

1 [Administrative Code - Procurement of Goods and Services]

2

3 **Ordinance amending the Administrative Code to expand the scope of emergency**

4 **procurement provisions for goods and services; and to allow City departments to**

5 **modify agreements in ways not contemplated in the original solicitations.**

6       **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.

7       **Additions to Codes** are in *single-underlined italics Times New Roman font*.

8       **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.

9       **Board amendment additions** are in double-underlined Arial font.

10       **Board amendment deletions** are in ~~strikethrough Arial font~~.

11       **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code

12       subsections or parts of tables.

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

14       Section 1. Chapter 21 of the Administrative Code is hereby amended by revising

15       Sections 21.04, 21.3, 21.4, and 21.15 to read as follows:

16       **SEC. 21.04. DIRECT PURCHASING AUTHORITY OF DEPARTMENTS.**

17       (a) Department heads may purchase Commodities or Services directly and without the

18       approval of purchasing, as provided in the Charter or Municipal Code, or in the following

19       circumstances:

20           (1) Departments may directly enter into contracts when such purchase is

21       recommended by a department head and is approved by the Purchaser. The Purchaser's

22       approval of direct department purchases may be for individual contracts or for classes of

23       contracts anticipated to be required by the department.

24           \* \* \* \*

(8) The Director of Health may contract directly for purchases under the authority of Chapter 21A of this Code.

(9) The Chief of the Fire Department may directly enter into contracts to purchase Fire Apparatus under the authority of Section 21.25-1. This subsection 21.04(a)(9) shall expire by operation of law on July 1, 2030. After its expiration, the City Attorney shall be authorized to cause this subsection 21.04(a)(9) to be removed from the Administrative Code.

(10) Departments may contract directly for purchases in emergency situations under the authority of Section 21.15 of this Code.

(b) The Purchaser shall determine the scope of direct purchasing authority granted under subsection (a) in the event of ambiguity.

(c) Nothing in this Section 21.04 is intended to affect the authorities granted to departments elsewhere in this Code or in the Charter

### **SEC. 21.3. COMPETITIVE SEALED BIDDING.**

(a) **Invitation for Bids.** Except as otherwise authorized in this Code, for any Commodity or General Services purchase estimated to cost in excess of the Minimum Competitive Amount, an invitation for Bids shall be issued to solicit Bids and shall include a purchase description and all contractual terms and conditions applicable to the procurement, including a reservation of the City's right to reject all Offers.

\* \* \* \*

**(f) Awards in the Public Interest.** If the Purchaser finds that the public interest would be best served by accepting other than the lowest total or unit price the Purchaser is authorized to accept the Bid(s) that in the Purchaser's opinion will best serve the public interest, to make the awards and to enter into the necessary contracts. Prior to making an award to a Bidder other than the lowest Bidder(s), the Purchaser shall submit a written statement of the basis for the finding to the Director of Administrative Services.

(g) **Additional Purchases.** *Where the quantity of Commodities or General Services to be provided under a contract is fixed, the Contracting Officer may, within one year after award and subject to the Contractor's consent, purchase additional quantities of the specific Commodities or General Services for which award was made at the award price or a lower price, in accordance with the Purchaser's regulations.*

(1) Where the quantity of Commodities or General Services to be provided under a contract is inadequate, the Contracting Officer may, subject to the Contractor's consent, purchase additional quantities of the specific Commodities or General Services for which award was made at the current contract price or a comparable price, in accordance with the Purchaser's regulations.

(2) If the Commodities or General Services to be provided under a contract are unavailable, obsolete, or discontinued, the Contracting Officer may, subject to the Contractor's consent, purchase replacements for the unavailable, obsolete, and/or discontinued Commodities or General Services for which the award was made, in accordance with the Purchaser's regulations.

**(h) Substantially Related Purchases.** The Contracting Officer may, subject to the Contractor's consent, purchase Commodities or General Services that were not specifically itemized in the original bid, but that are substantially related in nature and limited in scope in accordance with the Purchaser's regulations.

(*hi*) **Multi-step Bidding.** A Contracting Officer may prequalify Bidders prior to issuing an Invitation for Bids based on prequalification criteria set forth in a Solicitation.

(ii) **Bid Protests.** The procedure for resolving Bid protests shall be established by regulations adopted by the Purchaser.

## **SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

**(a) Authorization; Evaluation Criteria.** A Contracting Officer may issue a request for Proposals, or request for qualifications, for the selection of Professional Service

1 Contractors following consideration of the evaluation factors set forth in the request for  
2 Proposals, which may include cost, except as prohibited by law. If a department determines  
3 that it would be in the best interests of the City to acquire combined Commodities and  
4 Services or General Services by means of a request for Proposals or qualifications, rather  
5 than an invitation for Bids, such request for Proposals or qualifications shall be issued by the  
6 Purchaser. A request for Proposals or qualifications for Professional Services may be issued  
7 directly by the department.

8 \* \* \* \*

9 (f) **Mass-transit Vehicles.** Notwithstanding any other provision of the charter or laws  
10 of the City, the Public Transportation Department, through its department head and through  
11 the Purchaser is authorized to include among its purchasing specifications the use of  
12 negotiated procurement procedures for the purchase of mass-transit vehicles.

13 (g) Purchases of Services or Commodities Substantially Related to the Request for Proposals  
14 or Qualifications. The Contracting Officer may, subject to the Contractor's consent, purchase Services  
15 and Commodities not within the original scope advertised in the Request for Proposals or  
16 Qualifications, but that are substantially related in nature. Such additional purchases shall be limited  
17 in scope in accordance with the Purchaser's regulations.

18

## 19 SEC. 21.15. EMERGENCY PROCUREMENT PROCEDURES.

20 ~~(a) The Board of Supervisors hereby declares that an actual emergency shall exist when it~~  
21 ~~becomes necessary to immediately procure Commodities or Services to make repairs, to safeguard the~~  
22 ~~lives or property of the citizens or the property of the City or to maintain public health or welfare as a~~  
23 ~~result of extraordinary conditions created by war, epidemic, weather, fire, flood, earthquake or other~~  
24 ~~catastrophe, or the breakdown of any plant equipment, structure, street or public work.~~

25

1                   (b) ~~For any Commodities or Services that would normally be procured by the Purchaser, a~~  
2 ~~contract may be executed by the Purchaser in the most expeditious manner, and shall be promptly~~  
3 ~~confirmed by issuance of a regular purchase order.~~

4                   (c) ~~The department head responsible for the operations for which Commodities or Services~~  
5 ~~are needed may also enter into a contract directly in the most expeditious manner necessary in order to~~  
6 ~~respond to the emergency; however, if the emergency permits, the department head shall first secure~~  
7 ~~the written approval of the president of the board or commission concerned, or from the Mayor or the~~  
8 ~~Mayor's designee for any department under the Mayor's jurisdiction provided that the designee is not~~  
9 ~~the department head of the department concerned, and in all cases the approval of the Board of~~  
10 ~~Supervisors must be obtained for any contract in excess of \$100,000. If the emergency does not permit~~  
11 ~~such approvals to be obtained before the contract is executed, such approvals shall be obtained as soon~~  
12 ~~thereafter as it is possible to do so.~~

13                   (d) ~~The Purchaser or the department, as the case may be, shall attempt to obtain at least~~  
14 ~~three Bids for emergency purchases.~~

15                   (e) ~~The Board of Supervisors hereby declares that an actual emergency shall exist during a~~  
16 ~~period of material shortages when goods meeting the exact specifications as ordered are not~~  
17 ~~procurable. When such goods are immediately required, the Purchaser, with the approval of the~~  
18 ~~Director of Administrative Services, shall have authority to accept satisfactory substitutes and to make~~  
19 ~~proper price adjustments therefor; provided, that if such price adjustment should increase the~~  
20 ~~contractual obligation by more than 10 percent, the Purchaser shall first obtain approval by the~~  
21 ~~Controller, who shall reserve the additional amount of money required to meet the increased~~  
22 ~~obligation.~~

23                   (a) Scope. *An emergency shall exist:*

1               (1) *When a sudden, unforeseeable, and unexpected event necessitates immediate action*  
2               *to prevent or remedy harm or avert imminent danger to the lives or property of the citizens or the*  
3               *property of the City or to maintain public health or welfare;*  
4               (2) *When necessary Commodities or Services are in scarce supply due to local, national*  
5               *or global shortages in material or labor;*  
6               (3) *When the City's ability to ensure continuity of its operations are adversely impacted*  
7               *by an extraordinary condition, including, but not limited to, severe acts of nature or weather events*  
8               *including floods, fires, earthquakes, hurricanes, or explosions; war, acts of terrorism, and epidemics;*  
9               *expropriation or condemnation by governmental authorities; and inflationary surges or other*  
10               *disruptions to market conditions; or*  
11               (4) *When an emergency has been formally declared by the Mayor pursuant to Section*  
12               *3.100(14) of the Charter.*

13               **(b) New Agreements.**

14               (1) *Commodities or Services procured pursuant to subsection 21.15(a) may be purchased*  
15               *by the Purchaser or department head in the most expeditious manner necessary to meet the*  
16               *circumstances of the emergency and shall be confirmed by a written contract or purchase order as*  
17               *soon as feasible.*  
18               (2) *Emergency contracts shall be limited to a length of time deemed reasonable and*  
19               *appropriate by the Purchaser or department head to respond to the emergency.*  
20               (3) *Emergency contracts shall be exempt from the City's solicitation requirements and*  
21               *are not subject to the provisions of the Municipal Code, including but not limited to the Administrative,*  
22               *Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictions on*  
23               *contractors, except that the Purchaser or department shall attempt to obtain three Quotations for*  
24               *emergency purchases.*

(4) When a department head contracts directly for Commodities or Services necessary to respond to an emergency, the department head, if the emergency permits, shall secure the written approval of the president of the board or commission concerned, or from the Mayor or the Mayor's designee for any department under the Mayor's jurisdiction, provided that the Mayor's designee is not also the department head of the department concerned; and for any contract in excess of the Minimum Competitive Amount the department head must obtain the approval of the Board of Supervisors as soon as feasible.

(c) Modification of Existing Agreements. During an emergency as defined by subsection 21.15(a), the Purchaser or department head is authorized to renegotiate existing Commodities and Services contracts to modify commercial terms and conditions, including without limitation scope, duration, price, quantity, and not-to-exceed amount, regardless of originally advertised terms, so as to ensure continuity of operations, including timely delivery or performance of the Commodities and Services purchased. Contract modifications pursuant to this subsection 21.15(c) shall be limited to a length of time deemed reasonable and appropriate by the Purchaser or department head to respond to the emergency. The Purchaser or department head shall enter into a new contract for the Commodities or Services or revert to the original terms of the contract as soon as feasible.

**(d) Extensions for Continuity of Operations.** When necessitated by the events described in subsection 21.15(a), the Purchaser and departments may extend any existing contract when no other purchasing authority exists, provided such extension is critical to maintaining the continuity of the City's mission-critical operations and the Purchaser or department, despite diligent efforts, lacks sufficient time or resources to execute a new contract due to the impact of the emergency. Extensions completed pursuant to this subsection 21.15(d) shall be limited to a length of time deemed reasonable and appropriate by the Purchaser or department head to respond to the emergency. The Purchaser or department head shall enter into a new contract for the Commodities or Services as soon as feasible.

**(e) Reporting.** By July 31 of every fiscal year, each City department shall provide to the Board of Supervisors a list of all contracts and purchase orders issued or amended by the Purchaser or department under subsections 21.15(b), (c), and (d) during the past fiscal year.

**(f) Rules and Regulations.** The Purchaser shall develop regulations regarding subsections 21.15(c) and (d) within 60 days of enactment of this ordinance to give guidance on ensuring price controls in modifications. This subsection 21.15(f) shall expire by operation of law one year after the effective date of this ordinance. After the expiration, the City Attorney is authorized to cause this Section to be removed from the Administrative Code.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: /s/ Gus Guibert  
Gustin R. Guibert  
Deputy City Attorney