

1 [Defining a contract, sole source and sole source contract and specifying the criteria
2 governing the award of sole source contracts, requiring Solicitations and contracts to state the
3 term of the contract, requiring contract terms for procurement of Commodities or Services to
4 not exceed the term stated in the Solicitation, requiring reporting of all sole source contracts to
5 the Board of Supervisors, and requiring the Clerk of the Board to report each year to the
6 Board of Supervisors on departments' compliance with the obligation to report sole sources
7 contracts.]

8
9 **Ordinance amending sections 21.02 and 21.5 of the San Francisco Administrative Code
10 and adding Sections 21.19-1 and 67.40 of the Administrative Code to: (1) define a
11 contract, sole source, and sole source contract; (2) specify the criteria governing the
12 award of contracts to sole sources; (3) require Solicitations and contracts to state the
13 term of the contract; (4) require the terms of contracts to not exceed the term stated in
14 the Solicitation; (5) require departments to report all sole source contracts in effect
15 during the fiscal year; and (6) require the Clerk of the Board of Supervisors to report
16 each year to the Board of Supervisors on departments' compliance with the obligation
17 to report sole source contracts.**

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

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

23 Section 1. The San Francisco Administrative Code is hereby amended by amending
24 Sections 21.02, and 21.5, and adding Sections 21.19-1 and 67.40 to read as follows:

25 **Sec. 21.02. DEFINITIONS.**

As used in this Chapter the following words shall have the following respective meanings:

(a) "Bid" shall mean a bid, quotation, or other offer, other than a Proposal, from a person or entity to sell a Commodity or Service to the City at a specified price.

1 (b) "Bidder" shall mean any person or entity which submits a Bid.;

2 (c) "City" shall mean the City and County of San Francisco.

3 (d) "COIT" shall mean the Committee on Information Technology of the City
4 and County of San Francisco.

5 (e) "Commodity" shall mean products, including materials, equipment and
6 supplies, purchased by the City. "Commodity" shall ~~specifically exclude~~ not include legal and
7 litigation related contracts or contracts entered into pursuant to settlement of legal
8 proceedings, and employee benefits, including, without limitation, health plans, retirement or
9 deferred compensation benefits, insurance and flexible accounts, provided by or through the
10 City's Human Resources Department or the Retirement Board.

11 (f) "Computer Store" shall mean the City-wide, multiple award contract for
12 the procurement of certain Commodities and Services, which is administered by COIT for the
13 benefit of City departments, awarded pursuant to the "Request for Proposal for Computer
14 Hardware, Software, Peripherals and Appropriate Network, Consulting, Maintenance, Training
15 and Support Services," and any successor contracts thereto.

16 (g) "Contract" shall mean an agreement for Commodities or Services to be
17 purchased at the expense of the City and County or to be paid out of moneys deposited in the treasury
18 or out of trust moneys under the control of or collected by the City and County.

19 (h) "Contractor" shall mean any corporation, partnership, individual, sole
20 proprietorship, joint venture or other legal entity which enters into a contract to sell
21 Commodities or Services to the City.

22 (i) "Contracting Officer" shall mean the City employee who is authorized to
23 execute a contract, which may be either the department head or a person designated in
24 writing by the department head, board or commission as having the authority to sign contracts
25 for the department. A designation of authority to sign contracts on behalf of a department

1 may specify authority to sign a single contract, specified classes of contracts, or all contracts
2 entered into by a department.

3 (i) “Disadvantaged Business Enterprise” or “DBE” shall mean a private
4 business located in and doing business in San Francisco with current revenues equal to or
5 less than the limits set for similar businesses eligible for certification by the Human Rights
6 Commission as Minority Owned Business Enterprises (MBEs) or Women Owned Business
7 Enterprises (WBEs). DBE status shall be based only on economic criteria, and shall not
8 include consideration of race or gender. The Purchaser shall verify the DBE status of any
9 Offeror to whom a small business set aside contract is proposed to be awarded prior to
10 award.

11 (j) “Electronic” shall mean electrical, digital, magnetic, optical,
12 electromagnetic or other similar technology for conveying documents or authorizations,
13 excluding facsimile.

14 (k) “General services” shall mean those services that are not Professional
15 Services. Examples of General Services include: janitorial, security guard, pest control,
16 parking lot attendants and landscaping services.

17 (l) “Offer” shall mean a Bid or Proposal submitted to the City in response to
18 an invitation for Bids or a Request for proposals. “Offer” may include a response to a request
19 for qualifications if no further ranking prior to Contractor selection is contemplated by the
20 procurement process.

21 (m) “Offeror” shall mean a person or entity that submits an Offer to the City to
22 provide Commodities or Services.

23 (n) “Professional Services” shall mean those services which require
24 extended analysis, the exercise of discretion and independent judgment in their performance,
25 and/or the application of an advanced, specialized type of knowledge, expertise, or training

1 customarily acquired either by a prolonged course of study or equivalent experience in the
2 field. Examples of professional service providers include licensed professionals such as
3 architects, engineers, and accountants, and non-licensed professionals such as software
4 developers and financial and other consultants.

5 (ep) "Proposal" shall mean a response to a request for proposals issued by
6 the City for Commodities or Services, or a response to a request for qualifications if no further
7 ranking prior to contractor selection is contemplated by the procurement process.

8 (pq) "Proposer" shall mean a person or entity that submits a Proposal in
9 response to a request for proposals issued by the City.

10 (qr) "Purchase order" shall mean an authorization document designated as
11 such by the Purchaser for the procurement of Commodities or Services, whether issued in a
12 paper or electronic format, including blanket purchase orders for purchases involving multiple
13 payments.

14 (rs) "Purchaser" shall mean the Purchaser of Supplies of the City and County
15 of San Francisco, or his or her designee(s).

16 (st) "Quotation" shall mean a Bid for Commodities or Services which is
17 acquired without the use of advertising to solicit Bids.

18 (tu) "Services" shall mean Professional Services and General Services.

19 "Services" shall ~~specifically exclude~~ not include agreements making a grant of City funds to
20 private entities for the purpose of providing a benefit to the public, which may include
21 incidental purchases of commodities; legal and litigation related services or contracts entered
22 into pursuant to settlement of legal proceedings; and services related to employee benefits,
23 including, without limitation, health plans, retirement or deferred compensation benefits,
24 insurance and flexible accounts, provided by or through the City's Human Resources
25 Department or the Retirement Board.

1 (v) "Sole Source" shall mean a prospective contractor who is the only entity
2 afforded the opportunity to enter into a contract for Commodities or Services. Affording a prospective
3 contractor the opportunity to enter into a contract includes, but is not limited to, providing the
4 contractor an opportunity to submit a quotation, bid, or proposal, or to enter directly into negotiations
5 without submittal of a quotation, bid, or proposal.

6 (w) "Sole Source Contract" shall mean a contract entered into with a Sole Source.

7 ~~(x)~~ "Solicitation" shall mean an invitation for Bids, request for Quotations,
8 request for qualifications, or request for Proposals issued by the City for the purpose of
9 soliciting Bids, Quotations, or Proposals to perform a City contract.

10 **SEC. 21.5. OTHER PURCHASES.**

11 Notwithstanding any other provision of this Chapter, procurement of the
12 following shall be made in accordance with the Purchaser's regulations:

13 (a) Commodities or services where the total amount of the purchase does
14 not exceed \$50,000.

15 (b) Commodities or services available only from a sole source; provided at
16 least one of the following conditions is satisfied: (i) the sole source is the only entity able to provide
17 the Commodities or Services; (ii) the sole source is the only entity willing to enter into a contract with
18 the City for the Commodities or Services; (iii) the Commodities or Services have a design or
19 performance specification or requirement that is essential to the City and no other entity can satisfy the
20 design or performance specifications or requirement; or (iv) a license or patent limits the availability
21 of the Commodities or Services to the sole source. For departments authorized under the Charter or
22 Municipal Code to enter into contracts for Commodities or Services, the department head or the
23 Purchaser shall decide in writing whether any of the conditions (i) through (iv) has been satisfied. For
24 all other departments, the Purchaser shall decide in writing whether any of the conditions has been
25 satisfied.

1 (c) Perishable foods.
2 (d) Proprietary articles.
3 (e) Contracts involving a pilot project with a term not to exceed two years;
4 provided, however, that any further procurement beyond the pilot project phase shall be
5 subject to all applicable competitive procurement requirements.

6 (f) The Purchaser may designate a particular Solicitation as a small
7 business set aside, and restrict competition for that contract to DBEs. Such set-aside shall
8 not continue for more than two consecutive years for any particular contract, and the
9 Purchaser shall not allocate an aggregate of more than ten million dollars per fiscal year for
10 DBE set-aside contracts. The findings made by the Board of Supervisors with respect to
11 contracting with local businesses in Administrative Code Section 12-D.A.2 are hereby
12 incorporated by reference into this section.

13 **SEC. 21.19-1 CONTRACT TERMS—TERM OF CONTRACTS**

14 *Each Solicitation and contract awarded shall state the term of the contract. The term of*
15 *any contract shall not exceed the term stated in the Solicitation.*

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17 **SEC. 67.40. ADDITIONAL REQUIREMENTS IMPOSED BY THE BOARD OF**
18 **SUPERVISORS.**

19 *(a) Report by Departments on Sole Source Contracts. Notwithstanding any lesser*
20 *requirements of Section 67.24(e), at the end of each fiscal year, each City department shall provide to*
21 *the Board of Supervisors a list of all of the department's Sole Source Contracts that were in effect at*
22 *any time during that fiscal year. The term "Sole Source Contract" shall have the meaning provided in*
23 *Section 21.02 of the Administrative Code of San Francisco.*

1 **(b) Report by the Clerk on Sole Source Contracts.** At the end of each fiscal year, the
2 Clerk of the Board of Supervisors shall report to the Board of Supervisors on each department's
3 compliance with paragraph (a) of this Section.

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

10 By: _____
11 ROBERT A. BRYAN
12 Deputy City Attorney