works or Improvements, the*~~The~~ ~~d~~Department ~~h~~Head shall recommend to the
7 board or commission concerned the ~~a~~Award of all ~~p~~Public ~~w~~Work and professional service
8 ~~e~~Contracts in excess of the Threshold Amount and such board or commission may then adopt
9 a resolution awarding the ~~e~~Contract.

10 (~~C~~C) **Certification Required.** In accordance with Section 3.105 of the ~~San Francisco~~
11 Charter, all ~~e~~Contract ~~a~~Awards are subject to certification by the Controller as to the
12 availability of funds.

13 (~~D~~D) **Execution of Contracts.** Following all necessary approvals, orders or
14 resolutions and execution by the ~~e~~Contractor, the ~~d~~Department ~~h~~Head shall execute ~~in~~
15 ~~duplicate~~ all ~~e~~Contracts, modifications and change orders. All paper transactions under this
16 Chapter 6 shall be executed in duplicate. All electronic transactions shall be executed in accordance
17 with Section 21.06 of the Administrative Code.

18
19
20 **SEC. 6.4. PREFERENCE FOR LOCAL MANUFACTURERS AND INDUSTRY;**
21 **RECYCLED CONTENT MATERIALS.**

22 (a) **Local preference.** Whenever any preference in favor of local manufacturers or
23 industry is provided by State law or ordinance or resolution of the Board of Supervisors, the
24 same shall apply to ~~e~~Contracts under this Chapter.

1 (b) **Recycled Content Materials.**

2 (1) **Requirement.** The ~~a~~Department ~~h~~Head or officer calling for ~~b~~Bids shall specify
3 recycled content materials, rather than virgin materials, to the maximum extent feasible in the
4 Advertisement for Bids and plans for all ~~e~~Contracts for ~~p~~Public ~~w~~Works or ~~i~~Improvements.

5 (2) **Definitions.** For the limited purpose of this subsection, the following terms
6 shall have the following meanings: (A) "feasible" means that recycled content materials meet
7 the requirements of the California Building Code or other adopted standards or regulations for
8 each of the materials and its intended use, are permitted to be used in the manner specified in
9 the ~~b~~Bid specifications under Federal, State, and local law, are available within the project's
10 time line, and are comparable in price to virgin materials, and (B) "recycled content materials"
11 means a building component utilized in place of raw or virgin material that is either reclaimed
12 for reuse from a prior structure or assembly, or a building material or component
13 manufactured in part from waste materials and/or by-products recovered or diverted from
14 solid waste, excluding those materials and by-products generated from, and commonly
15 reused within, an original manufacturing process.

16 (3) **Department of the Environment, Reports.** ~~Departments~~Contract Awarding
17 ~~Authorities~~ shall (~~a~~A) consult with the Department of the Environment regarding available
18 recycled content products that meet the needs of the department; and (~~b~~B) include information
19 on recycled content material used on ~~p~~Public ~~w~~Works ~~e~~Contracts in the annual reporting to the
20 Department of the Environment specified in the Environment Code.

21
22 **SEC. 6.5. COMPLIANCE WITH LOCAL BUSINESS ENTERPRISE UTILIZATION AND**
23 **NONDISCRIMINATION PROVISIONS.**

24 (~~Aa~~) **Application of Administrative Code Chapters 12B, 12C, and 14B and ~~12D.A.~~**
25 Notwithstanding any other provision of this Administrative Code, all ~~e~~Contracts awarded under

1 this Chapter 6 shall be awarded in accordance with the applicable requirements and
2 procedures established in this Chapter and Chapters 12B, 12C, ~~and 14B and 12D.A.~~

3 ~~Any contract for the construction, reconstruction or repair of public buildings, streets, utilities~~
4 ~~or other public work or improvement estimated to cost in excess of \$10,000,000 shall be awarded in~~
5 ~~accordance with the provisions of this Chapter, except that the bid discount provisions of Chapter~~
6 ~~12D.A shall not be applicable.~~

7 **(Bb) Review by the Contract Monitoring Division ~~Human Rights Commission.~~** The
8 ~~Human Rights Commission~~ Contract Monitoring Division (the "CMDHRC") shall review all
9 eContracts under this Chapter to determine compliance with Chapter 12B, 12C, and
10 ~~14B~~ Chapter 12D.A of the ~~San Francisco~~ Administrative Code. Such review shall occur as soon
11 as practicable, but prior to ~~a~~ Award of any such eContract. ~~Noncompliance shall be resolved in~~
12 ~~accordance with Administrative Code section 12D.A.16.~~

13 ~~The HRC Director~~ CMD may waive the review of any eContract subject to this Chapter.
14 ~~The HRC Director~~ CMD shall transmit a memorandum to the ~~Human Rights Commission~~ City
15 Administrator as soon as possible reporting such waiver. ~~The Director~~ CMD's memorandum
16 regarding the review waiver shall be a public document. The City Administrator ~~Commission~~
17 may disapprove ~~the Director~~ CMD's decision to waive review. The ~~HRC's~~ City Administrator's
18 decision to disapprove must be made within 30 days of receipt of ~~the~~ CMD's memorandum but
19 in no event subsequent to the ~~a~~ Award of any eContract. Failure to complete the review of any
20 eContract within 60 days of the date ~~b~~ Bids are received by the City shall constitute a waiver
21 under this subsection 6.5(b).

22 Any duties required of the City Administrator ~~HRC~~ under this subsection 6.5(b) may be
23 delegated by the City Administrator ~~Human Rights Commission~~ to the CMD Director ~~HRC Director~~.

1 **SEC. 6.6. FEDERALLY-FUNDED OR STATE-FUNDED CONTRACTS.**

2 (*Aa*) **Time for Award.** For all *e*Contracts that are fully or partially funded by Federal
3 or State grants, loans or other governmental source, the department concerned shall not be
4 required to award such *e*Contracts until 120 days from the date *b*Bids are received. Such time
5 may only be extended prior to award of the *e*Contract and only upon (*a1*) written agreement of
6 the apparent *r*Responsible *b*Bidder with the lowest *r*Responsive *b*Bid; (*b2*) approval by the
7 Mayor or the Mayor's Designee or by resolution of the board or commission concerned; and
8 (*e3*) any necessary approvals of the Federal, State or other governmental funding agency.

9 (*Bb*) **Contract Terms.** In all *e*Contracts for the construction of any *p*Public *w*Work or
10 *i*Improvement which involves the use of any funds furnished, given or loaned by the
11 government of the United States or the State of California, all laws, rules and regulations of
12 the government of the United States or the State of California or of any of its departments
13 relative to the performance of such work and the conditions under which the work is to be
14 performed, shall prevail over the requirements of this Chapter 6 when such laws, rules or
15 regulations are in conflict.

16 **SEC. 6.7. VOID CONTRACT.**

17 Any *p*Public *w*Works or related professional services *e*Contract or subcontract that is
18 not awarded in accordance with the requirements or which does not comply with the
19 provisions of this Chapter 6 shall be null and void; and no recovery shall be had thereon. Any
20 officer, board or commission who shall sign, execute or approve such a *e*Contract shall be
21 deemed guilty of misfeasance in office.

22
23 **SEC. 6.8. SEVERABILITY.**

24 If any provision of this Chapter 6 or any application thereof to any person or
25 circumstances is held invalid, such invalidity shall not affect other provisions or application of

1 this eChapter 6 which can be given effect without the invalid provision or application, and to
2 this end the provisions of this Chapter 6 are declared to be severable.

3
4 **SEC. 6.9. SUBCONTRACTOR AND SUBCONSULTANT LIMITATION OF RIGHTS.**

5 Except as otherwise expressly provided by law or eContract, no subcontractor,
6 subconsultant, supplier, or other person or business entity shall be a third-party beneficiary to
7 any eContract awarded in accordance with this Chapter 6, or to any modification or any
8 resolution of any claim arising out of any such eContract.

9
10 **ARTICLE II: CONSTRUCTION CONTRACTING**

11 **SEC. 6.20. PUBLIC WORK CONTRACTS GENERALLY.**

12 (Aa) **Public Works In Excess of the Threshold Amount.** Except as otherwise
13 provided by the Charter or the Administrative Code, any pPublic wWork or iImprovement
14 estimated to cost more than the Threshold Amount shall be performed under eContract
15 awarded to the rResponsible bBidder submitting the lowest rResponsive bBid. To split or
16 divide any pPublic wWork or iImprovement into two or more eContracts for the purpose of
17 evading this sSection 6.20 shall constitute official misconduct.

18 (Bb) **Public Works Less Than or Equal to the Threshold Amount.** Any pPublic
19 wWork or iImprovement estimated to cost less than or equal to the Threshold Amount may be
20 performed (a1) under eContract or (b2) by City ~~and County~~ employees. If the work is to be
21 performed under eContract, the department shall obtain not fewer than three qQuotes and
22 shall award the eContract to the rResponsible bBidder offering the lowest qQuotation. If the
23 department is unable to obtain three qQuotes, the aAward may be based on the qQuote or
24 qQuotes received. For Contracts for Public Works or Improvements less than or equal to \$10,000, no
25 competitive solicitation is required. The department administering the eContract shall maintain

1 records as to whom the request for ~~q~~Quotations was directed and the ~~q~~Quotations received. It
2 is the policy of the Board of Supervisors for contracting departments to make every effort to
3 eradicate prejudice and favoritism in the ~~a~~Award of City ~~e~~Contracts. In order to effectuate this
4 policy, ~~the department heads~~ Department Heads ~~authorized to enter into construction contracts~~ and
5 their staff members shall collaborate with ~~the HRC Director and HRC staff members~~ CMD
6 periodically to create a list of ~~r~~Responsible ~~e~~Contractors qualified to perform various types of
7 ~~p~~Public ~~w~~Work or Improvements for projects estimated to be less than the Threshold Amount,
8 making every effort to include qualified, ~~r~~Responsible, and certified LBE ~~e~~Contractors on that
9 list. ~~The CMD HRC~~ shall be responsible for outreach efforts to make sure that certified LBE
10 ~~e~~Contractors are aware of the opportunity to be considered for the list. The ~~contract awarding~~
11 departments or commissions shall be responsible for evaluating and determining whether
12 ~~e~~Contractors are ~~r~~Responsible and qualified to perform the various scopes of work. ~~The~~
13 ~~department heads authorized to execute construction contracts shall report quarterly to the Board of~~
14 ~~Supervisors regarding LBE inclusion on the list of responsible and qualified contractors for public~~
15 ~~work contracts estimated to be less than or equal to the Threshold Amount, a description of the scope~~
16 ~~of work and price for each contract awarded under this section, the name of the contractor awarded~~
17 ~~the contract and whether the contract was awarded to an LBE contractor. Such reports shall be~~
18 ~~referred to a Board committee for public hearing.~~

19 (c) **Estimates Required.** For ~~p~~Public ~~w~~Works or ~~i~~Improvements in excess of the
20 Threshold Amount, no ~~d~~Department ~~h~~Head shall recommend a construction ~~e~~Contract for or
21 issue an order of ~~a~~Award without preparing detailed program requirements and detailed
22 estimates for the work to be performed. There shall be a separate accounting for each work or
23 improvement, which accounting shall include all direct, indirect, and supervisory elements of
24 costs chargeable to such work or improvement. All such accounts shall be reported to the
25

1 Controller and to either the Mayor or the Mayor's ~~D~~designee or to the board or commission
2 concerned, as appropriate.

3 **(Dd) Comparison of Bids on Basis of Time of Completion or Cost of Compensable**

4 **Delay.** ~~The department head~~**Department Heads may**~~concerned is authorized to~~ compare ~~b~~Bids on
5 the basis of time of completion and/or the cost of any compensable delay, and any ~~e~~Contract
6 awarded in consideration, in whole or in part, of the relative time estimate of ~~b~~Bidders for
7 completion of the work and/or the cost of any compensable delay in completing the work, shall be
8 subject to the provisions of this Chapter 6.

9 **(Ee) Time for Award.** Except when a ~~e~~Contract is funded by Federal or State grants
10 or funds, all ~~p~~Public ~~w~~Work ~~e~~Contracts shall be awarded within ~~ninety~~(90) days of the date the
11 City ~~and County~~ receives the ~~b~~Bids. Such time may only be extended prior to award of the
12 ~~e~~Contract and only upon written agreement of the apparent ~~r~~Responsible ~~b~~Bidder with the
13 lowest ~~r~~Responsive ~~b~~Bid and approval by the ~~d~~Department ~~h~~Head.

14 **(Ff) Prequalification.** Department ~~h~~Heads ~~authorized to execute public work contracts~~
15 may require that prospective ~~b~~Bidders be prequalified to ~~b~~Bid either on a specific project or on
16 an identified group of projects. The procedure for prequalification is as follows:

17 (1) The ~~d~~Department ~~h~~Head shall issue a prequalification statement. The
18 prequalification statement may, at the discretion of the ~~d~~Department ~~h~~Head, be issued in
19 conformance with California Public Contract Code ~~s~~Section 20101 and/or the California
20 Department of Industrial Relations Model Pre-Qualification Questionnaire. The ~~d~~Department
21 ~~h~~Head may, at his/her own discretion, apply the Model Pre-Qualification Questionnaire
22 guidelines for scorable questions and scoring as the basis for any prequalification. The
23 ~~d~~Department ~~h~~Head may also, at his/her own discretion, issue the Model Pre-Qualification
24 Questionnaire with additional questions or may use an alternative questionnaire. The
25 ~~d~~Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work may include in any questionnaire a

1 request for special qualifications, experience or expertise necessary to perform the project or
2 projects for which the prequalification is sought. For any project-specific information required,
3 the department shall set objective scoring criteria and incorporate the criteria into any scoring
4 procedure.

5 (2) The department responsible for the ~~p~~Public ~~w~~Work shall advertise any
6 prequalification questionnaire in the same manner required for ~~b~~Bids, as set forth in Section
7 6.21 ~~of this Chapter~~.

8 (3) Prequalification shall be valid for not more than two years following the date of
9 initial prequalification.

10 (4) A prospective ~~b~~Bidder may dispute a finding that he/she is not prequalified. The
11 dispute and request for review must be in writing and received by the department within ten
12 calendar days from the date the department issued notice of non-prequalification. The
13 department shall then provide the prospective ~~b~~Bidder with the basis for its finding and any
14 supporting evidence used in the determination. The department shall give the prospective
15 ~~b~~Bidder the opportunity to rebut the evidence provided and to present evidence as to why the
16 prospective ~~b~~Bidder should be found qualified. If a ~~b~~Bidder fails to avail itself of this dispute
17 process, the department's finding shall become final without further notice. Failure to be
18 prequalified shall not by itself preclude a prospective ~~b~~Bidder from participating in other or
19 future prequalifications.

20
21 **SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.**

22 (*Aa*) **Bids.** All Advertisements For Bids for construction ~~e~~Contracts in excess of the
23 Threshold Amount shall conform to and at a minimum require the following:

24 (1) **Published Advertisement.** The ~~d~~Deartment ~~h~~Head ~~authorized to execute the~~
25 ~~contract for the public work or improvement to be performed~~ shall advertise for competitive ~~b~~Bids

1 in at least one local newspaper, ~~or~~ periodical of general circulation, or on a publically available
2 website of the City's Office of Contract Administration or the department concerned. Such
3 advertisement shall be published not fewer than ~~ten~~(10) days prior to ~~b~~Bid opening. The
4 department may, in its discretion, include in the published advertisement the amount of the
5 engineer's estimate for the work to be performed.

6 (2) **Award and Certification Required.** All published advertisements and
7 Advertisements For Bid shall contain the following language [wording in brackets should be
8 chosen as appropriate to the department]:

9 In accordance with Administrative Code Chapter 6, no bid is accepted and no
10 contract in excess of [the Threshold Amount] is awarded by the City and County of San
11 Francisco until such time as [(1) for departments with boards or commissions, (a) the
12 department head recommends the contract for award and (b) the board or commission then
13 adopts a resolution awarding the contract]; or [(2) for departments under the Mayor, (a) the
14 Mayor or the Mayor's designee approves the contract for award and (b) the department head
15 then issues an order of award.] Pursuant to Charter Section 3.105, all contract awards are
16 subject to certification by the Controller as to the availability of funds.

17 Failure of a department to include such language in a published advertisement or
18 Advertisement For Bids does not give rise to a contract right by a ~~b~~Bidder or ~~e~~Contractor
19 outside of the requirements of the Charter or Administrative Code ~~of the City and County of San~~
20 ~~Francisco~~.

21 (3) **Form of Bid.** All ~~b~~Bids shall be sealed and directed to the ~~d~~Department ~~h~~Head
22 advertising for ~~b~~Bids, in the format prescribed by the ~~d~~Department ~~h~~Head ~~with the authority to~~
23 ~~execute the contract~~.

24 (4) **Bid Security Requirement Bond.** All ~~b~~Bids ~~in excess of \$25,000.00~~ shall be
25 accompanied by a corporate surety bond, or an irrevocable standby letter of credit on a bank

1 or trust company doing business and having an office in the State of California, having a
2 combined capital and surplus of at least \$50,000,000-~~00~~, and subject to supervision or
3 examination by Federal or State authority, or a certified check on a bank or trust company
4 doing business and having an office in the State of California, having a combined capital and
5 surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State
6 authority, payable on sight to the City and County of San Francisco, the amount of which
7 corporate surety bond, irrevocable standby letter of credit, or certified check shall be fixed by
8 the ~~d~~Department ~~h~~Head or officer as stated in the Advertisement For Bids, which amount shall
9 not be less than 10%~~percent~~ of the amount ~~b~~Bid for the cost of the proposed work of
10 improvement, and no ~~b~~Bid shall be considered unless accompanied by a corporate surety
11 bond or irrevocable standby letter of credit or certified check. Any irrevocable standby letter
12 submitted pursuant to this Chapter shall be on a form provided by the City ~~and County~~. If the
13 amount of security required is fixed by the ~~d~~Department ~~h~~Head or officer in an amount in
14 excess of \$15,000-~~00~~, the form of security required shall be that of a corporate surety bond or
15 irrevocable standby letter of credit. The requirement for a corporate surety bond, irrevocable
16 standby letter of credit, or certified check described in this subsection shall be referred to
17 collectively as the "bid security requirements."

18 Notwithstanding the above, the bid security requirements for a particular ~~e~~Contract
19 may be modified by the ~~d~~Department ~~h~~Head in accordance with Administrative Code Chapter
20 14B.

21 (5) **Fees.** The ~~d~~Department ~~h~~Head or officer calling for ~~b~~Bids may specify in the
22 Advertisement For Bids for any project a nonrefundable fee to be paid by each prospective
23 ~~b~~Bidder for each set of ~~b~~Bidding documents (including plans and specifications), such fee to
24 defray the cost of reproducing each set of ~~b~~Bidding documents as determined by the
25 ~~d~~Department ~~h~~Head or officer, and all such fees shall be deposited as an abatement of the

1 expenditure of the appropriation against which the cost of reproducing said ~~b~~Bidding
2 documents was charged.

3 (6) **License.** The ~~d~~Department ~~h~~Head shall specify in all Advertisements For Bids
4 and plans for ~~p~~Public ~~w~~Work projects the classification of the ~~e~~Contractor's license which a
5 ~~e~~Contractor shall possess at the time ~~b~~Bids are submitted. *Except as provided in California*
6 *Business and Professions Code Section 7000 et seq.,* ~~b~~Bidders and their subcontractors are
7 required to be properly licensed at the time of ~~b~~Bid.

8 (7) **Qualifications.** The ~~d~~Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work
9 shall require from all ~~b~~Bidders information concerning their experience and financial
10 qualifications, and shall take such information into consideration in the ~~a~~Award of any
11 ~~e~~Contract. At a minimum the ~~d~~Department ~~h~~Head shall require (~~1A~~) information concerning the
12 ~~e~~Contractor's experience, financial qualifications and ability to perform the terms and
13 conditions of the ~~e~~Contract, and (~~2B~~) information as to whether the ~~e~~Contractor possesses, or
14 can obtain in time to perform the ~~e~~Contract, the necessary equipment. *A Department Head may*
15 *satisfy this requirement through a Bidder prequalification process that meets the requirement of*
16 *Section 6.20(f). In the event that a bidder fails to provide such information within fourteen calendar*
17 *days of bid opening, or as otherwise required in the Advertisement For Bids, the department head*
18 *could find that the bidder is refusing to enter into the contract, resulting in a forfeiture of the bidder's*
19 *bid bond.*

20 (8) **Business Tax Registration Certificate.** All Advertisement For Bids shall
21 require that ~~b~~Bidders submit proof of a current Business Tax Registration Certificate. Failure
22 of a ~~b~~Bidder to provide such proof *prior to Award within fourteen (14) calendar days of bid opening,*
23 or as otherwise required in the Advertisement For Bids, could, at the discretion of the
24 ~~d~~Department ~~h~~Head, constitute a refusal to enter into the ~~e~~Contract and result in a forfeiture of
25 the ~~b~~Bid bond.

1 **(9) Designation of Subcontractors; Subcontracting and Subletting.** All

2 ~~b~~Bidders shall designate their subcontractors in accordance with and shall be subject to the
3 ~~California~~-Subletting and Subcontracting Fair Practices Act, at California Public Contract Code
4 ~~§Section~~ 4100 et seq., as amended from time-to-time. In addition to the penalties provided by
5 Public Contract Code ~~§Section~~ 4100 et seq., violation of this subsection 6.21(a)(9) may be
6 grounds for a determination of nonresponsibility under Article V of this Chapter 6.

7 **(10) Work to Be Performed by General Contractor.** The Advertisement For Bids

8 may specify the ~~portion~~scope of work which must be performed by the General Contractor
9 using his/her own forces, ~~or the~~. The specification may require the General Contractor to
10 perform with his/her own forces up to 25% of the base ~~e~~Contract work. Bidders must certify
11 with their ~~b~~Bids that, if awarded the ~~e~~Contract, they will perform with their own forces the
12 specified scope or percentage of the total ~~b~~Bid price (excluding alternate Bid items).

13 **(Bb) Quotes.** All requests for ~~q~~Quotes for construction ~~e~~Contracts less than or equal
14 to the Threshold Amount ~~may shall~~ be posted with three-days' notice. Such requests shall at a
15 minimum require a ~~e~~Contractor's license, qualifications, a Business Tax Registration
16 Certificate, participation in an apprenticeship program and compliance with subcontractor
17 listing laws, all in accordance with the listed provisions of Sections 6.21 and 6.22.

18 **(Cc) Right to Reject Any or All Bids or Quotes.** The ~~d~~Department ~~h~~Head shall

19 have the right to reject any or all ~~b~~Bids or ~~q~~Quotes for any reason or no reason. All
20 Advertisement For Bids shall reserve this right, but failure to make such reservation shall not
21 abrogate the right to reject.

22 **(Dd) Bid Protests.** Only a ~~b~~Bidder may submit a bid protest. The ~~d~~Department

23 ~~h~~Head concerned shall prescribe in the Advertisement For Bids procedures for submitting bid
24 protests. Such procedures shall set the time by which bid protests must be received but may
25

1 not require that bid protests be submitted fewer than five ~~(5)~~ business days after the date
2 ~~h~~Bids are due.

3
4 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
5 **CONDITIONS.**

6 All construction ~~e~~Contracts awarded under this Chapter 6 by the City ~~and County of San~~
7 ~~Francisco~~ shall contain the following minimum terms and conditions:

8 (Aa) **Bonds.** Before the execution of any ~~e~~Contract for ~~p~~Public ~~w~~Work or
9 ~~i~~Improvement in excess of \$25,000, the ~~d~~Department ~~h~~Head ~~authorized to execute such contracts~~
10 shall require the successful ~~h~~Bidder to file corporate surety bonds for the faithful performance
11 thereof and to guarantee the payment of wages for services engaged and of bills contracted
12 for material, supplies and equipment used in the performance of the ~~e~~Contract. ~~Each~~ ~~The~~ bond
13 shall be for a sum not less than 100% ~~percent~~ of the awarded ~~Contract amount~~.

14 The City ~~and County of San Francisco~~, acting through the City Administrator ~~its Human~~
15 ~~Rights Commission ("HRC")~~, intends to provide guarantees to private bonding assistance
16 companies and financial institutions in order to induce those entities to provide required
17 bonding and financing to eligible ~~e~~Contractors bidding on and performing City ~~p~~Public ~~w~~Work
18 ~~e~~Contracts. This bonding and financial assistance program is subject to the provisions of
19 Administrative Code Chapter 14B.

20 (Bb) **Insurance.** All construction ~~e~~Contracts awarded under this Chapter 6 must
21 conform to the insurance requirements established by the Risk Manager. The Risk Manager
22 shall develop uniform insurance requirements for City ~~e~~Contracts subject to this Chapter 6 and
23 shall publish such requirements in the Risk Manager's Manual. The Risk Manager shall
24 review and update such insurance requirements on an annual basis.

1 Every eContractor and subcontractor shall comply with the provisions of California
2 Labor Code ~~s~~Section 3700. Prior to commencing the performance of work under any pPublic
3 ~~W~~ork eContract, the eContractor and all of its subcontractors shall file with the awarding
4 department a certificate of insurance against liability for workers compensation or proof of
5 self-insurance in accordance with the provisions of the California Labor Code.

6 (Ec) **Indemnification.** All construction eContracts awarded under this Chapter 6
7 shall require that the eContractor fully indemnify the City ~~and County~~ to the maximum extent
8 provided by law, such that each eContractor must save, keep, bear harmless and fully
9 indemnify the City ~~and County~~ and any of its officers or agents from any and all liability,
10 damages, claims, judgments or demands for damages, costs or expenses in law or equity that
11 may at any time arise.

12 This indemnification requirement may not be waived or abrogated in any way for any
13 eContract without the recommendation of the ~~City's~~ Risk Manager and the express permission
14 and approval of the Board of Supervisors.

15 (Dd) **Assignment.** No eContract shall be assigned except upon the recommendation
16 of the ~~d~~Department ~~h~~Head concerned and with the approval of the Mayor or the Mayor's
17 designee, relative to the department under the Mayor's jurisdiction, or the approval of the
18 board or commission concerned for departments not under the Mayor.

19 (Ee) **Prevailing Wages.**

20 (1) **Generally.** All eContractors and subcontractors performing a pPublic ~~W~~ork or
21 ~~i~~Improvement for the City ~~and County of San Francisco~~ shall pay its workers on such projects
22 the pPrevailing ~~r~~Rate of ~~W~~ages as provided below. For the purpose of pPrevailing ~~W~~age
23 requirements only, the definition of a public work shall include ~~those~~ pPublic ~~W~~orks or
24 ~~i~~Improvements as defined in the ~~foregoing~~ ~~s~~Section 6.1, ~~of this Chapter~~ and shall also include
25 (~~a~~) any trade work performed at any stage of construction (including preconstruction work)

1 and (~~bB~~) any public work paid for by the City ~~and County of San Francisco~~ with "the equivalent of
2 money" under the meaning of California Labor Code ~~s~~Section 1720(b).

3 (2) **Additional Projects Included Within Definition of "Public Work or
4 Improvement" for Purposes of Prevailing Wages.**

5 (~~aA~~) **Property Leased by the City.** For the limited purposes of this subsection
6 6.22(~~Ee~~), a "public work or improvement" also means and includes any construction work
7 done under private contract when all of the following conditions exist:

- 8 (i) The construction contract is between private persons; and
- 9 (ii) The property subject to the construction contract is privately owned, but
10 upon completion of the construction work will be leased to the City ~~and County of San Francisco~~
11 for its use; and

12 (iii) Either of the following conditions exist: (1) The lease agreement between
13 the lessor and the City ~~and County of San Francisco~~, as lessee, is entered into prior to the
14 construction contract, or (2) The construction work is performed according to the plans,
15 specifications, or criteria furnished by the City ~~and County of San Francisco~~, and the lease
16 agreement between the lessor and the City ~~and County of San Francisco~~ as lessee, is entered
17 into during, or upon completion, of the construction work.

18 (~~bB~~) **Public Works Under California Labor Code.** For the limited purposes of
19 this subsection 6.22(~~Ee~~) and Section 6.24, a "public work or improvement" also means and
20 includes all projects for "public works" as defined in California Labor Code section 1720, and
21 projects for which ~~p~~Prevailing ~~w~~Wages are required to be paid ~~on "public works"~~ pursuant to
22 California Labor Code ~~s~~Section 1782. This subsection 6.22(~~Ee~~)(2)(~~bB~~) is intended to have
23 prospective effect only, and shall not be interpreted to impair the obligations of any pre-
24 existing grant agreement, lease, development agreement or other contract entered into by the
25 City. Notwithstanding the prior sentence, this subsection shall apply to newly included work in

1 pre-existing grant agreements, leases, development agreements, or other contracts amended
2 on or after the operative date. The subsection shall apply to grant agreements, leases,
3 development agreements and other contracts entered into by the City on or after the operative
4 date. All grant agreements, leases, development agreements and other contracts which allow
5 for such construction on property owned by the City that the City enters after the operative
6 date of the subsection must contain a provision that such construction shall comply with this
7 subsection.

8 (3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of
9 Supervisors, from time to time and at least once during each calendar year, to fix and
10 determine the ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as follows:

11 On or before the first Monday in November of each year, the Civil Service
12 Commission shall furnish to the Board of Supervisors data as to the highest general
13 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages of the various crafts and kinds of labor as paid in private
14 employment in the City and County of San Francisco, plus "per diem wages" and wages for
15 overtime and holiday work. The Civil Service Commission shall provide the Board of
16 Supervisors data for "per diem wages" pursuant to California Labor Code ~~s~~Sections 1773.1
17 and 1773.9, as amended from time to time. The Board of Supervisors shall, upon receipt of
18 such data, fix and determine the ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages. The ~~p~~Prevailing ~~r~~Rate of
19 ~~w~~Wages as so fixed and determined by the Board of Supervisors shall remain in force and
20 shall be deemed to be the highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages paid in private
21 employment for similar work, until the same is changed by the Board of Supervisors. In
22 determining the highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages per diem wages and wages for
23 overtime and holiday work, as provided for in this section, the Board of Supervisors shall not
24 be limited to the consideration of data furnished by the Civil Service Commission, but may
25

1 consider such other evidence upon the subject as the Board shall deem proper and thereupon
2 base its determination upon any or all of the data or evidence considered.

3 In the event that the Board of Supervisors does not fix or determine the highest
4 general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages in any calendar year, the rates established by the
5 California Department of Industrial Relations for such year shall be deemed adopted.

6 (4) **Specifications to Include Wage Rate.** The ~~d~~Department ~~h~~Head *authorized to*
7 *execute a construction contract under this Chapter* shall include in the contract specifications, or
8 make available in the offices of the department or at the job site, a detailed statement of the
9 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as fixed and determined by the Board of Supervisors at the time
10 the department issued the Advertisement For Bids on the contract. The contractor shall agree
11 to pay to all persons performing labor in and about the public work or improvement the
12 highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as determined pursuant to this Chapter,
13 including wages for holiday and overtime work. If the specifications do not include the
14 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages, the specifications shall include a statement that copies of the
15 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as fixed and determined by the Board of Supervisors are on file
16 at the department's principal office or at the job site and shall be made available to any
17 interested party on request.

18 (5) **Subcontractors Bound by Wage Provisions.** Every contract for any public
19 work or improvement shall also contain a provision that the contractor shall insert in every
20 subcontract or other arrangement which he or she may make for the performance of any work
21 or labor on a public work or improvement. This provision shall be that the subcontractor shall
22 pay to all persons performing labor or rendering service under said subcontract or other
23 arrangement the highest general prevailing rate of wages as fixed and determined by the
24 Board of Supervisors for such labor or services.

1 (6) **Records to be Kept by Contractors and Subcontractors.** Every public
2 works contract or subcontract ~~awarded under this Chapter~~ for any public work or improvement
3 shall contain a provision that the contractor shall keep, or cause to be kept, for a period of four
4 years from the date of substantial completion of a public work, payrolls and basic records
5 including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax
6 forms and superintendent and foreman daily logs for all trades workers performing work at or
7 for a City ~~and County of San Francisco~~ public work or improvement. Such records shall include
8 the name, address and social security number of each worker who worked on the project,
9 including apprentices, his or her classification, a general description of the work each worker
10 performed each day, the rate of pay (including rates of contributions for, or costs assumed to
11 provide fringe benefits), daily and weekly number of hours worked, deductions made and
12 actual wages paid. Every subcontractor who shall undertake the performance of any part of a
13 public work or improvement shall keep a like record of each person engaged in the execution
14 of the subcontract.

15 The contractor shall maintain weekly certified payroll records for submission to the
16 awarding department as required. The contractor shall be responsible for the submission of
17 payroll records of its subcontractors. All certified payroll records shall be accompanied by a
18 statement of compliance signed by the contractor indicating that the payroll records are
19 correct and complete, that the wage rates contained therein are not less than those
20 determined by the ~~San Francisco~~ Board of Supervisors and that the classifications set forth for
21 each employee conform with the work performed.

22 All such records as described in this section shall at all times be open to inspection
23 and examination of the duly authorized officers and agents of the City ~~and County of San~~
24 ~~Francisco~~, including representatives of the Office of Labor Standards Enforcement.
25

1 Should the ~~d~~Department ~~h~~Head responsible for the public work or the Labor
2 Standards Enforcement Officer determine that a contractor or subcontractor is not in
3 compliance with the requirements of this subsection, the ~~d~~Department ~~h~~Head or the Labor
4 Standards Enforcement Officer shall issue written notification to the contractor or
5 subcontractor mandating compliance within not fewer than ~~ten~~10 calendar days from the date
6 of the notification. Should the contractor or subcontractor fail to comply as required in the
7 notification, the ~~d~~Department ~~h~~Head who executed the ~~e~~Contract or the Labor Standards
8 Enforcement Officer may impose ~~a penalty~~penalties of \$25.00 ~~consistent with analogous provisions of~~
9 the California Labor Code, including Section 1776, as amended from time to time, for each calendar
10 day of noncompliance, or portion thereof, for each worker. Upon the request of the
11 responsible ~~d~~Department ~~h~~Head or the Labor Standards Enforcement Officer, the Controller
12 shall withhold these penalties from progress payments then due or to become due.

13 **(7) Additional Required Contract Provisions.** Every public works ~~e~~Contract shall
14 contain provisions stating that (~~1A~~) the contractor will cooperate fully with the Labor Standards
15 Enforcement Officer and other City employees and agents authorized to assist in the
16 administration and enforcement of the prevailing wage requirements and other labor
17 standards imposed on public works contractors by the Charter and Chapter 6 of the San
18 Francisco Administrative Code; (~~2B~~) the contractor agrees that the Labor Standards
19 Enforcement Officer and his or her designees, in the performance of their duties, shall have
20 the right to engage in random inspections of job sites and to have access to the employees of
21 the contractor, employee time sheets, inspection logs, payroll records and employee
22 paychecks; (~~3C~~) the contractor shall maintain a sign-in and sign-out sheet showing which
23 employees are present on the job site; (~~4D~~) the contractor shall prominently post at each job-
24 site a sign informing employees that the project is subject to the City's prevailing wage
25 requirements and that these requirements are enforced by the Labor Standards Enforcement

1 Officer; and (~~5E~~) that the Labor Standards Enforcement Officer may audit such records of the
2 contractor as he or she reasonably deems necessary to determine compliance with the
3 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
4 works contractors. Failure to comply with these requirements may result in penalties and
5 forfeitures consistent with analogous provisions of the California Labor Code, including sSection
6 1776(g), as amended from time to time.

7 (8) **Non-compliance with Wage Provisions – Penalties.**

8 (~~aA~~) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or
9 neglect to pay to the several persons who shall perform labor under any contract, subcontract
10 or other arrangement on any public work or improvement as defined in this Chapter the
11 highest general prevailing rate of wages as fixed by the Board of Supervisors under authority
12 of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to
13 pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit
14 to the City ~~and County of San Francisco~~ back wages due plus ~~the penal penalties in amounts~~
15 consistent with analogous provisions of the California Labor Code as amended from time to time,
16 including Sections 1775 and 1813, but not less than ~~sum of~~\$50.00 per day for each laborer,
17 workman or mechanic employed for each calendar day or portion thereof, while they shall be
18 so employed and not paid said highest general prevailing rate of wages, and in addition shall
19 be subject to the penalties set forth in Article V of this Chapter 6, including debarment.

20 (~~bB~~) **Enforcement.** It shall be the duty of the officer, board or commission under
21 whose jurisdiction said public work or improvement is being carried on, made or constructed,
22 when certifying to the Controller any payment which may become due under said contract, to
23 deduct from said payment or payments the total amount of said forfeiture provided for in this
24 subsection. In doing so, the ~~d~~Department ~~h~~Head must also notify in writing the Labor
25 Standards Enforcement Officer of his/her action. The Labor Standards Enforcement Officer

1 may also upon written notice to the ~~d~~Department ~~h~~Head who is responsible for the project,
2 certify to the Controller any forfeiture(s) to deduct from any payment as provided for in this
3 Subsection 6.22(~~Ee~~)(8). Certification of forfeitures under this subsection shall be made only
4 upon an investigation and audit by the responsible ~~d~~Department ~~h~~Head or the Labor
5 Standards Enforcement Officer and upon service of written notice to the contractor that
6 includes identification of the grounds for the forfeiture or forfeitures ("Certification of
7 Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of
8 Forfeiture, but failure to append such documentation shall not invalidate the Certification.
9 Service of the Certification of Forfeiture shall be made by United States mail and the date of
10 service shall be the date of mailing. The Controller, in issuing any warrant for any such
11 payment, shall deduct from the amount which would otherwise be due on said payment or
12 payments the amount of said forfeiture or forfeitures as so certified.

13 ~~(eC)~~ **Recourse Procedure.** A contractor and/or a subcontractor may appeal from
14 a Certification of Forfeiture. The Controller shall adopt and maintain rules and regulations for
15 any appeal under this ~~S~~subsection 6.22(~~Ee~~)(8)(~~eC~~), which rules shall generally include the
16 following parameters for efficient and effective due process:

17 (i) Any Appeal from Certification of Forfeiture shall be filed in writing by the
18 contractor and/or subcontractor (referred to in this ~~S~~subsection 6.22(~~Ee~~)(8)(~~eC~~), whether
19 singular or plural, as the "Appellant") within 15 days of the date of service of the Certification
20 of Forfeiture. Appellant shall file the Appeal from Certification of Forfeiture with the City
21 Controller and serve a copy on the Labor Standards Enforcement Officer. Failure by the
22 contractor or subcontractor to submit a timely, written Appeal from Certification of Forfeiture
23 shall constitute concession to the forfeiture, and the forfeiture shall be deemed final upon
24 expiration of the 15-day period.

25

1 (ii) The Office of Labor Standards Enforcement shall promptly afford Appellant
2 an opportunity to meet and confer in good faith regarding possible resolution of the
3 Certification of Forfeiture in advance of further proceedings under this ~~sub~~subsection
4 6.22(~~Ee~~)(8)(~~eC~~), with the intention that such meeting occur within 30 days of the date the
5 Appeal from Certification of Forfeiture is filed.

6 (iii) After the expiration of 30 days following the date the Appeal from
7 Certification of Forfeiture is filed, any party may request in writing, with concurrent notice to all
8 other parties, that the Controller appoint a hearing officer to hear and decide the appeal. If no
9 party requests appointment of a hearing officer, the Certification of Forfeiture shall be deemed
10 final on the 60th day after the date the Appeal from Certification of Forfeiture is filed.

11 (iv) Within 15 days of receiving a written request for appointment of a hearing
12 officer under ~~sub~~subsection 6.22(~~Ee~~)(8)(~~eC~~)(iii), the Controller shall appoint an impartial hearing
13 officer and immediately notify the enforcing official and Appellant, and their respective counsel
14 or authorized representative if any, of the appointment. The appointed hearing officer shall be
15 an Administrative Law Judge with at least ~~ten~~ 10 years' experience with the City and not less
16 than two years' experience in labor law, prevailing wage, and/or wage and hour matters; or
17 shall be an attorney with knowledge and not less than five years' experience in labor law,
18 prevailing wage, and/or wage and hour matters.

19 (v) The hearing officer shall promptly set a date for a hearing. The hearing
20 must commence within 45 days of the date the Controller notice of the hearing officer
21 appointment, and conclude within 75 days of such notice. The hearing officer shall conduct a
22 fair and impartial evidentiary hearing in conformance with the time limitations set forth in this
23 subsection 6.22(~~Ee~~)(8)(~~eC~~) and in the rules and regulations, so as to avoid undue delay in the
24 resolution of any appeal. The hearing officer shall have the discretion to extend the times
25

1 under this subsection 6.22(~~Ee~~)(8)(~~eC~~), and any time requirements under the rules and
2 regulations, only upon a showing of good cause.

3 (vi) Appellant has the burden of proving by a preponderance of the evidence
4 that the basis for the Certification of Forfeiture is incorrect, including any back wage and
5 penalty assessments that are at issue in the appeal.

6 (vii) Within 30 days of the conclusion of the hearing, the hearing officer shall
7 issue a written decision affirming, modifying, or dismissing the forfeiture. The decision of the
8 hearing officer shall consist of findings and a determination. The hearing officer's findings and
9 determination shall be final.

10 (viii) Appellant may appeal a final determination under this subsection 6.22(e)(8)
11 only by filing in the San Francisco Superior Court a petition for a writ of mandate under
12 California Code of Civil Procedure, Section 1084 et seq., as applicable and as may be
13 amended from time to time.

14 (~~dD~~) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as
15 provided in the foregoing paragraphs until such time as either the ~~eC~~Contractor or
16 subcontractor has conceded to the forfeiture or, in the event of an appeal, there is a
17 determination no longer subject to judicial review. The Controller shall then distribute the
18 amounts withheld in the following order: (1) the Labor Standards Enforcement Officer shall
19 make best efforts to distribute back wages withheld to the individual workers identified as not
20 having been paid the proper wage rate; (2) the penal sums provided for above shall inure to
21 the benefit of the general fund of the City ~~and County of San Francisco~~; (3) the Controller shall
22 hold the balance of any back wages in escrow for workers whom the Labor Standards
23 Enforcement Officer, despite his ~~or~~ her best efforts, cannot locate. In the event back wages
24 are unclaimed for a period of three years, the Controller shall undertake administrative
25

1 procedures for unclaimed funds in conformance with California Government Code Section
2 50050 et seq., as may be amended from time to time.

3 ~~(Ff)~~ **Hours and Days of Labor.**

4 (1) **Generally.** For the purpose of meeting prevailing conditions and enabling
5 employers to secure a sufficient number of satisfactory workers and artisans, no person
6 performing labor or rendering service in the performance of any ~~e~~Contract or subcontract for
7 any ~~p~~Public ~~w~~Work or ~~i~~Improvement as defined in this Chapter shall perform labor for a longer
8 period than five days (Monday through Friday) of eight hours each, with two 10-minute breaks
9 per eight-hour day, except in those crafts in which a different work day or week now prevails
10 by agreement in private employment. Any person working hours in addition to the above shall
11 be compensated in accordance with the prevailing overtime standards and rates.

12 (2) **Noncompliance and Forfeiture.** Any ~~e~~Contractor or subcontractor who shall
13 violate any of the provisions of this subsection 6.22(f) shall be liable for the same penalties
14 and forfeits as those specified in ~~s~~subsection 6.22(~~Ee~~) of this Chapter; penalties and forfeits
15 shall be applicable for each laborer, mechanic or artisan employed for each calendar day or
16 portion thereof whereon such laborer, mechanic or artisan is compelled or permitted to work
17 more than the days and hours specified herein. The provisions of this subsection 6.22(f) shall
18 be made a part of all ~~e~~Contracts and subcontracts for the construction of any ~~p~~Public ~~w~~Work or
19 ~~i~~Improvement.

20 (3) **Contracts Outside City and County.** In the event that any ~~p~~Public ~~w~~Work or
21 ~~i~~Improvement is to be constructed outside of the City ~~and County of San Francisco~~ and at such
22 a distance therefrom that those engaged in performing labor on ~~said the~~ ~~p~~Public ~~w~~Work or
23 ~~i~~Improvement must under ordinary conditions remain at or near the site of ~~said the~~ ~~p~~Public
24 ~~w~~Work or ~~i~~Improvement when not actually engaged in the performance of labor thereon, then
25 the officer, board or commission responsible for the construction of ~~said the~~ ~~p~~Public ~~w~~Work or

1 ~~i~~Improvement may, in making specifications or letting ~~e~~Contracts therefor, make provision
2 therein for days and hours of labor beyond the limitations provided for in ~~sub~~Section 6.22(~~Ff~~)
3 of this Chapter ~~6~~; but not to exceed eight hours in any one calendar day, or six days in any
4 calendar week. In the event that emergency conditions shall arise, making a change
5 advisable during the performance of any such ~~e~~Contract, or any portion thereof, the hours and
6 days of labor may be extended beyond the limits hereinabove expressed; but not to exceed
7 eight hours per day, upon the written authority of the officer, board or commission awarding
8 such ~~e~~Contract. Failure of the ~~e~~Contractor to perform such ~~e~~Contract within the time provided
9 shall not constitute an emergency.

10 (~~gG~~) **Local Hiring**~~Short Title~~. This subsection 6.22(~~gG~~) shall be known as and may be
11 cited as the San Francisco Local Hiring Policy for Construction ("Policy").

12 (1) **Findings and Purpose.**

13 (~~aA~~) The Board of Supervisors passed Ordinance 286-94 on August 4, 1994,
14 to establish local hiring requirements for City public work or improvement projects performed
15 within the boundaries of the City.

16 (~~bB~~) In 2010, the San Francisco Redevelopment Agency and the City's Office
17 of Economic and Workforce Development commissioned a study of the labor market in the
18 construction industry in San Francisco (the "Labor Market Analysis"), including review of
19 comparative demographic data regarding workers on public and private projects, scope of
20 past and future public and private construction work in San Francisco, comparative
21 compensation on public and private projects, demographic data regarding apprenticeship
22 programs operating in San Francisco, and income and residency data regarding construction
23 workers in San Francisco.

24 (~~eC~~) In 2010, the Walter and Elise Haas Fund and the San Francisco
25 Foundation, with assistance of the City's Office of Economic and Workforce Development,

1 convened a local hiring stakeholder process to discuss possible revision of subsection
2 6.22(~~gG~~), at which community, labor, contractor, and City stakeholders participated.

3 (~~dD~~) In August 2010, a report from Chinese for Affirmative Action and
4 Brightline Defense Project entitled, "The Failure of Good Faith," found that the City has
5 historically failed to meet its local hiring goals.

6 (~~eE~~) The Budget & Finance and Land Use & Economic Development
7 Committees of the Board of Supervisors held public hearings regarding local hiring and
8 proposed revisions to subsection 6.22(~~Gg~~).

9 (~~fF~~) The San Francisco Public Utilities Commission, Redevelopment Agency,
10 Human Rights Commission, and other City departments and agencies held public hearings
11 regarding local hiring.

12 (~~gG~~) The construction industry is one of the few industries providing a path to
13 middle-class careers for individuals without advanced degrees or facing barriers to quality
14 employment, and is therefore a crucial component of the effort to build economic opportunities
15 for targeted residents of San Francisco, with a particular emphasis on low-income and
16 underrepresented workers in various building and construction trades, in order to elevate
17 historically disadvantaged populations and create more sustainable communities throughout
18 San Francisco.

19 (~~hH~~) The City has awarded more than \$8 billion in public work and
20 improvement contracts during the last 10 years.

21 (~~iI~~) The City anticipates that it will award approximately \$27 billion in public
22 work and improvement contracts in the next 10 years.

23 (~~jJ~~) City spending on public work and improvement projects over the next 10
24 years will generate tens of thousands of construction work hours.

25

1 (~~K~~) The Board desires to ensure that employment and training opportunities
2 created by such public work and improvement projects provide consistent and high-quality
3 opportunities to the San Francisco labor pool, especially low-income residents of San
4 Francisco and other disadvantaged residents.

5 (~~L~~) Although approximately 40% of construction workers employed in San
6 Francisco are San Francisco residents, from 2002 to 2010 San Francisco residents worked
7 only approximately 24% of the work-hours on publicly-funded construction projects in the City,
8 and only 20% of work-hours since July 2009.

9 (~~M~~) The City faces unemployment levels that have risen dramatically over
10 the past four years, climbing from a low of 3.7% in December 2006 to an average of 9.8% for
11 each month of 2010 through July, leaving at least 44,500 San Franciscans out of work
12 according to the California Employment Development Department, with disproportionate
13 concentrations of high unemployment in neighborhoods such as Bayview-Hunters Point,
14 Chinatown, the Mission, Western Addition, Visitacion Valley, the Excelsior, South of Market,
15 Ocean View, Merced Heights and Ingleside.

16 (~~N~~) The 2010-2014 Consolidated Plan for the City and County of San
17 Francisco indicates that several San Francisco neighborhoods face concentrated poverty and
18 San Francisco's slow job growth rate and changing job base has had major impacts on
19 patterns of income inequality and disparity in the City, with distinctive, adverse, neighborhood-
20 specific effects.

21 (~~O~~) The loss of middle-income jobs has been associated with a diminishing
22 middle class in San Francisco, as indicated by rising income inequality. San Francisco's
23 unequal income distribution threatens the City's future competitiveness and overall economic
24 stability, and the City's anti-poverty strategy aims to ensure that the City and its partners are
25

1 marshaling its limited resources in an effective and coordinated way to create economic
2 opportunities in San Francisco's low-income communities.

3 (~~P~~) The City has made substantial public investments in its workforce
4 development system, including CityBuild and the City's community-based partners, to create
5 job opportunities in industries such as construction, which are vital to the economic health of
6 the local economy, have a capacity to generate a significant number of jobs, are accessible to
7 low- and middle-skilled individuals, have career ladder opportunities where workers can move
8 up with additional training and skill development, and provide access to living wage and
9 family-sustaining jobs.

10 (~~Q~~) City-funded construction projects provide a crucial opportunity to connect
11 participants in these City-funded or City-operated workforce development programs with
12 employment and training opportunities, and to direct employment and training opportunities
13 created by the City's public expenditures.

14 (~~R~~) The City and the San Francisco Redevelopment Agency have made
15 substantial public investments toward creating and facilitating growth in economic
16 opportunities for low-income individuals and neighborhoods in San Francisco.

17 (~~S~~) CityBuild, San Francisco's construction training workforce program, was
18 initiated in 2005 to serve as a training vehicle for ushering disadvantaged workers into the
19 construction skilled trades. The program is a multi-craft pre-apprenticeship training program,
20 and has assisted over 450 graduates, into union-sponsored apprentice programs. CityBuild, in
21 2009-2010, contributed approximately 44%~~percent~~ of all new San Francisco resident
22 apprentice intakes based on data provided by the California Department of Industrial
23 Relations, Division of Apprenticeship Standards. San Francisco's workforce construction
24 training infrastructure has the capacity to meet future demand for high quality and well trained
25 workers in the construction trades.

1 (~~T~~) Employment of workers that reside close to job sites has environmental
2 benefits, including reducing the distance of commutes and resulting vehicle emissions. These
3 environmental benefits are consistent with the mandates, policies and goals of the California
4 Global Warming Solutions Act (AB 32), the Sustainable Communities and Climate Protection
5 Act (SB 375), and the Climate Action Plan for San Francisco.

6 (~~U~~) The Board seeks terms and conditions that advance the City's workforce
7 and community development goals, removing obstacles that may have historically limited the
8 full employment of local residents on the wide array of opportunities created by public works
9 projects, curbing spiraling unemployment, population decline, and reduction in the number of
10 local businesses located in the City, eroding property values and depleting San Francisco's
11 tax base.

12 (~~V~~) A local hiring policy is necessary to counteract these grave economic and
13 social ills.

14 (~~W~~) The San Francisco Local Hiring Policy for Construction 2012-2013
15 Annual Report shows that the Policy has proven to be a highly effective tool in guaranteeing
16 good-paying jobs for Local Residents on Covered Projects, which includes public work
17 construction projects completed under City contracts.

18 (~~X~~) The 2012-2013 Annual Report is evidence that a true partnership
19 between the City, CityBuild and its community-based partners, contractors, labor
20 organizations, and state-certified apprenticeship programs has increased local hiring on
21 projects covered by the Policy by an average of 35% as of 2013. This compares to an
22 average of 20% under the "good faith efforts" policy it replaced.

23 (~~Y~~) The City has a proprietary interest in the construction contracts it issues,
24 and also has a proprietary interest in the leases and development agreements that it enters
25 that all allow for construction on city-owned property.

1 (~~z~~Z) Expanding the Policy to include construction projects on City-owned
2 property promotes an equitable share of job opportunities for San Francisco residents to
3 pursue a career in construction; and provides the opportunity for the use of state-certified
4 apprenticeships that expands the local construction workforce pipeline to support the
5 continued success of local hiring on public works projects.

6 (2) **Definitions.** For purposes of this subsection 6.22(~~G~~g), the following terms shall
7 have the following meanings:

8 (~~a~~) "Apprentice" means any worker who is indentured in a construction
9 apprenticeship program that maintains current registration with the State of California's
10 Division of Apprenticeship Standards.

11 (~~b~~) "Area Median Income" or "AMI" means unadjusted median income levels
12 derived from the Department of Housing and Urban Development ("HUD") on an annual basis
13 for the San Francisco area, adjusted solely for household size, but not high housing cost area.

14 (~~c~~) "Awarding department" means a department or commission empowered on
15 behalf of the City to contract for a covered project.

16 (~~d~~) "City" means the City and County of San Francisco, California.

17 (~~e~~) "Contractor" means any person, firm, partnership, owner operator, limited
18 liability company, corporation, joint venture, proprietorship, trust, association, or other entity
19 that contracts directly with the City to perform construction work on a covered project. A
20 contractor may also be referred to as a "prime contractor" or "general contractor."

21 (~~f~~) "Covered project" means a ~~p~~Public ~~w~~Work or ~~i~~Improvement project,
22 construction project, or part thereof to which this subsection 6.22(~~g~~G) applies, under standards
23 set forth in subsection 6.22(~~g~~G)(3).

24 (~~g~~) "Disadvantaged worker" means a local resident, as defined below, who (i)
25 resides in a census tract within the City with a rate of unemployment in excess of 150% of the

1 City unemployment rate, as reported by the State of California Employment Development
2 Department; or (ii) at the time of commencing work on a covered project has a household
3 income of less than 80% of the AMI, or (iii) faces or has overcome at least one of the following
4 barriers to employment: being homeless; being a custodial single parent; receiving public
5 assistance; lacking a GED or high school diploma; participating in a vocational English as a
6 second language program; or having a criminal record or other involvement with the criminal
7 justice system.

8 ~~(h)~~ "Local hiring incentives" means the incentives set forth in subsection
9 6.22(~~g~~)(5) of this Policy.

10 ~~(i)~~ "Local hiring requirements" means the requirements set forth in subsection
11 6.22(~~g~~)(4) of this Policy.

12 ~~(j)~~ "Local resident" means an individual who is domiciled, as defined by
13 Section 349(b) of the California Election Code, within the City at least seven (7) days prior to
14 commencing work on the project.

15 ~~(k)~~ "OEWD" means the City's Office of Economic and Workforce Development.

16 ~~(l)~~ "Policy" means this subsection 6.22(~~g~~).

17 ~~(m)~~ "Project work" means construction work performed as part of a covered
18 project.

19 ~~(n)~~ "Project work hours" means the total hours worked on a construction
20 contract by all apprentices and journey level workers, whether those workers are employed by
21 the contractor or any subcontractor.

22 ~~(o)~~ "Subcontractor" means any person, firm, partnership, owner operator,
23 limited liability company, corporation, joint venture, proprietorship, trust, association, or other
24 entity that contracts with a prime contractor or another subcontractor to provide services to a
25

1 prime contractor or another subcontractor in fulfillment of the prime contractor's or that other
2 subcontractor's obligations arising from a contract for construction work on a covered project.

3 ~~(p)~~ "Targeted worker" means any local resident or disadvantaged worker.

4 ~~(q)~~ "New hire" means any employee of a contractor who is not listed on the
5 contractor's quarterly tax statements for the tax period and has been hired prior to the
6 commencement of work.

7 ~~(r)~~ "Core employee or worker" means an apprentice or journey level
8 employee, who possesses any license required by state or federal law for the project work to
9 be performed, of a contractor or subcontractor who appears on that contractor or
10 subcontractor's certified payroll sixty (60) of the previous one hundred calendar (100) days
11 prior to date of award of a city contract.

12 **(3) Coverage.**

13 ~~(aA)~~ **Threshold for Public Work and Improvement Projects.** This Policy
14 applies to ~~e~~Contracts issued by the City with ~~p~~Prime ~~e~~Contractors for ~~p~~Public ~~w~~Works or
15 ~~i~~Improvements estimated to cost in excess of the Threshold Amount set forth in Section 6.1 ~~of~~
16 ~~this Chapter~~, as that amount may be amended.

17 ~~(bB)~~ **Threshold for Projects Constructed on Property Owned by the City.**

18 For purposes of subsection 6.22(~~Gg~~) only, this Policy applies to all construction projects on
19 property owned by the City that are estimated to cost in excess of the Threshold Amount set
20 forth in Section 6.1 ~~of this Chapter~~, as that amount may be amended, including construction
21 contracts that are issued by an entity or individual other than the City. The following
22 construction projects are exempt from this subsection 6.22(~~Gg~~)(3)(b): (i) tenant improvement
23 projects estimated to cost less than \$750,000 per building permit, where the project is
24 undertaken and contracted for by the tenant; (ii) projects for special events where the special
25 event is three ~~(3)~~ or fewer consecutive or non-consecutive days within a two ~~(2)~~ week period;

1 (iii) construction projects for which the construction work is fully funded and performed by a
2 donor or donor's agent as a gift-in-place donation, where the gift agreement does not require
3 City funds to be used for the construction and where the gift agreement includes a
4 requirement that workers be paid the same ~~p~~Prevailing ~~#~~Rate of ~~W~~Wages as would be required
5 a public work project; and (iv) projects that as of the effective date of this subsection
6 6.22(~~G~~g)(3)(~~b~~B) have a term sheet that has been endorsed by the Board of Supervisors and
7 have findings of fiscal feasibility, to the extent that such projects agree to be bound by a
8 legally enforceable document, enforceable by OEWD, committing the project to Local Hire
9 mandatory participation level of 30% per trade. All grant agreements, leases, development
10 agreements and other contracts that the City enters that allow for such non-exempt
11 construction projects on property owned by the City must contain a provision that such
12 construction shall comply with this Policy.

13 (~~e~~C) **Projects Constructed Outside the City.** Covered Projects constructed
14 within 70 miles from the jurisdictional boundary of the City and County of San Francisco shall
15 be governed by the terms of this Policy, except that percentage requirements shall apply in
16 proportion to the City's actual cost after reimbursement from non-City sources compared to
17 the total cost of the project, and, unless a reciprocity agreement exists, the "local" requirement
18 shall include San Francisco residents, workers local to the area where the work is located,
19 and workers residing within the San Francisco Public Utilities Commission service area. If a
20 reciprocity agreement with another local agency exists, the terms of that reciprocity
21 agreement shall govern. Covered City projects constructed 70 miles or more beyond the
22 jurisdictional boundary of the City and County of San Francisco shall be subject to this Policy,
23 except the "local" requirement shall include San Francisco residents, workers local to the area
24 where the work is located, and workers residing within the region where the work is located.
25 Awarding departments shall work with OEWD and regional local hiring programs to comply.

1 (~~d~~D) **Projects Utilizing Federal or State Funds.**

2 (i) **Segregation of Funds and Contract Awards.** Where the application of
3 this Policy would violate federal or state law, or would be inconsistent with the terms or
4 conditions of a grant or a contract with an agency of the United States or the State of
5 California, the City department or agency receiving the grant or contract shall, where
6 administratively feasible, segregate federal or state funds from City funds, and/or segregate
7 project administration and contracts, so as to maximize application of this Policy to City-
8 funded construction work.

9 (ii) **Alternative Terms in Case of Conflict.** Where the provisions of this
10 Policy would be prohibited by Federal or State law, or where the application of this Policy
11 would violate or be inconsistent with the terms or conditions of a grant or a contract with an
12 agency of the United States or the State of California, and where segregation of funds
13 pursuant to subsection 6.22 (~~Gg~~)(3)(~~d~~D)(i) is not administratively feasible with regard to some
14 or all of the project in question, then OEWD, in consultation with the awarding department,
15 shall adapt requirements of this Policy into a set of contract provisions that advance the
16 purposes of this Policy to the maximum extent feasible without conflicting with federal or state
17 law or with terms or conditions of the State or Federal grant or contract in question. The
18 awarding department shall include this set of contract provisions in the ~~public works or~~
19 ~~improvement~~ contract for the covered project with regard to the project or portions of the project
20 for which this Policy would conflict with Federal or State requirements.

21 (~~e~~E) **Out-of-State Workers.** Project work hours performed by residents of
22 states other than California shall not be considered in calculation of the number of project
23 work hours to which the local hiring requirements apply. Contractors and subcontractors shall
24 report to awarding departments and OEWD the number of project work hours performed by
25 residents of states other than California.

1 **(4) Local Hiring Requirements.**

2 (~~a~~A) For each covered project, the following requirements shall apply to each
3 prime contractor and subcontractor that performs project work in excess of the Threshold
4 Amount set forth in ~~s~~Section 6.1 of this Chapter, as that amount may be amended, with regard
5 to project work actually performed by the prime contractor and work included under any
6 subcontract, including all work performed by a subcontractor and all lower-tier subcontractors
7 under the subcontract:

8 (i) The initial mandatory participation level is 20% of all project work hours
9 within each trade performed by local residents, with no less than 10% of all project work hours
10 within each trade performed by disadvantaged workers. Subject to the periodic review
11 process set forth in subsection 6.22(~~G~~g)(4)(~~b~~B), below, the mandatory participation level for
12 project work hours shall increase annually up to a mandatory participation level of 50% of
13 project work hours within each trade performed by local residents, with no less than 25% of all
14 project work hours within each trade performed by disadvantaged workers. For each
15 mandatory participation percentage specified below, one-half of the specified percentage of
16 project work hours within each trade shall be performed by disadvantaged workers.

17

Year After Effective Date That Contract Is Advertised for Bids	Mandatory Participation Level For Project Work Hours
0	20%
1	25%
2	30%
Periodic Review	Periodic Review
3	30%

18
19
20
21
22
23
24
25

Periodic Review	Periodic Review
4	35%
5	40%
6	45%
Periodic Review	Periodic Review
7	50%

(ii) At least 50% of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25% of project work hours performed by apprentices within each trade to be performed by disadvantaged workers.

(bB) Periodic Review By OEWD and Controller. OEWD, in coordination with the Controller's Office, shall every three years from the end of the prior Periodic Review, evaluate the impact of existing mandatory participation levels and the continued need for financial incentives as set forth in subsection 6.22(~~Gg~~)(5). The OEWD/Controller review shall (i) determine whether there is a sufficient supply of qualified unemployed resident workers to meet the escalation rate set forth in subsection 6.22(~~Gg~~)(4)(~~A~~)(i), above; (ii) assess the length of time required for each trade to develop a pool of qualified resident workers sufficient to support a 50% mandatory participation target; and (iii) make relevant findings in support of those determinations, and, if necessary, propose amendments to the mandatory participation level by trade. OEWD and the Controller's Office shall further report on the financial incentive program and make relevant findings and, if necessary, propose reducing or eliminating financial incentives. During the periodic review process, OEWD and the Controller's Office shall consult with a broad spectrum of relevant stakeholders (including the community, the California Department of Industrial Relations Division of Apprenticeship Standards, contractors, building trades, and City departments and agencies). Promptly upon completion

1 of a periodic review, OEWD and the Controller's Office shall furnish to the Board of
2 Supervisors a report setting forth their findings, determinations and proposed amendments to
3 the mandatory participation level by trade and/or the financial incentive program, if any. The
4 Board shall, by resolution, fix and determine the mandatory participation levels by trade and
5 available financial incentives, if any. The mandatory participation levels by trade and financial
6 incentives as so fixed and determined by the Board shall supplant the mandatory participation
7 levels and financial incentives that this Policy sets and shall remain in force until the same are
8 changed by the Board. In determining the mandatory participation levels by trade and
9 available financial incentives, as so provided for in this subsection, the Board shall not be
10 limited to consideration of the periodic review report furnished by OEWD and the Controller's
11 Office, but may consider other such evidence upon the subject as the Board shall deem
12 proper and base its determination upon any or all of the evidence considered.

13 (eC) **Pipeline and Retention Compliance.** Contractors and subcontractors
14 may use one or more of the following pipeline and retention compliance mechanisms to
15 receive a conditional waiver from the local hiring requirements on a project-specific basis:

16 (i) **Specialized Trades.** Every two calendar years, OEWD shall publish a list
17 of trades designated as "Specialized Trades," for which the local hiring requirements of this
18 Policy shall not be applicable. Prior to designating a trade as a Specialized Trade, OEWD
19 shall have made findings that: (a) considering all referral sources and best estimates of
20 workers residing in the City, there will be insufficient numbers of qualified and available local
21 residents and disadvantaged workers to enable contractors and subcontractors to satisfy the
22 local hiring requirements for such trade; and (b) best estimates indicate that on all covered
23 projects during those calendar years, in the aggregate, demand for work hours in such trade
24 will not exceed a maximum number of hours as determined by OEWD through the regulatory
25

1 process set forth in subsection 6.22(~~Gg~~)(8)(~~A~~). All contractors and subcontractors shall report
2 to OEWD the project work hours utilized in each designated Specialized Trade.

3 (ii) **Credit for Hiring on Non-covered Projects.** Contractors and
4 subcontractors may accumulate credit hours for hiring San Francisco disadvantaged workers
5 on non-covered projects in the nine-county San Francisco Bay Area and apply those credit
6 hours to contracts for covered projects to meet the applicable minimum mandatory hiring
7 requirements set forth above or to work off penalties assessed under subsection
8 6.22(~~Gg~~)(7)(~~F~~). OEWD shall establish criteria for credit hours and their application to meet the
9 minimum participation requirements. OEWD shall consider credit hours to be accumulated for
10 work on non-covered projects performed by San Francisco disadvantaged workers only if (a)
11 the San Francisco disadvantaged worker performing work on the non-covered project is paid
12 prevailing wages for such work; and, in the case of non-covered projects in the City and
13 County of San Francisco, (b) the number of hours to be credited for the non-covered project in
14 question exceed one-half of the number of disadvantaged worker hours that would be
15 required if the project were a covered project.

16 (iii) **Sponsoring Apprentices.** A contractor or subcontractor may avoid the
17 assessment of penalties under subsection 6.22(~~Gg~~)(7)(~~F~~) for failing to meet applicable hiring
18 requirements by demonstrating the high impracticality of complying with the mandatory
19 participation level for a particular contract or classes of employees before project
20 commencement by agreeing to sponsor an OEWD-specified number of new apprentices in
21 trades in which noncompliance is likely and retaining those apprentices for the entire period of
22 a contractor's or subcontractor's work on the project. OEWD will verify with the California
23 Department of Industrial Relations Division of Apprenticeship Standards that the OEWD-
24 specified number of new apprentices are registered and active apprentices prior to issuing a
25 release from penalties.

1 (iv) **Direct Entry Agreements.** OEWD is authorized to negotiate and enter
2 into direct entry agreements with apprenticeship programs that are registered with California
3 Department of Industrial Relations' Division of Apprenticeship Standards, and, if OEWD is
4 successful in such negotiations, to develop standards and procedures through which
5 contractors and subcontractors may avoid assessments of penalties by hiring and retaining
6 apprentices who enrolled through such direct entry agreements. Such standards and
7 procedures shall allow avoidance of penalty assessments only where OEWD has made a
8 project-specific determination that compliance with local hiring requirements would be
9 impractical for that contractor or subcontractor. Direct entry agreements negotiated pursuant
10 to this section shall: (a) be enforceable contracts; (b) require apprenticeship programs to
11 enroll a class of apprentices no less frequently than every 365 days; (c) specify all admissions
12 standards related to applicants' training and skills; (d) specify a minimum number of local
13 residents and disadvantaged workers meeting those standards who shall be admitted in each
14 class of apprentices; and (e) be on file with and deemed permissible by the Division of
15 Apprenticeship Standards. OEWD's annual report to the Board as required by subsection
16 6.22(~~Gg~~)(8)(~~F~~) shall include the number of releases from penalties granted based on this
17 subsection, the number of local residents enrolled as apprentices based on direct entry
18 agreements, and the number of direct entry agreements in effect, and shall identify the trades
19 in question.

20 (5) **Local Hiring Incentives.**

21 (a) **Incentive Criteria.** Contractors and subcontractors may receive financial
22 and non-financial incentives for exceeding the local hiring requirements on a covered project.
23 Project work hours credited under subsection 6.22(~~Gg~~)(4)(~~C~~) shall not be the basis for any
24 financial or non-financial incentive payment or entitlement.

25

1 (b) **Administration.** Awarding departments will work in consultation with
2 OEWD to establish the operation and amounts of the incentives, if any.

3 (i) Any financial incentives provided on a covered project shall comply with
4 applicable law and shall not exceed one percent of the estimated cost of the project. If
5 financial incentives are made available for a covered project, awarding departments shall pay
6 such incentives, if earned by a contractor or subcontractor, only after a contractor or
7 subcontractor has completed work on the project and OEWD has approved the contractor's or
8 subcontractor's request for incentive payment. Subcontractors requesting incentive payments
9 shall submit requests to the awarding department and OEWD through the prime contractor,
10 not directly to the awarding department or OEWD. Payment of subcontractor incentives shall
11 be paid to the prime contractor for the benefit of the appropriate subcontractor(s). Prime
12 contractor must pay subcontractor(s) within 10 days of receipt of financial incentives from the
13 City.

14 (ii) OEWD shall, by regulation, develop non-financial incentives such as
15 expedited permitting and reduced administrative burden.

16 (6) **Additional Contractor Rights and Responsibilities.**

17 (~~A~~) **Local Hiring Plan for Large Projects.** For covered projects estimated to
18 cost more than \$1,000,000, the prime contractor shall prepare and submit to the awarding
19 department and OEWD for approval a local hiring plan for the project. The local hiring plan
20 shall be a written plan for implementation of the requirements of this Policy, including an
21 approximate timeframe for hiring decisions of subcontractors, a description of the hiring
22 processes to be utilized by subcontractors, an estimate of numbers of targeted workers
23 needed from various referral sources, qualifications needed for such targeted workers, and a
24 recruitment plan detailing an outreach strategy for candidates representative of local
25 demographics. An awarding department shall not issue a Notice to Proceed (NTP) without

1 receiving the Local Hiring Plan. The awarding department may issue an NTP upon submittal
2 of the Plan, but in no case may any payment be made until such time as it has verified in
3 writing that OEWD has approved the prime contractor's local hiring plan.

4 (bB) **Referral Sources.** Where a contractor's or subcontractor's preferred
5 hiring or staffing procedures for a covered project do not enable that contractor or
6 subcontractor to satisfy the local hiring requirements of this Policy, the contractor or
7 subcontractor shall use other procedures to identify and retain targeted workers. These
8 procedures shall include requesting workers from CityBuild, San Francisco's centralized
9 referral program, and considering targeted workers who are referred by CityBuild within three
10 business days of the request and who meet the qualifications described in the request. Such
11 consideration shall include in-person interviews. Qualifications described in the request shall
12 be limited to skills directly related to performance of job duties. When a contractor or
13 subcontractor has taken these steps and a local resident or disadvantaged worker is not
14 available, contractor or subcontractor may request a conditional waiver as described in
15 subsection 6.22(g)(4)(c).

16 (c) **Hiring Discretion.** This Policy does not limit contractors' or
17 subcontractors' ability to assess qualifications of prospective workers, and to make final hiring
18 and retention decisions. No provision of this Policy shall be interpreted so as to require a
19 contractor or subcontractor to employ a worker not qualified for the position in question, or to
20 employ any particular worker.

21 (d) **Subcontractor Compliance.** Each contractor and subcontractor shall
22 ensure that all subcontractors agree to comply with applicable requirements of this Policy. All
23 subcontractors agree as a term of participation on a covered project that the City shall have
24 third party beneficiary rights under all contracts under which subcontractors are performing
25 project work. Such third party beneficiary rights shall be limited to the right to enforce the

1 requirements of this Policy directly against the subcontractors. All subcontractors on a
2 covered project shall be responsible for complying with the recordkeeping and reporting
3 requirements set forth in this Policy. Subcontractors with work in excess of the Threshold
4 Amount shall be responsible for ensuring compliance with the local hiring requirements set
5 forth in subsection 6.22(~~Gg~~)(4) based on project work hours performed under their
6 subcontracts, including project work hours performed by lower tier subcontractors with work
7 less than the Threshold Amount.

8 (7) **Enforcement.**

9 (~~aA~~) **Role of OEWD.** OEWD is authorized to enforce all terms of this Policy.
10 Awarding departments shall work cooperatively with OEWD to implement requirements of this
11 Policy, to include the provisions of the Policy in every contract for which inclusion is required,
12 to assist contractors and subcontractors in complying with the Policy, and to assist OEWD in
13 furthering the purposes of the Policy through monitoring and enforcement activities. OEWD
14 shall determine the records required to be verified and/or provided by contractors and
15 subcontractors to establish workers' qualifications and statuses relevant to this Policy.

16 (~~bB~~) **Role of Community-Based Partners.** OEWD shall be authorized to
17 engage its community-based partners in the City's workforce development system to assist
18 with the recruitment and retention of targeted workers. OEWD shall, through the existing
19 Workforce Investment Board, provide a forum for community members, community-based
20 organizations, and representatives of all stakeholders affected by or interested in this Policy to
21 exchange information and ideas and to advise OEWD staff concerning the operation and
22 results of the Policy.

23 (~~cC~~) **Recordkeeping.** Each contractor and subcontractor shall keep, or cause
24 to be kept, for a period of four years from the date of substantial completion of project work on
25 a covered project, certified payroll and basic records, including time cards, tax forms, and

1 superintendent and foreman daily logs, for all workers within each trade performing work on
2 the covered project. Such records shall include the name, address and social security number
3 of each worker who worked on the covered project, his or her classification, a general
4 description of the work each worker performed each day, the apprentice or journey-level
5 status of each worker, daily and weekly number of hours worked, the self-identified race,
6 gender, and ethnicity of each worker, whether or not the worker was a local resident or
7 disadvantaged worker, and the referral source or method through which the contractor or
8 subcontractor hired or retained that worker for work on the covered project (e.g., core
9 workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring
10 method). Contractors and subcontractors may verify that a worker is a local resident through
11 the worker's possession of a valid SF City ID Card or other government-issued identification.
12 OEWD and awarding departments may require additional records to be kept with regard to
13 contractor or subcontractor compliance with this Policy. All records described in this section
14 shall at all times be open to inspection and examination by the duly authorized officers and
15 agents of the City, including representatives of the awarding department and the OEWD.

16 (dD) **Reporting.** The OEWD shall establish reporting procedures for
17 contractors and subcontractors to submit to OEWD and the awarding department the records
18 described above, for purposes of monitoring compliance with and effectiveness of this Policy
19 and monitoring operation of the City's public construction sector for other valid purposes. All
20 records submitted by contractor or subcontractor shall be accompanied by a statement of
21 compliance signed by an authorized representative of contractor or subcontractor indicating
22 that the records are correct and complete.

23 (eE) **Monitoring.** From time to time and in its sole discretion, OEWD and/or
24 the awarding department may monitor and investigate compliance of contractor and
25 subcontractors working on covered projects with requirements of this Policy. OEWD and

1 awarding departments shall have the right to engage in random inspections of job sites,
2 subject to construction schedule and safety concerns. Each contractor and subcontractor
3 shall allow representatives of OEWD and the awarding department, in the performance of
4 their duties, to engage in random inspections of job sites and to have access to the
5 employees of the contractor and subcontractor and the records required to be kept by this
6 Policy. The OEWD shall establish an administrative procedure for OEWD monitoring of
7 compliance with this Policy and to address allegations of noncompliance. The OEWD shall
8 have sole authority over the administration of this procedure. Except as prohibited by law,
9 OEWD will make data collected under subsections 7(~~e~~C) and (~~d~~D) of this Policy available on-
10 line to the public in real-time and create a process for members of the public to submit
11 complaints regarding alleged violations of this Policy. The OEWD shall investigate all
12 complaints filed by members of the public; the scope, methods, and conclusions of all such
13 complaint-driven investigations shall be within the discretion of OEWD, with no right of the
14 complaining party to determine the scope or methods of the investigation. All contractors,
15 subcontractors and awarding departments shall cooperate fully with the OEWD in monitoring
16 and compliance activities. The OEWD may interview, either at the worksite or elsewhere, any
17 witness who may have information related to a complaint.

18 (~~f~~F) **Compliance Procedures.**

19 (i) **Consequences of Noncompliance.** Awarding departments and OEWD
20 have the authority to seek for violations of this Policy all of the consequences imposed by or
21 described in this Policy, in the contract for a covered project, or by statute, including the
22 authority to assess penalties as described herein, assess damages for other violations of
23 terms of this Policy, and/or seek penalties set forth in Article V of this Chapter, including
24 debarment.

1 (ii) **Penalties Amount.** Any contractor or subcontractor who fails to satisfy
2 local hiring requirements of this Policy applicable to project work hours performed by local
3 residents shall forfeit ; and, in the case of any subcontractor so failing, the contractor and
4 subcontractor shall jointly and severally forfeit to the City an amount equal to the journeyman
5 or apprentice prevailing wage rate, as applicable, with such wage as established by the Board
6 of Supervisors or the California Department of Industrial Relations under subsection
7 6.22(~~Ee~~)(3), for the primary trade used by the contractor or subcontractor on the covered
8 project for each hour by which the contractor or subcontractor fell short of the local hiring
9 requirement. The assessment of penalties under this subsection shall not preclude the City
10 from exercising any other rights or remedies to which it is entitled.

11 (iii) **Assessment of Penalties.** It shall be the duty of the awarding
12 department, when certifying to the Controller any payment which may become due under a
13 contract, to deduct from said payment or payments the total amount of penalties due under
14 this subsection. In doing so, the department head must also notify the OEWD of his or her
15 action. OEWD may also upon written notice to the awarding department, certify to the
16 Controller any forfeiture to deduct from any payment as provided for in this subsection.
17 Certification of forfeitures under this subsection shall be made only upon an investigation by
18 the awarding department or OEWD and upon written notice to the contractor or subcontractor
19 identifying the grounds for the forfeiture or forfeitures, and providing the contractor or
20 subcontractor with the opportunity to respond. The Controller, in issuing any warrant for any
21 such payment, shall deduct from the amount which would otherwise be due on said payment
22 or payments the amount of said forfeiture or forfeitures as so certified. Any retainage to cover
23 contract performance that may become due to contractor under subsection 6.22(~~Ff~~) may be
24 withheld by the City pending a determination by the awarding department or OEWD as to
25 whether a contractor or subcontractor must pay a penalty or penalties.

1 (iv) **Recourse Procedure.** If the contractor or subcontractor disagrees with
2 the assessment of penalties as so provided in this subsection, then the following procedure
3 applies:

4 (a) The contractor or subcontractor may request a hearing in writing within
5 15 days of the date of the final notification of assessment. The request shall be directed to the
6 City Controller. Failure by the contractor or subcontractor to submit a timely, written request
7 for a hearing shall constitute concession to the assessment and the forfeiture shall be
8 deemed final upon expiration of the 15-day period. The contractor or subcontractor must
9 exhaust this administrative remedy prior to commencing further legal action.

10 (b) Within 15 days of receiving a proper request, the Controller shall
11 appoint a hearing officer with knowledge and not less than five years' experience in labor law,
12 and shall so advise the enforcing official and the contractor or subcontractor, and/or their
13 respective counsel or authorized representative.

14 (c) The hearing officer shall promptly set a date for a hearing. The hearing
15 must commence within 45 days of the notification of the appointment of the hearing officer
16 and conclude within 75 days of such notification unless all parties agree to an extended
17 period.

18 (d) Within 30 days of the conclusion of the hearing, the hearing officer shall
19 issue a written decision affirming, modifying, or dismissing the assessment. The decision of
20 the hearing officer shall consist of findings and a determination. The hearing officer's findings
21 and determination shall be final.

22 (e) The contractor or subcontractor may appeal a final determination under
23 this section only by filing in the San Francisco Superior Court a petition for a writ of mandate
24 under California Code of Civil Procedure, ~~Section 1084,~~ et seq., as applicable and as may be
25 amended from time to time.

1 (v) **Distribution of Penalties.** The Controller shall withhold any penalties
2 assessed as provided in the foregoing subparagraphs until such time as either the contractor
3 or subcontractor has conceded to the penalties or, in the event of an objection, there is a
4 determination no longer subject to judicial review. The Controller shall then deposit the
5 amounts withheld into a special account which shall be created for the sole purpose of
6 receiving said funds. The funds deposited into this account shall be used to support the
7 enforcement of this Policy and the further development of workforce development initiatives to
8 train and prepare local residents for careers in construction.

9 (vi) **Other Violations; Repeated Violations.** Violations of this Policy for
10 which penalties or other remedies are not specified above constitute violations of contract
11 terms, for which the full range of remedies under the contract may be invoked, including but
12 not limited to withholding of progress payments in amounts deemed proportional to the
13 violation. Awarding departments shall comply with and implement damages claims and other
14 noncompliance consequences assessed or required by OEWD.

15 (8) **Miscellaneous.**

16 (~~A~~) **Regulations and Administrative Guidance.** OEWD shall be the primary
17 department authorized to implement and enforce this Policy. OEWD shall issue regulations
18 and/or administrative guidance regarding implementation of the Policy, including (i)
19 documentation and recordkeeping requirements, (ii) incentive payments, (iii) monitoring and
20 compliance activities, (iv) project and/or contract coverage determinations, (v) designated
21 referral sources, (vi) bid and contract documents implementing the Policy, (vii) procedures for
22 application of the Policy to alternative competitive bidding processes set forth in Article IV of
23 this Chapter, (viii) procedures for monitoring and enforcement of the Policy where the
24 construction contract is issued by an entity or individual other than the City, and (ix) other
25 matters related to implementation of this Policy. Awarding departments shall cooperate with

1 and assist in implementation of OEWD actions and determinations regarding this Policy. For
2 projects where the construction contract is issued by an entity or individual other than the City,
3 OEWD may grant conditional waivers on a project specific basis if it finds that the contractor
4 has participated to the extent feasible in available pipeline and retention mechanisms, the
5 contractor has undertaken all corrective actions issued by OEWD, and considering all referral
6 sources and estimates of workers residing in the City, there will be insufficient numbers of
7 qualified and available local residents and/or disadvantaged workers to enable the contractor
8 or subcontractor to satisfy the local hiring requirements.

9 **(bB) Assistance in Monitoring, Investigations, and Implementation.** In
10 accordance with applicable law, the City may enter into one or more contracts for investigative
11 and monitoring services to further the purposes of this Policy, or to assist OEWD or awarding
12 departments in developing and implementing systems needed to advance the purposes of
13 this Policy.

14 **(eC) Departmental Assistance with Monitoring and Enforcement Costs.**
15 Subject to the fiscal and budgetary provisions of the City Charter and applicable federal and
16 state laws and regulations, OEWD is authorized to receive from awarding departments the
17 amount reasonably calculated to pay for the costs, including litigation costs, of monitoring and
18 enforcing requirements of this Policy. OEWD shall supervise the expenditure of all funds
19 appropriated for these purposes.

20 **(dD) Effective Date, Operative Date, and Prospective Application.** This
21 Policy shall become effective upon the date of its enactment and shall apply to covered
22 projects first advertised for bids by awarding departments more than sixty (60) days after such
23 date. The amendment to the Policy in subsection 6.22(Gg)(3)(bB) shall become operative sixty
24 (60) days after the effective date of the ordinance enacting the amendment. The amendment
25 in subsection 6.22(Gg)(3)(bB) is intended to have prospective effect only, and shall not be

1 interpreted to impair the obligations of any pre-existing grant agreement, lease, development
2 agreement or other contract entered into by the City. Notwithstanding the prior sentence, the
3 amendment in subsection 6.22(~~Gg~~)(3)(~~bB~~) shall apply to newly included work in pre-existing
4 grant agreements, leases, development agreements, or other contracts amended on or after
5 the operative date. The amendment in subsection 6.22(~~Gg~~)(3)(~~bB~~) shall apply to grant
6 agreements, leases, development agreements and other contracts entered into by the City on
7 or after the operative date.

8 (~~eE~~) **Existing Project Labor Agreements.** This Policy shall not apply to
9 project labor agreements entered into by awarding departments prior to the effective date of
10 this Policy ("Existing PLAs") or to ~~p~~Public ~~w~~Work or ~~i~~Improvement contracts advertised for
11 ~~b~~Bids after the effective date of this Policy that are covered by Existing PLAs, where the terms
12 of the Existing PLAs and this Policy are in conflict. Notwithstanding the foregoing, this Policy
13 shall apply to (i) any material amendment to an Existing PLA executed by an awarding
14 department after the effective date of this Policy; (ii) any new ~~p~~Public ~~w~~Work or ~~i~~Improvement
15 contract over the ~~t~~Threshold ~~a~~Amount set forth in subsection 6.22(~~Gg~~)(3)(~~aA~~) that is added to
16 the scope of an Existing PLA based on a discretionary decision by the awarding department
17 after the effective date of this Policy.

18 (~~fF~~) **Annual Report To Board.** Commencing on March 1, 2012, and annually
19 thereafter, the Director of OEWD shall submit a written report to the Board of Supervisors.
20 That report shall document each awarding department's performance under the terms of this
21 Policy, including, among other things, the compliance of each department's contractors and
22 subcontractors with the requirements of this Policy, any significant challenges experienced by
23 OEWD or awarding departments in implementing or enforcing this Policy, and proposed
24 remedies to address any such challenges. That report shall include documentation, organized
25 by awarding department, of the overall percentage of project work hours on covered projects

1 performed by local residents, disadvantaged workers, local resident apprentices, and
2 residents of states other than California. The report shall also compare the demographics of
3 workers performing work on covered projects, using data collected under the Policy, to the
4 demographics of the qualified labor pool. Awarding departments shall cooperate with requests
5 by OEWD for information needed by the Director to make such reports to the Board.

6 (g) **Material Term; Contractors' Agreements.** All contracts and
7 subcontracts for performance of project work shall include compliance with this Policy as a
8 material term, directly enforceable by the City as described herein. As a condition of
9 performance of project work, each contractor and subcontractor agrees: to comply with all
10 provisions of this Policy; that provisions of this Policy are reasonable and are achievable by
11 the contractor or subcontractor, including the reporting requirements and consequences for
12 noncompliance described herein; and that the contractor or subcontractor had a full and fair
13 opportunity to review and understand terms of this Policy, in consultation with counsel if so
14 desired.

15 (h) **Severability.** If any provision of this Policy or any application thereof to
16 any person or circumstances is held invalid by final judgment of any court of competent
17 jurisdiction, such invalidity shall not affect other provisions or application of this Policy which
18 can be given effect without the invalid provision or application, and to this end the provisions
19 of this Policy are declared to be severable.

20 (i) **Conflicting Agreements.** In case of conflict between terms of this Policy
21 and a contractual agreement entered into by a contractor, subcontractor or awarding
22 department, terms of this Policy shall govern. Each party to a contract incorporating terms of
23 this Policy agrees through that contract that either it is not a party to such a conflicting
24 agreements, or that it will comply with terms of this Policy as incorporated into the contract,
25 rather than with any conflicting agreements. After the effective date of this Policy, no awarding

1 department may enter into a project labor agreement or other contract relating to or applying
2 to the performance of project work on a covered project that conflicts with or precludes
3 contractor and subcontractor compliance with terms of this Policy.

4 (j) **Reciprocity.** An awarding department or OEWD may negotiate reciprocity
5 agreements with other local jurisdictions that maintain local hiring programs, provided that
6 such agreements advance the Policy goals of this subsection. Any such reciprocity agreement
7 shall allow targeted workers in each jurisdiction to utilize and benefit from local hiring
8 requirements and referral systems in the other jurisdiction on the same terms as do the
9 workers residing in that jurisdiction. When such a reciprocity agreement is in effect, residents
10 of another jurisdiction may be counted toward satisfaction of the local hiring requirements of
11 this Policy. Any reciprocity agreement negotiated by an awarding department or OEWD shall
12 be subject to the approval of the Board of Supervisors by resolution.

13
14 (H) **Modifications - Requirements.** If it becomes necessary in the prosecution of
15 any ~~p~~Public ~~w~~Work or ~~i~~Improvement ~~under~~e~~C~~ontract to make alterations or modifications or to
16 provide for extras, such alterations, modifications or extras shall be made only on written
17 recommendation of the ~~d~~Department ~~h~~Head responsible for the supervision of the ~~e~~Contract,
18 together with the approval of the Mayor or the Mayor's designee or the ~~B~~board or
19 ~~C~~commission, as appropriate to the department, and also the approval of the Controller,
20 except as hereafter provided. The Mayor or the ~~B~~board or ~~C~~commission, as appropriate to the
21 ~~D~~department, may delegate in writing the authority to approve such alterations, modifications
22 or extras to the Department ~~h~~Head, except as provided below. The Controller may delegate in
23 writing the authority to encumber funds from prior appropriations for such alterations,
24 modifications or extras to the Department ~~h~~Head prior to the certification for payment. Such
25 authority, when granted, will clearly state the limitations of the changes to be encompassed.

1 (1) **Increasing or Decreasing Price.** Alterations, modifications, or extras in any
2 eContract, which will increase or decrease the eContract cost or scope, may be made or
3 allowed only on the written recommendation of the dDepartment hHead responsible for the
4 supervision of the eContract stating the amount and basis for such increase or decrease. For
5 any cumulative increase or decrease in price in excess of ~~ten percent~~10% of the original
6 eContract price or scope, the Department hHead shall obtain the approval of the Mayor or
7 Mayor's designee or the Bboard or Ccommission as appropriate and also the approval of the
8 Controller notwithstanding any delegation provided for above.

9 (2) **Extensions of Time.** Upon finding that work under a construction eContract
10 cannot be completed within the specified time because of an unavoidable delay as defined in
11 the eContract, the Department hHead may extend the time for completion of the work. If the
12 cumulative extensions of time exceeds ~~ten percent~~10% of the original eContract duration, the
13 Department hHead shall ~~first~~ obtain the approval of the Mayor, the Mayor's Ddesignee, Bboard
14 or Ccommission, as appropriate to the Ddepartment notwithstanding any delegation provided
15 for above. The Department Head may seek such approval after completion of the work if the
16 Department Head makes a written finding in the time extension that no basis exists to assess liquidated
17 damages for delay against the Contractor. All time extensions shall be in writing, but in no event
18 shall any extension be granted subsequent to the issuance of a certificate of final
19 acceptancecompletion.

20 (aA) **Time Extension Not Waiver of City's Rights.** The granting of an extension
21 of time because of unavoidable delays shall in no way operate as a waiver on the part of the
22 City ~~and County~~ or the Department hHead, Mayor, Bboard or Ccommission of the right to
23 collect liquidated damages for other delays or of the right to collect other damages or of any
24 other rights to which the City ~~and County~~ is entitled.

1 **(bB) No Extension Granted When Contract Based on Time Estimates.** When
2 any ~~a~~Award of ~~e~~Contract has been made in consideration, in whole or in part, of the relative
3 time estimates of ~~b~~Bidders for the completion of the work, no extension of time may be
4 granted on such ~~e~~Contract beyond the time specified for completion, unless the liquidated
5 damages for each day the work is uncompleted beyond the specified time shall be collected;
6 provided, however, that this shall not apply to unavoidable delays as specified in the Contract~~due~~
7 ~~to acts of God.~~

8 **(eC) Avoidable and Unavoidable Delay; Limitation of Damages for Delay.**
9 The ~~d~~Department ~~h~~Head administering the ~~p~~Public ~~w~~Work or Improvement shall have the
10 authority to specify in the ~~e~~Contract the delays that shall be deemed avoidable or unavoidable.
11 The City ~~and County~~ shall not pay damages or compensation of any kind to a ~~e~~Contractor
12 because of delays in the progress of the work, whether such delays be avoidable or
13 unavoidable; provided, however, the City ~~and County~~ may pay for ~~(i)~~ delays caused to the
14 ~~e~~Contractor by the City ~~and County~~ and ~~(2ii)~~ such unavoidable delays as may be specifically
15 stated in the ~~e~~Contract. Such latter delays will be compensated for only under the conditions
16 specified in the ~~e~~Contract.

17 **(dD) Notice of Delay Required.** The ~~e~~Contractor shall promptly notify the
18 Department ~~h~~Head in writing, of all anticipated delays in the prosecution of the work and, in
19 any event, promptly upon the occurrence of a delay, the notice shall constitute an application
20 for an extension of time only if the notice requests such extension and sets forth the
21 ~~e~~Contractor's estimate of the additional time required together with a full recital of the causes
22 of unavoidable delays relied upon. The Department ~~h~~Head may take steps to prevent the
23 occurrence or continuance of the delay, may classify the delay as avoidable or unavoidable,
24 and may determine to what extent the completion of the work is delayed thereby.

1 (H) **Liquidated Damages.** Any eContract may provide a time within which the
2 eContract work, or portions thereof, shall be completed and may provide for the payment of
3 agreed liquidated damages to the City ~~and County~~ for every calendar or working day thereafter
4 during which such work shall be uncompleted.

5 (J) ~~Retention of~~ **Progressive Payments Authorized; Retentions.** Any eContract for
6 construction services may provide for progressive or milestone payments, if the
7 Advertisement For Bids shall so specify. Each progress or milestone payment shall constitute
8 full compensation for the value of work performed and materials furnished for a specified
9 period, less amounts withheld as a result of dispute or as required by law.

10 (1) For all eContracts entered into on or after the effective date of this
11 ~~Ordinance~~ subsection 6.22(j), from every progress payment, the City shall hold 5% percent in
12 retention.

13 (2) Notwithstanding the ~~subsection 6.22(j)(1) subparagraph~~ above, the City may hold
14 greater than 5% percent but not more than 10% percent in retention if the Department ~~h~~Head
15 responsible for the ~~p~~Public ~~w~~Work determines that the ~~Public~~ ~~w~~Work or ~~i~~Improvement is
16 substantially complex and therefore warrants a higher retention amount, and the retention
17 amount is specified in the Advertisement For Bids. For eContracts with retention amounts
18 greater than 5% percent, if the Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work
19 determines that the eContract is 50% percent or more complete, that the eContractor is making
20 satisfactory progress, and that there is no specific cause for greater withholding, the
21 Department ~~h~~Head, upon the written request of eContractor, may authorize one of the
22 following two options: (~~a~~A) the City shall release part of the retention to the eContractor so that
23 the amount held in retention by the City, after release to the eContractor, is reduced to an
24 amount not less than 5% percent of the total value of the labor and materials furnished, and
25 the City shall proceed to retain 5% percent of any subsequent progress payment under the

1 eContract; or (bB) the City shall continue to hold the already withheld retention amount, up to
2 5%~~percent~~ of the total eContract price, and shall not deduct further retention from progress
3 payments.

4 (3) The Department ~~h~~Head shall authorize the release of retention, in whole or in
5 part, for work completed by subcontractors certified by ~~CMD~~~~the HRC~~ as LBEs. The
6 Department ~~H~~Head shall do so only upon a written request by the eContractor certifying (iA) the
7 work by the certified LBE subcontractor is completed and satisfactory in accordance with the
8 plans and specifications for the project; (iiB) the total amount paid to the certified LBE
9 subcontractor by the eContractor as of the date of the written request and the total amount of
10 the subcontract; and (iiiC) the amount of retention associated with the work performed by the
11 certified LBE subcontractor. Following a release of such retention, and in order to calculate
12 retention and retention withholding from further progress or milestone payments, the City will
13 reduce the total retention required under the foregoing paragraphs (1) and (2) by the amount
14 paid to the certified LBE subcontractor(s) for whom the City released the retention. The
15 release of retention under this sub~~paragraph~~section 6.22(j)(3) shall not reduce the
16 responsibilities or liabilities of the eContractor or its surety under the eContract or applicable
17 law. ~~For any contract awarded under this Chapter prior to the enactment of this subparagraph, a~~
18 ~~Department head may in his or her sole discretion incorporate this subparagraph by change.~~

19 (4) The Department ~~h~~Head shall authorize the release of retention, in whole or in
20 part, for work completed by subcontractors under any ~~p~~Public ~~w~~Work eContract awarded under
21 this Chapter ~~6~~ with a ~~construction~~ duration of more than two years. The Department ~~h~~Head
22 shall do so only upon a written request by the eContractor certifying (iA) the work by the
23 subcontractor is completed and satisfactory in accordance with the plans and specifications
24 for the project; (iiB) the total amount paid to the subcontractor by the eContractor as of the
25 date of the written request and the total amount of the subcontract; and (iiiC) the amount of

1 retention associated with the work performed by the subcontractor. The City may issue or
2 authorize the release of retention within six months of the date of the request. Following a
3 release of such retention, and in order to calculate retention and retention withholding from
4 further progress or milestone payments, the City will reduce the total retention required under
5 the foregoing ~~paragraphs~~subsections (1) and (2) by the amount paid to the subcontractor(s) for
6 whom the City released retention. The release of retention under this subsection 6.22(j)(4)
7 ~~subparagraph~~ shall not reduce the responsibilities or liabilities of the eContractor or its surety
8 under the eContract or applicable law. ~~For any contract awarded under this Chapter prior to the~~
9 ~~enactment of this subparagraph with a construction duration of more than two years, a Department~~
10 ~~head may in his or her sole discretion incorporate this subparagraph by change order.~~

11 (5) Retention shall be withheld solely for the benefit and protection of the City.

12 (6) When the Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work determines
13 that the eContract is ~~98% percent~~ or more complete, the Department ~~h~~Head may reduce
14 retention funds to an amount equal to ~~200% percent~~ of the estimated value of work yet to be
15 completed, plus any amount necessary to cover offsets by the City for liquidated damages,
16 defective work, stop notices, forfeitures, and other charges. The City shall release retention to
17 the eContractor upon the following conditions: ~~(a)~~ the eContractor has reached final
18 completion under the eContract terms and conditions and ~~(b)~~ the eContract is free of offsets
19 by the City for liquidated damages, defective work and the like, and is free of stop notices,
20 forfeitures, and other charges.

21 (7) For all eContracts awarded under this Chapter 6, in no event shall the City be
22 liable for interest or charges arising out of or relating to the date the City issues any progress,
23 milestone, or other payment, or the date the City releases all or part of the retention, except
24 that the City will pay interest at the legal rate, as set forth in ~~s~~Section 685.010(a) of the
25 California Code of Civil Procedure, as ~~that section~~ may be amended from time to time, on any

1 improperly withheld amounts commencing no earlier than 90 days after the date the City
2 should have made any progress payment or released all or part of the retention. Under no
3 circumstances shall the legal rate of interest paid by the City under this provision exceed 10%
4 ~~percent~~ per annum. The payment of interest under this provision is the limit of the City's liability
5 with respect to any claim for interest on improperly withheld amounts.

6 ~~(8) For contracts entered into between January 1, 2012 and the effective date of this~~
7 ~~Ordinance, upon the written request of the contractor, the Department head responsible for the public~~
8 ~~work shall have the discretion to reduce retention to 5 percent, pursuant to one of the two options set~~
9 ~~forth in subparagraph (2).~~

10 ~~(Kk)~~ **Inspection and Acceptance of Completed Work; Final Payment.** The
11 Department ~~h~~Head ~~authorized to execute any contract for public works or improvements~~ shall be
12 responsible for the inspection and acceptance of ~~Public Works or Improvements~~ such work on
13 completion. Such acceptance shall be in writing and shall include the certificate of the
14 Department ~~h~~Head concerned that the work covered by the ~~e~~Contract has been fully and
15 satisfactorily completed in accordance with the plans and specifications therefor. Receipt of
16 copy of such acceptance in writing shall constitute the Controller's authority to complete any
17 payments due the ~~e~~Contractor under the ~~e~~Contract; provided that the Controller may make
18 such additional investigation or inspection as is provided by Administrative Code Section
19 10.07.

20 ~~(Ll)~~ **Termination for Convenience.** In all ~~e~~Contracts for the construction of any
21 ~~p~~Public ~~w~~Work or ~~i~~Improvement, the Department ~~h~~Head ~~authorized to execute any contract for~~
22 ~~any public work or improvement~~ may include in the specifications setting forth the terms and
23 conditions for the performance of the ~~e~~Contract a provision that the City ~~and County~~ may
24 terminate the performance of work under the ~~e~~Contract whenever the Department ~~h~~Head shall
25 determine, with the approval of the Mayor, the Mayor's designee or the ~~B~~Board or

1 ~~e~~commission concerned, that such termination is in the best interest of the City ~~and County~~.
2 Any such termination shall be effected by delivery to the ~~e~~Contractor of a notice of termination
3 specifying the extent to which performance of work under the ~~e~~Contract is terminated and the
4 date upon which such termination becomes effective. The Department ~~H~~Head is hereby
5 authorized to include within such construction ~~e~~Contract the appropriate language to
6 implement this subsection 6.22(l).

7 (~~Mm~~) **Articles Not to be Prison Made.** No article furnished under any ~~e~~Contract
8 awarded under the provisions of this Chapter 6 shall have been made in a prison or by convict
9 labor except for articles made in prisons or by convicts under the supervision and control of
10 the California Department of Corrections and limited to articles for use by the City ~~and County's~~
11 detention facilities.

12 (~~Nn~~) **Employment of Apprentices.** All construction ~~e~~Contracts awarded under this
13 Chapter 6 shall require the Contractor to comply with the requirements of the State
14 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4
15 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,
16 and shall require the Contractor to include in its subcontracts the obligation for subcontractors
17 to comply with the requirements of the State Apprenticeship Program.

18 (~~Oo~~) **Safety.** All construction ~~e~~Contracts awarded under this Chapter 6 shall require
19 the Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
20 Health statutes and regulations.

21 Additionally, all construction ~~e~~Contracts awarded under this Chapter 6 shall require
22 the Contractor and all of its subcontractors to abide by the requirements of Administrative
23 Code Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with
24 exceptions.
25

1 (P~~p~~) **Claims.** The City shall consider only those claims for additional payment under
2 a ~~public work~~ eContract that are certified and that conform to the eContract requirements for
3 claims, pricing, and schedule.

4 (1) **Claims by Contractors.** The eContractor shall certify under penalty of perjury
5 that (~~a~~A) the claim is made in good faith; (~~b~~B) the supporting data are accurate and complete
6 to the best of Contractor's knowledge and belief; and (~~c~~C) the amount request accurately
7 reflects the Contract adjustment for which the Contractor believes the City is liable. An
8 individual or officer authorized to act on behalf of the Contractor shall execute the certification.

9 (2) **Claims by Subcontractors.** Subcontractors at any tier are not third-party
10 beneficiaries of any Contract awarded under this Chapter. The City shall not consider a direct
11 claim by any subcontractor. A Contractor presenting to the City any claim on behalf of a
12 subcontractor must certify the subcontractor's claim in the same manner the Contractor would
13 certify its own claim under the foregoing ~~paragraph~~ subsection 6.22(p)(1).

14 (~~q~~Q) **Contractor Prompt Payment.** All construction eContracts under this Chapter 6
15 shall require the eContractor to pay its subcontractors within seven calendar days after receipt
16 of each progress payment from the City, unless otherwise agreed to in writing in advance by
17 both eContractor and subcontractor. In the event that there is a good faith dispute over all or
18 any portion of the amount due on a progress payment from a eContractor to a subcontractor,
19 the eContractor may withhold the disputed amount but shall pay the undisputed amount.

20 Any eContractor who violates this subsection 6.22(q) shall pay to the subcontractor a
21 penalty of 2% of the amount due per month for every month or portion thereof that payment is
22 not made. This subsection 6.22(q) is enforceable in a court of competent jurisdiction, and is
23 not intended to create a private right of action against the City ~~and County of San Francisco~~.

1 **SEC. 6.23. PUBLIC WORKS TO BE PERFORMED BY THE CITY; BIDS BY CITY**
2 **DEPARTMENTS; PROCEDURE UPON REJECTION OR FAILURE OF BIDS.**

3 **(Aa) Public Works Less Than or Equal to the Threshold Amount.** Any ~~p~~Public
4 ~~w~~Work or ~~i~~Improvement estimated to cost less than or equal to the Threshold Amount may be
5 performed by the employment of the necessary labor and purchase of the necessary
6 materials and supplies directly by the City ~~and County~~.

7 **(Bb) Bids or Quotes by City Departments.** Appropriate City ~~and County~~ departments
8 may file ~~sealed~~ ~~b~~Bids or submit Quotes for the execution of any work to be performed under a
9 ~~e~~Contract and shall not be required to furnish security or submit information relative to
10 financial qualifications as provided in this Chapter 6. Any ~~b~~Bid submitted by a department of
11 the City ~~and County~~, if it is the lowest ~~b~~Bid, must be approved by the Controller before the
12 ~~a~~Award of the eContract. If the ~~b~~Bid of a City ~~and County~~ department, as investigated and
13 approved by the Controller, is the lowest, the ~~e~~Contract shall be awarded to the department
14 which shall record accurate unit costs of all direct and indirect charges incurred under any
15 such ~~e~~Contract. Such unit costs shall be reported to and audited by the Controller monthly and
16 on completion of the work.

17 The Controller shall maintain records of ~~b~~Bids filed by departments in relation to the
18 total direct and indirect cost of each such work and shall report thereon periodically to the
19 Mayor. The Controller may refuse to approve ~~e~~Contracts with a department shown to be
20 repeatedly underbidding on ~~e~~Contract work and failing to complete same within the ~~e~~Contract
21 price or time.

22 **(Cc) Procedure Upon Rejection or Failure of Bids.** When ~~b~~Bids have been
23 advertised pursuant to the required procedures and a department receives no b~~Bids are received~~,
24 or only one ~~r~~Responsive ~~b~~Bid ~~is received~~ from a ~~r~~Responsible ~~b~~Bidder, the ~~d~~Department ~~h~~Head
25 shall take the following actions, as appropriate:

1 (1) **No Bids Received.** If no *bBids* are received, the *dDepartment hHead* shall
2 determine (*aA*) whether further outreach efforts would result in contractors submitting *bBids*
3 and/or (*bB*) whether removal or modification of certain requirements in the *eContract* would
4 result in contractors submitting *bBids*, provided that such requirements are not required by
5 statute or law and their removal or modification would not compromise the interests of the City
6 ~~and County~~. If the *dDepartment hHead* determines that steps (*aA*) and/or (*bB*), above, would
7 likely result in contractors submitting *bBids*, then the *dDepartment hHead* shall re-bid the work.
8 If the *dDepartment hHead* determines that neither step (*aA*) nor (*bB*), above, would likely result
9 in contractors submitting *bBids*, then the *dDepartment hHead*, with the approval of the Mayor,
10 the Mayor's designee, or the board or commission concerned, as appropriate, may negotiate
11 with any qualified *eContractor* or may order the work to be executed by the City ~~and County~~.

12 (2) **One Responsive Bid Received; No Other Bids Received.** If only one
13 *rResponsive bBid* is received from a *rResponsible bBidder*, and no other *bBids* are submitted
14 for the same work, the *dDepartment hHead* may recommend the *aAward* of a *eContract* to the
15 sole *bBidder* at the *bBid* price received, provided that the *bBid* price does not exceed the
16 engineer's estimate for the work. If the *bBid* price received exceeds the engineer's estimate,
17 the *dDepartment hHead* shall determine (*aA*) whether further outreach efforts would result in
18 more than one *bBid* and/or (*bB*) whether removal or modification of certain requirements in the
19 *eContract* would result in more than one *bBid*, provided that such requirements are not
20 required by statute or law and their removal or modification would not compromise the
21 interests of the City ~~and County~~. If the *dDepartment hHead* determines that steps (*aA*) and/or
22 (*bB*), above, would likely result in more than one *bBid* at bid prices substantially lower than the
23 bid price received, then the *dDepartment hHead* shall re-bid the work. If the *dDepartment*
24 *hHead* determines that neither step (*aA*) nor (*bB*), above, would likely result in more than one
25 *bBid* at bid prices substantially lower than the bid price received, then the *dDepartment*

1 hHead, with the approval of the Mayor, the Mayor's designee, or the board or commission for
2 the department concerned, as appropriate, may negotiate with the sole bBidder or any qualified
3 eContractor, or may order the work to be executed by the City ~~and County~~. The cost of
4 negotiated work or the cost of work executed by the City ~~and County~~ shall not exceed any bid
5 price received for the same work.

6 (3) **One Responsive Bid Received; Other Nonresponsive Bids Received.** If
7 only one rResponsive bBid is received from a rResponsible bBidder and other, nonresponsive
8 bBids and/or bBids by nonresponsible bBidders are submitted for the same work, the
9 dDepartment hHead may recommend the aAward of a eContract to the sole rResponsive,
10 rResponsible bBidder at the bid price received, provided that the bid price does not exceed
11 the engineer's estimate for the work. If the rResponsive bid price received exceeds the
12 engineer's estimate, the dDepartment hHead shall determine (aA) whether the qualifications
13 for bBidders were too onerous and not necessary for the work and/or (bB) whether one or
14 more of the nonresponsive bBids could be easily cured and whether the bBidders that
15 submitted such bBids are still interested in bidding on the work. If the dDepartment hHead
16 determines that ~~the~~ steps (aA) and/or (bB), above, would likely result in more than one
17 rResponsive bBid by rResponsible bBidders, at bid prices substantially lower than the bid price
18 received, then the dDepartment hHead shall re-bid the work. If the dDepartment hHead
19 determines that neither step (aA) nor (bB), above, would result in more than one rResponsive
20 bBid by rResponsible bBidders at bid prices substantially lower than the bid price received,
21 then the dDepartment hHead, with the approval of the Mayor, the Mayor's designee, or the
22 board or commission concerned, as appropriate, may negotiate with the sole rResponsible
23 bBidder or any qualified eContractor, or may order the work to be executed by the City ~~and~~
24 County. The cost of negotiated work or the cost of work executed by the City ~~and County~~ shall
25 not exceed any bid price received for the same work.

1 (4) All ~~e~~Contracts awarded under this subsection 6.23(~~C~~), including negotiated
2 ~~e~~Contracts, shall require that the substitution of subcontractors be in accordance with
3 California Public Contract Code ~~s~~Section 4107.
4

5 **SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT; PREVAILING**
6 **WAGE REQUIREMENTS.**

7 (~~Aa~~) Subject to the approval of the Mayor and Director of the Department of
8 Administrative Services, the Labor Standards Enforcement Officer shall develop and
9 administer a plan for the enforcement of the ~~p~~Prevailing ~~w~~Wage requirements and other labor
10 standards imposed by the Charter and this Chapter 6 on public work *or improvements as defined*
11 *in subection 6.22(e) ~~e~~contractors*. The Labor Standards Enforcement Officer shall coordinate his
12 or her activities with federal and state labor standards agencies. The Labor Standards
13 Enforcement Officer shall direct the City's enforcement of the ~~p~~Prevailing ~~w~~Wage requirements
14 and other labor standards imposed by the Charter and this Chapter 6 on *public work*
15 contractors as directed by the Mayor, and to this end all City departments shall cooperate with
16 the Labor Standards Enforcement Officer. The Labor Standards Enforcement Officer has the
17 authority to seek for violations of ~~p~~Prevailing ~~w~~Wage, working conditions and apprenticeship
18 requirements all of the penalties imposed by this Chapter, including the authority to file
19 charges, in the same manner and to the same extent as a ~~d~~Department ~~h~~Head, which may
20 lead to the debarment of the contractor under Article V of this Chapter 6. The Labor Standards
21 Enforcement Officer shall oversee the training of City personnel in the area of labor standards
22 enforcement. In accordance with applicable law, the Mayor may enter into a contract for
23 investigative and monitoring services to further the purposes of this ~~s~~Section 6.24. In
24 evaluating the qualifications of persons seeking that contract, the Mayor shall consider,
25

1 among other relevant factors, the experience of those persons in monitoring and investigating
2 labor standards compliance.

3 (Bb) Subject to the fiscal and budgetary provisions of the Charter, the Office of
4 Labor Standards Enforcement is authorized to receive from departments awarding ~~public work~~
5 contracts the amount reasonably calculated to pay for the costs, including litigation costs, of
6 enforcing the City ~~p~~Prevailing ~~W~~age requirements and other labor standards for contracts
7 awarded by those departments. The Labor Standards Enforcement Officer shall supervise the
8 expenditure of all funds appropriated for enforcement of ~~p~~Prevailing ~~W~~age requirements and
9 other labor standards imposed by the Charter and this Chapter 6 on ~~public works~~ contractors.

10 (Cc) The Labor Standards Enforcement Officer shall establish an administrative
11 procedure to address allegations of labor standards violations in connection with any ~~public~~
12 ~~work~~ contract under this Chapter 6. The Labor Standards Enforcement Officer shall have sole
13 authority over the administration of this complaint procedure. The complaint procedure shall
14 include but need not be limited to the following: (1) any person may file a complaint, written or
15 oral, alleging one or more violations of any labor standards requirement imposed by this
16 Chapter 6 on public work contractors; (2) before beginning to investigate the complaint, the
17 Labor Standards Enforcement Officer shall determine if the allegations of the complaint are
18 sufficient and based on that assessment shall determine to either dismiss it or proceed with
19 an investigation; (3) if the Labor Standards Enforcement Officer at any time determines that
20 the allegations contained in the complaint are without merit, the Labor Standards Enforcement
21 Officer shall notify the complainant; and (4) if the Labor Standards Enforcement Officer finds
22 that any allegations in a complaint have merit, the Labor Standards Enforcement Officer shall
23 proceed in accordance with the enforcement procedures under Section 6.22 ~~of this Chapter~~.
24 This complaint procedure is applicable to allegations of labor standards violations in
25 connection with any public work contract under this Chapter 6, but is not applicable to those

1 matters under the administrative jurisdiction of the San Francisco Human Rights Commission.
2 This procedure shall not preclude the Labor Standards Enforcement Officer from initiating or
3 proceeding with an investigation on his or her own authority. All ~~public work~~ eContractors and
4 departments engaged in public work shall cooperate fully with the Office of Labor Standards
5 Enforcement in connection with any investigation of any complaint filed in accordance with
6 this complaint procedure. The Labor Standards Enforcement Officer may interview, either at
7 the worksite or elsewhere, any witness who may have information relative to a complaint.

8
9 **SEC. 6.25. CONTRACT REQUIREMENTS FOR CLEAN CONSTRUCTION.**

10 (a) All work performed on a Major Construction Project, as defined in Environment
11 Code Section 25.3, shall be carried out in compliance with the Clean Construction
12 requirements of Environment Code Chapter 25. The ~~d~~Department ~~h~~Head or officer calling for
13 ~~b~~Bids for contracts for work to be performed on a Major Construction Project shall specify in
14 the Advertisement for Bids that Clean Construction is required for the performance of all work
15 unless a waiver of all or part of the requirements of that Chapter has been granted under
16 Sections 25.5 or 25.7.

17 (b) Every eContract for work to be performed on a Major Construction Project shall
18 contain provisions, in a form to be approved by the City Attorney: (A) requiring that the
19 contractor comply with Chapter 25 of the Environment Code, (B) authorizing waivers as set
20 forth in Environment Code Sections 25.5 and 25.7, and (C) specifying liquidated damages in
21 the amount of \$100.~~00~~ per day per each piece of off-road equipment and each off-road engine
22 utilized to complete work on the project in violation of Environment Code Chapter 25.

1 **ARTICLE III: PROFESSIONAL SERVICES CONTRACTING**

2
3 **SEC. 6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR**
4 **PUBLIC WORK PROJECTS.**

5 Notwithstanding any other provision of this Administrative Code, when a department
6 is seeking outside temporary professional design, consultant or ~~e~~Construction ~~m~~Management
7 services for a ~~p~~Public ~~w~~Work or Improvement project, where the fee for such services shall
8 exceed the ~~m~~Minimum ~~e~~Competitive ~~a~~Amount, as defined below, the department shall procure
9 such services through a competitive process based primarily on qualifications.

10 (Aa) **Minimum ~~e~~Competitive ~~a~~Amount.** The ~~m~~Minimum ~~e~~Competitive ~~a~~Amount for
11 temporary outside professional service ~~e~~Contracts shall be ~~\$100,000~~\$110,000. On January 1,
12 ~~2015~~20, and every ~~five~~5 years thereafter, the Controller shall recalculate the ~~m~~Minimum
13 ~~e~~Competitive ~~a~~Amount to reflect any proportional increase in the Urban Regional Consumer
14 Price Index from January 1, 20105, rounded to the nearest \$1,000.

15 (Bb) **Selection Process.** For professional services ~~e~~Contracts in excess of the
16 ~~m~~Minimum ~~e~~Competitive ~~a~~Amount, the ~~d~~Department ~~h~~Head ~~for the department empowered to~~
17 ~~contract for the public work~~ shall designate one or more panels to review proposals ~~and~~
18 ~~interview~~ and rate respondents with respect to a request for proposals or qualifications for a
19 professional services ~~e~~Contract. A panel shall consist of not fewer than two persons. The
20 ~~d~~Department ~~h~~Head may establish a multi-tier selection process whereby, for example, a
21 technical panel recommends a shortlist of qualified respondents and a second panel ranks the
22 shortlist.

23 The ~~d~~Department ~~h~~Head shall ensure that all panel members are impartial and that
24 all respondents are treated fairly. The panel members rating the respondents shall do so
25 according to their independent assessment of the respondent's qualifications for the ~~p~~Public

1 ~~Work~~ project; questions relating to a respondent's expertise, qualifications and experience
2 shall remain within the sole purview of the panel members.

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

7 (c) **Negotiation.** Following the selection process outlined above, and should the
8 department concerned desire to enter into a Contract, the Department Head shall invite the
9 highest-ranked qualified respondent to negotiate a ~~professional services agreement~~ Contract to the
10 extent provided for in the request for proposals. In the event that the Department Head
11 determines, in the Department Head's sole discretion, that negotiations are unfruitful, the
12 Department Head shall terminate negotiations in writing and may then invite the next
13 highest-ranked respondent to negotiate a Contract. In such event, the Department Head
14 shall as soon as practicable make a report to the Mayor, Mayor's designee board or
15 commission as appropriate to the department.

16 (d) Procedure Upon Rejection or Failure of Proposals. If no Responsive proposals are
17 received from qualified proposers, the Department Head shall determine (1) whether further outreach
18 efforts would result in respondents submitting proposals and/or (2) whether removal or modification of
19 certain requirements in the Contract or request for proposals or qualifications would result in
20 respondents submitting responsive proposals, provided that such requirements are not required by law
21 and their removal or modification would not compromise the interests of the City. If the Department
22 Head determines that steps (1) and/or (2), above, would likely result in respondents submitting
23 Responsive proposals, then the Department Head shall reissue the request for proposals or
24 qualifications. If the Department Head determines that neither step (1), nor (2) above, would likely
25 result in respondents submitting Responsive proposals, then the Department Head, with the approval of

1 the Mayor, the Mayor's designee, or the board or commission concerned, as appropriate, may
2 negotiate with any qualified Contractor for the professional services sought by the request for
3 proposals or qualifications.

4 (e) **Procedure Upon Contractor's Failure to Deliver.** When a Contractor fails to deliver a
5 service of the quality, in the quantity, or in the manner specified in the Contract within the time
6 specified in the Contract, the department may terminate the Contract and/or procure such service from
7 any source. The department's authority to procure services from other sources as specified in this
8 subsection 6.40(e) shall not preclude the City's exercise of any other remedies, including termination of
9 the Contract.

11 **SEC. 6.41. REQUESTS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

12 All requests for competitive proposals or qualifications for temporary design,
13 consultant, or ~~e~~C~~onstruction~~ ~~m~~M~~anagement~~ services shall conform to and at a minimum
14 require the following:

15 (Aa) **Evaluation Criteria.** The ~~d~~D~~epartment~~ ~~h~~H~~ead~~ ~~authorized to execute the contract~~
16 shall determine the criteria by which the design, consultant, or ~~e~~C~~onstruction~~ ~~m~~M~~anagement~~
17 service professionals shall be evaluated, on a project-by-project basis. Such criteria shall be
18 included as a part of any request for proposals or qualifications. The criteria shall be based
19 primarily on qualifications and experience relevant to the services needed for the project.
20 Except as prohibited by law, the ~~d~~D~~epartment~~ ~~h~~H~~ead~~, in his ~~or~~ her sole discretion, may
21 determine that, in the best interests of the City ~~and County of San Francisco~~, a consultant who
22 participated in the master plan, conceptual phase or other preliminary work for a project, may
23 compete to provide professional services in future phases of such project. In such event, the
24 consultant may not use, nor may the selection panel consider, the consultant's prior work on
25 the project to establish its experience or qualifications in the competitive process.

1 **(Bb) Reservation of Rights to Reject or Cancel the Request for Proposals in**

2 **Whole or Part.** The ~~d~~Department ~~h~~Head ~~authorized to execute the contract~~, upon approval of the
3 Mayor, the Mayor's designee or the board or commission, as appropriate, may reject any or
4 all proposals, in whole or in part, received in response to a request for proposals or
5 qualifications. The right to reject shall be reserved in any request for proposals or
6 qualifications, but the failure to include such reservation shall not abrogate the rights of the
7 ~~d~~Department ~~h~~Head under this ~~s~~Section 6.41 or give rise to any right by any respondent.

8 **(Cc) Award and Certification Required.** All requests for proposals or qualifications

9 shall contain the following language [wording in brackets should be chosen as appropriate to
10 the department]:

11 In accordance with San Francisco Administrative Code Chapter 6, no proposal is
12 accepted and no contract in excess of [the Threshold Amount] is awarded by the City and
13 County of San Francisco until such time as [(1) for departments with boards or commissions,
14 (a) the department head recommends the contract for award and (b) the board or commission
15 then adopts a resolution awarding the contract; or [(2) for departments under the Mayor, (a)
16 the Mayor or the Mayor's designee approves the contract for award and (b) the department
17 head then issues and order of award]. Pursuant to Charter Section 3.105, all contract awards
18 are subject to certification by the Controller as to the availability of funds.

19 Failure of a department to include such language in a request for proposals or
20 qualifications does not give rise to a contract right by a respondent or ~~e~~Contractor outside of
21 the requirements of the Charter or Administrative Code ~~of the City and County of San Francisco.~~

22 *///*

23 *///*

24 *///*

25 *///*

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

2 All ~~e~~Contracts for temporary design, consultant, and ~~e~~Construction ~~m~~Management
3 services are professional services Contracts, which~~("professional services")~~ shall contain the
4 following minimum terms and conditions:

5 (Aa) **Guaranteed Maximum Costs.** Professional service ~~e~~Contracts shall provide
6 for a Guaranteed Maximum Cost, including fees, travel and related expenses as necessitated
7 by the project. Any modification to the Guaranteed Maximum Cost must be approved by the
8 ~~d~~Department ~~h~~Head in writing and approved by the Mayor, the Mayor's designee or the board
9 or commission concerned, as appropriate, and the Controller.

10 (Bb) **Insurance.** Notwithstanding any other provisions of this Chapter 6, all
11 professional service ~~e~~Contracts must conform to the insurance requirements established by
12 the Risk Manager. The Risk Manager shall develop uniform insurance requirements for City
13 ~~e~~Contracts subject to this Chapter 6 and shall publish such requirements in the Risk
14 Manager's Manual. The Risk Manager shall review and update such insurance requirements
15 on an annual basis.

16 (Cc) **Indemnification.** All professional services ~~e~~Contracts awarded under this
17 Chapter 6 shall require that the ~~e~~Contractor fully indemnify the City ~~and County~~ to the maximum
18 extent provided by law, such that each ~~e~~Contractor must save, keep, bear harmless and fully
19 indemnify the City ~~and County~~ and any of its officers or agents from any and all liability,
20 damages, claims, judgments or demands for damages, costs or expenses in law or equity that
21 may at any time arise.

22 This indemnification requirement may not be waived or abrogated in any way for
23 any ~~e~~Contract without the recommendation of the ~~City's~~ Risk Manager and the express
24 permission and approval of the Board of Supervisors.

1 (~~Dd~~) **Assignment.** No eContract shall be assigned except upon the recommendation
2 of the ~~d~~Department ~~h~~Head concerned and with the approval of the Mayor or the Mayor's
3 designee, relative to the department under the Mayor's jurisdiction or the approval of the
4 board or commission concerned for departments not under the Mayor.

5 (~~Ee~~) **Modifications.** Professional service eContracts may be modified only by written
6 instrument, granted and approved by the City ~~and County~~ in the same manner the underlying
7 eContract was awarded.

8 (~~Ff~~) **Contractor Prompt Payment.** All professional services eContracts under this
9 Chapter 6 shall require the eContractor to pay its subcontractors within seven calendar days
10 after receipt of each progress payment from the City, unless otherwise agreed to in writing in
11 advance by both eContractor and subcontractor. In the event that there is a good faith dispute
12 over all or any portion of the amount due on a progress payment from a eContractor to a
13 subcontractor, the eContractor may withhold the disputed amount but shall pay the undisputed
14 amount.

15 Any eContractor who violates this subsection 6.42(f) shall pay to the subcontractor a
16 penalty of 2% of the amount due per month for every month or portion thereof that payment is
17 not made. This subsection 6.42(f) is enforceable in a court of competent jurisdiction, and is not
18 intended to create a private right of action against the City ~~and County of San Francisco~~.

19
20 **SEC. 6.43. AS-NEEDED PROFESSIONAL SERVICES CONTRACTS.**

21 *Department Heads are authorized to procure as-needed professional services for temporary*
22 *professional services to supplement the expertise or experience of the department for one or more*
23 *Public Work or Improvement projects in conformance with Sections 6.40 through 6.42, with the*
24 *following limitations:*

1 (a) The Department Head shall designate an as-needed professional service Contract as a
2 single-project or multiple-project Contract in the request for proposals or qualifications.

3 (b) Work shall be assigned by contract service orders. Contract service orders shall include a
4 scope of services, time, and a not-to-exceed fee.

5 (1) A multiple-project as-needed Contract shall provide for a not-to-exceed amount and
6 a Contract term of not more than five years from the date of certification by the Controller of the
7 Contract, including all modifications. The cumulative modifications to a multiple-project as-needed
8 Contract shall not exceed 150% of the original not-to-exceed amount. No contract service order or
9 multiple contract service orders for services provided for any single project, whether in one phase or
10 multiple phases, shall cumulatively exceed the Threshold Amount, including all modifications. A
11 department may issue or modify any contract service order(s) to exceed the foregoing limit only upon
12 the Department Head's written determination establishing the justification for proceeding under the as-
13 needed Contract rather than soliciting services through a formal competitive process.

14 (2) A single-project as-needed Contract shall provide for a not-to-exceed amount and
15 identify the public work. The scope of the contract service orders must be limited to that single Public
16 Work or Improvement. The limitations in subsection 6.43(b)(1) shall not apply to single-project as-
17 needed Contracts.

18
19 **ARTICLE IV: EXEMPTIONS FROM ARTICLES II AND III AND ALTERNATIVES TO**
20 ***COMPETITIVE BIDDING***

21 **SEC. 6.60. EMERGENCY REPAIRS, WORK AND CONTRACTS.**

22 **(Aa) Declaration of Emergency.** The Board of Supervisors may declare an
23 emergency and may direct any ~~d~~Department ~~h~~Head to perform any repair or other emergency
24 work in any manner the Board determines to be in the best interests of the City ~~and County of~~
25 ~~San Francisco.~~

1 **(Bb) Other Determinations of Emergency.** In an actual emergency as defined or
2 described below, the Department Head responsible for addressing the emergency may declare an
3 emergency with immediate notice to the President of the Board of Supervisors, the Mayor, the
4 Controller, and the board or commission having jurisdiction over the area affected by the emergency, if
5 any. The Department Head responsible for addressing the emergency may execute the repair,
6 reconditioning or other work or eContract necessitated by the emergency ~~may be executed by the~~
7 ~~department head responsible for such work~~ in the most expeditious manner, in accordance with
8 the procedures set forth below.

9 **(Cc) Emergency Defined.** For purposes of this Chapter 6, an "actual emergency"
10 means a sudden, unforeseeable and unexpected occurrence involving a clear and imminent
11 danger, demanding immediate action to prevent or mitigate loss of or damage to, life, health
12 property or essential public services. An "actual emergency" shall also mean the discovery of
13 any condition involving a clear and imminent danger to public health or safety, demanding
14 immediate action. Examples of an actual emergency may include, but are not limited to, the
15 following:

16 (1) Weather conditions, fire, flood, earthquake or other unforeseen occurrences of
17 unusual character; or

18 (2) The breakdown or imminent breakdown of any plant, equipment, structure,
19 street or public work necessitating immediate emergency repair or reconditioning to safeguard
20 the lives or property of the citizens; or the property of the City ~~and County~~; or to maintain the
21 public health or welfare; and

22 ~~(aA)~~ Including the installation, repair, construction and alteration of crossings and
23 switch work and special work in connection therewith at street and other railway crossings
24 and at street intersections when the same is to be done by or for the Municipal Transportation
25 Agency; or

1 (~~b~~B) Including the installation, repair, construction and alteration of the fire alarm,
2 police communication and traffic signal systems, when the same is to be performed by or for
3 the Department of Technology or the Municipal Transportation Agency; or

4 (~~e~~C) Including the work of making connections, installing gate valves, installing or
5 transferring services and performing such other work therewith to existing water pipes when
6 the same is to be done by or for the Public Utilities Commission and when such work will
7 leave one or more fire hydrants or water consumers without water; or

8 (3) Unforeseen occurrences of unusual character resulting in an insufficient
9 number of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental
10 health or hospital ancillary services so as to leave patients of the City ~~and County~~ without
11 required hospital or medical services.

12 (~~D~~d) **Approvals Required for Determination of Emergency.** If the estimated cost of
13 the emergency work is less than or equal to ~~\$250,000~~ the Threshold Amount the ~~d~~Department
14 ~~h~~Head may proceed with the work without additional approvals. If the estimated cost of the
15 emergency work exceeds ~~\$250,000~~ the Threshold Amount, the ~~d~~Department ~~h~~Head prior to
16 authorizing the commencement of the work, must first secure the approval in writing of the
17 Mayor or the Mayor's designee or the president of the board or commission concerned as
18 appropriate to the department. For all cases where the cost of the emergency work exceeds
19 ~~\$250,000~~ the Threshold Amount, the ~~d~~Department ~~h~~Head shall also obtain the approval of the
20 Board of Supervisors.

21 If the emergency does not permit the required approvals of the emergency determination
22 to be obtained before work is commenced or the ~~e~~Contract(~~s~~) entered into, such approvals
23 shall be obtained as soon thereafter as it is possible to do so. In such event, the ~~d~~Department
24 ~~h~~Head concerned shall notify the Controller immediately of the work involved or the
25

1 eContract(s) entered into and the estimated cost thereof and shall notify the Board of
2 Supervisors not more than seven days after work has been commenced.

3 (Ee) **Exemptions.** Contracts awarded in accordance with this sSection under
4 emergency circumstances as described and defined above are exempt from the requirements
5 of this Chapter 6 and Chapters 12A, 12B, 12C and Chapter 14B *of the Administrative Code*.
6 ~~However, the department head must comply with the certification requirement of Administrative Code~~
7 ~~Chapter 14B.~~ It is, however, the policy of the Board of Supervisors for contracting departments
8 to make every effort to comply with the provisions of Administrative Code Chapters 12A, 12B,
9 12C and Chapter 14B. In order to effectuate this policy, the dDepartment hHeads ~~authorized to~~
10 ~~enter into construction contracts~~ and their staff members shall collaborate with CMD ~~the HRC~~
11 ~~Director and HRC staff members~~ periodically to create a list of rResponsible eContractors
12 qualified to perform various types of emergency work, making every effort to include qualified,
13 responsible, and certified LBE contractors on that list. ~~The CMD~~ HRC shall be responsible for
14 outreach efforts to make sure that certified LBE contractors are aware of the opportunity to be
15 considered for the list. The eContract aAwarding departments or commissions shall be
16 responsible for evaluating and determining whether contractors are rResponsible and
17 qualified to perform the various scopes of work. The dDepartment hHeads ~~of departments~~
18 ~~authorized to execute construction contracts~~ shall report quarterly to the Board of Supervisors
19 regarding LBE inclusion on the list of rResponsible and qualified eContractors for emergency
20 eContracts, a description of each emergency eContract awarded, the reason why the work
21 was performed under these emergency procedures, and whether the emergency eContract
22 was awarded to an LBE contractor. Such reports shall be referred to a Board committee for
23 public hearing.

24 (Ff) **Indemnification For Emergency Contracts.** Department hHeads responsible
25 for any emergency work are hereby authorized to (aI) waive any requirement that a

1 eContractor performing such emergency work indemnify the City ~~and County~~ and/or (b2) enter
2 into a eContract ~~which that~~ provides that the City ~~and County~~ indemnify such eContractor, except
3 that the City ~~and County~~ shall in no event indemnify a contractor for the eContractor's gross
4 negligence or willful misconduct.

6 SEC. 6.61. DESIGN-BUILD.

7 Design-build is an approach to the procurement of design and construction services, whereby
8 a single entity, known as the "Design-Builder," is retained to provide both professional design services
9 and general contractor services. The ~~d~~Department ~~h~~Heads ~~authorized to execute contracts for public~~
10 ~~work projects~~ are authorized to seek bids or proposals from qualified private entities ("~~d~~Design-
11 ~~b~~Builders") for design-build construction and/or financing of public work projects under the
12 following conditions:

13 (Aa) Before the request for qualifications is issued, the ~~d~~Department ~~h~~Head shall
14 determine that a design-build ~~program~~delivery method is necessary or appropriate to achieve
15 anticipated cost savings or time efficiencies, or both, and that such a ~~process~~delivery method is
16 in the public's best interest. For projects involving financing of Public Work or Improvements
17 provided by the Design-Builder, the Department Head must first seek the approval of the board or
18 commission if the department is under the jurisdiction of a board or commission, or the City
19 Administrator, if the department is under the jurisdiction of the Mayor. The Department Head shall
20 consult with the Office of the Controller to establish criteria for evaluating private financing proposals.

21 (Bb) ~~If the proposed public work project is for the use or benefit of a department that is~~
22 ~~under the jurisdiction of a commission, then such commission shall first approve the solicitation of~~
23 ~~design-build and/or finance proposals. If the public work project is not for the use or benefit of a~~
24 ~~department under the jurisdiction of a commission, then the City Administrator must first approve this~~
25 ~~process.~~ Competitive Bid or Fixed Budget Limit Procurement.

1 **(C1) Pre-Qualification.** When selecting a Design-Builder based on competitive bid or
2 proposals for a fixed budget limit project, the Department ~~Head~~ shall ~~require that prospective~~
3 ~~design-builders be pre-qualified~~ Design-Builders, or a combination of the Design-Builders and one or
4 more of their subcontractors prior to issuing an invitation to submit bids or proposals~~to submit~~
5 ~~proposals on a specific project.~~ The procedure for pre-qualification is as follows:

6 (1A) The ~~Department~~ ~~Head~~ shall issue a request for qualifications inviting
7 interested parties to submit their qualifications to perform the project. The request for
8 qualifications shall include criteria by which the prospective ~~Design-Builders~~ will be
9 evaluated during the qualification process. The evaluation criteria shall be based on
10 qualifications and experience relevant to the services needed for the project, ~~including~~ The list
11 of criteria may include, but is not limited to the following: (i) qualifications to design-build the
12 proposed project; (ii) evidence of financial capacity; (iii) experience on similar projects; ~~(iv)~~
13 ~~commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14;~~
14 ~~(iv)~~ ability to collaboratively and cooperatively deliver projects on time and on budget; ~~(v)~~
15 history of liquidated damages for delay and other damages paid on prior projects, and prior
16 litigation ~~history~~; ~~(vi)~~ reputation with owners of prior projects; ~~(vii)~~ claims history with
17 insurance carriers and sureties; and ~~(viii)~~ compliance with all of the requirements established in
18 the request for qualifications and other criteria that the ~~Department~~ ~~Head~~ may deem
19 appropriate. The ~~Department~~ ~~Head~~ shall set objective scoring criteria and incorporate the
20 criteria into any scoring procedure.

21 (2B) The ~~Department~~ ~~Head~~ shall designate a panel to review pre-qualification
22 responses ~~and interview~~ and rate respondents with respect to the request for qualifications.
23 The panel, at the Department Head's discretion, may interview respondents and evaluate designs,
24 concepts and/or approaches to the project as part of the pre-qualification process. Only those
25 respondents found to be qualified will be eligible to submit bids or proposals. The list of pre-

1 qualified respondents shall be valid for not more than two years following the date of initial
2 pre-qualification. The Department Head may restrict bidding or proposing to a shortlist of no fewer
3 than three pre-qualified Design-Builders.

4 ~~(3) The department head may establish a pre-qualification selection process whereby the~~
5 ~~panel ranks respondents and recommends a shortlist of no fewer than three (3) pre-qualified~~
6 ~~respondents. The department head may restrict bidding to short-listed respondents. The shortlist of pre-~~
7 ~~qualified respondents shall be valid for not more than two years following the date of initial pre-~~
8 ~~qualification.~~

9 **(D2) Request for ProposalsBids.** The ~~d~~Department ~~h~~Head shall issue a request for
10 ~~proposalsbids~~ inviting pre-qualified ~~d~~Design-~~b~~Builders to submit ~~proposalsbids~~ for the project in
11 conformance with the requirements set forth in Section 6.21(a), except that the Department Head is not
12 required to advertise for bids. The request for ~~proposalsbids~~ shall include a criteria package
13 describing preliminary design criteria and performance criteria for the project, as well as any
14 other information deemed necessary to describe adequately the City's needs for the project.

15 ~~————(E) Final Selection Process.~~ The ~~d~~Department ~~h~~Head may recommend the award of a
16 ~~e~~Contract to the ~~r~~Responsible ~~b~~Bidder submitting the lowest ~~r~~Responsive bid. If the award to
17 that bidder is not made for any reason, the ~~d~~Department ~~h~~Head may recommend the award of
18 a ~~e~~Contract to the ~~r~~Responsible ~~b~~Bidder submitting the next lowest ~~r~~Responsive bid, and so
19 forth. ~~The department head may, at his or her sole discretion, conduct any negotiations that are~~
20 ~~necessary to effectuate the award of a contract.~~

21 **(3) Request for Proposals for Fixed Budget Limit Projects.** As an alternative to receiving
22 competitive bids, the Department Head may issue a request for proposals stating a fixed budget limit
23 for the project and inviting pre-qualified Design-Builders to submit proposals for the project. The
24 request for proposals shall provide a description of preliminary design criteria and performance
25 criteria for the base scope of the project. The request for proposals shall also provide a description of

1 preliminary design criteria and performance criteria for additional desired project enhancements. The
2 proposal shall include the Design-Builder's agreement to fully deliver the base scope of the project and
3 may also include any of the additional desired project enhancements the Design-Builder offers to fully
4 deliver within the fixed budget limit. The proposals shall be evaluated based upon stated objective
5 criteria, which may include qualifications, experience, design proposals, cost, and the value of the
6 proposed enhancements. The Department Head may recommend the Award of a Contract to the
7 highest-ranked proposer. If the Award to that proposer is not made for any reason, the Department
8 Head may recommend the Award of a Contract to the next highest-ranked proposer, and so forth.

9 **(4) Procurement of Trade Subcontractors.** The Department head may require that all
10 subcontractors be listed at the time of bid or proposal or may identify specific trades for which the
11 Design-Builder must list subcontractors. Following award of the Contract, the Design-Builder shall
12 add or substitute trade subcontracts with a value exceeding 0.5% of the Contract amount applicable to
13 the construction work as follows:

14 (A) Unless otherwise authorized by the Department Head, each trade subcontract
15 opportunity shall be advertised as provided in subsection 6.21(a)(1);

16 (B) The Design-Builder shall establish reasonable qualification criteria and standards;

17 (C) The Design-Builder may then award the subcontract either on a best value basis or to
18 the Responsible Bidder with the lowest Responsive bid;

19 (D) All subcontractors, whether listed at the time of bid or proposal or added or
20 substituted under this subsection 6.61(b)(4), shall be afforded all of the protections of the California
21 Subletting and Subcontracting Fair Practices Act, at California Public Contract Code Section 4100 et
22 seq., as amended from time to time.

23 (F~~c~~) ~~Alternative Final Selection Process~~**Best Value Procurement.** If the project seeks
24 private financing proposals and/or the ~~d~~Department ~~h~~Head determines that it is in the public's
25 best interest to consider qualifications and/or other subjective criteria (e.g., quality of design

1 proposal) as part of the final selection process, the ~~d~~Department ~~h~~Head shall require that
2 prospective proposers be pre-qualified pursuant to the process in Section 6.61(a)(1) or shall issue a
3 combined request for qualifications and proposals inviting ~~pre-qualified d~~Design-~~b~~Builders, or a
4 combination of Design-Builders and their Core Trade Subcontractors meeting specified minimum
5 qualification criteria, to submit design-build proposals, which will be evaluated based upon
6 qualifications, stated subjective criteria, and project and/or financing costs. The license and
7 business tax requirements of subsections 6.21(a)(6) and (8) shall apply to requests for proposals under
8 this subsection 6.61(c).

9 (1) ~~The Department Head may request design-builders to create partial designs, which~~
10 ~~will be evaluated as part of the final selection process. The department head may offer a reasonable~~
11 ~~stipend to short-listed design-builders to create partial designs. The receipt of a stipend shall be~~
12 ~~contingent upon a design-builder's proposal being responsive to the request for proposals.~~

13 ~~—————(2) The department head may require short-listed design-builders who are creating partial~~
14 ~~designs to participate in one or more confidential review meetings with City representatives and/or~~
15 ~~selection panel members during the proposal preparation period. The purpose of the review meetings~~
16 ~~will be to ensure that each design-builder's partial design is proceeding in a manner that is consistent~~
17 ~~with the requirements of the City as set forth in the criteria package. Discussions during review~~
18 ~~meetings shall be limited to objective elements of the criteria package.~~

19 ~~—————(3) Design-builders submitting private financing proposals shall provide evidence of the~~
20 ~~commitment of funds necessary to privately finance the proposed projects to completion.~~

21 ~~—————(4) The ~~d~~Department ~~h~~Head shall designate a qualified panel to evaluate design-~~
22 ~~build proposals and rank the proposals to determine which provides the overall best value to~~
23 ~~the City and County in regard to the following criteria: The non-cost evaluation criteria may include,~~
24 ~~but is not limited to the following: (i) A plan for expediency in completing the proposed project;~~
25 ~~(ii) B lifecycle cost to the City and County; (iii) C qualifications to finance the proposed project;~~

1 (~~iv~~D) quality of design proposal; (~~v~~E) ~~compliance with the goals set by the Human Rights~~
2 ~~Commission and requirements of the Administrative Code Chapters 12 and 14;~~ (~~vi~~) ~~commitment to~~
3 ~~meet the City hiring goals (e.g., CityBuild or First Source Hiring);~~ (~~vii~~F) if private financing is
4 sought, commitment of funds, cost of funds and terms to the City; and (~~viii~~G) ~~compliance with~~
5 ~~all the requirements and other~~ criteria established by the Department ~~h~~Head in the request for
6 proposals. The cost criterion shall constitute not less than ~~sixty five percent (65~~40~~%)~~ of the
7 overall evaluation.

8 **(2) Design proposals**

9 (A) The Department Head may request Design-Builders to create partial designs, which
10 will be evaluated as part of the selection process. The Department Head may offer a reasonable stipend
11 to short-listed Design-Builders to create partial designs who are not awarded the Contract. The receipt
12 of a stipend shall be contingent upon a Design-Builder's proposal being responsive to the request for
13 proposals. Stipends paid in accordance with this subsection are exempt from the requirements of the
14 Administrative Code, including but not limited to this Chapter 6 and Chapters 12B, 12C and Chapter
15 14B.

16 (B) The Department Head may require short-listed Design-Builders who are creating
17 partial designs to participate in one or more confidential review meetings with City representatives
18 and/or selection panel members during the proposal preparation period. The purpose of the review
19 meetings will be to ensure that each Design-Builder's partial design is proceeding in a manner that is
20 consistent with the requirements of the City as set forth in the criteria package. Discussions during
21 review meetings shall be limited to objective elements of the criteria package.

22 (3) Design-Builders submitting private financing proposals shall provide evidence of the
23 commitment of funds necessary to privately finance the proposed projects to completion.

24 (~~G~~4) The Department Head may, at his or her sole discretion, conduct any negotiations
25 that are necessary to effectuate the award of a Contract and that are fair and reasonable to the

1 competitive process. ~~Subject to paragraph (K) below,~~ The dDepartment hHead may recommend
2 the award of a eContract to the highest-ranked ~~design-builderproposer~~. If the ~~aAward~~ to the
3 highest-ranked ~~design-builderproposer~~ is not made for any reason, the dDepartment hHead
4 may recommend the award of a eContract to the next highest-ranked ~~design-builderproposer~~,
5 and so forth. ~~The department head may, at his or her sole discretion, conduct any negotiations that~~
6 ~~are necessary to effectuate the award of a contract.~~

7 ~~(H) The City shall retain the absolute discretion to determine, at any time during the~~
8 ~~process, not to proceed with any proposed project, which right may be exercised without liability to~~
9 ~~design-builders for costs incurred during the entire pre-qualification, proposal and negotiation~~
10 ~~process, and such rights shall be reserved in all requests for qualifications and proposals.~~

11 ~~(I) The competitive bid requirements of this Chapter shall not apply to the selection of~~
12 ~~design-builders under this Section 6.61.~~

13 ~~(J) Design-builders shall comply with all applicable requirements set forth in San Francisco~~
14 ~~Administrative Code Chapters 12 and 14.~~

15 ~~(K) All final contracts for a public work project that involve a design-build and/or finance~~
16 ~~program shall be subject to the award provisions of Article I of this Chapter. If the proposed contract~~
17 ~~involves a financing program, the Capital Planning Committee must review and report on the proposed~~
18 ~~project before the board, commission, Mayor or his/her designee takes any action with respect to~~
19 ~~award of the contract.~~

20 **(L5) Procurement of Trade Subcontractors.** With the approval of the Department
21 hHeads, ~~may require~~ the selected dDesign-bBuilder ~~to~~may procure trade work ~~contracts through a~~
22 ~~pre-qualification and competitive bid process, as~~in conformance with the ~~following~~ procedures:

23 ~~(1A) Pre-qualification~~Competitive Bid Procurement. The dDepartment hHead shall
24 require the dDesign-bBuilder to pre-qualify ~~all~~ trade subcontractors, subject to ~~the a process,~~
25 which may be a minimum qualification application, pre-approved ~~of~~by the dDepartment hHead.

1 The ~~d~~Design-~~b~~Builder shall attempt to establish a pool of no fewer than three pre-qualified
2 subcontractors for each trade package, ~~subject to the approval of the department head.~~

3 ~~———— (2) Competitive Bid. The department head shall require the d~~Design-~~b~~Builder ~~to~~shall
4 receive sealed bids from the pre-qualified trade subcontractors. The bid security provisions of
5 Section 6.21 will not apply. ~~The design builder shall award a trade package subcontract~~ All trade
6 packages procured pursuant to this subsection 6.61(c)(5)(A) shall be awarded to the rResponsible
7 bBidder submitting the lowest ~~r~~Responsible ~~bBid, ~~except that the design builder may negotiate and~~
8 ~~award a portion of the trade package subcontracts as provided in paragraph (3), below. Only those~~
9 ~~Administrative Code provisions that normally apply to subcontracts will apply to the trade package~~
10 ~~subcontracts.~~~~

11 (B) Core Trade Subcontractors. Upon approval of the Department Head, the Design-
12 Builder may procure design, preconstruction, or design-assist services from Core Trade
13 Subcontractors based on qualifications only. As soon as practical, or as otherwise approved by the
14 department, each Core Trade Subcontractor shall provide a written cost proposal for construction of
15 the related trade package. Before authorizing the Design-Builder to subcontract with a Core Trade
16 Subcontractor for the trade package, the department must validate the cost proposal by an independent
17 cost estimate. The Department Head, in his or her sole discretion, may require the Design-Builder to
18 competitively procure the trade package by competitive bid in conformance with subsection
19 6.61(b)(5)(A).

20 (C) Self-Performed Work. The Department Head may specify in the design-build request
21 for proposals one or more scopes of work that may be self-performed by the Design-Builder. Before
22 authorizing the Design-Builder to self-perform work, the Department Head must determine the cost of
23 the work to be fair and reasonable, either by an independent cost estimate or by a competitive bidding
24 process.

1 **(3D) Direct Negotiations.** The ~~d~~Department ~~h~~Head may authorize the ~~d~~Design-
2 ~~b~~Builder to negotiate subcontracts for trade work as appropriate for the project, up to an
3 amount not exceeding ~~seven and one-half percent~~7.5% of the total estimated construction
4 subcontract costs. The ~~d~~Department ~~h~~Head shall establish a maximum dollar value for each
5 negotiated trade subcontract as appropriate for the project.

6 (d) The City shall retain the absolute discretion to determine, at any time during the process,
7 not to proceed with any proposed project, which right may be exercised without liability to Design-
8 Builders for costs incurred at any point during the pre-qualification, proposal and negotiation process,
9 and such rights shall be reserved in all requests for qualifications and proposals.

10 (e) All Contract terms and working conditions of Section 6.22 shall apply to design-build
11 Contracts. Only those Administrative Code provisions that normally apply to subcontracts will apply to
12 the trade package subcontracts procured under this Section 6.61. The Design-Builder may request
13 permission from the Department Head to require corporate surety payment and performance bonds for
14 some or all subcontracts.

15 (f) Design-builders shall comply with all applicable requirements set forth in Administrative
16 Code Chapters 12 and 14.

17 (g) All Contracts procured under this Section 6.61 are subject to the award provisions of
18 Section 6.3. If the proposed Contract involves a financing program, the City Capital Planning
19 Committee must review and report on the proposed project before the board, commission, Mayor or
20 his/her designee takes any action with respect to award of the Contract.

21 (Mh) All actions heretofore taken by a department head consistent with the
22 provisions of this section are hereby approved.

23 ~~(N) All design-build projects that are substantially underway as of the effective date of this~~
24 ~~Subsection 6.61(N) that do not comply with the mandatory pre-qualification requirements of Subsection~~

1 ~~6.61(C) are hereby approved, provided that the applicable department heads shall only consider~~
2 ~~proposals from qualified design-builders.~~

3
4 **SEC. 6.62. JOB ORDER CONTRACTS.**

5 The job order contracting system ("JOC") provides for an indefinite quantity ~~e~~Contract
6 with a predefined set of ~~b~~Bid items that are assigned on a periodic or task order basis for the
7 performance of ~~public work~~ maintenance, repair and minor construction projects. ~~The~~
8 ~~d~~Department ~~h~~Heads ~~authorized to execute contracts for public work projects~~ are authorized to
9 utilize JOC according to the procedures set forth below.

10 (Aa) Each JOC ~~e~~Contract is to be advertised for competitive ~~b~~Bids in accordance
11 with the procedures set forth in this Chapter 6 and awarded to the ~~r~~Responsible ~~b~~Bidder who
12 submits the lowest ~~r~~Responsive ~~b~~Bid.

13 (Bb) The Advertisement For Bids shall include unit prices and detailed technical
14 specifications for each construction task contemplated to be performed under the JOC
15 ~~e~~Contract. Each task item shall include direct costs for material, equipment and labor.
16 Construction tasks shall be grouped by trade.

17 (Cc) The Advertisement For Bids ~~for a JOC contract~~ shall contain the City's estimate
18 regarding the percentage of work under the JOC ~~e~~Contract that will be performed by each
19 trade. The Advertisement For Bids shall also require the Contractor to commit to an LBE
20 Subcontractor Participation Requirement Goal, as set by CMD~~the Human Rights Commission~~, in the
21 performance of ~~service~~task orders under the JOC Contract. Upon completion of the JOC
22 Contract term, ~~the Human Rights Commission~~CMD shall verify compliance with the LBE
23 Subcontractor Participation Requirement Goal ~~under the provisions of Administrative Code Chapter~~
24 ~~14B~~. Departments may designate specific JOC Contracts as limited set asides for Micro-LBEs
25 as provided under Chapter 14B of the Administrative Code.

1 (~~Dd~~) The Contractor's ~~b~~Bid shall include a subcontractor list in conformance with
2 Section 6.21A(~~a~~) ~~of this Chapter~~ and Chapter 14B of the Administrative Code at the time of bid or
3 at the time of a task order as appropriate. All requests for substitutions of subcontractors shall
4 be made and considered under California Public Contract Code Section 4107, as may be
5 amended from time to time. Notwithstanding this requirement, if a listed subcontractor
6 confirms in writing that it is not available to perform one or more ~~work~~task orders, the
7 ~~e~~Contractor may request to add without penalty a subcontractor to perform under the ~~work~~task
8 order(s) at no additional cost to the City. The aggregate value of the work performed by
9 subcontractors added to substitute for listed but unavailable subcontractors shall not exceed
10 20% of the original ~~e~~Contract amount. Specialty trade work unanticipated at the time of bid,
11 requiring the addition of one or more subcontractors, shall be considered the performance of
12 a change order under California Public Contract Code Section 4107(c). The addition of any
13 subcontractor under any circumstances or for any purpose shall be effected by change order
14 or ~~e~~Contract modification. Prior to any added subcontractor performing any ~~service~~task order
15 work, the awarding department shall confirm the license, insurance coverage, and other
16 qualifying criteria as required by law.

17 (~~Ee~~) Contractors submitting ~~b~~Bids on the JOC ~~e~~Contract shall state in their ~~b~~Bids an
18 adjustment on a percentage basis either increasing or decreasing the unit prices for all
19 construction tasks set forth in the ~~b~~Bid documents. There may be a single adjustment factor
20 that applies to all tasks. For example, an adjustment factor of 25% below the unit prices
21 stated in the ~~b~~Bid documents would be bid as .75. All of the ~~contractor's~~ profit, overhead and
22 indirect costs shall be included in the adjusted unit prices.

23 (~~Ff~~) The Advertisement For Bids and the contract specifications shall contain a
24 maximum dollar amount of the JOC ~~e~~Contract, which maximum amount shall not exceed
25 \$5,000,000 five million dollars. In no case shall tThe cumulative modifications to a JOC ~~e~~Contract

1 ~~shall~~ result in a contract sum ~~not to exceeding one hundred fifty percent~~ 150% of the original
2 ~~e~~Contract amount.

3 (Gg) JOC ~~e~~Contracts shall provide for an expiration term of not more than five years,
4 including all modifications. However, the ~~d~~Department ~~h~~Head shall not issue any new ~~work~~task
5 orders under the JOC ~~e~~Contract after ~~three~~four years from the date ~~the Contract is of~~
6 ~~award~~certified by the Controller.

7 (h) The contracting terms and working conditions of Section 6.22 shall apply to JOC
8 Contracts, except that the Department Head may authorize the Contractor to file the bonds required by
9 Section 6.22(a) after Contract execution but prior to the execution of any task order. The Department
10 Head shall require the Contractor to issue bonds for a sum of not less than 100% of the task orders
11 issued under the JOC Contract or 25% of the Contract amount, whichever is greater.

12 (Hi) Projects will be assigned under the JOC ~~e~~Contract on a ~~work~~task order basis at
13 the sole discretion of the ~~d~~Department ~~h~~Head concerned. Each ~~work~~task order shall include a
14 time certain for completion of the work and an appropriate sum for liquidated damages for
15 delay. Each ~~work~~task order shall also include a list of the subcontractors performing work
16 under such order, with each subcontractor's name, business address, San Francisco
17 business tax registration number, contractor license number, scope of work, and data as may
18 be required by ~~the Human Rights Commission~~CMD. The ~~work~~task order price shall be no more
19 than the calculated unit prices and the bid adjustment factor. No ~~work~~task order shall exceed
20 ~~\$400,000~~ the Threshold Amount, including all modifications. A department may issue or modify
21 any ~~work~~task order(s) to exceed the ~~foregoing limit~~Threshold Amount only upon the ~~d~~Department
22 ~~h~~Head's written ~~determination establishing the urgency of the work and the~~ justification for
23 proceeding under this Section 6.62 rather than by formal competitive process.

24 (Ii) A ~~e~~Contractor who enters into a JOC ~~e~~Contract with a particular City department
25 is not eligible during the term of such JOC ~~e~~Contract to submit a ~~b~~Bid on a subsequent JOC

1 ~~eContract~~ advertised by the same contracting department, except in the following circumstances:
2 ~~however, a contractor may submit a bid on a subsequent JOC contract advertised by the same~~
3 ~~contracting department if (1) the eContractor's existing JOC eContract will expire in 120 days or~~
4 ~~fewer; (2) if the contractor contracting department has performed work issued task orders~~ valued
5 by the City in an amount equal to or exceeding 90% of the maximum dollar amount of the
6 existing JOC eContract; or (3) the subsequent JOC Contract is funded by a different source of
7 government funds (e.g., Federal, State, Local) than the funding source used for the existing JOC
8 Contract. Nothing in this section shall preclude a Contractor from simultaneously bidding on multiple
9 JOC Contracts advertised by one City department prior to Award of a JOC Contract by that
10 department.

12 **SEC. 6.63. HAZARDOUS MATERIALS ABATEMENT WORK.**

13 Department Heads are authorized to execute Contracts for hazardous materials abatement
14 work ("Abatement Work") in accordance with the following procedures:

15 When the Director of Public Works (the "Director") determines: (1) that hazardous materials
16 on public property must be expeditiously abated (the "work"); and (2) that there is inadequate time to
17 advertise and competitively bid the work in accordance with this Chapter, then the work may be
18 performed in accordance with the following procedures:

19 (Aa) The ~~D~~department of ~~Public Works~~ shall advertise for and receive proposals from
20 hazardous materials abatement eContractors, which proposals shall address the qualifications
21 of the eContractors to perform the ~~a~~Abatement ~~W~~Work. The proposals shall be evaluated
22 according to the requirements of this Chapter 6 and Chapters 12B, 12C and 14B of the
23 Administrative Code~~12D.A~~, relevant to professional services eContracts.

24 (Bb) The ~~D~~department of ~~Public Works~~ shall select a sufficient number of qualified
25 eContractors to perform the amount of ~~hazardous materials a~~Abatement ~~W~~Work anticipated to be

1 required in the upcoming one or more years and enter into master agreements for Abatement
2 Work on an "if-and as-needed" basis with those eContractors. Each master agreement for
3 Abatement Work shall state the maximum total dollar value of work each eContractor is
4 authorized to perform during the eContract period.

5 (C) When the Department Head determines that: (1) hazardous materials on public
6 property must be expeditiously abated; (2) there is inadequate time to issue an Advertisement for Bids
7 in accordance with this Chapter 6; and (3) the department personnel who will manage the work have
8 the appropriate training, then task orders for Abatement Work may be issued as follows:

9 The Ddepartment shall seek price qQuotations for performance of the Abatement
10 Work from at least three of the eContractors with master agreements. The contracttask order
11 for the Abatement Work will be awardissued to the eContractor submitting the lowest
12 qQuotation, except as otherwise provided herein. The Ddepartment shall keep a record of
13 such qQuotations and a register of all awards made thereunder task orders issued under master
14 agreements for Abatement Work. In the event that the Ddepartment is unable to obtain three
15 qQuotations, the DirectorDepartment Head shall base the awardissuance of a task order on the
16 qQuotation or qQuotations received. If the DirectorDepartment Head believes that the public
17 interest would best be served by accepting other than the lowest qQuotation, he or she is
18 hereby authorized to accept the qQuotation that in his or her discretion will best serve the
19 public interest. The DirectorDepartment Head may reject any and all qQuotations and request
20 new qQuotations.

21 (d) The department may authorize the Contractor to file corporate surety bonds as required in
22 subsection 6.22(a), or after Contract execution but prior to the issuance of any work. The bonds shall
23 be for a sum of not less than 100% of the cumulative value of all work issued under the master
24 agreement.

1 **SEC. 6.64. AS-NEEDED CONSTRUCTION CONTRACTS.**

2 *A Department Head is authorized to execute Contracts for construction services on an as-*
3 *needed basis, with definite or indefinite quantities of work, in accordance with the following*
4 *procedures:*

5 **(a) General As-Needed Contracts.** ~~A dDepartment hHead authorized to execute public~~
6 ~~work and professional service contracts~~ may issue an Advertisement For Bids for construction
7 services ~~or a request for proposals or qualifications for professional services~~ on an as-needed
8 basis, with ~~definite or indefinite quantities of work.~~ Work shall be to be assigned on a by contract
9 service order_s basis based on costs contained in the Bid. ~~None of the requirements of this Chapter or~~
10 ~~Administrative Code Chapters 12B, 12C or 12D.A are waived for as-needed contracts.~~ The All as-
11 needed eContracts shall provide for a not-to-exceed price amount and an expiration term of not
12 more than five years, including all modifications. ~~However, t~~The dDepartment hHead shall not
13 issue any new contract service order after ~~three~~ four years from the date ~~of award~~ the Contract
14 is certified by the Controller. Additionally, the cumulative modifications to ~~an~~ the as-needed
15 eContract shall result in a contract sum not to exceed ~~one hundred fifty percent~~ 150% of the
16 original eContract amount. ~~Before any item of work is commenced under an as-needed contract, the~~
17 ~~cost of such work must be certified by the Controller as to the availability of funds.~~ No contract
18 service order or multiple contract service orders for any single pPublic wWork, whether in one
19 phase or multiple phases, shall cumulatively exceed \$200,000, ~~including all modifications.~~ ~~For~~
20 ~~departments with capital programs over \$1 Billion, no contract service order or multiple contract~~
21 ~~service orders, as described above, shall cumulatively exceed \$400,000, including all modifications~~the
22 Threshold Amount. A department may issue or modify any contract service order(s) to exceed
23 the ~~foregoing limits~~ Threshold Amount only upon the ~~dDepartment hHead's~~ written determination
24 establishing the ~~urgency of the work and the~~ justification for proceeding under this Section 6.64
25 rather than by formal competitive process.

1 **(b) Master As-Needed Agreements.** *The Department Head may execute master as-needed*
2 *agreements, on an "if-and-as-needed" basis with Contractors who can establish experience, expertise,*
3 *and quality of work. Master as-needed agreements shall provide for an expiration term of not more*
4 *than five years from the date of certification by the Controller, including all modifications. A*
5 *Contractor may apply for a master as-needed agreement under this subsection 6.64(b) by providing the*
6 *department with a statement of its experience and qualifications and other information as requested by*
7 *the department. Within 60 days of receiving such information, the department shall advise the applicant*
8 *of its eligibility for an award of a master as-needed agreement.*

9 *For performance of specific tasks, the department shall seek Quotations from at least three*
10 *of the Contractors with master as-needed agreements. The department shall issue a contract service*
11 *order for the work to the Contractor submitting the lowest Quotation, except as provided below. In the*
12 *event that the department is unable to obtain three Quotations, the Department Head shall base the*
13 *issuance of the contract service order on the Quote or Quotes received. The Department Head may*
14 *reject any and all Quotations and request new Quotations. No contract service order or multiple*
15 *contract service orders for any single Public Work, whether in one phase or multiple phases, shall*
16 *cumulatively exceed the Threshold Amount, including all modifications. Additionally, the cumulative*
17 *modifications to an as-needed agreement shall not exceed 150% of the original Contract amount.*

18 **(c)** *Except as provided below, all of the requirements of this Chapter 6 and Administrative*
19 *Code Chapters 12B, 12C and 14B apply to as-needed Contracts. Departments may designate specific*
20 *as-needed contracts as limited set asides for Micro-LBEs as provided under Chapter 14B of the*
21 *Administrative Code.*

22 **(1)** *The Department Head may authorize the Contractor to file corporate surety bonds as*
23 *required in subsection 6.22(a) after execution of the as-needed Contract, but prior to the execution of*
24 *any contract service order. The bonds shall be for a sum of not less than 100% of the cumulative value*
25

1 of all issued contract service orders under the as-needed Contract or at least 25% of the Contract
2 amount, whichever is greater.

3 (2) The Department Head may require the Contractor to include a subcontractor list in
4 conformance with subsection 6.21(a) and Chapter 14B of the Administrative Code at time of Bid or at
5 the time of contract service order, as appropriate to the Contract.

6 (d) The Department Heads authorized to execute public work and professional service
7 contracts shall report quarterly to the Board of Supervisors regarding the department's use of
8 as-needed eContracts and the actual amount of participation of ~~MLBE and WBE~~ subcontractors
9 or subconsultants that were listed on prime contractors' bid(s) or proposal(s) to determine whether
10 ~~MBE/WLBE Subcontractor Participation Requirements~~ subcontracting participation goals are being
11 met on as-needed eContracts. Such reports shall be referred to a Board committee for public
12 hearing.

13
14 **SEC. 6.65. CONTRACTING FOR ~~ELEVATOR, ESCALATOR, SECURITY, FIRE~~**
15 **~~PROTECTION OR FIRE ALARM EQUIPMENT AND SYSTEMS, INSPECTION,~~**
16 **MAINTENANCE AND REPAIR WORK.**

17 Department ~~hHeads~~ ~~who are authorized to execute public work contracts under this~~
18 ~~Chapter~~ are hereby authorized to award eContracts for the inspection, maintenance and repair
19 services of existing equipment or systems, including but not limited to: elevator, escalator,
20 security, fire protection, ~~or~~ fire alarm, power distribution, chillers, pumping, heating, ventilation and
21 air conditioning ("HVAC"), supervisory control and data acquisition ("SCADA"), public address,
22 airfield drainage, and sewage and freshwater systems ("~~special services~~") in accordance with the
23 following procedures:

24 (Aa) The department shall award master agreement eContracts, on an "if-and-as-
25 needed" basis to ~~special~~ service providers who can establish experience, expertise, and

1 quality of work. A potential ~~special~~ service provider may apply for a master agreement under
2 this ~~s~~Section 6.65 by providing the department with a statement of its experience and
3 qualifications and other information as requested by the department. Within 60 days of
4 receiving such information, the department shall advise the applicant of its eligibility for an
5 award of a master agreement. Master agreements for ~~special~~ services under this Section 6.65
6 shall conform to the insurance, indemnification and ~~p~~Prevaling ~~w~~Wage requirements of
7 Section 6.22 ~~of this Chapter~~. Master agreements shall provide for an expiration term of not
8 more than five years from the date ~~of the Contract is awarded~~ certified by the Controller, including all
9 modifications.

10 (Bb) For performance of specific tasks, the department shall seek price ~~q~~Quotations
11 from at least three of the ~~special~~ service providers with master agreements. The department
12 shall issue a contract service order for the work to the provider submitting the lowest
13 ~~q~~Quotation, except as provided below. In the event that the department is unable to obtain
14 three ~~q~~Quotations, the ~~d~~Department ~~h~~Head shall base the issuance of the contract service
15 order on the ~~q~~Quote or ~~q~~Quotes received. If the ~~d~~Department ~~h~~Head believes that the public
16 interest would best be served by accepting other than the lowest ~~q~~Quotation, he or she is
17 hereby authorized to accept the ~~q~~Quotation that in his or her discretion will best serve the
18 public interest. The ~~d~~Department ~~h~~Head may reject any and all ~~q~~Quotations and request new
19 ~~q~~Quotations.

20
21 **SEC. 6.66. CONVENTION FACILITY PUBLIC WORKS.**

22 When construction work is required for the City-owned convention facilities, such
23 services may be procured in accordance with the following procedures:

24 (Aa) Bids will be requested from not fewer than three ~~b~~Bidders for a construction
25 ~~e~~Contract. The ~~e~~Contract will be awarded to the ~~r~~Responsible ~~b~~Bidder with the lowest

1 ~~#~~Responsive ~~b~~Bid. A record of all ~~b~~Bids received and a register of all ~~a~~Awards made under this
2 ~~subs~~Section 6.66 shall be maintained. In the event three ~~b~~Bids cannot be obtained, the ~~a~~Award
3 shall be based on the ~~b~~Bid or ~~b~~Bids received. Any or all ~~b~~Bids may be rejected and new ~~b~~Bids
4 may be requested.

5 (Bb) Authority to undertake the contracting process and enter into ~~e~~Contract directly
6 with the ~~e~~Contractor may be delegated to the operator/manager of the convention facilities. In
7 such event, the City Administrator or his or her designee shall first review the propriety of the
8 process and shall approve the ~~a~~Award of any ~~e~~Contract.

9 (Cc) In no event shall the ~~a~~Award of ~~e~~Contracts by the procedures set forth in this
10 ~~subs~~Section 6.66 exceed the cumulative sum of ~~three million dollars~~ (\$3,000,000) in any fiscal
11 year.

12 Except as provided herein, any ~~e~~Contract awarded under this ~~subs~~Section must
13 comply with this Chapter 6 and with Administrative Code Chapters 12B, 12C and ~~12D.A14B~~.

14 All of the ~~e~~Contracts awarded and work performed under this ~~subs~~Section 6.66 shall be
15 reported to the Board of Supervisors on a quarterly basis.

16
17 **SEC. 6.67. CLEAN CONSTRUCTION IN BIDDING.**

18 The Clean Construction requirements of Section 6.25 and Environment Code
19 Chapter 25 are mandatory for ~~p~~Public ~~w~~Works or Improvements to be performed within the City
20 and estimated to require ~~twenty~~ (20) or more days of work to complete. For other ~~p~~Public
21 ~~w~~Works or Improvements, ~~d~~Department ~~h~~Heads are encouraged to require the use of off-road
22 equipment and off-road engines that meet or exceed the standards in Chapter 25, or to use
23 bid criteria that favor the use of such equipment and/or engines. Department ~~h~~Heads are
24 particularly encouraged to do so wherever the project is located within 500 feet of a Sensitive
25 Site, as defined in Health Code Section 3804.

1
2 **SEC. 6.68. CONSTRUCTION MANAGER/GENERAL CONTRACTOR INTEGRATED**

3 **PROJECT DELIVERY**

4 Construction Manager/General Contractor Integrated project delivery is an approach to
5 the procurement of construction services whereby a construction manager/general contractor
6 ("CM/GC") is retained during the design process to review and provide comments as to the
7 constructability of the Architect/Engineer's design within the established budget. ~~The~~
8 Department ~~h~~Heads authorized to execute contracts for public work projects are authorized to seek
9 proposals from qualified CM/GCs for construction of public work projects ~~using an integrated~~
10 ~~project delivery~~ under the following conditions:

11 (aA) Before the request for qualifications or proposals is issued, the Department
12 ~~h~~Head shall determine that ~~an integrated~~ CM/GC project delivery method is necessary or
13 appropriate to achieve anticipated cost savings or time efficiencies, or both, and that such a
14 ~~delivery method process~~ is in the public's best interest.

15 ~~(B) If the proposed public work project is for the use or benefit of a Department that is under~~
16 ~~the jurisdiction of a commission, then such commission shall first approve the solicitation of integrated~~
17 ~~project delivery proposals. If the public work is for the use or benefit of a Department not under the~~
18 ~~jurisdiction of a commission, then the City Administrator must first approve this process.~~

19 (b) **Procurement of CM/GC.** Department Heads are authorized to procure CM/GC
20 services through one of the following three methods:

21 (1) Cost Only Procurement.

22 ~~(C) Pre-qualification.~~ Department ~~h~~Heads shall require that prospective proposers be
23 pre-qualified to submit proposals on a specific project. The procedure for pre-qualification and
24 final selection is as follows:

1 (A) Pre-qualification.

2 (1) The Department ~~h~~Head shall issue a request for qualifications inviting
3 interested parties to submit their qualifications to perform the project. The request for
4 qualifications shall include criteria by which the prospective proposers shall be evaluated. The
5 evaluation criteria shall be based on qualifications and experience relevant to the services
6 needed for the particular project. The list of criteria may include, but is not limited to the
7 following: (i) ability to perform required pre-construction and construction phase services; (ii)
8 evidence of financial capacity; (iii) experience on projects of similar size and complexity; (iv)
9 ~~commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14;~~ (v)
10 ability to collaboratively and cooperatively deliver projects on time and on budget; (vi) history
11 of liquidated damages for delay and other damages paid on prior projects, and prior litigation
12 history; (vii) reputation with owners of prior projects; (viii) claims history with insurance carriers
13 and sureties; and (ix) ~~compliance with all of the requirements established in the request for~~
14 ~~qualifications and~~ other criteria that the Department ~~h~~Head ~~in consultation with the Human Rights~~
15 ~~Commission~~ may deem appropriate. The Department ~~h~~Head shall set objective scoring criteria
16 and incorporate the criteria into any scoring procedure.

17 (2) The Department ~~h~~Head shall designate a qualified panel to review pre-
18 qualification responses and ~~interview and~~ rate respondents with respect to the request for
19 qualifications. The panel, at the department's discretion, may interview respondents as part of the pre-
20 qualification process. Only those respondents found to be qualified will be eligible to submit
21 proposals. The list of pre-qualified respondents shall be valid for not more than two years
22 following the date of initial pre-qualification. The Department Head may establish a shortlist of no
23 fewer than three pre-qualified respondents.

24 ____ (B) **Request for Proposals and Selection Process.** The Department ~~h~~Head
25 shall issue a request for proposals inviting pre-qualified CM/GCs to submit competitive cost

1 proposals for the project. The request for proposals shall include information describing the
2 scope of pre-construction and construction phase services for the project. The request for
3 proposals shall request the following minimum ~~cost~~ information from each proposer: (i) fees for
4 pre-construction services; and (ii) fees for construction phase services, such as including
5 overhead, profit ~~and~~ general conditions, and (iii) the qualitative criteria as described in (1) below.
6 The Department Head may recommend the award of a Contract to the Responsible proposer submitting
7 the lowest Responsive cost proposal.

8 (2) **Best Value Procurement.** The Department Head shall require that prospective CM/GCs
9 be pre-qualified according to the process in subsection 6.68(b)(1)(A), or shall issue a combined request
10 for qualifications and proposals inviting CM/GCs to submit competitive proposals for the project. In
11 the case of a combined request for qualifications and proposals, the department may include a set of
12 minimum qualifications that all potential proposers must meet in order for their proposals to be
13 evaluated. The request for proposals shall include information describing the scope of pre-construction
14 and construction phase services for the project. The request for proposals shall request the following
15 minimum information from each proposer: (i) fees for pre-construction services; (ii) fees for
16 construction phase services, such as profit or general conditions; and (iii) the qualitative criteria
17 described in subsection 6.68(b)(2)(A).

18 ___(A+) The Department ~~H~~Head shall designate a qualified panel to evaluate
19 ~~integrated project delivery proposals~~ and rank the proposals to determine which provides the
20 overall best value to the City with respect to non-cost and cost criteria. In cases where
21 proposers were pre-qualified in advance, this panel may be the same panel that reviewed the pre-
22 qualification responses, or may include different qualified panelists. The list of non-cost criteria may
23 include but is not limited to the following: (i) plan for expediency in completing the proposed
24 project; (ii) quality of proposal; and (iii) ~~commitment to comply with the goals set by the Human~~
25 ~~Rights Commission and requirements of Administrative Code Chapters 12 and 14; (iv) commitment to~~

1 ~~meet City hiring goals (e.g. City Build or First Source Hiring); and (v) compliance with all the~~
2 ~~requirements and other~~ criteria established by the Department ~~h~~Head ~~or HRC~~ in the request for
3 proposals. The ~~d~~Department ~~h~~Head shall set objective scoring criteria and incorporate the
4 criteria into any scoring procedure. The cost criterion shall constitute not less than ~~40%~~~~sixty-~~
5 ~~five percent (65%)~~ of the overall evaluation.

6 (B) The Department Head may recommend the award of a Contract to the highest-
7 ranked CM/GC. If award to such CM/GC is not made for any reason, the Department Head may
8 recommend the award of a Contract to the next highest-ranked CM/GC.

9 (3) CM/GC Team Best Value Procurement. The Department Head may select a CM/GC
10 team made up of the CM/GC and specified Core Trade Subcontractors. The Department Head shall
11 require that prospective teams be pre-qualified according to the process in subsection 6.68(b)(1)(A),
12 and then issue a request for proposals inviting pre-qualified CM/GC teams to submit competitive cost
13 proposals for the project. Alternatively, the Department Head shall issue a combined request for
14 qualifications and proposals inviting prospective teams to submit competitive proposals for the project.
15 In the case of a combined request for qualifications and proposals, the department may include a set of
16 minimum qualifications that all potential CM/GCs and their Core Trade Subcontractors must meet in
17 order for their proposals to be evaluated.

18 The request for proposals shall include information describing the scope of pre-construction
19 and construction phase services for the project. The request for proposals shall request the following
20 minimum information from each team: (i) fees for pre-construction services; (ii) fees for construction
21 phase services, such as profit or general conditions; and (iii) the qualitative criteria as described in
22 subsection 6.68(b)(2)(A).

23 (A) The Department Head may recommend the award to the highest-ranked CM/GC
24 team in accordance with the selection process in subsection 6.68(b)(2)(A) and (B).

1 ~~(2) The Department head shall set forth in the request for proposals and in the contract~~
2 ~~liquidated damages to be assessed against the successful CM/GC in the event it fails to fulfill the~~
3 ~~commitments made in its proposal.~~

4 ~~(3) The Department head may recommend the award of a contract to the highest-ranked~~
5 ~~CM/GC whose total proposed fee is not more than twenty percent (20%) greater for contracts the~~
6 ~~estimated cost of which is \$10 million or less, or is not more than ten percent (10%) greater for~~
7 ~~contracts the estimated cost of which is in excess of \$10 million, than the total proposed fee of the~~
8 ~~lowest responsive bid. If award to such CM/GC is not made for any reason, the Department head may~~
9 ~~recommend the award of a contract to the next highest-ranked CM/GC whose total proposed fee is not~~
10 ~~more than ten percent (10%) greater than the total proposed fee of the lowest responsive bid, and so~~
11 ~~forth. In making the final determination, the Department head shall apply the LBE discount to~~
12 ~~proposals submitted by LBEs, in accordance with Administrative Code Chapter 14B.~~

13 ~~(E) Alternate Request for Proposals and Selection Process. If the department head~~
14 ~~determines that it is in the City's best interest to exclude consideration of non-cost criteria as part of~~
15 ~~the final selection process, the Department head shall issue a request for proposals inviting pre-~~
16 ~~qualified CM/GCs to submit integrated project delivery proposals, which will be evaluated based upon~~
17 ~~project costs only. If the proposed public work project is for the use or benefit of a Department that is~~
18 ~~under jurisdiction of a commission, then such commission shall approve the use of this alternate~~
19 ~~process. If the public work is for the use or benefit of a Department not under the jurisdiction of a~~
20 ~~commission, then the City Administrator must approve the use this alternate process.~~

21 ~~(F) The City shall retain the absolute discretion to determine, at any time during the process,~~
22 ~~not to proceed with any proposed project, which right may be exercised without liability to CM/GCs for~~
23 ~~costs incurred during the entire pre-qualification, proposal and negotiation process, and such rights~~
24 ~~shall be reserved in all requests for qualifications and proposals.~~

1 ~~(G) The bid security and subcontractor listing requirements of section 6.21 will not apply to~~
2 ~~the selection of CM/GCs under this section 6.68. Any resulting contract with a CM/GC shall comply~~
3 ~~with section 6.22.~~

4 (cH) **Procurement of Trade Subcontractors.** Department ~~h~~Head shall require the
5 selected CM/GC to procure trade work contracts through one or more of the following methods~~a~~
6 ~~pre-qualification and competitive bid process, as follows:~~

7 (1) **Pre-qualification and Competitive Bid.** The ~~d~~Department ~~h~~Head shall require
8 the CM/GC to pre-qualify~~all~~ trade subcontractors, subject to ~~the~~ a process, which may be a
9 minimum qualification application, pre-approved by approval of the Department ~~h~~Head. The
10 CM/GC shall attempt to establish a pool of no fewer than three pre-qualified subcontractors
11 for each trade package, ~~subject to the approval of the department head.~~ Unless otherwise authorized
12 by the Department Head, each trade package pre-qualification opportunity shall be advertised as
13 provided in subsection 6.21(a)(1).

14 ~~(2) Competitive Bid.~~ The Department ~~h~~Head shall require the CM/GC to receive
15 sealed bids from the pre-qualified trade subcontractors. Unless otherwise provided for in the
16 advertisement or notice for bids, theThe bid security provisions of ~~s~~Section 6.21 will not apply. The
17 CM/GC shall award a trade package subcontract to the ~~r~~Responsible ~~b~~Bidder submitting the
18 lowest ~~r~~Responsive ~~b~~Bid, ~~except that the CM/GC may negotiate and award a portion of the trade~~
19 ~~package subcontracts as provided in paragraph (3), below. Only those Administrative Code provisions~~
20 ~~that normally apply to subcontracts will apply to the trade package subcontracts.~~

21 (2) Core Trade Subcontractors. The Department Head may authorize the CM/GC to enter
22 into subcontracts with Core Trade Subcontractors to provide pre-construction, design-assist, or
23 design-build services as appropriate for the project. Before the CM/GC may award trade package
24 subcontracts for construction services to the Core Trade Subcontractors, including Core Trade
25

1 Subcontractors selected as part of the CM/GC team in subsection 6.68(b)(3), the Core Trade
2 Subcontractors' bids must be validated against an independent cost estimate.

3 (3) **Direct Negotiation.** The Department ~~H~~Head may authorize the CM/GC to
4 negotiate subcontracts for trade work as appropriate for the project, up to an amount not
5 exceeding ~~seven and one half percent~~7.5% of the total estimated construction subcontract costs.
6 The Department ~~H~~Head shall establish a maximum dollar value for each negotiated trade
7 subcontract as appropriate for the project.

8 (4) **Self-Performed Work.** The Department Head may authorize the CM/GC to self-
9 perform work after determining the cost of the work to be fair and reasonable, either by an independent
10 cost estimate or by a competitive bidding process.

11 (d) Except for the bid security and subcontractor listing requirements in subsections
12 6.21(a)(4) and 6.21(a)(9), the requirements of Section 6.21 will apply to the selection of CM/GCs under
13 this Section 6.68. Any resulting Contract with a CM/GC shall comply with Section 6.22, except that the
14 bond shall be for a sum not less than 100% of the costs of construction and must be filed with the
15 department prior to notice to proceed with construction. Only those Administrative Code provisions
16 that normally apply to subcontracts will apply to the trade package subcontracts, except that the
17 Department Head may authorize the CM/GC to require corporate surety payment and performance
18 bonds for some or all trade package subcontracts.

19 (e) The City shall retain the absolute discretion to determine, at any time during the process,
20 not to proceed with any proposed project, which right may be exercised without liability to CM/GC for
21 costs incurred at any point during the selection process, and such rights shall be reserved in all request
22 for qualifications or proposals.

23 (f) All actions heretofore taken by a ~~D~~Department ~~H~~Head consistent with the
24 provisions of this ~~s~~Section 6.68 are hereby approved.

1 **SEC. 6.69. DEPARTMENT OF PUBLIC HEALTH PUBLIC WORK.**

2 For ~~p~~Public ~~or~~Works or Improvements necessary to maintain or repair health facilities
3 under the jurisdiction of the Health Commission, the Department of Public Health (DPH) may
4 award master agreement ~~e~~Contracts, for work to be performed on an "if-and-as-needed"
5 basis, to qualified ~~construction~~~~e~~Contractors in conformance with the following procedures:

6 (Aa) **Contract Award.** The Director of DPH may award master agreement
7 ~~e~~Contracts, on an "if-and-as-needed" basis to construction ~~e~~Contractors who can establish all
8 of the licensing, qualifications, experience, and certifications, as required by the Director of
9 DPH. A ~~e~~Contractor may apply for a master agreement under this Section 6.69 by providing
10 DPH with a statement of its experience and qualifications and other information as requested
11 by DPH. Within 60 days of receiving such information, DPH shall advise the applicant of its
12 eligibility for an award of a master agreement.

13 (Bb) **Contract Terms.** Master agreements awarded under this Section 6.69 shall
14 conform to the requirements of Section 6.22 ~~of this Chapter~~ and shall conform to Administrative
15 Code Chapter 14B, as applicable. Master agreements shall provide for an expiration term of
16 not more than ~~three~~five years from the date of ~~a~~Award, including all modifications. All master
17 agreements shall provide for a maximum total dollar value of work each ~~e~~Contractor is
18 authorized to perform during the ~~e~~Contract period. No master agreement may be modified to
19 exceed 150% of the original ~~e~~Contract amount. Master agreements shall contain no minimum
20 dollar amount. Master agreements shall provide that DPH may assign work on a task order
21 basis, "if-and-as-needed, " through competition among master agreement ~~e~~Contractors.

22 (Cc) **Task Order Competitive Solicitation.** To assign work under master
23 agreement ~~e~~Contracts, DPH shall solicit ~~q~~Quotations from no fewer than three qualified master
24 agreement ~~e~~Contractors. Solicitations shall conform to Section 6.21 ~~of this Chapter~~, except that
25 neither a published advertisement nor ~~a~~bid ~~security~~bond shall be required. Solicitations shall

1 include a description of the proposed task order scope of work, including plans or
2 specifications, if any, and may include provisions for liquidated damages for delay if and as
3 appropriate to the particular project. Responsive ~~q~~Quotations must include subcontractor
4 listing, if any, in conformance with ~~S~~subsection 6.21(Aa)(9).

5 (Dd) **Task Order Award.** The Director of DPH shall ~~award~~ issue a task order for the
6 performance of work under a master agreement to the ~~e~~Contractor submitting the lowest
7 ~~#~~Responsive ~~q~~Quotation. In the event that DPH is unable to obtain three ~~q~~Quotations, the
8 Director of DPH shall base the award on the ~~q~~Quotation or ~~q~~Quotations received. If the
9 Director of DPH believes that the public interest would best be served, by accepting other
10 than the lowest ~~q~~Quotation, he or she is hereby authorized to accept the ~~q~~Quotation that in his
11 or her discretion will best serve the public interest.

12 (Ee) **Task Order Terms.** No task order or multiple task orders for any single ~~p~~Public
13 ~~#~~Work, whether in one phase or multiple phases, shall cumulatively exceed ~~\$400,000.00~~the
14 Threshold Amount, including all modifications. The Director of DPH may issue or modify a task
15 order to exceed the foregoing imitation only upon the Director's written determination
16 establishing the urgency of the work and the justification for proceeding under this Section
17 6.69, rather than through ~~the Department of San Francisco~~ Public Works, in conformance with
18 Section 6.2 ~~of this Chapter~~.

19
20 **SEC. 6.70. REAL ESTATE DIVISION PUBLIC WORK.**

21 For ~~p~~Public ~~#~~Works or Improvements necessary to maintain or repair facilities and real
22 property under the jurisdiction of the Real Estate Division ("RED"), RED may award master
23 agreement ~~e~~Contracts for ~~special~~ services under ~~Administrative Code~~ Section 6.65, or may
24 award master agreement ~~e~~Contracts for work to be performed on an "if-and-as-needed" basis,
25 to qualified construction contractors in conformance with the following procedures:

1 (Aa) **Contract Award.** The Director of RED may award master agreement
2 eContracts, on an "if-and-as-needed" basis to ~~construction~~ eContractors who can establish all
3 of the licensing, qualifications, experience, and certifications, as required by the RED Director.
4 A eContractor may apply for a master agreement under this Section 6.70 by providing RED
5 with a statement of its experience and qualifications and other information as requested by
6 RED. Within 60 days of receiving such information, RED shall advise the applicant of its
7 eligibility for an award of a master agreement.

8 (Bb) **Contract Terms.** Master agreements awarded under this Section 6.70 shall
9 conform to the requirements of Section ~~6.22 of this Chapter~~ and shall conform to Administrative
10 Code Chapter 14B, as applicable. Master agreements shall provide for an expiration term of
11 not more than ~~three~~five years from the date of ~~a~~award, including all modifications. All master
12 agreements shall provide for a maximum total dollar value of work each eContractor is
13 authorized to perform during the contract period. No master agreement may be modified to
14 exceed 150% of the original contract amount. Master agreements shall contain no minimum
15 dollar amount. Master agreements shall provide that RED may assign work on a task order
16 basis, "if-and-as-needed," through competition among master agreement eContractors.

17 (Cc) **Task Order Competitive Solicitation.** To assign work under master
18 agreement eContracts, RED shall solicit ~~q~~Quotations from no fewer than three ~~Q~~qualified
19 master agreement eContractors. Solicitations shall conform to Section ~~6.21 of this Chapter~~,
20 except that neither a published advertisement nor ~~a~~bid security~~bond~~ shall be required.
21 Solicitations shall include a description of the proposed task order scope of work including
22 plans or specifications, if any, and may include provisions for liquidated damages for delay if
23 and as appropriate to the particular project. Responsive ~~q~~Quotations must include
24 subcontractor listing, if any, in conformance with Subsection ~~6.21(Aa)~~(9).
25

1 (~~Dd~~) **Task Order Award.** The Director of RED shall ~~award~~ issue a task order for the
2 performance of work under a master agreement to the ~~e~~Contractor submitting the lowest
3 responsive ~~q~~Qotation. In the event that RED is unable to obtain three ~~q~~Qotations, the
4 Director of RED shall base the ~~a~~ Award on the ~~q~~Qotation or ~~q~~Qotations received. If the
5 Director of RED believes that the public interest would best be served by accepting other than
6 the lowest ~~q~~Qotation, he or she is hereby authorized to accept the ~~q~~Qotation that in his or
7 her discretion will best serve the public interest.

8 (~~Ee~~) **Task Order Terms.** No task order or multiple task orders for any single ~~p~~Public
9 ~~w~~Work, whether in one phase or multiple phases, and whether under this Section 6.70 or for
10 ~~S~~Special ~~S~~Services under Section 6.65. shall cumulatively exceed ~~\$400,000~~the Threshold Amount,
11 including all modifications. The Director of RED may issue or modify a task order to exceed
12 the foregoing limitation only upon the Director's written determination establishing the urgency
13 of the work and the justification for proceeding under this Section 6.70, rather than through ~~the~~
14 ~~Department of San Francisco~~ Public Works, in conformance with Section 6.2 ~~of this Chapter~~.

15
16 **SEC. 6.71. PIER REPAIR WORK.**

17 (~~Aa~~) The Port is authorized to use the Port's Maintenance Division employees and
18 equipment to perform demolition, repair and replacement work on piers under the jurisdiction
19 of the Port Commission, including pile-supported pier structures, substructures, aprons,
20 wharves, decks, fenders and associated utilities. The competitive ~~b~~Bid requirements of
21 Sections 6.20(~~Aa~~) and 6.23(~~Bb~~) shall not apply to the Port's self-performance of such pier
22 demolition, repair and replacement work.

23 (~~Bb~~) All actions previously taken by the Port consistent with this section are hereby
24 approved.

1 (€c) Nothing in this Section 6.71 shall prohibit the Port from using the procedures
2 described elsewhere in this Chapter 6 for the performance of pier demolition, repair and
3 replacement work.

4
5 **SEC. 6.72. RAIL GRINDING**

6 *The Director of Transportation is authorized to issue requests for proposals for rail grinding*
7 *and related services. Proposals will be evaluated based upon qualifications, cost, and any other*
8 *criteria stated in the request for proposals. The Director of Transportation may negotiate with the*
9 *highest-ranking proposers and seek best and final offers after negotiation to determine which proposer*
10 *will provide the best value to the City. Contracts awarded under this Section 6.72 are subject to the*
11 *award requirements of Section 6.3 and shall conform to the requirements of Section 6.22.*

12
13 **SEC. 6.73. OTHER PROCUREMENTS**

14 *Notwithstanding any other provision of this Code, a department may contract for works or*
15 *services governed by this Chapter 6 other than through open and full competition (“Sole Source”),*
16 *subject to the requirements of this provision. None of the requirements of applicable provisions of the*
17 *Municipal Code, including but not limited to requirements of Chapters of 12B, 12C or 14B of the*
18 *Administrative Code, are waived for Sole Source Contracts.*

19 **(a) Approval.** *For departments under the jurisdiction of a commission or a board, the*
20 *Department Head shall recommend to the commission or board concerned the approval and award of*
21 *a Sole Source Contract and such commission or board may then adopt a resolution approving the*
22 *justification of the Sole Source and awarding the Contract. For departments with no commission or*
23 *board, the Department Head, with the approval of the Mayor or Mayor’s Designee, may award a Sole*
24 *Source Contract. The Department Head’s recommendation must provide specific and comprehensive*
25

1 information, as provided under Section 6.73(d) below, justifying the necessity of a Sole Source
2 Contract.

3 (b) **When Prohibited.** Sole Source contracting shall not be justified on the basis of: (1) a
4 lack of advance planning by the department, or (2) expediency or convenience of the department.

5 (c) **When Allowable.** Before a department begins negotiations for a Sole Source Contract,
6 the Department Head shall make a written justification that a Sole Source procurement is necessary or
7 appropriate based on one or more of the following circumstances:

8 (1) Work or services are available from only one source as justified by the results of a
9 solicitation or advertisement designed to attract as many potential sources qualified to compete on the
10 procurement as appropriate, whether through a Request for Interest, Request for Qualifications or
11 other form of advertisement or solicitation;

12 (2) Documented rights in or singular ownership of data, intellectual property, processes,
13 systems, or similar circumstances make the work or services, or maintenance of such work or services,
14 available from only one source;

15 (3) Work or services deemed to be available only from the original source in the case of a
16 follow-on Contract for the continued work or services, when it is likely that award to any other source
17 would result in: (A) substantial duplication of cost to the City that is not expected to be recovered
18 through competition; (B) unacceptable delays in fulfilling the City's requirements; or (C) loss of
19 warranty protection;

20 (4) Work or services required by statute or government regulation to be from a specific
21 public entity or accrediting agency. For purposes of this Section 6.73, an accrediting agency is defined
22 as a government-controlled or privately supported agency authorized to certify compliance with
23 statutes or government regulations required for Public Works or Improvements; or

1 (5) Work or services needed on an expedited basis in order to use State or Federal funding
2 made available to the department that otherwise will expire, where the need for expediency is not
3 caused by action or inaction of the City.

4 **(d) Justification Requirements.** The Department Head's written justification for a Sole
5 Source procurement shall be valid for no more than two years, prior to award of a Contract.
6 Departments must assess the validity of the determination as often as is appropriate. The determination
7 shall remain valid during the term of an executed Sole Source Contract. At a minimum, the written
8 justification of the Department Head described in Section 6.73(c) shall address the following:

9 (1) The work or services required to meet the department's needs, including the estimated
10 value;

11 (2) The proposed Contractor's unique qualifications to perform the work or services or why
12 the nature of the work or services requires use of the procurement through a Sole Source;

13 (3) The anticipated cost to the City and the department's determination that such cost will
14 be in the best financial interest of the City;

15 (4) The solicitation issued to determine that the procurement is justified as a Sole Source
16 pursuant to Section 6.73(c)(1) or a statement as to why issuing a solicitation or advertisement is
17 impracticable, along with the results of any market research conducted;

18 (5) When Section 6.73(c)(3) is cited for follow-on work or services, the department shall
19 prepare an explanation justifying why use of a competitive process would not be in the public's best
20 interests, including: (A) a detailed estimate of the costs to the City that would be duplicated; (B) an
21 estimate of the delay that would occur; and/or (C) loss of warranty protection that would result.

22 **(e) Exceptions.**

23 (1) The designation of particular materials, products, things or services in specifications
24 for Contracts for Public Works or Improvements shall be subject to the provisions of California Public
25 Contract Code Section 3400, as amended from time to time.

1 (2) In Contracts that involve the use of any funds furnished, given or loaned by the
2 Government of the United States or the State of California, all laws, rules and regulations of the
3 Government of the United States or the State of California or of any of its departments relative to the
4 performance of such work and the conditions under which the work is to be performed, shall prevail
5 over the requirements of this Section 6.73 when such laws, rules or regulations are in conflict.
6

7 **ARTICLE V: VIOLATIONS OF ADMINISTRATIVE CODE CHAPTER 6; FALSE**
8 **CLAIMS; PROCEDURES FOR DEBARMENT; MONETARY PENALTIES**
9

10 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
11 **PENALTIES.**

12 Any ~~e~~Contractor, subcontractor, supplier, consultant or subconsultant~~s~~ who fails to
13 comply with the terms of its contract with the City ~~and County~~; or who violates any provision of
14 ~~Administrative Code~~this Chapter 6; or who fails to abide by any rules and/or regulations
15 adopted pursuant to ~~Administrative Code~~this Chapter 6; or who submits false claims; or who
16 has violated against any government entity a civil or criminal law relevant to its ability to
17 perform under or comply with the terms and conditions of a contract with the City ~~and County~~,
18 may be declared an irresponsible ~~b~~Bidder or an unqualified consultant and debarred
19 according to the procedures set forth in Chapter 28 of this Administrative Code. Additionally,
20 any ~~e~~Contractor, subcontractor, supplier, consultant or subconsultant who submits a false
21 claim to the City ~~and County~~ may also be subject to monetary penalties, investigation and
22 prosecution as described below.

23 In the event that such a violation of this Chapter 6, including the submission of one or
24 more false claims, comes to the attention of ~~aboard or commission or~~ responsible Ddepartment
25 Hhead ~~or board or commission concerned~~responsible for public work, the Ddepartment Hhead

1 must investigate the matter. The ~~D~~department ~~H~~head must report the findings of any such
2 investigation by letter to the Board of Supervisors within 30 days of the completion of the
3 investigation. The investigation letter to the Board of Supervisors must state the name of the
4 ~~e~~Contractor, subcontractor, supplier, consultant or subconsultant; the nature of the violation;
5 the results of the investigation; and the ~~D~~department ~~H~~head's plan for addressing the
6 violation, if any. A hearing shall also be called in the Audit Committee of the Board of
7 Supervisors to report on this investigation.

8
9 **SEC. 6.81. COLLUSION IN CONTRACTING.**

10 If, at the determination of the Mayor, the ~~D~~department ~~H~~head who executed the
11 ~~construction or professional services e~~Contract or the board or commission who awarded such
12 ~~e~~Contract, and pursuant to the debarment procedures set forth below, any party or parties to
13 whom a ~~e~~Contract has been awarded has been ~~guilty found to have engaged in of~~ collusion with
14 any officer or representative of the City ~~and County~~, or any other party or parties, in the
15 submission of any ~~b~~Bid or in preventing of any other being made, or in knowingly receiving
16 preferential treatment by any officer or an employee of the City ~~and County~~, then any ~~e~~Contract
17 so awarded, if not completed, may be declared null and void by the Board of Supervisors on
18 the recommendation of the Mayor, ~~D~~department ~~H~~head or the board or commission
19 concerned, and no recovery shall be had thereon. The ~~D~~department ~~H~~head concerned may
20 then readvertise for ~~b~~Bids for the uncompleted portion of the work. The matter may also be
21 referred to the City Attorney for such action as may be necessary. Any party or parties ~~guilty of~~
22 ~~found to have engaged in~~ such collusion shall not be permitted to participate in or to bid on any
23 future ~~p~~Public ~~w~~Work, ~~i~~Improvement, or purchase to be made by the City ~~and County~~.

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

2 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
3 action, any eContractor, subcontractor, supplier, consultant or subconsultant directly or
4 indirectly subject to the provisions of this Chapter 6 may be determined irresponsible and
5 disqualified from contracting with the City ~~and County of San Francisco~~ in accordance with the
6 provisions of Chapter 28 of this Administrative Code.

7
8 **SEC. 6.83. ASSESSMENT OF MONETARY PENALTIES FOR FALSE CLAIMS:**
9 **INVESTIGATION AND PROSECUTION.**

10 (a) Notwithstanding and not exclusive or preclusive of any other administrative or
11 legal action taken by the City ~~and County~~, a eContractor may be assessed monetary penalties
12 for submitting false claims. The ~~d~~Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work ~~or~~
13 Improvement may withhold such penalties from amounts due or retained under the eContract.
14 Notwithstanding and not exclusive or preclusive of any administrative or other legal action, the
15 City Attorney may investigate and prosecute in a civil action any submission of a false claim.

16 (b) The submission of a false claim occurs when a eContractor, subcontractor,
17 supplier, consultant or subconsultant commits any of the following acts enumerated below: .
18 ~~In such event, the eContractor, subcontractor, supplier, consultant or subconsultant shall be liable to~~
19 ~~the City and County for (1) three times the amount of damages which the City and Count sustains~~
20 ~~because of the act(s) of that eContractor, subcontractor, supplier, consultant or subconsultant; and (2)~~
21 ~~the costs, including attorney's fees of a civil action brought to recover any of those penalties or~~
22 ~~damages. Such eContractor, subcontractor, supplier, consultant or subconsultant may also be liable to~~
23 ~~the City and County for a civil penalty of up to \$10,000 for each false claim.~~

24 (1) Knowingly presents or causes to be presented to an officer or employee of the
25 City ~~and County~~ a false claim or request for payment or approval;

1 (2) Knowingly makes, uses, or causes to be made or used a false record or
2 statement to get a false claim paid or approved by the City ~~and County~~;

3 (3) Conspires to defraud the City ~~and County~~ by getting a false claim allowed or
4 paid by the City ~~and County~~;

5 (4) Knowingly makes, uses, or causes to be made or used a false record or
6 statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to
7 the City ~~and County~~;

8 (5) Is a beneficiary of an inadvertent submission of a false claim to the City ~~and~~
9 ~~County~~, subsequently discovers the falsity of the claim, and fails to disclose the false claim to
10 the City ~~and County~~ within a reasonable time after discovery of the false claim.

11 (c) In such event, the Contractor, subcontractor, supplier consultant or subconsultant shall be
12 liable to the City for: (1) three times the amount of damages which the City sustains because of the
13 act(s) of that Contractor, subcontractor, supplier, consultant or subconsultant; and (2) the costs,
14 including attorney's fees of a civil action brought to recover any of those penalties or damages. Such
15 Contractor, subcontractor, supplier, consultant or subconsultant may also be liable to the City for a
16 civil penalty of up to \$10,000 for each false claim. Liability under this §Section 6.83 shall be joint
17 and several for any act committed by two or more persons.

18 (d) For purposes of this §Section, "claim" includes any request or demand for money,
19 property or services made to any employee, officer, or agent of the City ~~and County~~, or to any
20 ~~Contractor~~, subcontractor, grantee or other recipient, whether under contract or not, if any
21 portion of the money, property, or services requested or demanded issued from, or was
22 provided by, the City ~~and County~~.

23 (e) For purposes of this §Section, "knowingly" means that a ~~Contractor~~,
24 subcontractor, supplier, consultant or subconsultant with respect to information does any of
25 the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of

1 the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of
2 the information. Proof of specific intent is not required and reliance on the claim by the City
3 ~~and County~~ is also not required.

4
5
6 Section 2. The Administrative Code is hereby amended by revising Section 21.02, to
7 read as follows:

8 **SEC. 21.02. DEFINITIONS.**

9 * * * *

10 (j) "Minimum Competitive Amount" shall mean (i) for the procurement of
11 Commodities and Professional Services, the "Minimum Competitive Amount" as defined in
12 Section 6.40(~~a~~A) of the Administrative Code, which shall be ~~\$100,000~~110,000 and (ii) for the
13 procurement of General Services, an amount equivalent to the "Threshold Amount" as defined
14 in ~~Chapter~~Section 6.1(~~M~~) of the Administrative Code which shall be ~~\$400,000~~600,000, provided
15 that on January 1, 201~~5~~20 and every five years thereafter, the Controller shall recalculate the
16 Minimum Competitive Amount (and the Threshold Amount from which the Minimum
17 Competitive Amount for General Services is calculated) to reflect any proportional increase in
18 the Urban Regional Consumer Price Index from January 1, 2010~~5~~, rounded to the nearest
19 \$1,000.

20 * * * *

21
22 Section 3. The Administrative Code is hereby amended by revising Section 14B.2, to
23 read as follows:

24 **SEC. 14B.2. DEFINITIONS.**

25 * * * *

1 "Minimum Competitive Amount" means (1) for the procurement of commodities,
2 professional services, and architect/engineering services, the "Minimum Competitive Amount"
3 as defined in Section 6.40(aA) of the Administrative Code, which shall be ~~\$100,000~~110,000 and
4 (2) for the procurement of general services, an amount equivalent to the "Threshold Amount"
5 as defined in ~~Chapter~~Section 6.1(~~M~~) of the Administrative Code which shall be ~~\$400,000~~600,000,
6 provided that on January 1, 201~~5~~20, and every five years thereafter, the Controller shall
7 recalculate the applicable Minimum Competitive Amount (and the Threshold Amount from
8 which the Minimum Competitive Amount for general services is calculated) to reflect any
9 proportional increase in the Urban Regional Consumer Price Index from January 1, 20105,
10 rounded to the nearest \$1,000.

11 * * * *

12 "Threshold Amount" means, for public works/construction projects, the "Threshold
13 Amount" as defined in Administrative Code Chapter~~Section~~ 6.1(~~M~~) ~~of the Administrative Code~~
14 which shall be ~~\$400,000~~600,000 provided that on January 1, 201~~5~~20, and every five years
15 thereafter, the Controller shall recalculate the Threshold Amount to reflect any proportional
16 increase in the Urban Regional Consumer Price Index from January 1, 20105, rounded to the
17 nearest \$1,000.

18
19 Section 4. Effective and Operative Dates. This ordinance shall become effective 30
20 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
21 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
22 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall
23 become operative on July 1, 2015, and shall apply to all ~~e~~Contracts first advertised or initiated
24 on or after this date.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 Yadira Taylor
13 Deputy City Attorney

14 n:\legana\as2015\1500461\00992468.doc