

1 [Chapter 6 Technical Amendments.]

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3 **Ordinance amending San Francisco Administrative Code Chapter 6 to update section**
 4 **6.2, to add new section 6.9 concerning subcontractor limitation of rights, to add new**
 5 **subsection 6.20(F) for a bidder prequalification process, to add new subsection**
 6 **6.21(A)(10) to allow a specification requirement for contractor work with its own forces,**
 7 **to revise subsection 6.21(C) to allow a department head to reject all bids, to revise**
 8 **subsection 6.22(J) concerning retention of progressive payments, to add a new**
 9 **subsection 6.22(Q) concerning public work contract claims, to revise section 6.41**
 10 **concerning subsequent phase competition for design services, to revise section 6.60**
 11 **emergency contracting procedures, to revise section 6.61 design-build contracting**
 12 **procedures, to revise section 6.62 job order contracting procedures, to revise 6.64 as-**
 13 **needed contracting procedures, and to revise section 6.65 special service contracting**
 14 **procedures.**

15 Note: Additions are *single-underline italics Times New Roman*;
 16 deletions are ~~*strikethrough italics Times New Roman*~~.
 17 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

19 Section 1. The San Francisco Administrative Code is hereby amended by amending
20 Section 6.2, to read as follows:

21 **SEC. 6.2. DEPARTMENTS OR COMMISSIONS EMPOWERED TO CONTRACT FOR**
22 **PUBLIC WORKS OR RELATED PROFESSIONAL SERVICES.**

23 Except as otherwise provided, the departments or commissions empowered on behalf
24 of the City and County of San Francisco to contract for public works or improvements or
25 professional services related to a public work or improvement are the Department of Public

1 Works, the Municipal Transportation Agency, and the Airport, Port, Public Utilities, and
2 Recreation and Park ~~and Public Transportation~~ Commissions. All other department or
3 commissions must procure construction or related professional services through the
4 Department of Public Works.

5 Section 2. The San Francisco Administrative Code is hereby amended by adding
6 Section 6.9, to read as follows:

7 **SEC. 6.9. SUBCONTRACTOR AND SUBCONSULTANT LIMITATION OF RIGHTS.**

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

12 Section 3. The San Francisco Administrative Code is hereby amended by amending
13 Section 6.20, to read as follows:

14 **SEC. 6.20 PUBLIC WORK CONTRACTS ~~SUBJECT TO COMPETITIVE~~**
15 **BIDDING GENERALLY.**

16 **(A) Public Works In Excess of the Threshold Amount.** Except as otherwise
17 provided by the Charter or the Administrative Code, any public work or improvement
18 estimated to cost more than the Threshold Amount shall be performed under contract
19 awarded to the responsible bidder submitting the lowest responsive bid. To split or divide any
20 public work or improvement into two or more contracts for the purpose of evading this section
21 shall constitute official misconduct.

22 **(B) Public Works Less Than or Equal to the Threshold Amount.** Any public work or
23 improvement estimated to cost less than or equal to the Threshold Amount may be performed
24 (a) under contract or (b) by City and County employees. If the work is to be performed under
25 contract, the department shall obtain not fewer than three quotes and shall award the contract

1 to the responsible bidder offering the lowest quotation. If the department is unable to obtain
2 three quotes, the award may be based on the quote or quotes received. The department
3 administering the contract shall maintain records as to whom the request for quotations was
4 directed and the quotations received. It is the policy of the Board of Supervisors for
5 contracting departments to make every effort to eradicate prejudice and favoritism in the
6 award of City contracts. In order to effectuate this policy, the department heads authorized to
7 enter into construction contracts and their staff members shall collaborate with the HRC
8 Director and HRC staff members periodically to create a list of responsible contractors
9 qualified to perform various types of public work for projects estimated to be less than the
10 Threshold Amount, making every effort to include qualified responsible MBE and WBE
11 contractors on that list. The HRC shall be responsible for outreach efforts to make sure that
12 MBE and WBE contractors are aware of the opportunity to be considered for the list. The
13 contract awarding departments or commissions shall be responsible for evaluating and
14 determining whether contractors are responsible and qualified to perform the various scopes
15 of work. The department heads authorized to execute construction contracts shall report
16 quarterly to the Board of Supervisors regarding MBE/WBE inclusion on the list of responsible
17 and qualified contractors for public work contracts estimated to be less than or equal to the
18 Threshold Amount, a description of the scope of work and price for each contract awarded
19 under this section, the name of the contractor awarded the contract and whether the contract
20 was awarded to an MBE or WBE contractor. Such reports shall be referred to a Board
21 committee for public hearing.

22 **(C) Estimates Required.** For public works or improvements in excess of the Threshold
23 Amount, no department head shall recommend a construction contract for or issue an order of
24 award without preparing detailed program requirements and detailed estimates for the work to
25 be performed. There shall be a separate accounting for each work or improvement, which

1 accounting shall include all direct, indirect and supervisory elements of costs chargeable to
2 such work or improvement. All such accounts shall be reported to the Controller and to either
3 the Mayor or the Mayor's Designee or to the board or commission concerned, as appropriate.

4 **(D) Comparison of Bids on Basis of Time of Completion.** The department head
5 concerned is authorized to compare bids on the basis of time of completion and any contract
6 awarded in consideration, in whole or in part, of the relative time estimate of bidders for
7 completion of the work, shall be subject to the provisions of this Chapter.

8 **(E) Time for Award.** Except when a contract is funded by Federal or State grants or
9 funds, all public work contracts shall be awarded within ninety (90) days of the date the City
10 and County receives the bids. Such time may only be extended prior to award of the contract
11 and only upon ~~(a)~~ written agreement of the apparent responsible bidder with the lowest
12 responsive bid and ~~(b)~~ approval by the ~~Mayor, the Mayor's Designee or by resolution of the board~~
13 ~~or commission concerned~~ department head.

14 **(F) Prequalification.** Department heads authorized to execute public work contracts may
15 require that prospective bidders be prequalified to bid either on a specific project or an identified
16 group of projects. The procedure for prequalification is as follows:

17 (1) The department head shall issue a pre-qualification statement. The pre-
18 qualification statement may, at the discretion of the department head, be issued in conformance
19 with Public Contract Code section 20101 and/or the California Department of Industrial
20 Relations Model Pre-Qualification Questionnaire. The department head may, at his/her own
21 discretion, apply the Model guidelines for scorable questions and scoring as the basis for any
22 prequalification. The department head may also, at his/her own discretion, issue the Model
23 with additional questions or may use an alternative questionnaire. The department head
24 responsible for the public work may include in any questionnaire a request for special
25 qualifications, experience or expertise necessary to perform the project or projects for which

1 the prequalification is sought. For any project-specific information required, the department
2 shall set objective scoring criteria and incorporate the criteria into any scoring procedure.

3 (2) The department responsible for the public work shall advertise any prequalification
4 questionnaire in the same manner required for bids, as set forth in section 6.21 of this Chapter.

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

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

17 Section 4. The San Francisco Administrative Code is hereby amended by amending
18 Section 6.21, to read as follows:

19 **SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.**

20 ~~A.(A)~~ Bids. All Advertisements For Bids for construction contracts in excess of the
21 Threshold Amount shall conform to and at a minimum require the following:

22 ~~I.(1)~~ Published Advertisement. The department head authorized to execute the
23 contract for the public work or improvement to be performed shall advertise for
24 competitive bids in at least one local newspaper or periodical of general circulation.

25 Such advertisement shall be published not fewer than ten (10) days prior to bid

1 opening. The department may, in its discretion, include in the published advertisement
2 the amount of the engineer's estimate for the work to be performed.

3 ~~2.~~(2) Award and Certification Required. All published advertisements and
4 Advertisements For Bid shall contain the following language [wording in brackets
5 should be chosen as appropriate to the department]:

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

15 Failure of a department to include such language in a published advertisement
16 or Advertisement For Bids does not give rise to a contract right by a bidder or
17 contractor outside of the requirements of the Charter or Administrative Code of the City
18 and County of San Francisco.

19 ~~3.~~(3) Form of Bid. All bids shall be sealed and directed to the department head
20 advertising for bids, in the format prescribed by the department head with the authority
21 to execute the contract.

22 ~~4.~~(4) Bid Bond. All bids in excess of \$25,000 shall be accompanied by a
23 corporate surety bond, or an irrevocable letter of credit on a bank or trust company
24 doing business and having an office in the State of California, having a combined
25 capital and surplus of at least \$50,000,000, and subject to supervision or examination

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

17 Notwithstanding the above, the bid security requirements for a particular
18 contract may be modified by the department head in accordance with Administrative
19 Code Section 12D.A.9.(A)(4).

20 ~~5.~~(5) Fees. The department head or officer calling for bids may specify in the
21 Advertisement For Bids for any project a nonrefundable fee to be paid by each
22 prospective bidder for each set of bidding documents (including plans and
23 specifications), such fee to defray the cost of reproducing each set of bidding
24 documents as determined by the department head or officer, and all such fees shall be
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1 deposited as an abatement of the expenditure of the appropriation against which the
2 cost of reproducing said bidding documents was charged.

3 ~~6.~~(6) License. The department head shall specify in all Advertisements For Bids
4 and plans for public work projects the classification of the contractor's license which a
5 contractor shall possess at the time bids are submitted. Bidders and their
6 subcontractors are required to be properly licensed at the time of bid.

7 ~~7.~~(7) Qualifications. The department head responsible for the public work shall
8 require from all bidders information concerning their experience and financial
9 qualifications and shall take such information into consideration in the award of any
10 contract. At a minimum the department head shall require (1) information concerning
11 the contractor's experience, financial qualifications and ability to perform the terms and
12 conditions of the contract and (2) information as to whether the contractor possesses,
13 or can obtain in time to perform the contract, the necessary equipment. In the event
14 that a bidder fails to provide such information within fourteen calendar days of bid
15 opening, or as otherwise required in the Advertisement For Bids, the department head
16 could find that the bidder is refusing to enter into the contract, resulting in a forfeiture of
17 the bidder's bid bond.

18 ~~8.~~(8) Business Tax Registration Certificate. All Advertisements For Bids shall
19 require that bidders submit proof of a current Business Tax Registration Certificate.
20 Failure of a bidder to provide such proof within fourteen (14) calendar dues of bid
21 opening, or as otherwise required in the Advertisement For Bids, could, at the
22 discretion of the department head, constitute a refusal to enter into the contract and
23 result in a forfeiture of the bid bond.

24 ~~9.~~(9) Designation of Subcontractors; Subcontracting and Subletting. All bidders
25 shall designate their subcontractors in accordance with and shall be subject to the

1 California Subletting and Subcontracting Fair Practices Act, at Public Contract Code
2 §4100 et seq., as amended from time-to-time. In addition to the penalties provided by
3 Public Contract Code §4100 et seq., violation of this subsection may be grounds for a
4 determination of nonresponsibility under Article V of this Chapter.

5 (10) Work To Be Performed by General Contractor. The Advertisement For Bids may
6 specify the portion of work which must be performed by the General Contractor using his/her
7 own forces. The specification may require the General Contractor to perform with his/her own
8 forces up to 25% of the base contract work. Bidders must certify with their bids that, if
9 awarded the contract, they will perform with their own forces the specified percentage of the
10 total bid price (excluding alternates).

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

16 ~~C.(C)~~ Right to Reject Any or All Bids or Quotes. The department head shall have the
17 right to reject any or all bids or quotes for any reason or no reason. All Advertisements For
18 Bids shall reserve this right, but failure to make such reservation shall not abrogate the right to
19 reject. ~~For public work contracts in excess of the Threshold Amount, the department head shall obtain~~
20 ~~the approval of the Mayor or the Mayor's Designee or the board or commission as appropriate in the~~
21 ~~rejection of bids.~~

22 ~~D.(D)~~ Bid Protests. Only a bidder may submit a bid protest. The department head
23 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
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1 not require that bid protests be submitted fewer than five (5) business days after the date bids
2 are due.

3 Section 5. The San Francisco Administrative Code is hereby amended by amending
4 subsection (J) and adding a new subsection (Q) to Section 6.22, to read as follows:

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

7 All construction contracts awarded by the City and County of San Francisco shall contain the
8 following minimum terms and conditions:

9 (A) **Bonds.** Before the execution of any contract for public works or improvements, the
10 department head authorized to execute such contracts shall require the successful bidder to
11 file corporate surety bonds for the faithful performance thereof and to guarantee the payment
12 of wages for services engaged and of bills contracted for material, supplies and equipment
13 used in the performance of the contract. The bond shall be for a sum not less than 100
14 percent of the award.

15 The City and County of San Francisco, acting through its Human Rights Commission
16 (“HRC”), intends to provide guarantees to private bonding assistance companies and financial
17 institutions in order to induce those entities to provide required bonding and financing to
18 eligible contractors bidding on and performing City public work contracts. This bonding and
19 financial assistance program is subject to the provisions of Administrative Code Section
20 12D.A.9.

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

1 Every contractor and subcontractor shall comply with the provisions of California Labor
2 Code section 3700. Prior to commencing the performance of work under any public work
3 contract, the contractor and all of its subcontractors file with the awarding department a
4 certificate of insurance against liability for workers compensation or proof of self-insurance in
5 accordance with the provisions of the California Labor Code.

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

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

15 (D) **Assignment.** No contract shall be assigned except upon the recommendation of
16 the department head concerned and with the approval of the Mayor or the Mayor's designee,
17 relative to the department under the Mayor's jurisdiction, or the approval of the board or
18 commission concerned for departments not under the Mayor.

19 (E) **Prevailing Wages.**

20 (1) **Generally.** All contractors and subcontractors performing a public work or
21 improvement for the City and County of San Francisco shall pay its workers on such projects
22 the prevailing rate of wages as provided below. For the purpose of prevailing wage
23 requirements only, the definition of a public work shall include those public works or
24 improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a)
25 any trade work performed at any stage of construction (including preconstruction work) and

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

3 (2) **Leased Property Included.** For the limited purposes of this subsection, a "public
4 work or improvement" also means and includes any construction work done under private
5 contract when all of the following conditions exist:

6 (a) The construction contract is between private persons; and

7 (b) The property subject to the construction contract is privately owned, but upon
8 completion of the construction work will be leased to the City and County of San Francisco for
9 its use; and

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

16 (3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of
17 Supervisors, from time to time and at least once during each calendar year, to fix and
18 determine the prevailing rate of wages as follows:

19 On or before the first Monday in November of each year, the Civil Service Commission
20 shall furnish to the Board of Supervisors data as to the highest general prevailing rate of
21 wages of the various crafts and kinds of labor as paid in private employment in the City and
22 County of San Francisco, plus "per diem wages" and wages for overtime and holiday work.
23 The Civil Service Commission shall provide the Board of Supervisors data for "per diem
24 wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time
25 to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the

1 prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the
2 Board of Supervisors shall remain in force and shall be deemed to be the highest general
3 prevailing rate of wages paid in private employment for similar work, until the same is
4 changed by the Board of Supervisors. In determining the highest general prevailing rate of
5 wages per diem wages and wages for overtime and holiday work, as provided for in this
6 section, the Board of Supervisors shall not be limited to the consideration of data furnished by
7 the Civil Service Commission, but may consider such other evidence upon the subject as the
8 Board shall deem proper and thereupon base its determination upon any or all of the data or
9 evidence considered.

10 In the event that the Board of Supervisors does not fix or determine the highest general
11 prevailing rate of wages in any calendar year, the rates established by the California
12 Department of Industrial Relations for such year shall be deemed adopted.

13 (4) **Specifications to Include Wage Rate.** The department head authorized to execute
14 a construction contract under this Chapter shall include in the contract specifications, or make
15 available in the offices of the department or at the job site, a detailed statement of the
16 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the
17 department issued the Advertisement For Bids on the contract. The contractor shall agree to
18 pay to all persons performing labor in and about the public work or improvement the highest
19 general prevailing rate of wages as determined pursuant to this Chapter, including wages for
20 holiday and overtime work. If the specifications do not include the prevailing rate of wages,
21 the specifications shall include a statement that copies of the prevailing rate of wages as fixed
22 and determined by the Board of Supervisors are on file at the department's principal office or
23 at the job site and shall be made available to any interested party on request.

24 (5) **Subcontractors Bound by Wage Provisions.** Every contract for any public work or
25 improvement shall also contain a provision that the contractor shall insert in every subcontract

1 or other arrangement which he or she may make for the performance of any work or labor on
2 a public work or improvement. This provision shall be that the subcontractor shall pay to all
3 persons performing labor or rendering service under said subcontract or other arrangement
4 the highest general prevailing rate of wages as fixed and determined by the Board of
5 Supervisors for such labor or services.

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

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

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

6 Should the department head responsible for the public work or the Labor Standards
7 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
8 requirements of this subsection, the department head or the Labor Standards Enforcement
9 Officer shall issue written notification to the contractor or subcontractor mandating compliance
10 within not fewer than ten calendar days from the date of the notification. Should the
11 contractor or subcontractor fail to comply as required in the notification, the department head
12 who executed the contract or the Labor Standards Enforcement Officer may impose a penalty
13 of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon
14 the request of the responsible department head or the Labor Standards Enforcement Officer,
15 the Controller shall withhold these penalties from progress payments then due or to become
16 due.

17 (7) **Additional Required Contract Provisions.** Every public works contract shall
18 contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards
19 Enforcement Officer and other City employees and agents authorized to assist in the
20 administration and enforcement of the prevailing wage requirements and other labor
21 standards imposed on public works contractors by the Charter and Chapter 6 of the San
22 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
23 Enforcement Officer and his or her designees, in the performance of their duties, shall have
24 the right to engage in random inspections of job sites and to have access to the employees of
25 the contractor, employee time sheets, inspection logs, payroll records and employee

1 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
2 employees are present on the job site; (4) the contractor shall prominently post at each job-
3 site a sign informing employees that the project is subject to the City's prevailing wage
4 requirements and that these requirements are enforced by the Labor Standards Enforcement
5 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
6 contractor as he or she reasonably deems necessary to determine compliance with the
7 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
8 works contractors. Failure to comply with these requirements may result in penalties and
9 forfeitures consistent with California Labor Code section 1776(g), as amended from time to
10 time.

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

12 (a) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or neglect to
13 pay to the several persons who shall perform labor under any contract, subcontract or other
14 arrangement on any public work or improvement as defined in this Chapter the highest
15 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this
16 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said
17 wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City
18 and County of San Francisco back wages due plus the penal sum of \$50 per day for each
19 laborer, workman or mechanic employed for each calendar day or portion thereof, while they
20 shall be so employed and not paid said highest general prevailing rate of wages, and in
21 addition shall be subject to the penalties set forth in Article V of this Chapter, including
22 debarment.

23 (b) **Enforcement.** It shall be the duty of the officer, board or commission under whose
24 jurisdiction said public work or improvement is being carried on, made or constructed, when
25 certifying to the Controller any payment which may become due under said contract, to deduct

1 from said payment or payments the total amount of said forfeiture provided for in this
2 subsection. In doing so, the department head must also notify in writing the Labor Standards
3 Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also,
4 upon written notice to the department head who is responsible for the project, certify to the
5 Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.
6 Certification of forfeitures under this subsection shall be made only upon an investigation by
7 the responsible department head or the Labor Standards Enforcement Officer and upon
8 written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The
9 Controller, in issuing any warrant for any such payment, shall deduct from the amount which
10 would otherwise be due on said payment or payments the amount of said forfeiture or
11 forfeitures as so certified.

12 (c) **Recourse.** If the contractor or subcontractor disagrees with the forfeiture as so
13 provided in the foregoing subparagraph (b), then within fifteen working days of the date of the
14 notification as provided for above, the contractor or subcontractor may request a hearing
15 before the City Administrator. The City Administrator, or his/her designee, shall consider the
16 evidence provided by the contractor or subcontractor and the responsible department head
17 and/or the Labor Standards Enforcement Officer. The hearing shall occur within forty-five
18 days of the request, unless all parties agree to an extended period. The determination of the
19 City Administrator, or his/her designee, shall be final. The contractor or subcontractor may
20 appeal such determination only by action at law for breach of contract.

21 (d) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as provided
22 in the foregoing paragraphs until such time as either the contractor or subcontractor has
23 conceded to the forfeiture or, in the event of an objection, there is a determination no longer
24 subject to judicial review. The Controller shall then distribute the amounts withheld in the
25 following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to

1 distribute back wages withheld to the individual workers identified as not having been paid the
2 proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the
3 general fund of the City and County of San Francisco; (3) the Controller shall hold the balance
4 of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
5 despite his/her best efforts, cannot locate; funds so held for two years or more shall be
6 dedicated to the enforcement of the prevailing wage requirements.

7 (F) **Hours and Days of Labor.**

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

16 (2) **Noncompliance - Penalties and Forfeiture.** Any contractor or subcontractor who
17 shall violate any of the provisions of this subsection shall be liable for the same penalties and
18 forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits shall be
19 applicable for each laborer, mechanic or artisan employed for each calendar day or portion
20 thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more
21 than the days and hours specified herein. The provisions of this subsection shall be made a
22 part of all contracts and subcontracts for the construction of any public work or improvement.

23 (3) **Contracts Outside City and County.** In the event that any public work or
24 improvement is to be constructed outside of the City and County of San Francisco and at such
25 a distance therefrom that those engaged in performing labor on said public work or

1 improvement must under ordinary conditions remain at or near the site of said work or
2 improvement when not actually engaged in the performance of labor thereon, then the officer,
3 board or commission responsible for the construction of said public work or improvement may,
4 in making specifications or letting contracts therefor, make provision therein for days and
5 hours of labor beyond the limitations provided for in Section 6.22(F) of this Chapter; but not to
6 exceed eight hours in any one calendar day, or six days in any calendar week. In the event
7 that emergency conditions shall arise, making a change advisable during the performance of
8 any such contract, or any portion thereof, the hours and days of labor may be extended
9 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the
10 written authority of the officer, board or commission awarding such contract. Failure of the
11 contractor to perform such contract within the time provided shall not constitute an
12 emergency.

13 (G) **Local Hiring.**

14 (1) **Contract Requirements.** All construction contracts for public works or
15 improvements to be performed within the boundaries of the City and County of San Francisco
16 shall contain the following provisions:

17 Contractor agrees to make a good-faith effort, with the assistance of community organizations
18 designated by the City or local labor union hiring halls, to hire qualified individuals who are
19 residents of the City and County of San Francisco to comprise not less than 50% of each
20 contractor's total construction work force, measured in labor work hours, and contractor
21 promises to give special preference to minorities, women and economically disadvantaged
22 individuals.

23 Contractor shall keep, and provide to the City, an accurate record showing the name, place of
24 residence, hours employed and per diem pay of each person employed by the contractor,
25 including full-time, part-time, permanent and temporary employees.

1 Contractor shall keep, and provide to the City, an accurate record describing in detail
2 contractor's good-faith efforts to secure employment of residents of the City and County of
3 San Francisco.

4 A failure to abide by these contract provisions may result in the imposition of sanctions and
5 penalties, including those provided for in San Francisco Administrative Code Section 6.80.

6 (2) **Definitions.**

7 "Qualified individual" shall mean an individual who (A) is eligible for a certified
8 apprenticeship program in an applicable trade; (B) has completed a certified apprenticeship
9 program in an applicable trade; or (C) has completed comparable time in an applicable trade.

10 "Resident of the City and County of San Francisco" shall mean an individual who is
11 domiciled, as defined by Section 200(b) of the California Election Code, within the boundaries
12 of the City and County during the entire time of the performance of the contract and who can
13 verify his or her domicile, upon request of the contractor or City, by producing documentation
14 such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid
15 California driver's license or identification card, and/or any other similar, reliable evidence that
16 verifies that the individual is domiciled within the City and County of San Francisco.

17 "Economically disadvantaged" shall mean an individual who has been unable to secure
18 employment in his or her trade for more than 20 working days in the past six months, or
19 whose annual maximum income falls within the income limits established by the Mayor's
20 Office of Community Development for the Community Development Block Grant (CDBG)
21 programs.

22 (3) **Enforcement.** The Human Rights Commission shall be the City agency charged
23 with the monitoring and enforcement of the provisions of this subsection.

24 (H) **Modifications—General Requirements.** If it becomes necessary in the
25 prosecution of any public work or improvement under contract to make alterations or

1 modifications or to provide for extras, such alterations, modifications or extras shall be made
2 only on written recommendation of the department head responsible for the supervision of the
3 contract, together with the approval of the Mayor or the Mayor's designee or the board or
4 commission, as appropriate to the department, and also the approval of the Controller, except
5 as hereafter provided. The Mayor or the board or commission, as appropriate to the
6 department, may delegate in writing the authority to approve such alterations, modifications or
7 extras to the department head, except as provided below. The Controller may delegate in
8 writing the authority to encumber funds from prior appropriations for such alterations,
9 modifications or extras to the department head prior to the certification for payment. Such
10 authority, when granted, will clearly state the limitations of the changes to be encompassed.

11 (1) **Increasing or Decreasing Price.** Alterations, modifications or extras in any
12 contract, which will increase or decrease the contract cost or scope, may be made or allowed
13 only on the written recommendation of the department head responsible for the supervision of
14 the contract stating the amount and basis for such increase or decrease. For any cumulative
15 increase or decrease in price in excess of ten percent of the original contract price or scope,
16 the department head shall obtain the approval of the Mayor or Mayor's designee or the board
17 or commission as appropriate and also the approval of the Controller notwithstanding any
18 delegation provided for above.

19 (2) **Extensions of Time.** Upon finding that work under a construction contract cannot
20 be completed within the specified time because of an unavoidable delay as defined in the
21 contract, the department head may extend the time for completion of the work. If the
22 cumulative extensions of time exceeds ten percent of the original contract duration, the
23 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
24 commission, as appropriate to the department notwithstanding any delegation provided for
25

1 above. All time extensions shall be in writing, but in no event shall any extension be granted
2 subsequent to the issuance of a certificate of final completion.

3 (a) **Time Extension Not Waiver of City's Rights.** The granting of an extension of time
4 because of unavoidable delays shall in no way operate as a waiver on the part of the City and
5 County or the department head, Mayor, board or commission of the right to collect liquidated
6 damages for other delays or of the right to collect other damages or of any other rights to
7 which the City and County is entitled.

8 (b) **No Extension Granted When Contract Based on Time Estimates.** When any
9 award of contract has been made in consideration, in whole or in part, of the relative time
10 estimates of bidders for the completion of the work, no extension of time may be granted on
11 such contract beyond the time specified for completion, unless the liquidated damages for
12 each day the work is uncompleted beyond the specified time shall be collected; provided,
13 however, that this shall not apply to unavoidable delays due to acts of God.

14 (c) **Avoidable and Unavoidable Delay; Limitation of Damages for Delay.** The
15 department head administering the public work shall have the authority to specify in the
16 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall
17 not pay damages or compensation of any kind to a contractor because of delays in the
18 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
19 the City and County may pay for (1) delays caused to the contractor by the City and County;
20 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
21 delays will be compensated for only under the conditions specified in the contract.

22 (d) **Notice of Delay Required.** The contractor shall promptly notify the department
23 head in writing, of all anticipated delays in the prosecution of the work and, in any event,
24 promptly upon the occurrence of a delay, the notice shall constitute an application for an
25 extension of time only if the notice requests such extension and sets forth the contractor's

1 estimate of the additional time required together with a full recital of the causes of unavoidable
2 delays relied upon. The department head may take steps to prevent the occurrence or
3 continuance of the delay, may classify the delay as avoidable or unavoidable and may
4 determine to what extent the completion of the work is delayed thereby.

5 (I) **Liquidated Damages.** Any contract may provide a time within which the contract
6 work, or portions thereof, shall be completed and may provide for the payment of agreed
7 liquidated damages to the City and County for every calendar or working day thereafter during
8 which such work shall be uncompleted.

9 (J) **Retention of Progressive Payments.** Any contract may provide for progressive
10 payments, if the Advertisement For Bids shall so specify. No progressive payments under
11 any contract shall be made which, with prior payments, shall exceed in amount 90 percent of
12 the value of the work and labor and materials furnished. However, if the department head
13 responsible for the public work determines that the contract is 50 percent or more complete,
14 that the contractor is making satisfactory progress and that there is no specific cause for
15 greater withholding, the department head may authorize that either (a) the amount held in retention
16 be liquidated to an amount not less than 5% of the contract price, including all modifications, and that
17 future progressive payments may not exceed 95% of the value of the work and labor and materials
18 furnished or (b) once the amount held in retention equals an amount not less than 10% of the contract
19 price, including all modifications, that no further retention be deducted from progressive payments.
20 ~~progressive payments may be made not to exceed in amount the lesser of either 95 percent of the value~~
21 ~~of the work and labor and material furnished or 95 percent of the contract price.~~ When the
22 department head responsible for the public work determines that the contract is 95 percent
23 complete, ~~funds withheld may be reduced to an amount equal to 200 percent of the estimated value of~~
24 ~~the work yet to be completed as determined by the department head.~~ the department shall make no
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1 further payments to the contractor until the department head responsible for the public work
2 determines the project to be 100% complete.

3 (K) **Inspection and Acceptance of Completed Work; Final Payment.** The
4 department head authorized to execute any contract for public works or improvements shall
5 be responsible for the inspection and acceptance of such work on completion. Such
6 acceptance shall be in writing and shall include the certificate of the department head
7 concerned that the work covered by the contract has been fully and satisfactorily completed in
8 accordance with the plans and specifications therefor. Receipt of copy of such acceptance in
9 writing shall constitute the Controller's authority to complete any payments due the contractor
10 under the contract; provided that the Controller may make such additional investigation or
11 inspection as is provided by Administrative Code Section 10.07.

12 (L) **Termination for Convenience.** In all contracts for the construction of any public
13 work or improvement, the department head authorized to execute any contract for any public
14 work or improvement may include in the specifications setting forth the terms and conditions
15 for the performance of the contract a provision that the City and County may terminate the
16 performance of work under the contract whenever the department head shall determine, with
17 the approval of the Mayor, the Mayor's designee or the board or commission concerned, that
18 such termination is in the best interest of the City and County. Any such termination shall be
19 effected by delivery to the contractor of a notice of termination specifying the extent to which
20 performance of work under the contract is terminated and the date upon which such
21 termination becomes effective. The department head is hereby authorized to include within
22 such construction contract the appropriate language to implement this subsection.

23 (M) **Violations of Chapter 6; False Claims.** Every public work contract performed at
24 the expense of the City and County of San Francisco, or the cost of which is paid for out of
25 monies deposited in the treasury of the City and County, whether directly awarded or

1 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
2 other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at
3 Section 6.80) of this Chapter, relating to administrative debarments and false claims. The
4 failure to include such reference or incorporation shall not in any way abrogate the rights of
5 the City and County under Article V of this Chapter.

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

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

17 (P) **Safety.** All construction contracts awarded under this Chapter shall require the
18 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
19 Health statutes and regulations.

20 (Q) Claims. The City shall consider only those claims for additional payment under a public work
21 contract that are certified and that conform to the contract requirements for claims, pricing, and
22 schedule.

23 (1) Claims by Contractors. The Contractor shall certify under penalty of perjury that (a) the
24 claim is made in good faith; (b) the supporting data are accurate and complete to the best of
25 Contractor's knowledge and belief; and (c) the amount request accurately reflects the Contract

1 adjustment for which the Contractor believes the City is liable. An individual or officer authorized to
2 act on behalf of the Contractor shall execute the certification.

3 (2) Claims by Subcontractors. Subcontractors at any tier are not third-party beneficiaries of
4 any Contract awarded under this Chapter. The City shall not consider a direct claim by any
5 subcontractor. A Contractor presenting to the City any claim on behalf of a subcontractor must certify
6 the subcontractor's claim in the same manner the Contractor would certify its own claim under the
7 foregoing paragraph (1).

8 Section 5. The San Francisco Administrative Code is hereby amended by amending
9 Subsection 6.41(A), to read as follows:

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

11 All requests for competitive proposals or qualifications for temporary design, consultant
12 or construction management services shall conform to and at a minimum require the
13 following:

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

25

1 Section 6. The San Francisco Administrative Code is hereby amended by amending
2 Section 6.60, to read as follows:

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

4 (A) Declaration of Emergency. The Board of Supervisors may declare an emergency
5 and may direct any department head to perform any repair or other emergency work in any
6 manner the Board determines to be in the best interests of the City and County of San
7 Francisco.

8 (B) Other Determinations of Emergency. In an actual emergency as defined or
9 described below, the repair, reconditioning or other work or contract necessitated by the
10 emergency may be executed by the department head responsible for such work in the most
11 expeditious manner, in accordance with the procedures set forth below.

12 (C) Emergency Defined. For purposes of this Chapter, an “actual emergency” means ~~a~~
13 ~~sudden, unforeseeable and unexpected~~ an occurrence involving a clear and imminent danger,
14 demanding immediate action to prevent or mitigate loss of or damage to, life, health, property,
15 or essential public services. An “actual emergency” shall also mean the discovery of any
16 condition involving a clear and imminent danger to public health or safety, demanding
17 immediate action, ~~which discovery was sudden and unforeseen and which would not have been made~~
18 ~~in the regular course of business~~. Examples of an actual emergency may include, but are not
19 limited to, the following:

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

22 (2) The breakdown of any plant, equipment, structure, street or public work
23 necessitating immediate emergency repair or reconditioning to safeguard the lives or property
24 of the citizens; or the property of the City and County; or to maintain the public health or
25 welfare; and

1 (a) Including the installation, repair, construction and alteration of crossings and switch
2 work and special work in connection therewith at street and other railway crossings and at
3 street intersections when the same is to be done by or for the Public Transportation
4 Commission; or

5 (b) Including the installation, repair, construction and alteration of the fire alarm, police
6 communication and traffic signal systems, when the same is to be performed by or for the
7 Department of Telecommunications and Information Services or the Department of Parking
8 and Traffic; or

9 (c) Including the work of making connections, installing gate valves, installing or
10 transferring services and performing such other work therewith to existing water pipes when
11 the same is to be done by or for the Public Utilities Commission and when such work will
12 leave one or more fire hydrants or water consumers without water; or

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

17 (D) Approvals Required. If the estimated cost of the emergency work is less than or
18 equal to \$250,000, the department head may proceed with the work without additional
19 approvals. If the estimated cost of the emergency work exceeds \$250,000, the department
20 head prior to authorizing the commencement of the work, must first secure the approval in
21 writing of the Mayor or the Mayor's designee or the president of the board or commission
22 concerned as appropriate to the department. For all cases where the cost of the emergency
23 work exceeds \$250,000, the department head shall also obtain the approval of the Board of
24 Supervisors.

1 If the emergency does not permit the required approvals to be obtained before work is
2 commenced or the contract entered into, such approvals shall be obtained as soon thereafter
3 as it is possible to do so. In such event, the department head concerned shall notify the
4 Controller immediately of the work involved or the contract entered into and the estimated cost
5 thereof and shall notify the Board of Supervisors not more than seven days after work has
6 been commenced.

7 (E) Exemptions. Contracts awarded in accordance with this section under emergency
8 circumstances as described and defined above are exempt from the requirements of this
9 Chapter and Chapters 12A, 12B, 12C and 12D.A. However, the department head must
10 comply with the certification requirement of Administrative Code Section 12D.A.15(A)(2). It is,
11 however, the policy of the Board of Supervisors for contracting departments to make every
12 effort to comply with the provisions of Chapters 12A, 12B, 12C and 12D.A. In order to
13 effectuate this policy, the department heads authorized to enter into construction contracts
14 and their staff members shall collaborate with the HRC Director and HRC staff members
15 periodically to create a list of responsible contractors qualified to perform various types of
16 emergency work, making every effort to include qualified, responsible MBE and WBE
17 contractors on that list. The HRC shall be responsible for outreach efforts to make sure that
18 MBE and WBE contractors are aware of the opportunity to be considered for the list. The
19 contract awarding departments or commissions shall be responsible for evaluating and
20 determining whether contractors are responsible and qualified to perform the various scopes
21 of work. The department heads of departments authorized to execute construction contracts
22 shall report quarterly to the Board of Supervisors regarding MBE/WBE inclusion on the list of
23 responsible and qualified contractors for emergency contracts, a description of each
24 emergency contract awarded, the reason why the work was performed under these
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1 emergency procedures, and whether the emergency contract was awarded to an MBE or
2 WBE contractor. Such reports shall be referred to a Board committee for public hearing.

3 (F) Indemnification For Emergency Contracts. Department heads responsible for any
4 emergency work are hereby authorized to (a) waive any requirement that a contractor
5 performing such emergency work indemnify the City and County and/or (b) enter into a
6 contract which provides that the City and County indemnify such contractor, except that the
7 City and County shall in no event indemnify a contractor for the contractor's gross negligence
8 or willful misconduct.

9 Section 7. The San Francisco Administrative Code is hereby amended by amending
10 Section 6.61, to read as follows:

11 **SEC. 6.61. DESIGN-BUILD.**

12 The department heads authorized to execute contracts for public work projects are
13 authorized to seek proposals from qualified private entities ("developers") for design-build
14 construction and/or financing of public work projects under the following conditions:

15 (A) Before the request for proposals is issued, the department head shall determine
16 that a design-build program is necessary or appropriate to achieve anticipated cost savings or
17 time efficiencies, or both, and that such a process is in the public's best interest. *The*
18 *department head shall notify the Board of Supervisors of his or her intention to seek design-build*
19 *and/or finance proposals by generally describing the proposed program and the reasons for it in a*
20 *letter to the Clerk of the Board.*

21 (B) 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
23 solicitation of design-build and/or finance proposals. If the public work project is not for the
24 use or benefit of a department under the jurisdiction of a commission, then the *Mayor*City
25 Administrator must first approve this process.

1 (C) Developers submitting design-build proposals shall offer evidence of qualifications
2 in the field of design and construction of similar projects. The department head may request
3 developers to create partial designs, which will be evaluated as part of the selection process.

4 (D) Developers submitting private financing proposals shall provide evidence of the
5 commitment of funds necessary to privately finance the proposed projects to completion.

6 (E) Developers shall comply with all applicable requirements set forth in San Francisco
7 Administrative Code Chapters 12B, 12C and 12D.A. The request for proposals shall require
8 developers to demonstrate good faith efforts to utilize MBE and WBE
9 subcontractors/subconsultants pursuant to San Francisco Administrative Code Chapter
10 12D.A.

11 (F) The department head shall evaluate developers' proposals and rank the proposals
12 to determine which provides the best overall value to the City and County in regard to the
13 following criteria: (1) plan for expediency in completing the proposed project; (2) lifecycle cost
14 to the City and County; (3) qualifications of the developers to design-build and, if applicable,
15 finance the proposed project; (4) qualifications of the developers to construct the proposed
16 project; (5) quality of design proposal; (6) compliance with the goals and requirements of
17 Administrative Code Chapters 12B, 12C and 12D.A; (7) commitment to meet the City hiring
18 goals (e.g., welfare-to-work); (8) if private financing is sought, commitment of funds, cost of
19 funds and terms to the City; and (9) compliance with all the requirements and criteria
20 established by the Department head in the request for proposals. The cost criterion shall
21 constitute not less than sixty percent of the overall evaluation.

22 (G) The competitive bid requirements of this Chapter shall not apply to the selection of
23 developers under this Section 6.61.

24 (H) Subject to paragraph (I) below, the department head is authorized to negotiate all
25 proposed contracts necessary or appropriate for the proposed project with the highest ranked

1 developer. If the department head determines that contract negotiations with the highest-
2 ranked developer are not proceeding satisfactorily, the department head may terminate such
3 negotiations and enter into negotiations with the next-highest-ranked developer. If the
4 department head deems a contract to have successfully been negotiated with a developer,
5 the department head may then recommend such proposed contract to the Board of
6 Supervisors for approval. The City shall retain the absolute discretion to determine not to
7 proceed with any proposed project, which right may be exercised without liability to
8 developers for costs incurred during the entire proposal and negotiation process, and such
9 rights shall be reserved in all requests for proposals.

10 (I) All final contracts for a public work project that involve a design-build and/or finance
11 program shall be ~~subject to approval of the Board of Supervisors by resolution~~ subject to the award
12 provisions of Article I of this Chapter. If the proposed contract involves a financing program, the
13 Capital Improvement Advisory Committee must review and report on the proposed project
14 before the ~~Board of Supervisors considers the proposed resolution concerning the contract~~ the board,
15 commission, Mayor or his/her designee takes any action with respect to award of the contract.

16 (J) All actions heretofore taken by a department head consistent with the provisions of
17 this section are hereby approved.

18 Section 8. The San Francisco Administrative Code is hereby amended by amending
19 Subsection 6.62(H), to read as follows:

20 **SEC. 6.62. JOB ORDER CONTRACTS.**

21 The job order contracting system (“JOC”) provides for an indefinite quantity contract
22 with a predefined set of bid items that are assigned on a periodic or task order basis for the
23 performance of public work maintenance, repair and minor construction projects. The
24 department heads authorized to execute contracts for public work projects are authorized to
25 utilize JOC according to the procedures set forth below.

1 (A) Each JOC contract is to be advertised for competitive bids in accordance with the
2 procedures set forth in this Chapter and awarded to the responsible bidder who submits the
3 lowest responsive bid.

4 (B) The Advertisement For Bids shall include unit prices and detailed technical
5 specifications for each construction task contemplated to be performed under the JOC
6 contract. Each task item shall include direct costs for material, equipment and labor.
7 Construction tasks shall be grouped by trade.

8 (C) The Advertisement For Bids for a JOC contract shall contain the City's estimate
9 regarding the percentage of work under the JOC contract that will be performed by each
10 trade. The Human Rights Commission shall set goals for MBE/WBE subcontractor
11 participation in accordance with Administrative Code Chapter 12D.A. Calculation of whether a
12 contractor's bid has met the goals will be based on the City's estimate of the amount of work
13 that will be performed by each trade.

14 (D) Contractor's bid shall identify by trade group which tasks will be performed by
15 contractor and which tasks will be performed under subcontract. Contractor shall identify in its
16 bid all subcontractors to be utilized, including the subcontractors' name, business tax
17 registration certificate number, license number and the location of the place of business of
18 each subcontractor. Contractor agrees that it is qualified for and will perform with its own
19 forces work of all trades for which a subcontractor is not listed in the bid. This paragraph
20 supercedes the listing requirements of Section 6.21(J). Substitutions of JOC subcontractors
21 shall be in accordance with California Public Contract Code Section 4107. Penalties set forth
22 in Administrative Code Sections 6.22 and 6.80 shall apply to JOC contracts for violation of this
23 section.

24 (E) Contractors submitting bids on the JOC contract shall state in their bids an
25 adjustment on a percentage basis either increasing or decreasing the unit prices for all

1 construction tasks set forth in the bid documents. There may be a single adjustment factor
2 that applies to all tasks. For example, an adjustment factor of 25% below the unit prices
3 stated in the bid documents would be bid as .75. All of the contractor's profit, overhead and
4 indirect costs shall be included in the adjusted unit prices.

5 (F) The Advertisement For Bids and the contract specifications shall contain a maximum
6 dollar amount of the JOC contract, which maximum amount shall not exceed three million
7 dollars. The cumulative modifications to a JOC contract shall result in a contract sum not to
8 exceed one hundred-fifty percent of the original contract amount.

9 (G) JOC contracts shall provide for an expiration term of not more than three years,
10 including all modifications.

11 (H) Projects will be assigned under the JOC contract on a work order basis at the sole
12 discretion of the department head concerned. No work order shall exceed \$200,000, including all
13 modifications. A department may issue or modify a work order to exceed \$200,000 only upon the
14 department head's written determination establishing the urgency of the work and the justification for
15 proceeding under this Section 6.62 rather than by formal bid.

16 Section 9. The San Francisco Administrative Code is hereby amended by amending
17 Section 6.64, to read as follows:

18 **SEC. 6.64. AS-NEEDED CONTRACTS.**

19 A department head authorized to execute public work and professional service
20 contracts may issue an Advertisement For Bids for construction services or a request for
21 proposals or qualifications for professional services on an as-needed basis, with definite or
22 indefinite quantities of work. Work shall be assigned on a contract service order basis. None of the
23 requirements of this Chapter or Administrative Code Chapters 12B, 12C or 12D.A are waived
24 for as-needed contracts.

25

1 All as-needed contracts shall provide for a not-to-exceed price and an expiration term
2 of not more than ~~three~~five years, including all modifications. However, the department head shall
3 not issue any new contract service order after three years from the date of award. Additionally, the
4 cumulative modifications to an as-needed contract shall result in a contract sum not to exceed
5 one hundred-fifty percent of the original contract amount. Before any item of work is
6 commenced under an as-needed contract, the cost of such work must be certified by the
7 Controller as to the availability of funds. No contract service order or multiple contract service
8 orders for any single public work, whether in one phase or multiple phases, shall cumulatively exceed
9 \$200,000, including all modifications.

10 The department heads authorized to execute public work and professional service
11 contracts shall report quarterly to the Board of Supervisors regarding the department's use of
12 as-needed contracts and the actual amount of participation of MBE and WBE subcontractors
13 or subconsultants that were listed on prime contractors' bid(s) or proposal(s) to determine
14 whether MBE/WBE subcontracting participation goals are being met on as-needed contracts.
15 Such reports shall be referred to a Board committee for public hearing.

16 Section 10. The San Francisco Administrative Code is hereby amended by amending
17 Section 6.65, to read as follows:

18 **SEC. 6.65. CONTRACTING FOR ELEVATOR, ESCALATOR, SECURITY OR FIRE**
19 **ALARM SYSTEMS INSPECTION, MAINTENANCE AND REPAIR WORK.**

20 ~~The department heads of departments empowered to contract for public works or improvements~~
21 ~~are authorized to execute contracts for elevator, escalator, security or fire alarm service inspection,~~
22 ~~maintenance and repair work (“special services”) in accordance with the following procedures:~~

23 ~~(A) The competitive bid requirements of this Chapter shall not apply to the procurement of~~
24 ~~contracts for special services. The department head may negotiate contracts for the service of existing~~
25 ~~elevators, escalators or fire alarm systems with the manufacturer of the elevators to be serviced or may~~

1 ~~seek bids for such work. Prior to commencing such negotiations, the department head must first obtain~~
2 ~~approval of the Mayor or the Mayor's designee or the board or commission, as appropriate.~~

3 ~~(B) The determination for award of special service contracts shall be based on expertise, quality~~
4 ~~of work and economical pricing.~~

5 ~~(C) Special service contracts shall provide for an expiration term of not more than three years.~~
6 ~~At the end of the contract period, the department head may elect to renew the contract for a period of~~
7 ~~not more than two years or to initiate a new procurement process for special services pursuant to this~~
8 ~~subsection.~~

9 Department heads who are authorized to execute public work contracts under this Chapter are
10 hereby authorized to award contracts for the inspection, maintenance and repair services of existing
11 elevator, escalator, security or fire alarm systems ("special services") in accordance with the following
12 procedures:

13 (A) The department shall award master agreement contracts, on an "if-and-as-needed" basis to
14 special service providers who can establish experience, expertise, and quality of work. A potential
15 special service provider may apply for a master agreement under this section by providing the
16 department with a statement of its experience and qualifications and other information as requested by
17 the department. Within 60 days of receiving such information, the department shall advise the
18 applicant of its eligibility for award of a master agreement. Master agreements for special services
19 shall conform to the requirements of section 6.22 of this Chapter. Master agreements shall provide for
20 an expiration term of not more than five years from the date of award, including all modifications.

21 (B) For performance of specific tasks, the department shall seek price quotations from at least
22 three of the special service providers with master agreements. The department shall issue a contract
23 service order for the work to the provider submitting the lowest quotation, except as provided below.
24 In the event that the department is unable to obtain three quotations, the department head shall base
25 the issuance of the contract service order on the quote or quotes received. If the department head

1 believes that the public interest would best be served by accepting other than the lowest quotation, he
2 or she is hereby authorized to accept the quotation that in his or her discretion will best serve the
3 public interest. The department head may reject any and all quotations and request new quotations.

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 Sheryl L. Bregman
9 Deputy City Attorney

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