

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

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

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

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

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

15 **SEC. 6.20. PUBLIC WORK CONTRACTS GENERALLY.**

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

22 (B) Public Works Less Than or Equal to the Threshold Amount. Any public work or
23 improvement estimated to cost less than or equal to the Threshold Amount may be performed
24 (a) under contract or (b) by City and County employees. If the work is to be performed under
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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 require that prospective bidders be prequalified to bid either on a specific project or
17 on an identified group or category of projects. The prequalification requirements of this section
18 shall apply to all public work contracts awarded under this Chapter, including but not limited to
19 design-build and integrated project delivery contracts. The procedure for prequalification is as
20 follows:

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

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

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

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

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

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

1 previous five years may appeal the disqualification in accordance with section 6.20(F)(6), below, and
2 provide an explanation of the relevant circumstances during the appeal procedure;

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

6 (v) Prospective bidder's financial ability;

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

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

17 (viii) Prospective bidder's safety record, including compliance with occupational safety and
18 health laws and other labor legislation safety requirements during the previous five years, and
19 evaluation of a prospective bidder's worker's compensation insurance Experience Modification Rate
20 (EMR) for the previous three years. A department head shall automatically disqualify any prospective
21 bidder that has a three year average EMR of 1.5 or higher. A department head may apply a more
22 stringent EMR disqualification standard (i.e., three year average EMR between 1.1 and 1.49) based on
23 the type of work and/or hazards involved. A prospective bidder automatically disqualified solely
24 because its EMR is higher than the applicable disqualification standard may appeal the
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1 disqualification in accordance with section 6.20(F)(6), below, and provide an explanation of the
2 relevant circumstances during the appeal procedure;

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

11 (x) Prospective bidder's history and organization;

12 (xi) Prospective bidder's relevant experience;

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

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

22 (2) The department responsible for the public work shall advertise any
23 prequalification questionnaire in the same manner required for bids, as set forth in Section
24 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 45
4 or more days prior to bid opening or the due date for requests for proposals. For prequalification
5 statements submitted by prospective bidders during a bid or request for proposals period, the
6 department shall make a prequalification determination within 30 days of the prequalification
7 statement submittal.

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

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

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

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

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

11 Section 2. 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,
18 the department head authorized to execute such contracts shall require the successful bidder
19 to file corporate surety bonds for the faithful performance thereof and to guarantee the
20 payment of wages for services engaged and of bills contracted for material, supplies and
21 equipment used in the performance of the contract. The bond shall be for a sum not less than
22 100 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
5 to 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,
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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.

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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
24 execute a construction contract under this Chapter shall include in the contract specifications,
25 or make 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
10 or improvement shall also contain a provision that the contractor shall insert in every
11 subcontract or other arrangement which he or she may make for the performance of any work
12 or labor on a public work or improvement. This provision shall be that the subcontractor shall
13 pay to all persons performing labor or rendering service under said subcontract or other
14 arrangement the highest general prevailing rate of wages as fixed and determined by the
15 Board of 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.

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1 (7) Additional Required Contract Provisions. Every public works contract shall
2 contain 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
22 to 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
8 whose jurisdiction said public work or improvement is being carried on, made or constructed,
9 when certifying to the Controller any payment which may become due under said contract, to
10 deduct 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
25 of 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
5 hearing officer with knowledge and not less than five years' experience in labor law, prevailing
6 wage, and/or wage and hour issues, and shall so advise the enforcing official and the
7 contractor or 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
12 for 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
22 in the foregoing paragraphs until such time as either the contractor or subcontractor has
23 conceded to the forfeiture or, in the event of an objection, there is a determination no longer
24 subject to judicial review. The Controller shall then distribute the amounts withheld in the
25 following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to

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

7 (F) Hours and Days of Labor.

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

13 (1) Increasing or Decreasing Price. Alterations, modifications or extras in any
14 contract, which will increase or decrease the contract cost or scope, may be made or allowed
15 only on the written recommendation of the department head responsible for the supervision of
16 the 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
10 award of contract has been made in consideration, in whole or in part, of the relative time
11 estimates of bidders for the completion of the work, no extension of time may be granted on
12 such contract beyond the time specified for completion, unless the liquidated damages for
13 each day the work is uncompleted beyond the specified time shall be collected; provided,
14 however, that 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:

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

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

5 like, 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

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

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

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

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

16 after 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

1 the plans and specifications therefor. Receipt of copy of such acceptance in writing
2 shall constitute the Controller's authority to complete any payments due the contractor under
3 the contract; provided that the Controller may make such additional investigation or inspection
4 as is provided by Administrative Code Section 10.07.

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

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

24 (N) Articles Not to be Prison Made. No article furnished under any contract awarded
25 under the provisions of this Chapter shall have been made in a prison or by convict labor

1 except for articles made in prisons or by convicts under the supervision and control of the
2 California Department of Corrections and limited to articles for use by the City and County's
3 detention facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 GEORGE K. WONG
25 Deputy City Attorney