

[Mandatory prequalification, training and safety certification requirements for public works projects.]

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Ordinance amending Administrative Code Chapter 6, Public Works Contracting Policies and Procedures, Section 6.20(F), to require mandatory bidder prequalification for all public works contracts and set minimum requirements for prequalification; amending Section 6.22(O) to establish training requirements applicable to apprentices and journeymen; and amending Section 6.22(P) to establish minimum safety training and certification requirements for electricians working on a jobsite.

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike-through italics Times New Roman~~. Board amendment additions are double-underlined; Board amendment deletions are ~~striketthrough-normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by amending Section 6.20, to read as follows:

SEC. 6.20. PUBLIC WORK CONTRACTS GENERALLY.

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

(B) Public Works Less Than or Equal to the Threshold Amount. Any public work or improvement estimated to cost less than or equal to the Threshold Amount may be performed (a) under contract or (b) by City and County employees. If the work is to be performed under

1 contract, the department shall obtain not fewer than three quotes and shall award the contract
2 to the responsible bidder offering the lowest quotation. If the department is unable to obtain
3 three quotes, the award may be based on the quote or quotes received. The department
4 administering the contract shall maintain records as to whom the request for quotations was
5 directed and the quotations received. It is the policy of the Board of Supervisors for
6 contracting departments to make every effort to eradicate prejudice and favoritism in the
7 award of City contracts. In order to effectuate this policy, the department heads authorized to
8 enter into construction contracts and their staff members shall collaborate with the HRC
9 Director and HRC staff members periodically to create a list of responsible contractors
10 qualified to perform various types of public work for projects estimated to be less than the
11 Threshold Amount, making every effort to include qualified responsible MBE and WBE
12 contractors on that list. The HRC shall be responsible for outreach efforts to make sure that
13 MBE and WBE contractors are aware of the opportunity to be considered for the list. The
14 contract awarding departments or commissions shall be responsible for evaluating and
15 determining whether contractors are responsible and qualified to perform the various scopes
16 of work. The department heads authorized to execute construction contracts shall report
17 quarterly to the Board of Supervisors regarding MBE/WBE inclusion on the list of responsible
18 and qualified contractors for public work contracts estimated to be less than or equal to the
19 Threshold Amount, a description of the scope of work and price for each contract awarded
20 under this section, the name of the contractor awarded the contract and whether the contract
21 was awarded to an MBE or WBE contractor. Such reports shall be referred to a Board
22 committee for public hearing.

23 (C) Estimates Required. For public works or improvements in excess of the
24 Threshold Amount, no department head shall recommend a construction contract for or issue
25 an order of award without preparing detailed program requirements and detailed estimates for

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

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

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

15 (F) Prequalification. Department heads authorized to execute public work contracts
16 ~~may shall~~ *may* require that prospective bidders be prequalified to bid either on a specific project
17 or on an identified group or category of projects, and shall require bidder be prequalified for
18 construction contracts greater than \$10 million. The prequalification requirements of this section shall
19 apply to all public work contracts awarded pursuant to Article II: Construction Contracting of under
20 this Chapter, including but not limited to design-build and integrated project delivery contracts. The
21 procedure for prequalification is as follows:

22 (1) The department head shall issue a prequalification statement. The
23 prequalification statement may, at the discretion of the department head, be based on the Model
24 Pre-Qualification Questionnaire developed by the California Department of Industrial Relations under
25 issued in conformance with Public Contract Code section 20101, modified as necessary to

1 incorporate project-specific requirements and the mandatory prequalification requirements set forth in
2 this section, below. and/or the California Department of Industrial Relations Model Pre-Qualification
3 Questionnaire. The department head may, at his/her own discretion, apply the Model guidelines for
4 scorable questions and scoring as the basis for any prequalification. The department head may
5 also, at his/her own discretion, issue the Model with additional questions or may use an alternative
6 questionnaire that complies with the mandatory prequalification requirements set forth in this section,
7 below. The department head responsible for the public work may include in any questionnaire
8 a request for special qualifications, experience or expertise necessary to perform the project
9 or projects for which the prequalification is sought. For any prequalification project-specific
10 information required, the department shall set objective scoring criteria and incorporate the
11 criteria into any scoring procedure.

12 (a) Any prequalification statement issued by a department head must include the following
13 minimum evaluation criteria:

14 (i) Prospective bidder's ability to secure required liability insurance. A department head
15 shall automatically disqualify any prospective bidder that does not maintain sufficient liability
16 insurance for the project or projects;

17 (ii) Prospective bidder's ability to secure required worker's compensation insurance. A
18 department head shall automatically disqualify any prospective bidder that does not maintain current
19 worker's compensation insurance as required by the California Labor Code or that is not legally self-
20 insured under Labor Code section 3700 et seq. (unless prospective bidder is exempt from this
21 requirement because it has no employees);

22 (iii) Evidence and history of proper licensing. A department head shall automatically
23 disqualify any prospective bidder that does not possess a valid and current California contractor's
24 license for the project or projects. In addition, a department head shall automatically disqualify a
25 prospective bidder if that bidder's contractor's license was revoked at any time during the previous five

1 years. A prospective bidder automatically disqualified solely because its license was revoked during the
2 previous five years may appeal the disqualification in accordance with section 6.20(F)(6), below, and
3 provide an explanation of the relevant circumstances during the appeal procedure;

4 (iv) Prospective bidder's ability to secure required bonding to demonstrate sound financial
5 position. A department head shall automatically disqualify any prospective bidder that does not have
6 sufficient available bonding capacity for the project or projects;

7 (v) Prospective bidder's financial ability;

8 (vvi) Prospective bidder's history of civil litigation and claims or other adverse actions
9 during the previous five years;

10 (vii) Criminal matters and related civil suits involving prospective bidder and any of its
11 owners, officers or partners. A department head shall automatically disqualify any prospective bidder
12 if, at any time during the preceding five years, it or any of its owners, officers or partners were
13 convicted of a crime involving the awarding of a contract for a government construction project, or the
14 bidding or performance of a government contract. A prospective bidder automatically disqualified
15 solely because of a criminal conviction as specified above may appeal the disqualification in
16 accordance with section 6.20(F)(6), below, and provide an explanation of the relevant circumstances
17 during the appeal procedure;

18 (viii) Prospective bidder's safety record, including compliance with ~~occupational safety and~~
19 health laws Federal or State Occupational Safety and Health Administration (OSHA) and other labor
20 legislation safety requirements during the previous five years, and evaluation of a prospective bidder's
21 worker's compensation insurance Experience Modification Rate (EMR) for the previous three years if
22 applicable. A department head shall automatically disqualify any prospective bidder that has a three
23 year average EMR of 1.5 or higher. A department head may apply a more stringent EMR
24 disqualification standard (i.e., three year average EMR between 1.1 and 1.49) based on the type of
25 work and/or hazards involved. A prospective bidder automatically disqualified solely because its EMR

1 is higher than the applicable disqualification standard may appeal the disqualification in accordance
2 with section 6.20(F)(6), below, and provide an explanation of the relevant circumstances during the
3 appeal procedure;

4 (viii) Prospective bidder's prevailing wage and apprenticeship compliance record for the
5 previous five years. A department head shall automatically disqualify any prospective bidder that, at
6 the time of submitting its prequalification statement, is ineligible to bid on or be awarded a public work
7 contract, or perform as a subcontractor on a public work contract, under Labor Code section 1777.1 or
8 Labor Code section 1777.7. A prospective bidder automatically disqualified solely because it is
9 ineligible to bid as specified above may re-submit a prequalification statement after the applicable
10 period of debarment has expired, provided that the department is still accepting prequalification
11 statements for the applicable project or group of projects;

12 (ix) Prospective bidder's history and organization;

13 (x) Prospective bidder's relevant experience;

14 (xi) Prospective bidder's experience in successfully completing public works projects of
15 similar size, scope and complexity. A department head shall automatically disqualify a prospective
16 bidder if, at any time during the preceding five years, a surety firm completed a contract or paid for
17 completion of a contract on prospective bidder's behalf because such bidder was terminated for default
18 by the project owner. A prospective bidder automatically disqualified solely because it was terminated
19 for default as specified above may appeal the disqualification in accordance with section 6.20(F)(6),
20 below, and provide an explanation of the relevant circumstances during the appeal procedure ; and

21 (xii) For project-specific prequalification statements, the experience of the proposed
22 management team and proposed key personnel for the project.

23 (2) The department responsible for the public work shall advertise any
24 prequalification questionnaire in the same manner required for bids, as set forth in Section
25 6.21 of this Chapter.

1 (3) For any prequalification for a group or category of projects, Departments shall
2 prequalify prospective bidders on a rolling basis. Under such rolling prequalification, departments
3 shall consider and evaluate complete prequalification statements submitted by prospective bidders
4 within 45 or more days prior to bid opening or the due date for requests for proposals. For
5 prequalification statements submitted by prospective bidders during a bid or request for proposals
6 period, the department shall make a prequalification determination within 30 days of the
7 prequalification statement submittal. When an advertisement for a construction contract so specifies,
8 only contractors prequalified under the designated project or project category, prior to bid opening
9 date, will be eligible to bid.

10 (34) Prequalification shall be valid for not more than two years following the date of
11 initial prequalification. Prequalification statements shall reserve the right of the department to limit,
12 suspend or rescind the prequalification status of a prospective bidder based on additional or new
13 information received by the department.

14 (5) A prospective bidder prequalified by a City department for a certain category of projects
15 that wishes to bid on projects that fall under the same category advertised by other City departments
16 during the applicable two-year prequalification period may submit documentation of its existing
17 prequalification to such other departments in place of a full prequalification statement. Such other
18 departments may accept the existing prequalification and find the prospective bidder qualified, or may
19 require updated or supplemental information before making a determination. Acceptance of an existing
20 prequalification by a different City department will not extend the validity of the existing
21 prequalification beyond the original two-year term.

22 (46) A prospective bidder may dispute a finding that the firm/entity he/she is not
23 prequalified or a finding that the firm's/entity's existing prequalification status will be limited,
24 suspended or rescinded. The dispute and request for review must be in writing and received by
25 the department within ten calendar days from the date the department issued notice of non-

1 prequalification or notice of limitation, suspension or rescission of prequalification. The department
2 shall then provide the prospective bidder with the basis for its finding and any supporting
3 evidence used in the determination. The department shall give the prospective bidder the
4 opportunity to rebut the evidence provided and to present evidence as to why the prospective
5 bidder should be found qualified. If a bidder fails to avail itself of this dispute process, the
6 department's finding shall become final without further notice. Failure to be prequalified shall
7 not by itself preclude a prospective bidder from participating in other or future
8 prequalifications.

9 (7) Departments with existing prequalification programs underway as of the effective date
10 of this Ordinance shall comply with the requirements of this section 6.20(F) for all initial
11 prequalifications and prequalification renewals advertised or processed on or after the effective date of
12 this Ordinance.

13 Section 2. The San Francisco Administrative Code is hereby amended by amending
14 Section 6.22, to read as follows:

15 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
16 **CONDITIONS.**

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

19 (A) Bonds. Before the execution of any contract for public works or improvements,
20 the department head authorized to execute such contracts shall require the successful bidder
21 to file corporate surety bonds for the faithful performance thereof and to guarantee the
22 payment of wages for services engaged and of bills contracted for material, supplies and
23 equipment used in the performance of the contract. The bond shall be for a sum not less than
24 100 percent of the award.
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1 The City and County of San Francisco, acting through its Human Rights Commission
2 ("HRC"), intends to provide guarantees to private bonding assistance companies and financial
3 institutions in order to induce those entities to provide required bonding and financing to
4 eligible contractors bidding on and performing City public work contracts. This bonding and
5 financial assistance program is subject to the provisions of Administrative Code Section
6 12D.A.9.

7 (B) Insurance. All construction contracts awarded under this Chapter must conform
8 to the insurance requirements established by the Risk Manager. The Risk Manager shall
9 develop uniform insurance requirements for City contracts subject to this Chapter and shall
10 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and
11 update such insurance requirements on an annual basis.

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

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

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

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

5 (E) Prevailing Wages.

6 (1) Generally. All contractors and subcontractors performing a public work or
7 improvement for the City and County of San Francisco shall pay its workers on such projects
8 the prevailing rate of wages as provided below. For the purpose of prevailing wage
9 requirements only, the definition of a public work shall include those public works or
10 improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a)
11 any trade work performed at any stage of construction (including preconstruction work) and
12 (b) any public work paid for by the City and County of San Francisco with "the equivalent of
13 money" under the meaning of Labor Code section 1720(b).

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

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

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

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

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

6 On or before the first Monday in November of each year, the Civil Service Commission
7 shall furnish to the Board of Supervisors data as to the highest general prevailing rate of
8 wages of the various crafts and kinds of labor as paid in private employment in the City and
9 County of San Francisco, plus "per diem wages" and wages for overtime and holiday work.
10 The Civil Service Commission shall provide the Board of Supervisors data for "per diem
11 wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time
12 to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the
13 prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the
14 Board of Supervisors shall remain in force and shall be deemed to be the highest general
15 prevailing rate of wages paid in private employment for similar work, until the same is
16 changed by the Board of Supervisors. In determining the highest general prevailing rate of
17 wages per diem wages and wages for overtime and holiday work, as provided for in this
18 section, the Board of Supervisors shall not be limited to the consideration of data furnished by
19 the Civil Service Commission, but may consider such other evidence upon the subject as the
20 Board shall deem proper and thereupon base its determination upon any or all of the data or
21 evidence considered.

22 In the event that the Board of Supervisors does not fix or determine the highest general
23 prevailing rate of wages in any calendar year, the rates established by the California
24 Department of Industrial Relations for such year shall be deemed adopted.
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1 (4) Specifications to Include Wage Rate. The department head authorized to
2 execute a construction contract under this Chapter shall include in the contract specifications,
3 or make available in the offices of the department or at the job site, a detailed statement of the
4 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the
5 department issued the Advertisement For Bids on the contract. The contractor shall agree to
6 pay to all persons performing labor in and about the public work or improvement the highest
7 general prevailing rate of wages as determined pursuant to this Chapter, including wages for
8 holiday and overtime work. If the specifications do not include the prevailing rate of wages, the
9 specifications shall include a statement that copies of the prevailing rate of wages as fixed
10 and determined by the Board of Supervisors are on file at the department's principal office or
11 at the job site and shall be made available to any interested party on request.

12 (5) Subcontractors Bound by Wage Provisions. Every contract for any public work
13 or improvement shall also contain a provision that the contractor shall insert in every
14 subcontract or other arrangement which he or she may make for the performance of any work
15 or labor on a public work or improvement. This provision shall be that the subcontractor shall
16 pay to all persons performing labor or rendering service under said subcontract or other
17 arrangement the highest general prevailing rate of wages as fixed and determined by the
18 Board of Supervisors for such labor or services.

19 (6) Records to be Kept by Contractors and Subcontractors. Every public works
20 contract or subcontract awarded under this Chapter shall contain a provision that the
21 contractor shall keep, or cause to be kept, for a period of four years from the date of
22 substantial completion of a public work, payrolls and basic records including time cards, trust
23 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
24 and foreman daily logs for all trades workers performing work at or for a City and County of
25 San Francisco public work or improvement. Such records shall include the name, address and

1 social security number of each worker who worked on the project, including apprentices, his
2 or her classification, a general description of the work each worker performed each day, the
3 rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits),
4 daily and weekly number of hours worked, deductions made and actual wages paid. Every
5 subcontractor who shall undertake the performance of any part of a public work or
6 improvement shall keep a like record of each person engaged in the execution of the
7 subcontract.

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

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

18 Should the department head responsible for the public work or the Labor Standards
19 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
20 requirements of this subsection, the department head or the Labor Standards Enforcement
21 Officer shall issue written notification to the contractor or subcontractor mandating compliance
22 within not fewer than ten calendar days from the date of the notification. Should the contractor
23 or subcontractor fail to comply as required in the notification, the department head who
24 executed the contract or the Labor Standards Enforcement Officer may impose a penalty of
25 \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon the

1 request of the responsible department head or the Labor Standards Enforcement Officer, the
2 Controller shall withhold these penalties from progress payments then due or to become due.

3 (7) Additional Required Contract Provisions. Every public works contract shall
4 contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards
5 Enforcement Officer and other City employees and agents authorized to assist in the
6 administration and enforcement of the prevailing wage requirements and other labor
7 standards imposed on public works contractors by the Charter and Chapter 6 of the San
8 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
9 Enforcement Officer and his or her designees, in the performance of their duties, shall have
10 the right to engage in random inspections of job sites and to have access to the employees of
11 the contractor, employee time sheets, inspection logs, payroll records and employee
12 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
13 employees are present on the job site; (4) the contractor shall prominently post at each job-
14 site a sign informing employees that the project is subject to the City's prevailing wage
15 requirements and that these requirements are enforced by the Labor Standards Enforcement
16 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
17 contractor as he or she reasonably deems necessary to determine compliance with the
18 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
19 works contractors. Failure to comply with these requirements may result in penalties and
20 forfeitures consistent with California Labor Code section 1776(g), as amended from time to
21 time.

22 (8) Non-compliance with Wage Provisions--Penalties.

23 (a) Penalty and Forfeiture. Any contractor or subcontractor who shall fail or neglect
24 to pay to the several persons who shall perform labor under any contract, subcontract or other
25 arrangement on any public work or improvement as defined in this Chapter the highest

1 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this
2 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said
3 wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City
4 and County of San Francisco back wages due plus the penal sum of \$50.00 per day for each
5 laborer, workman or mechanic employed for each calendar day or portion thereof, while they
6 shall be so employed and not paid said highest general prevailing rate of wages, and in
7 addition shall be subject to the penalties set forth in Article V of this Chapter, including
8 debarment.

9 (b) Enforcement. It shall be the duty of the officer, board or commission under
10 whose jurisdiction said public work or improvement is being carried on, made or constructed,
11 when certifying to the Controller any payment which may become due under said contract, to
12 deduct from said payment or payments the total amount of said forfeiture provided for in this
13 subsection. In doing so, the department head must also notify in writing the Labor Standards
14 Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also,
15 upon written notice to the department head who is responsible for the project, certify to the
16 Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.
17 Certification of forfeitures under this subsection shall be made only upon an investigation by
18 the responsible department head or the Labor Standards Enforcement Officer and upon
19 written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The
20 Controller, in issuing any warrant for any such payment, shall deduct from the amount which
21 would otherwise be due on said payment or payments the amount of said forfeiture or
22 forfeitures as so certified.

23 (c) Recourse Procedure. If the contractor or subcontractor disagrees with the
24 forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
25 applies:

1 (i) The contractor or subcontractor may request a hearing in writing within 15 days
2 of the date of the notification of forfeiture. The request shall be directed to the City Controller.
3 Failure by the contractor or subcontractor to submit a timely, written request for a hearing
4 shall constitute concession to the assessment and the forfeiture shall be deemed final upon
5 expiration of the 15-day period;

6 (ii) Within 15 days of receiving a proper request, the Controller shall appoint a
7 hearing officer with knowledge and not less than five years' experience in labor law, prevailing
8 wage, and/or wage and hour issues, and shall so advise the enforcing official and the
9 contractor or subcontractor, and/or their respective counsel or authorized representative;

10 (iii) The hearing officer shall promptly set a date for a hearing. The hearing must
11 commence within 45 days of the notification of the appointment of the hearing officer and
12 conclude within 75 days of such notification unless all parties agree to an extended period;

13 (iv) The contractor or subcontractor shall have the burden of proving that the basis
14 for the back wage and penalty assessment is incorrect;

15 (v) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
16 written decision affirming, modifying, or dismissing the assessment. The decision of the
17 hearing officer shall consist of findings and a determination. The hearing officer's findings and
18 determination shall be final.

19 (vi) The contractor or subcontractor may appeal a final determination under this
20 section only by filing in the San Francisco Superior Court a petition for a writ of mandate
21 under California Code of Civil Procedure, section 1084, et seq., as applicable and as may be
22 amended from time to time.

23 (d) Distribution of Forfeiture. The Controller shall withhold any forfeiture as provided
24 in the foregoing paragraphs until such time as either the contractor or subcontractor has
25 conceded to the forfeiture or, in the event of an objection, there is a determination no longer

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

9 (F) Hours and Days of Labor.

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

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

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

16 (G) Local Hiring.

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

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

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

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

7 A failure to abide by these contract provisions may result in the imposition of sanctions
8 and penalties, including those provided for in San Francisco Administrative Code Section
9 6.80.

10 (2) Definitions.

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

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

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

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

3 (H) Modifications--General Requirements. If it becomes necessary in the
4 prosecution of any public work or improvement under contract to make alterations or
5 modifications or to provide for extras, such alterations, modifications or extras shall be made
6 only on written recommendation of the department head responsible for the supervision of the
7 contract, together with the approval of the Mayor or the Mayor's designee or the board or
8 commission, as appropriate to the department, and also the approval of the Controller, except
9 as hereafter provided. The Mayor or the board or commission, as appropriate to the
10 department, may delegate in writing the authority to approve such alterations, modifications or
11 extras to the department head, except as provided below. The Controller may delegate in
12 writing the authority to encumber funds from prior appropriations for such alterations,
13 modifications or extras to the department head prior to the certification for payment. Such
14 authority, when granted, will clearly state the limitations of the changes to be encompassed.

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

23 (2) Extensions of Time. Upon finding that work under a construction contract cannot
24 be completed within the specified time because of an unavoidable delay as defined in the
25 contract, the department head may extend the time for completion of the work. If the

1 cumulative extensions of time exceeds ten percent of the original contract duration, the
2 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
3 commission, as appropriate to the department notwithstanding any delegation provided for
4 above. All time extensions shall be in writing, but in no event shall any extension be granted
5 subsequent to the issuance of a certificate of final completion.

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

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

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

1 (d) Notice of Delay Required. The contractor shall promptly notify the department
2 head in writing, of all anticipated delays in the prosecution of the work and, in any event,
3 promptly upon the occurrence of a delay, the notice shall constitute an application for an
4 extension of time only if the notice requests such extension and sets forth the contractor's
5 estimate of the additional time required together with a full recital of the causes of unavoidable
6 delays relied upon. The department head may take steps to prevent the occurrence or
7 continuance of the delay, may classify the delay as avoidable or unavoidable and may
8 determine to what extent the completion of the work is delayed thereby.

9 (l) Liquidated Damages. Any contract may provide a time within which the contract
10 work, or portions thereof, shall be completed and may provide for the payment of agreed
11 liquidated damages to the City and County for every calendar or working day thereafter during
12 which such work shall be uncompleted.

13 (J) Retention of Progressive Payments. Any contract may provide for progressive
14 payments, if the Advertisement For Bids shall so specify. Each progress payment shall
15 constitute full compensation for the value of work performed and materials furnished for a
16 specified period, less amounts withheld as a result of dispute or as required by law.

17 (1) From every progress payment, the City shall hold 10 percent in retention.

18 (2) If the department head responsible for the public work or his/her designee
19 determines that the contract is 50 percent or more complete, that the contractor is making
20 satisfactory progress, and that there is no specific cause for greater withholding, the
21 department head or his/her designee, upon the written request of contractor, may authorize
22 one of the following two options: (a) the City shall release part of the retention to the
23 contractor so that the amount held in retention by the City, after release to the contractor, is
24 reduced to an amount not less than 5 percent of the total value of the labor and materials
25 furnished, and the City shall proceed to retain 5 percent of any subsequent progress payment

1 under the contract; or (b) the City shall continue to hold the already withheld retention amount,
2 up to 5 percent of the total contract price, and shall not deduct further retention from progress
3 payments.

4
5 (3) Retention shall be withheld solely for the benefit and protection of the City,

6 (4) The City shall release retention to the contractor upon the following conditions:

7 (a) the contractor has reached final completion under the contract terms and conditions and

8 (b) the contract is free of offsets by the City for liquidated damages, defective work and the

9 like, and is free of stop notices, forfeitures, and other charges. When the department head

10 responsible for the public work or his/her designee determines that the contract is 98 percent

11 or more complete, the department head or his/her designee may reduce retention funds to an

12 amount equal to 200 percent of the estimated value of work yet to be completed, provided that

13 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other

14 charges.

15 (5) In no event shall the City be liable for interest or charges arising out of or

16 relating to the date the City issues any progress payment or the date the City releases all or

17 part of the retention, except that the City will pay interest at the legal rate, as set forth in

18 section 685.010(a) of the California Code of Civil Procedure as that section may be amended

19 from time to time, on any improperly withheld amounts commencing no earlier than 90 days

20 after the date the City should have made any progress payment or released all or part of the

21 retention. Under no circumstances shall the legal rate of interest paid by the City under this

22 provision exceed 10 percent per annum. The payment of interest under this provision is the

23 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

24 (K) Inspection and Acceptance of Completed Work; Final Payment. The department

25 head authorized to execute any contract for public works or improvements shall be

1 responsible for the inspection and acceptance of such work on completion. Such acceptance
2 shall be in writing and shall include the certificate of the department head concerned that the
3 work covered by the contract has been fully and satisfactorily completed in accordance with
4 the plans and specifications therefor. Receipt of copy of such acceptance in writing shall
5 constitute the Controller's authority to complete any payments due the contractor under the
6 contract; provided that the Controller may make such additional investigation or inspection as
7 is provided by Administrative Code Section 10.07.

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

19 (M) Violations of Chapter 6; False Claims. Every public work contract performed at
20 the expense of the City and County of San Francisco, or the cost of which is paid for out of
21 monies deposited in the treasury of the City and County, whether directly awarded or
22 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
23 other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at
24 Section 6.80) of this Chapter, relating to administrative debarments and false claims. The
25

1 failure to include such reference or incorporation shall not in any way abrogate the rights of
2 the City and County under Article V of this Chapter.

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

8 (O) Employment of Apprentices and Journeymen. All construction contracts awarded
9 under this Chapter shall include the following requirements:

10 (1) ~~require the Contractor~~ must to comply with the requirements of the State
11 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4
12 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,
13 and shall ~~require the Contractor to~~ include in its subcontracts the obligation for subcontractors
14 to comply with the requirements of the State Apprenticeship Program;:-

15 (2) All apprentices must be registered in a federal or state approved apprenticeship
16 program;

17 (3) The use of journeymen must comply with all applicable state and federal labor laws;

18 and

19 (4) A minimum of 70 percent of all journey-level electricians shall be graduates of a federal
20 or state approved apprenticeship program that graduates 15 or more journeyman electricians per year.

21 (P) Safety. All construction contracts awarded under this Chapter shall include the
22 following requirements:

23 (1) ~~require the Contractor~~ and all of its subcontractors shall to abide by the applicable
24 Occupational Safety and Health statutes and regulations;:-

1 (2) A minimum of 20 percent of electricians working on the jobsite shall be OSHA 10-hour
2 General Industry Safety and Health certified;

3 (3) At least one electrician working on the jobsite shall be OSHA 30-hour General Industry
4 Safety and Health certified;

5 (4) Electricians working on the jobsite shall be in compliance with all applicable California
6 certification and licensing requirements; and

7 (5) Additionally, all construction contracts awarded under this Chapter shall require the
8 Contractor and all of its subcontractors shall to abide by the requirements of Administrative
9 Code Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with
10 exceptions.

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


14 (1) Claims by Contractors. The contractor shall certify under penalty of perjury that (a)
15 the claim is made in good faith; (b) the supporting data are accurate and complete to the best
16 of Contractor's knowledge and belief; and (c) the amount request accurately reflects the
17 Contract adjustment for which the Contractor believes the City is liable. An individual or officer
18 authorized to act on behalf of the Contractor shall execute the certification.

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

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

By: 
GEORGE K. WONG
Deputy City Attorney

LEGISLATIVE DIGEST

[Mandatory prequalification, training and safety certification requirements for public work projects.]

Ordinance amending Administrative Code Chapter 6, Public Works Contracting Policies and Procedures, Section 6.20(F), to require mandatory bidder prequalification for all public work contracts and set minimum requirements for prequalification; amending Section 6.22(O) to establish training requirements applicable to apprentices and journeymen; and amending Section 6.22(P) to establish minimum safety training and certification requirements for electricians working on a jobsite.

Existing Law

Administrative Code Chapter 6 addresses public work or improvement contracting policies and procedures.

Section 6.20 addresses general requirements for public work contracts. Subsection 6.20(F) authorizes City department heads, at their option, to require that prospective bidders be prequalified to bid either on a specific project or an identified group of projects. The subsection authorizes department heads to develop their own unique prequalification questionnaires or use the model prequalification questionnaire developed by the California Department of Industrial Relations under California Public Contract Code section 20101. The subsection also provides for an appeal process for prospective bidders found not qualified to bid.

Section 6.22 addresses required contract terms and working conditions for public work or improvement contracts. Subsection 6.22(O) requires that all construction contracts awarded under Chapter 6 require contractors to comply with the requirements of the State Apprenticeship Program as set forth in the California Labor Code with respect to the employment of apprentices. Subsection 6.22(P) requires that all construction contracts awarded under Chapter 6 require contractors and their subcontractors to abide by applicable occupational safety and health statutes and regulations.

Amendments to Current Law

Subsection 6.20(F) is amended to:

- Require bidder prequalification of prospective bidders on a project-specific or group/category basis for all public work contracts awarded under Chapter 6. (New subsection 6.20(F).)

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- Require that all prequalification statements issued by departments include certain minimum evaluation criteria, including: (a) a prospective bidder's ability to secure required liability and worker's compensation insurance; (b) a prospective bidder's licensing history; (c) a prospective bidder's ability to secure required bonding; (d) a prospective bidder's financial ability; (e) a prospective bidder's claims and litigation history; (f) a prospective bidder's safety record; (g) a prospective bidder's prevailing wage and apprenticeship compliance record; and (h) a prospective bidder's history, organization and relevant experience. (New subsection 6.20(F)(1)(a).)
- Require departments to prequalify prospective bidders on a rolling basis for prequalifications based on groups or categories of projects. (New subsection 6.20(F)(3).)
- Clarify that the prequalification status of a prospective bidder may be limited, suspended or rescinded based on additional or new information received by a department. (New subsection 6.20(F)(4).)
- Allow a department to accept a prospective bidder's existing prequalification by a different City department for the same category of projects. (New subsection 6.20(F)(5).)
- Clarify that the appeal process applies to a finding that a prospective bidder's existing prequalification status will be limited, suspended or rescinded. (New subsection 6.20(F)(6).)
- Require departments with existing prequalification programs to comply with the requirements of amended section 6.20(F) for all initial prequalifications and prequalification renewals advertised or processed on or after the effective date of this Ordinance. (New subsection 6.20(F)(7).)
- Renumber existing subsections 6.20(F)(3) and 6.20(F)(6) for clarity and logic within amended section 6.20.

Subsection 6.22(O) is amended to require that construction contracts awarded under Chapter 6 include the following requirements:

- All apprentices must be registered in a federal or state approved apprenticeship program. (New subsection 6.22(O)(2).)
- The use of journeymen must comply with all applicable state and federal labor laws. (New subsection 6.22(O)(3).)

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- A minimum of 70 percent of all journey-level electricians shall be graduates of a federal or state approved apprenticeship program that graduates 15 or more journeyman electricians per year. (New subsection 6.22(O)(4).)

Subsection 6.22(P) is amended to require that construction contracts awarded under Chapter 6 include the following requirements:

- A minimum of 20 percent of electricians working on the jobsite shall be OSHA 10-hour General Industry Safety and Health certified. (New subsection 6.22(P)(2).)
- At least one electrician working on the jobsite shall be OSHA 30-hour General Industry Safety and Health certified. (New subsection 6.22(P)(3).)
- Electricians working on the jobsite shall be in compliance with all applicable California certification and licensing requirements. (New subsection 6.22(P)(4).)

Background Information

Mandatory bidder prequalification requirements and minimum training and certification requirements for apprentices, journeymen and electricians will help ensure that contractors bidding on City public work projects are suitably experienced for the type of work involved, are financially and managerially sound, and have a track record of successfully completing similar projects in compliance with applicable laws and regulations, including safety and prevailing wage requirements.