

File No. 091233

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Date January 7, 2010

Board of Supervisors Meeting Date _____

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Completed by: Alisa Somera Date December 31, 2009

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file and the online version.

1 [Amendments to Chapters 6 and 21, related to false claims.]

2
3 **Ordinance amending Administrative Code Sections 6.22, 6.42, and 21.35 to clarify that**
4 **the false claims provisions of Chapters 6 and 12 are statutory rather than contractual**
5 **and to eliminate the requirement that such provisions be incorporated into public**
6 **works contracts or professional services contracts.**

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

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

11 Section 1. The San Francisco Administrative Code is hereby amended by amending
12 Section 6.22, to read as follows:

13 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
14 **CONDITIONS.**

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

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

23 The City and County of San Francisco, acting through its Human Rights Commission
24 ("HRC"), intends to provide guarantees to private bonding assistance companies and financial
25 institutions in order to induce those entities to provide required bonding and financing to

1 eligible contractors bidding on and performing City public work contracts. This bonding and
2 financial assistance program is subject to the provisions of Administrative Code Section
3 12D.A.9.

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

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

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

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

23 (D) Assignment. No contract shall be assigned except upon the recommendation of
24 the department head concerned and with the approval of the Mayor or the Mayor's designee,
25

1 relative to the department under the Mayor's jurisdiction, or the approval of the board or
2 commission concerned for departments not under the Mayor.

3 (E) Prevailing Wages.

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

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

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

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

19 (c) Either of the following conditions exist: (1) The lease agreement between the
20 lessor and the City and County of San Francisco, as lessee, is entered into prior to the
21 construction contract, or (2) The construction work is performed according to the plans,
22 specifications, or criteria furnished by the City and County of San Francisco, and the lease
23 agreement between the lessor and the City and County of San Francisco as lessee, is
24 entered into during, or upon completion, of the construction work.
25

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

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

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

23 (4) Specifications to Include Wage Rate. The department head authorized to execute
24 a construction contract under this Chapter shall include in the contract specifications, or make
25 available in the offices of the department or at the job site, a detailed statement of the

1 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the
2 department issued the Advertisement For Bids on the contract. The contractor shall agree to
3 pay to all persons performing labor in and about the public work or improvement the highest
4 general prevailing rate of wages as determined pursuant to this Chapter, including wages for
5 holiday and overtime work. If the specifications do not include the prevailing rate of wages, the
6 specifications shall include a statement that copies of the prevailing rate of wages as fixed
7 and determined by the Board of Supervisors are on file at the department's principal office or
8 at the job site and shall be made available to any interested party on request.

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

16 (6) Records to be Kept by Contractors and Subcontractors. Every public works
17 contract or subcontract awarded under this Chapter shall contain a provision that the
18 contractor shall keep, or cause to be kept, for a period of four years from the date of
19 substantial completion of a public work, payrolls and basic records including time cards, trust
20 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
21 and foreman daily logs for all trades workers performing work at or for a City and County of
22 San Francisco public work or improvement. Such records shall include the name, address and
23 social security number of each worker who worked on the project, including apprentices, his
24 or her classification, a general description of the work each worker performed each day, the
25 rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits),

1 daily and weekly number of hours worked, deductions made and actual wages paid. Every
2 subcontractor who shall undertake the performance of any part of a public work or
3 improvement shall keep a like record of each person engaged in the execution of the
4 subcontract.

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

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

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

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

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

21 (a) Penalty and Forfeiture. Any contractor or subcontractor who shall fail or neglect to
22 pay to the several persons who shall perform labor under any contract, subcontract or other
23 arrangement on any public work or improvement as defined in this Chapter the highest
24 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this
25 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said

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

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

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

24 (i) The contractor or subcontractor may request a hearing in writing within 15 days of
25 the date of the notification of forfeiture. The request shall be directed to the City Controller.

1 Failure by the contractor or subcontractor to submit a timely, written request for a hearing
2 shall constitute concession to the assessment and the forfeiture shall be deemed final upon
3 expiration of the 15-day period;

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

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

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

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

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

21 (d) Distribution of Forfeiture. The Controller shall withhold any forfeiture as provided in
22 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
9 employers to secure a sufficient number of satisfactory workers and artisans, no person
10 performing labor or rendering service in the performance of any contract or subcontract for
11 any public work or improvement as defined in this Chapter shall perform labor for a longer
12 period than five days (Monday through Friday) of eight hours each, with two 10-minute breaks
13 per eight-hour day, except in those crafts in which a different work day or week now prevails
14 by agreement in private employment. Any person working hours in addition to the above shall
15 be 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
18 organizations designated by the City or local labor union hiring halls, to hire qualified
19 individuals who are residents of the City and County of San Francisco to comprise not less
20 than 50% of each contractor's total construction work force, measured in labor work hours,
21 and contractor promises to give special preference to minorities, women and economically
22 disadvantaged individuals.

23 Contractor shall keep, and provide to the City, an accurate record showing the name,
24 place of residence, hours employed and per diem pay of each person employed by the
25 contractor, 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
5 and penalties, including those provided for in San Francisco Administrative Code Section
6 6.80.

7 (2) Definitions.

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

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

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

23 (3) Enforcement. The Human Rights Commission shall be the City agency charged
24 with the monitoring and enforcement of the provisions of this subsection.
25

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

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

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

1 commission, as appropriate to the department notwithstanding any delegation provided for
2 above. All time extensions shall be in writing, but in no event shall any extension be granted
3 subsequent to the issuance of a certificate of final completion.

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

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

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

23 (d) Notice of Delay Required. The contractor shall promptly notify the department
24 head in writing, of all anticipated delays in the prosecution of the work and, in any event,
25 promptly upon the occurrence of a delay, the notice shall constitute an application for an

1 extension of time only if the notice requests such extension and sets forth the contractor's
2 estimate of the additional time required together with a full recital of the causes of unavoidable
3 delays relied upon. The department head may take steps to prevent the occurrence or
4 continuance of the delay, may classify the delay as avoidable or unavoidable and may
5 determine to what extent the completion of the work is delayed thereby.

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

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

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

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

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

2 (4) The City shall release retention to the contractor upon the following conditions: (a)
3 the contractor has reached final completion under the contract terms and conditions and (b)
4 the contract is free of offsets by the City for liquidated damages, defective work and the like,
5 and is free of stop notices, forfeitures, and other charges. When the department head
6 responsible for the public work or his/her designee determines that the contract is 98 percent
7 or more complete, the department head or his/her designee may reduce retention funds to an
8 amount equal to 200 percent of the estimated value of work yet to be completed, provided that
9 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other
10 charges.

11 (5) In no event shall the City be liable for interest or charges arising out of or relating
12 to the date the City issues any progress payment or the date the City releases all or part of
13 the retention, except that the City will pay interest at the legal rate, as set forth in section
14 685.010(a) of the California Code of Civil Procedure as that section may be amended from
15 time to time, on any improperly withheld amounts commencing no earlier than 90 days after
16 the date the City should have made any progress payment or released all or part of the
17 retention. Under no circumstances shall the legal rate of interest paid by the City under this
18 provision exceed 10 percent per annum. The payment of interest under this provision is the
19 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

20 (K) Inspection and Acceptance of Completed Work; Final Payment. The department
21 head authorized to execute any contract for public works or improvements shall be
22 responsible for the inspection and acceptance of such work on completion. Such acceptance
23 shall be in writing and shall include the certificate of the department head concerned that the
24 work covered by the contract has been fully and satisfactorily completed in accordance with
25 the plans and specifications therefor. Receipt of copy of such acceptance in writing shall

1 constitute the Controller's authority to complete any payments due the contractor under the
2 contract; provided that the Controller may make such additional investigation or inspection as
3 is provided by Administrative Code Section 10.07.

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

15 ~~(M) Violations of Chapter 6; False Claims. Every public work contract performed at the~~
16 ~~expense of the City and County of San Francisco, or the cost of which is paid for out of monies~~
17 ~~deposited in the treasury of the City and County, whether directly awarded or indirectly by or under~~
18 ~~subcontract, subpartnership, day labor, station work, piece work or any other arrangement whatsoever,~~
19 ~~shall incorporate the provisions of Article V (commencing at Section 6.80) of this Chapter, relating to~~
20 ~~administrative debarments and false claims. The failure to include such reference or incorporation~~
21 ~~shall not in any ways abrogate the rights of the City and County under Article V of this Chapter.~~

22 (AM) Articles Not to be Prison Made. No article furnished under any contract awarded
23 under the provisions of this Chapter shall have been made in a prison or by convict labor
24 except for articles made in prisons or by convicts under the supervision and control of the
25

1 California Department of Corrections and limited to articles for use by the City and County's
2 detention facilities.

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

9 (PO) Safety. All construction contracts awarded under this Chapter shall require the
10 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
11 Health statutes and regulations.

12 Additionally, all construction contracts awarded under this Chapter shall require the
13 Contractor and all of its subcontractors to abide by the requirements of Administrative Code
14 Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with exceptions.

15 (PP) Claims. The City shall consider only those claims for additional payment under a
16 public work contract that are certified and that conform to the contract requirements for claims,
17 pricing, and schedule.

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

23 (2) Claims by Subcontractors. Subcontractors at any tier are not third-party
24 beneficiaries of any Contract awarded under this Chapter. The City shall not consider a direct
25 claim by any subcontractor. A Contractor presenting to the City any claim on behalf of a

1 subcontractor must certify the subcontractor's claim in the same manner the Contractor would
2 certify its own claim under the foregoing paragraph (1).

3 Section 2. The San Francisco Administrative Code is hereby amended by amending
4 Section 6.42, to read as follows:

5 **SEC. 6.42. PROFESSIONAL SERVICES CONTRACT TERMS.**

6 All contracts for temporary design, consultant and construction management services
7 ("professional services") shall contain the following minimum terms and conditions:

8 (A) Guaranteed Maximum Costs. Professional service contracts shall provide for a
9 Guaranteed Maximum Cost, including fees, travel and related expenses as necessitated by
10 the project. Any modification to the Guaranteed Maximum Cost must be approved by the
11 department head in writing and approved by the Mayor, the Mayor's designee or the board or
12 commission concerned, as appropriate, and the Controller.

13 (B) Insurance. Notwithstanding any other provisions of this Chapter, all professional
14 service contracts must conform to the insurance requirements established by the Risk
15 Manager. The Risk Manager shall develop uniform insurance requirements for City contracts
16 subject to this Chapter and shall publish such requirements in the Risk Manager's Manual.
17 The Risk Manager shall review and update such insurance requirements on an annual basis.

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

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

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

8 ~~(E) Violations of Chapter 6; False Claims. Every professional service contract performed at
9 the expense of the City and County of San Francisco, or the cost of which is paid for out of monies
10 deposited in the treasury of the City and County, whether directly awarded or indirectly by or under
11 subcontract, subpartnership, subconsultancy or any other arrangement whatsoever, shall incorporate
12 the provisions of Article V (commencing at Section 6.80) of this Chapter, relating to administrative
13 debarments and false claims. The failure to include such reference or incorporation shall not in any
14 way abrogate the rights of the City and County under Article V of this Chapter.~~

15 (~~FE~~) Modifications. Professional service contracts may be modified only by written
16 instrument, granted and approved by the City and County in the same manner the underlying
17 contract was awarded.

18 Section 3. The San Francisco Administrative Code is hereby amended by amending
19 Section 21.35, to read as follows:

20 **SEC. 21.35. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.**

21 (a) The covenant of good faith and fair dealing is contained in every City Commodities
22 or Services contract, and Contractors and subcontractors shall at all times deal in good faith
23 with the City and shall submit claims, requests for equitable adjustments, requests for change
24 orders, requests for contract modifications or requests of any kind seeking increased
25 compensation on a City contract only upon a good-faith, honest evaluation of the underlying

1 circumstances and a good-faith, honest calculation of the amount sought. Any contractor,
2 subcontractor, or consultant who commits any of the following acts shall be liable to the City
3 for three times the amount of damages which the City sustains because of the act of that
4 contractor, subcontractor or consultant. A contractor, subcontractor or consultant who
5 commits any of the following acts shall also be liable to the City for the costs, including
6 attorney's fees, of a civil action brought to recover any of those penalties or damages, and
7 may be liable to the City for a civil penalty of up to \$10,000 for each false claim:

8 (1) Knowingly presents or causes to be presented to an officer or employee of the City
9 a false claim or request for payment or approval;

10 (2) Knowingly makes, uses, or causes to be made or used a false record or statement
11 to get a false claim paid or approved by the City;

12 (3) Conspires to defraud the City by getting a false claim allowed or paid by the City;

13 (4) Knowingly makes, uses, or causes to be made or used a false record or statement
14 to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;

15 (5) Is a beneficiary of an inadvertent submission of a false claim to the City,
16 subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City
17 within a reasonable time after discovery of the false claim.

18 (b) This Section does not apply to any controversy involving an amount of less than
19 \$500 in value. For purposes of this Section, "controversy" means any one or more false
20 claims submitted by the same contractor, subcontractor, or consultant in violation of this
21 Section.

22 (c) Every contract for Commodities or services performed at the expense of the City
23 or the cost of which is paid for out of monies deposited in the treasury of City, whether directly
24 awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece
25

1 work, or any other arrangement whatsoever, ~~shall contain a clause informing the contractor of is~~
2 subject to the requirements of Subdivision (a).

3 (d) Liability under this section shall be joint and several for any act committed by two
4 or more persons.

5 (e) For purposes of this Section, the terms "contractor" and "subcontractor" shall have
6 the same definitions as found in Section 12-D.A.5 of the San Francisco Administrative Code.
7 The term "consultant" shall be broadly defined to include any person or entity that provides
8 services to the City.

9 (f) For purposes of this Section, "claim" includes any request or demand for money,
10 property, or services made to any employee, officer, or agent of the City, or to any contractor,
11 subcontractor, grantee, or other recipient, whether under contract or not, if any portion of the
12 money, property, or services requested or demanded issued from, or was provided by the
13 City.

14 (g) For purposes of this Section, "knowingly" means that a contractor, subcontractor,
15 or consultant, with respect to information, does any of the following:

- 16 (1) Has actual knowledge of the information;
17 (2) Acts in deliberate ignorance of the truth or falsity of the information;
18 (3) Acts in reckless disregard of the truth or falsity of the information.

19 Proof of specific intent is not required and reliance on the claim by the City is also not
20 required.

21
22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 

25 KATHRYN LUHE
Deputy City Attorney

LEGISLATIVE DIGEST

[Amendments to Chapters 6 and 21, related to false claims.]

Ordinance amending Administrative Code Sections 6.22, 6.42, and 21.35 to clarify that the false claim provisions in Chapters 6 and 21 are statutory rather than contractual and to eliminate the requirement that such provisions be incorporated into public works contracts, professional services contracts, and in contracts for the acquisition of commodities and services.

Existing Law

Chapters 6 and 21 of the Administrative Code govern public works, personal services, and acquisition contracting. Both Chapters provide a process that allows the City to pursue monetary penalties, investigation and/or prosecution against contractors who submit false claims or fail to abide by the provisions of the Chapters. These procedures are restated in Sections 6.22, 6.42, and 21.35, which also require Departments to incorporate the provisions into City contracts. The incorporation into contracts converts the false claims provisions from statutory to contractual, resulting in confusion, duplication and unnecessary work by Departments.

Amendments to Current Law

The proposed amendments to Chapters 6 and 21 clarify that the false claims provisions are statutory, not contractual, by eliminating the requirement that the provisions be incorporated into contracts while clarifying that the contractors remain subject to underlying rules against submitting false claims.

Background Information

The City and County of San Francisco may take certain actions in its role as a "market participant," when it is purchasing goods or services. Other actions are taken under the "police power" provisions of state law and the Charter. The drafting of these provisions in Chapter 6 and 21 inadvertently convert "police power" provisions into "market participant" provisions.