

**AMENDMENT OF THE WHOLE 10/6/04
ORDINANCE NO.**

FILE NO. 040989

1 [Granting a bid preference of twenty percent to each contractor who will perform all services to
2 be required by a contract in the United States of America.]

3 **Ordinance amending the San Francisco Administrative Code by adding a new Chapter**
4 **12I to grant a bid preference of twenty percent to each contractor who will perform all**
5 **services to be required by a contract in the United States of America.**

6 Note: This Chapter is entirely new.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Administrative Code is hereby amended by adding a
11 new Chapter 12I to read as follows:

12 Chapter 12I – Bid Preference for Services to be Performed in the United States

13 Sec. 12I.1. DEFINITIONS. For the purposes of this Chapter, the following definitions shall
14 apply to the terms use herein.

15 (a) “Bid” shall mean a bid, Quotation, Proposal or other offer from a Contractor to
16 perform a Contract.

17 (b) “Bid Preference” shall mean: (1) where a Contract is awarded based on the highest
18 ranking Proposals, an increase of twenty percent to the score of the Proposal; or (2) where a Contract
19 is awarded to the lowest responsive and responsible Contractor, a reduction to the price stated in the
20 Bid of twenty percent.

21 (c) “Contract” shall mean an agreement for Services, including without limitation
22 agreements for public works or improvement: (1) to be purchased or provided at the expense of the
23 City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the
24 control of or collected by the City and County; or (2) which grants the Contractor the right to receive
25 revenues from sources other than the City and County based on its services under the agreement.

1 (d) “Contractor” shall mean any person or persons, association, cooperative, firm,
2 partnership, corporation, company, venture, trustee, trustee in bankruptcy, receiver, or combination
3 thereof, who submits a Bid or enters into a Contract with the City and County.

4 (e) “Proposal” shall mean a response to a request for proposals issued by the City and County
5 to perform a Contract, or a response to a request for qualifications to perform a Contract, which
6 requires responses to be ranked.

7 (f) “Quotation” shall mean a bid, quotation, or Proposal for Services, which is acquired
8 without the issuance of a written invitation or request for Bids.

9 (g) “Services” shall mean any or all services to be performed under a Contract. “Services”
10 shall not mean the procurement of goods, or any services incidental to the manufacturing or delivery of
11 goods. Goods include but are not limited to materials, supplies or equipment.

12 (h) “Solicitation” shall mean an invitation or request for Bids issued by the City and County for
13 the purpose of soliciting Bids to perform a Contract that will be awarded based on ranking of the Bids
14 or to the lowest responsive responsible Contractor.

15 (i) “Subcontractor” shall mean any person or persons, association, cooperative, firm,
16 partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, including
17 without limitation any subcontractor or subconsultant at any tier, that has an arrangement or
18 agreement, directly or indirectly, with a Contractor to perform Services.

19 (j) “Sworn Statement” shall mean a written statement in a form provided by the City and
20 County and submitted by a Contractor that meets each of the following requirements: (1) is sworn
21 under penalty of perjury under the laws of the State of California; (2) states that any Services to be
22 performed under the Contract by the Contractor or its Subcontractors will be performed in the United
23 States of America; (3) is executed by an officer of the Contractor who is authorized to execute the
24 statement and bind the Contractor by contract; and (4) is submitted in accordance with the
25 requirements of the Solicitation.

1 Sec. 21.2. PREFERENCE. The following requirements shall be effective ninety days
2 after the effective date of this Chapter:

3 (a) Each Solicitation that requires ranking of Bids shall require the Bids to be scored,
4 unless the award is to be made to the lowest responsive responsible Contractor.

5 (b) The City and County shall give to each Bid submitted in response to a Solicitation the
6 Bid Preference if the Contractor provided the City and County a Sworn Statement. The City and
7 County shall apply the Bid Preference to the actual price proposed where the Contract is to be
8 awarded to the lowest responsive responsible Contractor, or to the score before the application of any
9 other bid discounts or preferences.

10 (c) Each Solicitation shall inform prospective Contractors that they may submit a Sworn
11 Statement.

12 (d) Each department shall maintain in its records a copy of each Sworn Statement that the
13 City has received for Contracts that have been awarded at the department's request or
14 recommendation. The department shall keep each Sworn Statement for a period of at least five years
15 after the expiration or termination of the Contract.

16 Sec. 121.3. ENFORCEMENT. Any failure of a Contractor to perform the Contract in
17 accordance with the Sworn Statement shall be a material breach of the Contract. In such an event, or
18 if a Contractor submits a Sworn Statement that is not truthful, the City and County may take any of the
19 following actions, individually or in any combination: (1) terminate the Contract; (2) bring a false
20 claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code;
21 (3) debar the Contractor; or (4) pursue any other remedies available to the City and County at law or
22 in equity.

23 Sec 121.4. CONTRACT REQUIREMENTS. All Contracts entered into after ninety days after
24 the effective date of this Chapter shall incorporate by reference the provisions of Sections 121.3 of this
25 Chapter if the Contract is awarded based on a Bid that received a Bid Preference.

1 Sec. 12I.5. EXCEPTIONS. This Chapter shall not apply in the following circumstances:

2 (a) When a Solicitation is for a Contract that involves the expenditure of funds received by
3 the City and County to the extent the application of this Chapter would violate or be inconsistent with
4 the terms or conditions of the applicable grant agreement, subvention or agreement or the instructions
5 of an authorized representative of any such agency with respect to any such grant agreement,
6 subvention or agreement.

7 (b) When a Solicitation is for the purchase, sale, transfer or lease of any interest in real
8 property or a license or permit for the use of real property.

9 (c) When competitive solicitation is not required by law or regulation.

10 (d) When a Solicitation is for a grant agreement between the City and County and a
11 nonprofit entity or a public agency where the nonprofit entity or public agency is required to use the
12 grant funds provided under the agreement to provide services to the community or the public agency is
13 required to construct improvements to its facilities.

14 Sec. 12I.6. PREEMPTION. Nothing in this Chapter shall be interpreted or applied so as to
15 create any power or duty in conflict with any federal or state law.

16 Sec. 12I.7. SEVERABILITY

17 If any part or provision of this Chapter, or the application of this Chapter to any person or
18 circumstance, is held invalid, the remainder of this Chapter, including the application of such part or
19 provisions to other persons or circumstances, shall not be affected by such holding and shall continue
20 in full force and effect. To this end, the provisions of this Chapter are severable.

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

24 By: _____
25 Robert A. Bryan

Deputy City Attorney

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