

1 [Administrative Code Chapter 6 – technical amendments and amendments to procedures for
2 investigations and grounds for administrative debarment or other penalties.]

3 **Ordinance amending Administrative Code Chapter 6 to clarify and update requirements**
4 **for the solicitation of quotes under subsection 6.21(B); to clarify requirements for**
5 **modifications to construction contracts under subsection 6.22(H); to add a**
6 **nonabrogation clause to subsection 6.22(M); to correct the statutory references in**
7 **section 6.40; to add a nonabrogation clause to subsection 6.42(E); to add a new section**
8 **6.8 severability clause; to add a new subsection 6.42(F), requiring that modifications**
9 **for professional service contracts be in writing; to add an investigation requirement for**
10 **violations of Chapter 6; and to extend the grounds upon which the City and County**
11 **may determine a contractor to be nonresponsive to civil or criminal violations against**
12 **any government entity relevant to the contractor's ability to comply with or perform**
13 **under the terms and conditions of its contract with the City and County.**

14
15 Note: Additions are single-underline italics Times New Roman;
16 deletions are ~~strikethrough italics Times New Roman~~.
17 Board amendment additions are double underlined.
18 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. The San Francisco Administrative Code is hereby amended by amending
21 Subsection 6.21(B), Subsections 6.22(H) and 6.22(M), Section 6.40 and Subsection 6.42(E),
22 to read as follows:

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

24 . . .

25 (B) **Quotes.** All requests for quotes for construction contracts less than *or equal to* the
Threshold Amount shall be posted with three-days' notice. Such requests shall at a minimum

1 require a contractor's license, qualifications, a Business Tax Registration Certificate and
2 compliance with subcontractor listing laws, all in accordance with the above-listed provisions
3 of this Section 6.21.

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

6 . . .

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

19 (1) **Increasing or Decreasing Price.** Alterations, modifications or extras in any contract,
20 which will increase or decrease the contract cost or scope, may be made or allowed only on
21 the written recommendation of the department head responsible for the supervision of the
22 contract stating the amount and basis for such increase or decrease. For any cumulative
23 increase or decrease in price in excess of ten percent of the original contract price or scope,
24 the department head shall obtain the approval of the Mayor or Mayor's designee or the board
25

1 or commission as appropriate and also the approval of the Controller *notwithstanding any*
2 *delegation provided for above.*

3 (2) Extensions of Time. Upon finding that work under a construction contract cannot be
4 completed within the specified time because of an unavoidable delay as defined in the
5 contract, the department head may extend the time for completion of the work. If the
6 cumulative extensions of time exceeds ten percent of the original contract duration, the
7 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
8 commission, as appropriate to the department, *notwithstanding any delegation provided for above.*
9 All time extensions shall be in writing, but in no event shall any extension be granted
10 subsequent to the issuance of a certificate of final completion.

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

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

22 (c) Avoidable and Unavoidable Delay; Limitation of Damages for Delay. The
23 department head administering the public work shall have the authority to specify in the
24 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall
25 not pay damages or compensation of any kind to a contractor because of delays in the

1 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
2 the City and County may pay for (1) delays caused to the contractor by the City and County;
3 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
4 delays will be compensated for only under the conditions specified in the contract.

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

13 . . .

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

22 **SEC. 6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR**
23 **PUBLIC WORK PROJECTS.**

24 Notwithstanding any other provision of this Administrative Code, when a department is
25 seeking outside temporary professional design, consultant or construction management

1 services for a public work project, where the fee for such services shall exceed the minimum
2 competitive amount, as defined below, the department shall procure such services through a
3 competitive process based on qualifications.

4 (A) **Minimum Competitive Amount.** The minimum competitive amount for temporary
5 outside professional service contracts shall be \$25,000. On January 1, 2005, and every five
6 years thereafter, the Controller shall recalculate the minimum competitive amount to reflect
7 any proportional increase in the Urban Regional Consumer Price Index from January 1, 2000,
8 rounded to the nearest \$1,000.

9 (B) **Selection Process.** For professional services contracts in excess of the minimum
10 competitive amount, the department head for the department empowered to contract for the
11 public work shall designate one or more panels to review proposals and interview and rate
12 respondents with respect to a request for proposals or qualifications for a professional
13 services contract. A panel shall consist of not fewer than two persons. The department head
14 may establish a multi-tier selection process whereby, for example, a technical panel
15 recommends a shortlist of qualified respondents and a second panel ranks the shortlist.

16 The department head shall ensure that all panel members are impartial and that all
17 respondents are treated fairly. The panel members rating the respondents shall do so
18 according to their independent assessment of the respondent's qualifications for the public
19 work project; questions relating to a respondent's expertise, qualifications and experience
20 shall remain within the sole purview of the panel members.

21 Any rating sheet completed by any panel member may be considered a matter of
22 public record, but the names of the individual panel members shall not. Any name appearing
23 on a rating sheet produced in accordance with the Public Records Act or the San Francisco
24 Sunshine Ordinance shall be redacted.

1 (C) **Negotiation.** Following the *selection* process outlined *above*, and should the
2 department concerned desire to enter into a contract, the department head shall invite the
3 highest-ranked qualified respondent to negotiate a professional services agreement. In the
4 event that the department head determines, in the department head's sole discretion, that
5 negotiations are unfruitful, the department head shall terminate negotiations in writing and
6 may then invite the next-ranked respondent to negotiate a contract. In such event, the
7 department head shall as soon as practicable make a report to the Mayor, board or
8 commission as appropriate to the department.

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

10 . . .

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

19 Section 2. The San Francisco Administrative Code is hereby amended by adding
20 Section 6.8 and Subsection 6.42(F), to read as follows:

21 **SEC. 6.8. SEVERABILITY.**

22 *If any provisions of this Chapter or any application thereof to any person or circumstances is*
23 *held invalid, such invalidity shall no affect other provisions or application of this Chapter which can be*
24 *given effect without the invalid provision or application, and to this end the provisions of this Chapter*
25 *are declared to be severable.*

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

2 . . .

3 *(F) Modifications. Professional service contracts may be modified only by written instrument,*
4 *granted and approved by the City and County in the same manner the underlying contract was*
5 *awarded.*

6 Section 3. The San Francisco Administrative Code is hereby amended by amending
7 Section 6.80 and Section 6.82, to read as follows:

8 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
9 **PENALTIES.** Any contractor, subcontractor, supplier, consultant or subconsultant^s who fails
10 to comply with the terms of its contract with the City and County; or who violates any provision
11 of Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations
12 adopted pursuant to Administrative Code Chapter 6; or who submits false claims; *or who has*
13 *violated against any government entity a civil or criminal law relevant to its ability to perform under or*
14 *comply with the terms and conditions of its contract with the City and County,* may be declared an
15 irresponsible bidder or an unqualified consultant and debarred according to the procedures
16 set forth below. Additionally, any contractor, subcontractor, supplier, consultant or
17 subconsultant who submits a false claim to the City and County may also be subject to
18 monetary penalties, investigation and prosecution as described below.

19 *In the event that such a violation of this Chapter, including the submission of one or more false*
20 *claims, comes to the attention of a board or commission or department head responsible for public*
21 *work, the department head must investigate the matter. The department head must report the findings*
22 *of any such investigation by letter to the Board of Supervisors. The investigation letter to the Board of*
23 *Supervisors must state the name of the contractor, subcontractor, supplier, consultant or*
24 *subconsultant; the nature of the violation; the results of the investigation; and the department head's*
25 *plan for addressing the violation, if any.*

1 **SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**

2 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
3 action, the Mayor, board or commission or department head responsible for the public work
4 may bring charges against a contractor, subcontractor, supplier, consultant or subconsultant
5 for violation of a contract, for violation of Chapter 6, *for violating against any government entity a*
6 *civil or criminal law relevant to its ability to perform work for the City and County*, for submitting a
7 false claim or for engaging in collusion. The department head, upon approval of the Mayor or
8 the board or commission concerned, as appropriate to the department, shall give written
9 notice to the contractor, subcontractor, supplier, consultant or subconsultant of the charges
10 and of all evidence supporting such charges. The contractor, subcontractor, supplier,
11 consultant or subconsultant, and/or his or her attorney or other authorized representative shall
12 be entitled to offer rebuttal evidence and any other evidence in support of his or her position.
13 The department head or the board or commission, as appropriate to the department, shall
14 conduct a hearing where the charges and all evidence shall be presented. In the alternative,
15 such department head, board or commission may appoint a hearing officer to conduct such a
16 hearing and make written findings of fact to be submitted to the department head, board or
17 commission. For departments under the Mayor, the department head shall then render a final
18 written decision. For departments under boards or commissions, the commission president or
19 his or her designee shall render a written decision which shall become final upon adoption by
20 resolution of the board or commission concerned.

21 Any final written decision by a department head, board or commission that includes a
22 determination of nonresponsibility or disqualification shall provide for a term of debarment. A
23 contractor, subcontractor, supplier, consultant or subconsultant (or any other entity with
24 substantially the same officers, directors, owners or principals) may be debarred for a period
25 of up to five years. During such debarment period, the contractor, subcontractor, supplier,

1 consultant or subconsultant shall not be permitted to act as a contractor or consultant at any
2 tier, directly or indirectly, for any public work or improvement for the City and County.

3 Upon a written determination of nonresponsibility or disqualification, any department
4 head, board or commission may cancel any contract with the nonresponsible or disqualified
5 contractor or consultant or direct the cancellation of the subcontract or subconsultancy. In the
6 event of such cancellation, no recovery shall be had on that contract by the contractor,
7 subcontractor, consultant or subconsultant.

8 Following any decision finding a contractor, subcontractor, supplier, consultant or
9 subconsultant nonresponsible, the department head, board or commission who made the
10 finding of nonresponsibility retains authority to modify the decision.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: _____
Sheryl L. Bregman
Deputy City Attorney