

1 [Music Licensing Contracts; Chapter 21 Clean-Up.]

2 **Ordinance authorizing Director of Administrative Services to enter into long term**
3 **agreements for music licensing with performing rights societies as sole source**
4 **agreements; amending Chapters 21 and 85 of the Administrative Code to correct certain**
5 **references.**

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

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

11 **Section 1.** The San Francisco Administrative Code is hereby amended by amending
12 Chapter 21, Section 21.02, to read as follows:

13 **SEC. 21.02. DEFINITIONS.**

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

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

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

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

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

21 (e) "Commodity" shall mean products, including materials, equipment and supplies
22 purchased by the City. "Commodity" shall specifically exclude legal and litigation related
23 contracts or contracts entered into pursuant to settlement of legal proceedings, and employee
24 benefits, including, without limitation, health plans, retirement or deferred compensation
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1 benefits, insurance and flexible accounts, provided by or through the City's Human Resources
2 Department or the Retirement Board.

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

8 (g) "Contractor" shall mean any corporation, partnership, individual, sole
9 proprietorship, joint venture or other legal entity which enters into a contract to sell
10 Commodities or Services to the City.

11 (h) "Contracting Officer" shall mean the City employee who is authorized to execute a
12 contract, which may be either the department head or a person designated in writing by the
13 department head, board or commission as having the authority to sign contracts for the
14 department. A designation of authority to sign contracts on behalf of a department may specify
15 authority to sign a single contract, specified classes of contracts, or all contracts entered into by
16 a department.

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

24 (j) "Electronic" shall mean electrical, digital, magnetic, optical, electromagnetic or
25 other similar technology for conveying documents or authorizations, excluding facsimile.

1 (k) "General services" shall mean those services which are not Professional
2 Services. Examples of General Services include: janitorial; security guard; pest control;
3 parking lot attendants; and landscaping services.

4 (l) "Offer" shall mean a Bid or Proposal submitted to the City in response to an
5 invitation for Bids or a request for Proposals.

6 (m) "Offeror" shall mean a person or entity that submits an Offer to the City to provide
7 Commodities or Services.

8 (n) "Professional Services" shall mean those services which require extended
9 analysis, the exercise of discretion and independent judgment in their performance, and/or the
10 application of an advanced, specialized type of knowledge, expertise, or training customarily
11 acquired either by a prolonged course of study or equivalent experience in the field. Examples
12 of professional service providers include licensed professionals such as architects, engineers,
13 and accountants, and non-licensed professionals such as software developers and financial
14 and other consultants.

15 (o) "Proposal" shall mean a response to a request for proposals issued by the City for
16 Commodities or Services.

17 (p) "Proposer" shall mean a person or entity which submits a Proposal in response to
18 a request for proposals issued by the City.

19 (q) "Purchase Order" shall mean an authorization document designated as such by
20 the Purchaser for the procurement of Commodities or Services, whether issued in a paper or
21 electronic format, including blanket purchase orders for purchases involving multiple payments.

22 (r) "Purchaser" shall mean the ~~Purchaser of Supplies~~ Director of Administrative Services
23 of the City and County of San Francisco, or his or her designee.

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

1 (t) "Services" shall mean Professional Services and General Services. "Services"
2 shall specifically exclude agreements making a grant of City funds to private entities for the
3 purpose of providing a benefit to the public, which may include incidental purchases of
4 Commodities, legal and litigation related services or contracts entered into pursuant to
5 settlement of legal proceedings, and services related to employee benefits, including, without
6 limitation, health plans, retirement or deferred compensation benefits, insurance and flexible
7 accounts, provided by or through the City's Human Resources Department or the Retirement
8 Board.

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

12 **Section 2.** The San Francisco Administrative Code is hereby amended by amending
13 Chapter 21, Section 21.03, to read as follows:

14 **Sec. 21.03. GENERAL AUTHORITY OF THE PURCHASER OF SUPPLIES.**

15 (a) Approval of Purchases. The Purchaser shall purchase all Commodities or
16 Services required by City departments and offices of the City, except as otherwise provided in
17 the Charter and Municipal Code of San Francisco. The Purchaser shall, by
18 regulation, designate and authorize appropriate department personnel to exercise the
19 Purchaser's approval authority for contracts approved as provided in this section.

20 (b) Purchases to be Made on Requisitions; Exception for Large Quantities or
21 Common Use. All purchases made by the Purchaser shall be made on the basis of requisitions
22 of ordering departments; except that Commodities and Services in common use by more than
23 one department, or used in large quantities by a department may be purchased on the basis of
24 the total of such requisitions or estimates previously filed from the various departments. The
25 Purchaser is authorized to enter into City-wide requirements contracts for the purchase of

1 indefinite quantities of Commodities or Services for the period of time and at prices set forth in
2 the contract, under which any department may elect to order such Commodities or Services.

3 (c) Standardization of Purchases. The Purchaser may establish specifications, terms
4 and conditions, and product tests to cover all Commodities and Services purchases of (i) large
5 quantities, or (ii) recurring purchases, or (iii) Commodities or Services in common use by more
6 than one department. The Purchaser may, as far as is practicable, standardize Commodities
7 according to the use to which they are to be put, when two or more types, brands or kinds are
8 specified or requested by individual departments.

9 (d) Purchases of Commodities. Purchases of Commodities shall be made in
10 accordance with selection criteria or specifications furnished by the department requiring such
11 Commodities whenever the need for particular selection criteria or specifications is peculiar to
12 such department. For patented or proprietary Commodities sold by brand name, the purchaser
13 may require each department requisitioning same by such brand name to furnish
14 specifications of the Commodity requisitioned, and may advertise for Offers on the basis of
15 such specifications, under conditions permitting manufacturers of, or dealers in other products
16 made and sold for the same purpose, to make Offers on such specifications or on the
17 specifications of their own product. If the Purchaser recommends the acceptance of the lowest
18 or best Offer, stating the Purchaser's reasons in writing therefor, and if the department head
19 concerned recommends the acceptance of any other Offer on such proprietary Commodities,
20 stating the department's reasons in writing therefor, the award shall be determined by the
21 Controller.

22 (e) Procurement Of Vehicles for Use of City Officials And Employees.

23 (1) When purchasing, leasing, or otherwise procuring passenger vehicles, including
24 passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and
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1 including one ton in payload, departments shall request vehicles of the same functional type
2 and passenger capacity approved by the Board of Supervisors in the budget.

3 (2) In evaluating vehicle purchase requests, the Purchaser is authorized to consider
4 the price, durability, fuel efficiency, resale value, expected repair and maintenance cost, and all
5 other factors, including options and accessories that may among other considerations enhance
6 the safety and resale value of the vehicle and that bear directly on the total cost to the City of
7 the vehicle in relationship to the service it will render.

8 (3) The Purchaser may develop sets of general specifications, including optional
9 equipment, for purchases of compact, mid-size and full-size passenger cars or may specify
10 vehicles by proprietary brand name when purchasing additional vehicles for an existing fleet.

11 The specifications shall note the major items of standard equipment of such vehicles
12 and may include, in the Purchaser's discretion, optional equipment which the Purchaser has
13 determined should be ordered on City passenger cars. When procuring passenger cars, the
14 purchaser shall include this group of options, to the extent possible, even if the department
15 which will use the car does not request them. If a department requests optional equipment that
16 is not part of the Purchaser's group of options and which would cost in excess of a dollar limit to
17 be set by the Purchaser in regulations, the department must either:

18 (A) Itemize the equipment in the description of the vehicle itself, when the vehicle
19 purchase is reviewed as part of the City's annual budget process, and obtain the Board's
20 approval of the vehicle as equipped; or

21 (B) Obtain the approval of the Mayor's Budget Office before submitting a requisition to
22 the Purchaser.

23 (4) If a department desires to procure a passenger vehicle that is upgraded in terms of
24 the functional type or capacity from what was approved in the budget, then the department
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1 must first obtain the approval of the Mayor's Budget Office before submitting a requisition to the
2 Purchaser.

3 (5) This section shall not apply to the procurement of mass transit vehicles over one
4 ton or other specialized vehicles as defined in the Purchaser's regulations.

5 (f) Payment procedures. The Purchaser and Controller shall establish procedures to
6 approve all bills and vouchers for Commodities and Services. All approvals required pursuant
7 to such procedures must be obtained before the controller shall draw and approve warrants
8 therefor.

9 (g) Storerooms and Garages. The Purchaser shall have charge of a garage and shop
10 for the repair of City equipment, and of the purchaser's storerooms and warehouses for the
11 City and the personnel assigned thereto.

12 (h) Leasing Of Equipment From Non-profit Corporations Without Competitive Bidding.
13 Notwithstanding any other provisions of this Code, the Purchaser is authorized to award a
14 contract, without issuing Solicitations, to a non-profit corporation for the leasing of equipment;
15 provided, that the non-profit corporation has been formed for the purpose of aiding and
16 assisting the City, and the formation of the non-profit corporation has been approved by
17 resolution of the Board of Supervisors.

18 (i) Disposal of Surplus. Commodities which have been determined to be surplus to
19 City needs shall be disposed of in a manner which will best serve the interests of the City. For
20 the purposes of this section, the interests of the City shall include the City's ability to maximize
21 the City's economic return on surplus Commodities, the City's interest in maximizing the re-use
22 of surplus Commodities by public entities, non-profit organizations and schools, and the City's
23 interest in avoiding any unnecessary additions to the waste stream by maximizing the re-use
24 and recycling of surplus Commodities. Disposal of surplus Commodities may include sales
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1 to, exchanges with, or donation to public entities, non-profit organizations, and private
2 organizations for a public purpose, or donation to private entities for recycling of parts or
3 materials. The Purchaser may maintain lists of all known local resources for transfer of surplus
4 Commodities to public entities, non-profit organizations, and private organizations for a public
5 purpose, and for the recycling of parts. The Purchaser shall have the authority to require the
6 transfer of surplus property in any department to the Purchaser's stores or to other
7 departments.

8 (1) The Purchaser of supplies shall have the authority to exchange Used commodities
9 to the advantage of the City, to advertise for Bids, and to sell Commodities belonging to the
10 City on the recommendation of a department head that such Commodities are surplus to the
11 needs of the department.

12 (2) The Purchaser shall have the authority to donate obsolete, used or surplus
13 Commodities if a department head states in writing that such Commodities are surplus to the
14 needs of the department. The Purchaser shall document in writing each donation.

15 (A) Donations of Commodities meeting the criteria listed above may be offered to
16 public entities, non-profit organizations, or private organizations serving the public. The order
17 of priority for donations shall be to entities or organizations:

18 (i) Engaged in distributing the surplus Commodities offered at no cost or for a
19 nominal fee to non-profit organizations, schools, or low-income individuals or families that are
20 physically located in San Francisco;

21 (ii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal
22 fee to non-profit organizations, schools, or low-income individuals or families that are physically
23 located in the Bay Area;

1 (iii) Engaged in distributing the surplus Commodities offered at no cost or for a
2 nominal fee to non-profit organizations, schools, or low-income individuals or families that are
3 physically located in the United States;

4 (iv) Engaged in distributing the surplus Commodities offered at no cost or for a
5 nominal fee to non-profit organizations, schools, or low-income individuals or families that are
6 physically located in foreign countries;

7 (v) Engaged in recycling the surplus Commodities, including parts or materials.

8 (B) Surplus medical supplies that are no longer in compliance with Federal Drug
9 Administration regulations may be offered to entities and organizations which are engaged in
10 distributing or administering the surplus medical supplies at no cost or for a nominal fee to low-
11 income individuals or families in foreign countries.

12 (C) To the extent that more than one organization meets the criteria in a category
13 listed above, surplus Commodities shall be made available on a rotational basis to entities and
14 organizations in the same category. If there is a need to dispose of surplus Commodities and
15 no entity or organization meeting the criteria noted in Section 21.03(i)(2)(A) can be located to
16 receive a donation, the Purchaser is authorized to utilize other means that may be available to
17 dispose of such Commodities in a manner that will best serve the interests of the City.

18 (j) Information Technology Purchases. All contracts for the acquisition of information
19 technology Commodities or Services shall be made by the Purchaser, under the direction and
20 supervision of COIT. "Information technology" Commodities and Services which are subject to
21 this requirement shall be defined in regulations adopted by the Purchaser, the Department of
22 Telecommunication and Information Services and COIT.

23 (k) Music Licensing. The Purchaser is authorized to enter into agreements for music
24 licensing in excess of 10 years on behalf of the City with performing rights societies as defined by the
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1 federal Copyright Act of 1976. Such agreements shall be treated as a sole source, and are not required
2 to include contractual language otherwise required by this Administrative Code.

3 ~~(k)~~ (l) Rules And Regulations. The Purchaser, with the approval of the Director
4 of Administrative Services and the Controller, shall establish rules and regulations for the
5 purpose of implementing the provisions of this Chapter.

6 **Section 3.** The San Francisco Administrative Code is hereby amended by amending
7 Chapter 85, Section 85.2, to read as follows:

8 **SEC. 85.2. DEFINITIONS.**

9 (a) "Alternative Fuel" means any fuel other than gasoline, diesel, and other
10 substantially petroleum-based fuels that is less polluting than gasoline or diesel fuel, as
11 determined by the California Air Resource Board. Alternative Fuel shall include, but is not
12 limited to, natural gas and electricity.

13 (b) "Alternative Fuel Vehicle" means any motor vehicle powered by alternative fuels.

14 (c) "Bi-Fuel Vehicle" means any motor vehicle designed to operate on two (2) fuels,
15 one of which is an alternative fuel, but not on a mixture of fuels.

16 (d) "Bus" means any passenger vehicle with a seating capacity of greater than fifteen
17 (15) persons.

18 (e) "Car-Sharing Program" means a program in which automobile providers are
19 established to make motor vehicles available to people on a per-use basis.

20 (f) "City Department" means any department of the City and County of San
21 Francisco. City department does not include any other local agency or any federal or State
22 agency, including but not limited to the San Francisco Unified School District, the San
23 Francisco Community College District, the San Francisco Redevelopment Agency, and the San
24 Francisco Housing Authority.

1 (g) "Construction Vehicle" means any motor vehicle intended for use in the
2 construction, repair, and/or demolition of structures or roadways and which is not licensed for
3 use on public roads.

4 (h) "Electric Charging Bay" means a device used to restore the electromotive power
5 of a battery in an electric vehicle.

6 (i) "Electric Vehicle" means a zero emission vehicle that derives its motive power
7 from one (1) or more electric motors.

8 (j) "Fast-Fueling" means a fueling process that refuels an alternative fuel vehicle in
9 the same or less time than traditional refueling methods.

10 (k) "Heavy Duty Vehicle" means any motor vehicle, licensed for use on roadways,
11 having a manufacturer's gross vehicle weight rating greater than 14,000 pounds.

12 (l) "Hybrid Electric Bus" means a bus having an on-board internal combustion engine
13 attached to an electric generator.

14 (m) "Light Duty Truck" means any motor vehicle, with a manufacturer's gross vehicle
15 weight rating of 6,000 pounds or less, which is designed primarily for purposes of transportation
16 of property or is a derivative of such a vehicle, or is available with special features enabling off-
17 street or off-highway operation and use.

18 (n) "Medium Duty Vehicle" means any 1995 and subsequent-model year vehicle
19 having a manufacturer's gross vehicle weight rating of 14,000 pounds or less and which is not a
20 passenger vehicle or light-duty truck.

21 (o) "Motor Vehicle" means a self-propelled vehicle.

22 (p) "Motorized Equipment" means any implement powered by an internal combustion
23 engine. ~~Motorized Equipment shall not include equipment regulated pursuant to Section 21.18-6 of this~~
24 ~~code.~~

25 (q) "Natural Gas Bus" means a bus powered by natural gas.

1 (r) "Natural Gas Fueling Station" means any fueling station that provides fueling
2 services for motor vehicles fueled by natural gas.

3 (s) "NOX" means oxides of nitrogen.

4 (t) "Particulate Matter (PM)" means solid or liquid particles of soot, dust, smoke,
5 fumes, aerosols or other airborne material.

6 (u) "PM10" means particulate matter less than ten (10) microns in diameter.

7 (v) "PM2.5" means particulate matter less than two and five-tenths (2.5) microns in
8 diameter.

9 (w) "Passenger Vehicle" means any motor vehicle designed primarily for
10 transportation of persons and having a design capacity of twelve (12) persons or less.

11 (x) "Portable Motorized Equipment" means motorized equipment that is capable of
12 being carried or moved from one location to another. Indicia of portability or transportability
13 include, but are not limited to, wheels, skids, carrying handles, a dolly, a trailer, or a platform.

14 (y) "Stationary Motorized Equipment" means motorized equipment that remains or will
15 remain at a single site at a building, structure, facility, or installation for more than twelve (12)
16 consecutive months.

17 (z) "Trolley Bus" means an electric-powered bus that derives its motive power from
18 overhead wires.

19 (aa) "Ultra-Low Emission Vehicle" means any motor vehicle that meets or exceeds the
20 standards set forth in 13 California Code of Regulations § 1960.1 for Ultra-Low Emission
21 Vehicles.

22 (ab) "Zero-Emission Vehicle" means (i) any motor vehicle that produces zero exhaust
23 emissions of all criteria pollutants, as defined by 17 California Code of Regulations § 90701(b),
24 (or precursors thereof) under any and all possible operational modes and conditions or (ii) any
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1 vehicle that has been certified by the California Air Resources Board as a zero-emission
2 vehicle.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

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6 By: _____
7 CHRISTIANE HAYASHI
8 Deputy City Attorney
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