

LEGISLATIVE DIGEST
(5/21/2015 - Amended in Committee)

[Administrative Code - Chapter 6 Public Works Contracting]

Ordinance amending the Administrative Code to comprehensively revise Chapter 6 (Public Works Contracting Policies and Procedures) to: 1) increase the Threshold Amount from \$400,000 to \$600,000; 2) authorize sole source contracts under certain conditions; 3) allow procurement of public works construction contracts under \$10,000 with no competitive solicitation; 4) increase the amount of emergency work a department may authorize without Board of Supervisors approval from \$250,000 to \$600,000 by linking it to the Threshold Amount; 54) increase the amount of time allowed to issue a task order from three to four years, increase the limit of the amount of a task order from \$400,000 to \$600,000 by linking it to the Threshold Amount, allow subcontractors to be listed at time of bid or at time of issuance of a task order, and allow for performance and payment bonds to incrementally increase throughout the term of the contracts for Job Order Contracts and as-needed contracts; 56) authorize execution of master as-needed construction contracts and master as-needed inspection, maintenance and repair contracts of equipment and systems on an if-and-as-needed basis; 67) increase the limit of the amount of a task order from \$400,000 to \$600,000 by linking it to the Threshold Amount in master as-needed contracts on an if-and-as-needed basis for services that the Department of Public Health and the Division of Real Estate are authorized to procure; 78) provide greater flexibility and clarify requirements for the design-build and construction manager/general contractor project delivery methods; 89) authorize the Director of Transportation to procure rail grinding and related services through a negotiated project delivery method; 940) allow departments to advertise bids on a public website and/or in a local newspaper or periodical; 1044) add procedure upon rejection or failure of professional services proposals and upon professional services contractor's failure to deliver; and 1142) make various other changes and clarifications in Chapter 6.

Background

The San Francisco Administrative Code Chapter 6 ("Chapter 6") sets forth the City's rules and requirements for selecting and contracting for the design, management, and construction of public work projects. Public work projects generally involve selection of a design or management professional through a qualifications process and the selection of a construction contractor through competitive bidding, whereby the construction contract is awarded to the responsible bidder with the lowest responsive bid on a completed design. Chapter 6 also sets forth alternatives and exemptions from the standard competitive bidding process.

The departments with general contracting authority under Chapter 6 are San Francisco Public Works ("SFPW"), Municipal Transportation Agency ("MTA"), the Airport, the Port, the Public

Utilities Commission, and Recreation and Park (referred to collectively as “Departments”). All other City departments or commissions procure public work contracts through SFPW.

SFPW enlisted the Controller’s Office City Services Auditor to convene and facilitate a Chapter 6 Working Group made up of representatives from the Departments, the City Administrator’s Office, the Office of Contract Administration, the Controller’s Office, the City Attorney’s Office, and the Real Estate Division. The proposed ordinance encompasses the recommended changes from the Working Group.

Amendments: This digest reflects the amendments made on May 21, 2015 at the Government Audit and Oversight Committee. The proposed amendments would:

- Require that the immediate notice of a Department Head’s emergency declaration be made to the entire Board of Supervisors, not simply the President of the Board.
- Remove the requirement that the Board be notified not more than seven days after emergency work has been commenced, and instead require that the proposed resolution approving the emergency determination be submitted to the Board within 60 days of the Department Head’s emergency declaration if the estimated cost of the emergency work is over \$250,000.
- Add provision that for contracts less than or equal to \$10,000, departments are encouraged to solicit quotes, especially from LBEs, and award the work to the responsible bidder offering the lowest quotation.
- Require formal public works construction contracts to be advertised on the websites of both the Office of Contract Administration and the department rather than only one of the websites.
- Keep the existing requirement that construction contracts under the Threshold Amount be posted with three-days’ notice.
- Require a written justification that establishes the need for the work before a Department Head can authorize a JOC or As-Needed task order to exceed the Threshold Amount.

Increase to the Threshold Amount

Chapter 6 states the current Threshold Amount for construction contracts as \$400,000 and the Minimum Competitive Amount for professional service contracts as \$100,000. Both the Threshold Amount and the Minimum Competitive Amount are adjusted every five years based on the regional Consumer Price Index-Urban. The Controller’s Office has adjusted the Threshold Amount to \$440,000 effective January 1, 2015.

Solicitations for projects under the Threshold Amount or Minimum Competitive Amount have fewer restrictions. Construction contracts under the Threshold Amount do not require

advertisement, bid security, and can be awarded by the heads of the Departments (“Department Heads”).

The proposed ordinance would increase the Threshold Amount to \$600,000. The effects of increasing the Threshold Amount are as follows:

- Pursuant to Chapter 14B, Local Business Enterprise (LBE) subcontracting requirements would be placed on all contracts of \$300,000 or more (instead of the current \$220,000 or more).
- Pursuant to Chapter 14B, Departments would be able to set-aside larger contracts for Micro-LBEs, meaning contracts \$600,000 or less rather than \$440,000 or less (Departments must set aside 50% of eligible construction contracts and 25% of eligible professional services for Micro-LBEs).
- Pursuant to Section 6.20(B), Departments would be able to use the City’s labor force for more projects and larger projects.

The proposed ordinance would also link the following to the Threshold Amount:

- Job Order Contracts (JOC). Pursuant to the proposed Section 6.62, the task order limit for JOC contracts would be linked to the Threshold Amount and would increase from \$400,000.
- As-Needed Contracts. Pursuant to the proposed Sections 6.64 and 6.43, the contract service order limit for as-needed contracts would be linked to the Threshold Amount and would increase from \$200,000 for departments with a capital program of \$1 Billion or less, and \$400,000 for departments with a capital program of more than \$1 Billion.
- Public Health Facilities. Pursuant to the proposed Section 6.69, the contract service order limit for contracts to maintain and repair facilities under the jurisdiction of the Department of Public Health would be linked to the Threshold Amount and would increase from \$400,000.
- Real Estate Division Property. Pursuant to the proposed Section 6.70, the contract service order limit for contracts to maintain and repair facilities and real property under the jurisdiction of the Division of Real Estate would be linked to the Threshold Amount and would increase from \$400,000

Changes to Existing Contracting and Procurement Methods

1. Emergency Repairs, Work and Contracts (Section 6.60):

The proposed ordinance would require the Department Head to notify the Board, Mayor, and the Department’s commission, if any, as soon as the Department Head declares an emergency, regardless of the value of the work. Additionally, for emergencies with an estimated cost over \$250,000, the proposed resolution approving the emergency

determination shall be submitted to the Board within 60 days of the Department Head's emergency declaration.

The proposed ordinance would also clarify that when the Board of Supervisors approves emergency work, the Board's approval will be to cover all work to address the emergency, regardless of the number of contracts involved in the emergency.

2. Contract Durations and Task Order and Contract Service Order Limits

The existing sections for Job Order Contracts (Section 6.62) and As-Needed Contracts (Section 6.64) limit contract duration to five years, and limit the time in which a task order or contract service order may be issued to three years from the award of the contract.

The proposed ordinance would increase the amount of time allowed to issue a task or contract service order from three years to four years, while maintaining a five-year maximum for the contract duration. The proposed ordinance also starts the four-year period from certification of the contract by the Controller rather than from the date the contract is awarded. This change would also apply to the new Section 6.43, which separates As-Needed Professional Services from As-Needed Construction Contracts in Section 6.64, as discussed below.

3. Subcontractor Listing for JOC and As-Needed Construction Contracts

The existing law requires bidders to list all of their subcontractors at the time of bid for both JOC (Section 6.62) and As-Needed Construction Contracts (Section 6.64). The proposed ordinance would allow Departments to determine whether to require subcontractors to be listed at the time of bid or at the time of task order or contract service order.

4. Incremental Surety Bonds for JOC and As-Needed Construction Contracts

The proposed ordinance would expressly allow the amount of performance and payment bonds to commence with at least 25% of the awarded contract amount and incrementally increase throughout the term of the contract based on the task orders or contract services orders issued.

5. Addition of If-and-As-Needed Construction Contracts

The proposed ordinance would allow for if-and-as-needed construction contracts, under which the Departments would execute contracts with qualified contractors without obtaining unit prices for estimated quantities of work. Departments would then solicit quotes for contract services orders and award the work to the lowest quote.

6. As-Needed Professional Services

The proposed ordinance would separate the requirements for as-needed professional service contracts from as-needed construction contracts by adding the proposed Section 6.43. The proposed ordinance would clarify that as-needed professional services are selected in the same manner as other Chapter 6 professional services.

The proposed ordinance would divide as-needed professional service contracts into two types: single project and multiple project contracts. Multiple project contracts would be similar to the current as-needed structure under the existing Section 6.64, included proposed changes thereto, by limiting contract duration to five years and limiting issuance of contract services orders to four years from the certification of the contract by the Controller. The proposed ordinance would allow contract durations longer than five years and contract services orders in excess of the Threshold Amount for single-project, as-needed contracts, as long as the scope of work is related to that single project.

7. Hazardous Materials Abatement Work:

SFPW is the only Department authorized to procure contracts under this existing Section 6.63. The proposed ordinance would authorize all of the Departments to procure contracts for the abatement of hazardous materials pursuant to this Section 6.63. The proposed ordinance would also add the requirement that Department Heads must determine that the department personnel who will manage the work have the appropriate training before using these types of contracts for abatement work.

8. Maintenance, Inspection, and Repair of Special Systems:

The existing Section 6.65, titled "Contracting for Elevator, Escalator, Security, Fire Protection or Fire Alarm Systems Inspection, Maintenance and Repair Work," authorizes Departments to enter into master agreements with qualified contractors for the listed "special services." The proposed ordinance would expand the list of services that may be procured under this Section 6.65 to include all existing equipment or systems, specifying the following as examples: i) elevator; ii) escalator; iii) security; iv) fire protection; v) fire alarm; vi) power distribution; vii) chillers; viii) pumping; ix) heating, ventilation and air (HVAC); x) supervisory control and data acquisition (SCADA); xi) public address; xii) airfield drainage; and xiii) sewage and fresh water systems.

9. Department of Public Health and Division of Real Estate If-and-As-Needed Contracts:

Existing Sections 6.69 and 6.70 allow the Department of Public Health and the Division of Real Estate, respectively, to procure services under Chapter 6 on an if-and-as-needed basis for a contract term of three years. The proposed ordinance increases the maximum term to five years, consistent with other if-and-as-needed contracts under Chapter 6.

10. Design-Build Contracts:

- a. Under the existing Section 6.61, Departments are required to obtain approval to use design-build procurement from their boards, commissions, or the City Administrator. Since design-build was introduced into Chapter 6 in 1999, it has become a mainstream procurement method in the construction industry. The proposed ordinance would authorize Department Heads to approve the design-build approach.
- b. Under the existing Section 6.61, Departments may provide a reasonable stipend to short-listed design-builders who provide partial designs to be evaluated as part of the solicitation process. In order to pay a stipend to the design-builders, a City contract is required, including all applicable requirements within the Administrative Code that typically are not required until contract award. In light of the fact that design-builders receiving stipends are not being awarded a City contract, the proposed ordinance would exempt the payment of a stipend from contracting requirements such as competitive bidding and compliance with Chapters 12B, 12C, and 14B.
- c. Under the existing Section 6.61, Departments must pre-qualify design-build entities and then either select a contractor based on competitive bids or by best value, involving cost and qualifications, as long as the cost criteria is at least 65% of the overall selection.

Competitive Bid. The proposed ordinance still authorizes Departments to select design-builders by pre-qualification and competitive bidding; however, the Departments would also be expressly authorized to pre-qualify one or more of the design-builder's subcontractors. The proposed ordinance would also remove mandatory pre-qualification criteria, but still provide example criteria. The proposed ordinance would not remove the requirement that design-builders must comply with Administrative Code Chapters 12B and 14B, but the proposed ordinance does remove the proposer's commitment to do so as a criterion in the selection process.

Fixed Budget Limit. The proposed ordinance would authorize Departments to set a fixed budget limit for the design-build project and then solicit proposals from pre-qualified design-builders to design and build the base scope of the project and desired project enhancements. The proposed ordinance would allow the Departments to select a contractor based on (1) cost; (2) quality; and (3) the number and priority of project enhancements the design-builder can deliver within the fixed budget.

Best Value. The proposed ordinance still authorizes Departments to select design-builders based on qualification and cost criteria, but the proposed ordinance would decrease the minimum weight of cost criteria from at least 65% to at least 40% of the overall selection. Thus, the proposed ordinance would increase the weight of qualification criteria for the design and pre-construction services provided by the design-builder.

- d. Under the existing Section 6.61, Department Heads may allow a design-builder to procure trade subcontracts by competitive bid or through direct negotiations, if the negotiated subcontracts are cumulatively 7.5% or less of the total estimated subcontract costs. The proposed ordinance would allow design-builders, with Department Head approval, to select Core Trade Subcontractors for design and pre-construction services by qualifications after the award of the contract. Departments would then have to independently confirm the price of the trade work before allowing the design-builder to award the trade work to a Core Trade Subcontractor.
- e. The proposed ordinance would allow design-builders, with Department Head approval, to require performance and payment bonds from their subcontractors.
- f. The proposed ordinance would allow Department Heads to specify portions of work that may be self-performed by the design-builder under the best value approach. This is consistent with the other design-build procurement methods, because under a competitive bidding approach, the design-builder determines in advance which portions of the work it will self-perform and includes the same in its bid.

11. Construction Manager/General Contractor Contracts:

- a. Under the existing Section 6.68, the delivery approach is titled “integrated project delivery.” Because there are multiple types of integrated project delivery methods in the construction industry, including design-build, the proposed ordinance would rename this procurement method as “Construction Manager/General Contractor.”
- b. Under the existing Section 6.68, Departments are required to obtain approval to use the Construction Manager/General Contractor (CM/GC) approach from their boards, commissions, or the City Administrator. Since CM/GC was introduced into Chapter 6 in 2008, the City has gained much experience with the procurement method. The proposed ordinance would authorize Department Heads to approve a CM/GC approach.
- c. Under the existing Section 6.68, Departments must pre-qualify CM/GC entities and then select a contractor based on best value, involving cost and qualifications, as long as the cost criteria is at least 65% of the overall selection.

Cost-Only. The proposed ordinance would authorize Departments to select CM/GCs by pre-qualification and cost-only. The proposed ordinance would not remove the requirement that CM/GCs must comply with Administrative Code Chapters 12B and 14B, but the proposed ordinance does remove the proposer’s commitment to do so as a criterion in the selection process.

Best Value. The proposed ordinance would authorize Departments to select CM/GCs based on qualification and cost criteria, as long as the cost criteria is at least 40% of the

overall selection, a decrease from the existing required 65%. The proposed ordinance would also remove the requirement of a mandatory pre-qualification of CM/GCs when the CM/GCs' qualifications will be considered during the final selection process.

Best Value Team. The proposed ordinance would authorize Departments to pre-qualify the CM/GC's Core Trade Subcontractors and select the CM/GC's team as a whole to provide design assist and pre-construction services.

- d. Under the existing Section 6.68, Department Heads may allow a CM/GC to procure trade subcontracts by competitive bid or through direct negotiations if the negotiated subcontracts are cumulatively 7.5% or less of the total estimated subcontract costs. The proposed ordinance would allow CM/GCs, with Department Head approval, to select Core Trade Subcontractors by qualifications for design assist and pre-construction services after award of the contract. The department would then have to independently confirm the price of the trade work before allowing the CM/GC to award the trade work to Core Trade Subcontractor.

New Contracting Methods

1. Low Cost Contracting:

Currently, all Chapter 6 contracts must be procured through some sort of competitive solicitation process. The proposed ordinance would allow Departments to procure Chapter 6 construction contracts with no competitive solicitation if the work or service costs less than \$10,000. This provision will allow for expedited contracting for small repairs and is consistent with the guidelines for Chapter 21 procurement contracting.

2. Rail Grinding Services for MTA

The proposed ordinance would allow specialized rail grinding services to be procured by the MTA through a request for proposal and negotiation process. Rail grinding services are necessary for maintenance and repair of the MTA's tracks.

3. Sole Source

Existing law does not provide Departments with the ability to procure sole source contracts related to public works. In the past, Departments have sought contract-specific ordinances to award public work contracts without the competitive processes permitted by Chapter 6.

The proposed ordinance would require the Department Head to make a written determination that a justification exists to enter into negotiations for a contract without a competitive selection. The proposed ordinance also requires the Department Head to recommend the award of the contract to the Department's board or commission, or the Mayor or his or her designee, based on the following justifications:

- Work or services are available from only one source as justified by the results of some sort of solicitation;
- The contractor owns proprietary rights to the product or service;
- The contract is a follow-on contract and there would be: (i) substantial duplication of cost to the City that is not expected to be recovered through competition; (ii) unacceptable delays in fulfilling the City's requirements; or (iii) loss of a warranty protection;
- The contract is required by statute or government regulation; or
- The contract is needed on an expedited basis due to State or Federal funding being made available to a City department on short notice.

General Clean-Up Amendments to Current Law

1. The proposed ordinance would update Chapter 6 to reflect the transfer of functions for the LBE Program from the Human Rights Commission to the Contract Monitoring Division.
2. The proposed ordinance would clarify that construction contracts managed by SFPW for non-Chapter 6 departments would be approved by the Mayor or Mayor's designee, in accord with all other SFPW public work contracts.
3. Existing law requires that contracts over the Threshold Amount must be listed in a local newspaper or periodical. The proposed ordinance would allow Departments to advertise bids on a public website instead.
4. The proposed ordinance would add a process for when a professional services solicitation fails or receives only one proposal similar to procedures outlined in Section 6.23 for construction bids and Chapter 21 for procurement of services.
5. The proposed ordinance would add a definition for Integrated Furniture, Fixtures, and Equipment, to clarify the products that may be purchased under a Chapter 6 contract.
6. The proposed ordinance would clarify terms by capitalizing all defined terms within Chapter 6.
7. The proposed ordinance would update section and subsection numbering to reflect current legislative drafting conventions.

n:\legana\as2015\1500461\01017736.doc