

FILE NO. 991645

ORDINANCE NO. 286-99

1 [Administrative Code Revision – Chapter 6]
2 AMENDING CHAPTER 6 OF THE SAN FRANCISCO ADMINISTRATIVE CODE TO DELETE
3 OUT-DATED REFERENCES AND OBSOLETE PROVISIONS; TO RE-ORGANIZE, RE-
4 NUMBER AND CONSOLIDATE EXISTING PROVISIONS FOR A REVISED CHAPTER 6; TO
5 ADD PROVISIONS DEFINING TERMS RELEVANT TO PUBLIC WORKS CONTRACTING;
6 TO ADD PROVISIONS CLARIFYING THE REQUIREMENTS AND PROCEDURES FOR
7 COMPETITIVE BIDDING AND THE AWARD OF PUBLIC WORK AND RELATED
8 TEMPORARY PROFESSIONAL SERVICE CONTRACTS; TO INCREASE THE THRESHOLD
9 FOR COMPETITIVE BIDDING AND AWARD OF PUBLIC WORK CONTRACTS TO
10 \$100,000; TO REVISE THE PROCEDURES FOR AND INCREASE TO \$250,000
11 EMERGENCY CONTRACTING AUTHORITY; TO ADD NEW PROCEDURES FOR JOB
12 ORDER CONTRACTS, AS-NEEDED CONTRACTS, ELEVATOR, ESCALATOR AND FIRE
13 ALARM SERVICE CONTRACTS AND CONVENTION FACILITY PUBLIC WORK
14 CONTRACTS; TO CLARIFY PENALTIES AND PROCEDURES FOR VIOLATIONS OF
15 CHAPTER 6 AND THE SUBMISSION OF FALSE CLAIMS.

16 Note: Additions are underlined; deletions are in ((double parentheses)).

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

18 Section 1. Chapter 6 of the San Francisco Administrative Code is hereby amended by
19 deleting all existing Sections, as follows:

20 ((**SEC. 6.01. SCOPE OF CHAPTER.** Chapter 6 governs contracts for public works and
21 improvements and for the services of architects and engineers associates with public works
22 and improvements. Chapter 6 shall not govern purchases of products and other services,
23 except as they may be contained within contracts for public works and improvements or for
24 the services of architects and engineers associated with public works and improvements.

25 This Chapter does not affect or apply to street improvement work or to other public work, the

1 cost or expense of which is or will be assessed in whole or in part against private property.

2 (Added by Ord. 156-99, App. 5/19/99)))

3 ((**SEC. 6.02. PURCHASING; SURPLUS COMMODITIES.** (Added by Ord. 277-96, App.
4 7/3/96. Repealed by Ord. 156-99, App. 5/19/99)))

5 ((**SEC. 6.03. PURCHASING; MONETARY FUNCTIONS.** (Added by Ord. 277-96, App.
6 7/3/96. Repealed by Ord. 156-99, App. 5/19/99)))

7 ((**SEC. 6.04. PURCHASING; REQUISITION, CONTRACT AND PAYMENT.** (Added by
8 Ord. 277-96, App. 7/3/96. Repealed by Ord. 156-99, App. 5/19/99)))

9 ((**SEC. 6.05. PUBLIC WORKS AND PURCHASING CONTRACTS.**

10 (a) The construction, reconstruction or repair of public buildings, streets, utilities or
11 other public works or improvements, when the expenditure involved in each case shall exceed
12 the sum of \$50,000, shall be done by contract, except as otherwise provided by the Charter or
13 the Administrative Code. It shall constitute official misconduct to split or divide any public work
14 or improvement into two or more units for the purpose of evading the contract provisions of
15 this Section. In an emergency, provided an actual emergency be declared by the Board of
16 Supervisors to exist, and when authorized by resolution of said Board, any public work or
17 improvement may be executed in the most expeditious manner. Notwithstanding any other
18 provision in this Section or the Charter contained, upon the approval of the Mayor or the
19 Mayor's designee declaring the work to be emergency in character, there may be expended
20 by the Department of Public Works the sum not to exceed \$500 for new constructions of any
21 type in or upon unimproved or unaccepted streets.

22 (b) Any public work or improvement estimated to cost less than \$50,000 may be
23 performed under contract or written order or by the employment of the necessary labor and
24 purchase of the necessary materials and supplies directly by the City and County. Any public
25 work or improvement executed by the City, other than routine repair work, shall be authorized

1 by the Mayor or the Mayor's designee when the cost exceeds \$50,000 or by the heads of
2 departments not under the Mayor, only after detailed estimates have been prepared and
3 submitted by the head of the department concerned. There shall be separate accounting for
4 each work or improvement so executed, which accounting shall include all direct, indirect and
5 supervisory elements of cost chargeable to such work or improvement, and each cost
6 accounting shall be reported to the Mayor or the Mayor's designee. All such accounts shall be
7 reported to the Controller. Any public work or improvement costing less than \$50,000 and not
8 performed by the use of City and County labor, materials, and supplies shall, if not performed
9 under contract, be covered by written order or agreement which shall be based on not less
10 than three bids, notice of which shall be given by three days' posting. Records of such bids
11 shall be kept by the department.

12 (c) When the expenditure for any public work or improvement shall exceed the sum of
13 \$50,000, the same shall be done by contract, except as otherwise provided in the Charter or
14 the Administrative Code. The head of the department in charge of or responsible for the work
15 for which a contract is to be let, shall let such contract to the lowest reliable and responsible
16 bidder not less than 10 days after advertising by publication for sealed proposals for the work
17 or improvement contemplated, in order to develop, implement or improve a qualifying
18 nondiscrimination program as required by Chapter 12B of the Administrative Code a period in
19 excess of 30 days after receipt of bid shall be required. Each such advertisement shall contain
20 the reservation of the right to reject any and all bids. The officer responsible for the awarding
21 of any such contract shall require from all bidders information concerning their experience and
22 financial qualifications, as provided by general law relative to such investigations authorized
23 by Department of Public Works.

24 (d) The department head concerned, with the approval of the board or commission to
25 which he or she is responsible, may reject any and all bids and readvertise for bids.

1 (e) The department head shall have power to sign such contract for estimated
2 expenditures of \$50,000 or less. Any contract for an amount in excess of \$50,000 shall
3 require the joint approval of the department head and the Mayor or the Mayor's designee
4 relative to departments under the Mayor's jurisdiction, or the signature of the department head
5 and the approval by resolution of the board or commission concerned for departments not
6 under the Mayor.

7 (f) The Board of Supervisors, by ordinance, shall establish a procedure whereby City
8 departments may file sealed bids for the execution of any work to be performed under
9 contract. If such bid is the lowest, the contract shall be awarded to the department. Accurate
10 unit costs shall be kept of all direct and indirect charges incurred by the department under any
11 such contract, which unit costs shall be reported to and audited by the Controller monthly and
12 on the completion of the work.

13 (g) In any case where the lowest gross price or unit cost bid is not accepted, and a
14 contract is entered into with another bidder, written report shall be made to the Director of
15 Administrative Services, the Mayor and the Controller by the officer authorized to execute the
16 contract, with the reasons for failure to accept such lowest bid. (Added by Ord. 277-96, App.
17 7/3/96; Amended by Ord. 156-99, App. 5/19/99)))

18 ((**SEC. 6.06. CONTRACTING; PENALTIES AND EXTRAS.** If so specified in the
19 published notice soliciting sealed bids for any public work or improvement, any contract
20 therefor may be let for a gross price or on a basis of cost per unit of work to be performed,
21 and may also provide for liquidated damages to the City and County for every day during
22 which the contract is uncompleted beyond such specified date. In awarding any contract, the
23 department head concerned is authorized to compare bids on the basis of time of completion.
24 When any award of contract has been made in consideration, in whole or in part, of the
25 relative time estimates of bidders for the completion of the work, the time within which the

1 contractor shall start work shall be fixed and the performance within such time limits shall be
2 covered by the bond required of the contractor, and no extension may be granted on such
3 contract beyond the date specified for completion, unless the liquidated damages for each day
4 the work is uncompleted beyond the specified date shall be collected; provided, however, that
5 this shall not apply to unavoidable delays due to acts of God.

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

18 In the performance of any contract awarded on the unit and the unit-cost basis, if the
19 department head concerned ascertains that the amount of work done or to be done shall
20 exceed the estimated amount of the contract by 10 percent, or more, the excess shall be
21 provided for as prescribed by Section 10.02 relative to supplemental appropriations. (Added
22 by Ord. 277-96, App. 7/3/96)))

23 ((**SEC. 6.07. PUBLIC WORKS CONTRACT PROCEDURE BY ORDINANCE.**

24 Notwithstanding any other provision of this Code and, in particular, the provisions of Section
25 6.05 of this Code, the Board of Supervisors shall by ordinance determine the monetary limits

1 not to exceed \$50,000, within which the construction, reconstruction or repair of public
2 buildings, streets, utilities or other public works or improvements may be done by contract or
3 by written order or by the employment of the necessary labor and purchase of the necessary
4 materials and supplies directly by the City and County, consistent, save as to monetary limits,
5 with the manner provided for in Section 6.05 and Section 6.01 of this Code. (Added by Ord.
6 439-96, App. 11/8/96)))

7 ((**SEC. 6.08. CONTRACTING FOR HAZARDOUS MATERIALS ABATEMENT WORK.**

8 When the Director of Public Works ("Director") determines: (1) that hazardous materials on
9 public property must be expeditiously abated (the "work"); and (2) that there is inadequate
10 time to advertise and competitively bid the work in accordance with Section 6.05 of the San
11 Francisco Administrative Code, then the work may be performed in accordance with the
12 following procedures:

13 (a) The Department of Public Works shall advertise for and receive proposals from
14 hazardous materials abatement contractors, which proposals shall address the qualifications
15 of the contractors to perform the abatement work. The proposals shall be evaluated according
16 to the requirements of Administrative Code Section 12D.11, Subdivision (C), regarding
17 professional services contracts.

18 (b) The Department of Public Works shall select a sufficient number of qualified
19 contractors to perform the amount of hazardous materials abatement work anticipated to be
20 required in the upcoming one or more years and enter into master agreements on an "if- and
21 as-needed" basis with those contractors. Each master agreement shall state the maximum
22 total dollar value of work each contractor is authorized to perform during the contract period.

23 (c) The Department shall seek price quotations for performance of the work from at
24 least three of the contractors with master agreements. The contract for the work will be
25 awarded to the contractor submitting the lowest quotation, except as otherwise provided

1 herein. The Department shall keep a record of such quotations and a register of all awards
2 made thereunder. In the event that the Department is unable to obtain three quotations, the
3 Director shall base the award on the quotation or quotations received. If the Director believes
4 that the public interest would best be served by accepting other than the lowest quotation, he
5 or she shall have and is hereby given authority to accept the quotation that in his or her
6 opinion will best serve the public interest. The Director may reject any and all quotations
7 and request new quotations. (Added by Ord. 357-97, App. 9/5/97))

8 ((**SEC. 6.1. BIDDING REQUIRED ON CONTRACTS EXCEEDING \$50,000; TIME FOR**
9 **BIDDING.** The several department heads and officers empowered by law to enter into
10 contracts on the part of the City and County for public works or improvements to be performed
11 at the expense of the City and County, or to be paid out of moneys deposited in the Treasury,
12 or out of trust moneys under the control of or collected by the City and County, when the
13 expenditures involved shall exceed the sum of \$50,000, shall let such contract to the lowest
14 reliable and responsible bidder at any time not less than 10 days after the last date of
15 publication or more than 30 days after receipt of bid unless the time for letting such contract
16 be extended by resolution of the Board of Supervisors upon the recommendation of the
17 department head, board or commission responsible for such award; provided, that whenever,
18 in order to develop, implement or improve a qualifying affirmative action nondiscrimination
19 program as required by Section 12B of the Administrative Code a period in excess of 30 days
20 after receipt of bid shall be required, then such department heads or officers empowered to
21 enter into contracts for public works or improvements to be performed for or on behalf of the
22 City and County shall have an additional 30 days within which to let such contract to the
23 lowest reliable and responsible bidder. (Amended by Ord. 104-82, App. 3/5/82; Ord. 409-89,
24 App. 11/8/89))

25 ((**SEC. 6.1-1. PORT COMMISSION; PUBLIC UTILITIES COMMISSION; PUBLIC**

1 **TRANSPORTATION COMMISSION; DEPARTMENT OF PUBLIC WORKS; TIME FOR**
2 **AWARD OF CONTRACTS.*** Notwithstanding the provisions of Section 6.1 of this Chapter,
3 the Port Director, upon the approval of the Port Commission, or the General Manager of the
4 Public Utilities Commission, upon approval of the Public Utilities Commission, or the Director
5 of Public Transportation, upon approval of the Public Transportation Commission, may specify
6 in its call for bids a period of time to award said bid exceeding 30 days or may extend the time
7 of award of any such bid with the consent of the successful bidder, and the Director of Public
8 Works, upon approval of the Mayor or the Mayor's designee may specify, in his or her call for
9 any bid for construction, reconstruction or alteration of or addition to any school building, for
10 the protection of life and property, pursuant to the provisions of Article 4, Chapter 2 of the
11 California Education Code, Sections 15451, et seq. (The Field Act), a period of time within
12 which to award said bid exceeding 30 days or may extend the time of award of any such bid
13 with the consent of the successful bidder. (Amended by Ord. 346-73, App. 8/31/73; Ord. 278-
14 96, App. 7/3/96; Ord. 111-97, App. 3/28/97; Ord. 412-97, App. 10/31/97)))

15 ((*** Editor's Note:** The provisions of Ord. 111-97 will expire on June 30, 1998, and
16 Section 6.1-1 will revert to its state as amended by Ord. 278-96.))

17 ((**SEC. 6.1-2. TIME FOR AWARD OF CONTRACTS FOR FEDERAL AND STATE**
18 **GRANT AND LOAN PROJECTS.** Notwithstanding the provisions of Section 6.1 of this
19 Chapter, the Director of Public Works, upon the approval of the Mayor or Mayor's designee,
20 may award any contract, for which federal or State grant and/or loan funds are available to the
21 City and County within the period of time specified in the Special Provisions for any such
22 contract, or within an extended period beyond such specified in the Special Provisions for any
23 such contract, or within an extended period beyond such specified time with the consent of
24 the successful bidder. (Added by Ord. 224-75, App. 5/29/75; amended by Ord. 102-94, App.
25 3/11/94; Ord. 223-94, App. 6/9/94; Ord. 278-96, App. 7/3/96)))

1 ((**SEC. 6.1-3. PREVAILING RATES OF WAGE REQUIRED IN CONTRACTS FOR**
2 **PERSONAL SERVICES; NONPROFIT MAKING ENTERPRISE EXCLUDED; SMALL**
3 **BUSINESS EXEMPTION.** The provisions of this ordinance shall apply to every contract,
4 lease, franchise, concession, permit or other agreement awarded, let or granted for or on
5 behalf of the City and County of San Francisco by the San Francisco Airports Commission
6 under which the contractor, lessee, franchisee, concessionaire or other party of said
7 agreement (hereafter the "contracting party") will engage in an activity, render a service, or
8 exercise a privilege on property subject to the jurisdiction of the San Francisco Airports
9 Commission, or otherwise take measures that are supportive of, ancillary to, or an integral
10 element of San Francisco International Airport.

11 This ordinance shall obligate the contracting party to pay not less than the prevailing
12 rate of wage to any person performing personal services (as those terms are defined herein)
13 on property under the jurisdiction of the San Francisco Airports Commission and shall further
14 require the contracting party to include a similar provision in all subcontracts, subleases or
15 other subordinated agreements let, awarded, negotiated or entered into by the contracting
16 party with any third person which involves personal services to be performed on property
17 under the jurisdiction of the San Francisco Airports Commission.

18 This ordinance shall not apply to the following:

19 (1) Personal services wherein the person performing personal services is paid a
20 basic wage exclusive of fringe benefits in excess of \$40,000 annually or the hourly equivalent
21 thereof, annually adjusted on July 1st based upon the Consumer Price Index for the San
22 Francisco Bay Area, except when as a result of a determination of prevailing wage, said
23 person's basic wage is increased to an amount in excess of that figure;

24 (2) Any permit issued by the San Francisco Airports Commission authorizing the
25 permittee to engage in business on the property under the Commission's jurisdiction;

1 provided, that the Commission finds that (a) the permittee has fewer than six employees or
2 full-time equivalent employees working on City property, or (b) the permittee pays to the City
3 less than \$10,000 in any calendar year for said permit and provided further that the permittee
4 is not a subcontractor as defined herein. The \$10,000 limit shall be adjusted annually by the
5 Commission to reflect changes in the Consumer Price Index;

6 (3) Subcontractors providing courier, delivery service, or repair service to
7 contracting parties where the persons performing the services spend less than 25 percent of
8 their paid hours per week on property subject to the jurisdiction of the San Francisco Airports
9 Commission;

10 (4) Contracts between the San Francisco Airports Commission or the City and
11 County of San Francisco for the provision of personal services to be rendered to the San
12 Francisco Airports Commission or to the City and County of San Francisco which contracts
13 are exempt from the civil service provisions of the Charter pursuant to Charter Section 8.300.

14 (a) **Definitions.** The following definitions shall apply to the terms used herein:

15 "Concession" shall mean and include a grant of land or other property under the
16 jurisdiction of the San Francisco Airports Commission by or on behalf of the City and County
17 of San Francisco by the San Francisco Airports Commission to a person for the purpose or
18 use specified in said grant.

19 "Concessionaire" shall mean and include a person who is the grantee or beneficiary of
20 a concession as herein defined. "Contract" shall mean and include any agreement involving
21 personal services in the performance of a contract, lease, franchise, concession, permit or
22 other agreement awarded, let or granted for or on behalf of the City and County of San
23 Francisco by the San Francisco Airports Commission or to be performed at any facility owned,
24 leased or otherwise under the jurisdiction of the San Francisco Airports Commission;
25 provided, however, that the term "contract" shall not include contracts let by the City and

1 County of San Francisco pursuant to Charter Section 8.300-1.

2 "Contractor" shall mean and include any person who submits a bid and/or enters into a
3 contract with the City and County of San Francisco by and through the San Francisco Airports
4 Commission, or for a franchise, concession or lease of property, or for personal services to be
5 purchased at the expense of the City and County or to be paid out of moneys deposited in the
6 treasury or out of trust moneys under the control of or collected by the City and County where
7 the work will be performed or the franchise or concession authorizes business activity on or
8 the lease of property involves land under the jurisdiction of the San Francisco Airports
9 Commission.

10 "Franchise" shall mean and include a right or privilege conferred by grant from the San
11 Francisco Airports Commission, and vesting in and authorizing a person to conduct such
12 business or engage in such activity on property subject to the jurisdiction of the San Francisco
13 Airports Commission as is specified in such grant.

14 "Franchisee" shall mean and include a person who is the grantee or beneficiary of a
15 franchise as herein defined.

16 "Lease" shall mean and include any agreement, permit or license by which the San
17 Francisco Airports Commission grants to a person the temporary possession and use of
18 property under the jurisdiction of the San Francisco Airports Commission for reward, and the
19 latter agrees to return the same to the former at a future date.

20 "Lessee" shall mean and include a person or tenant taking possession of property
21 under a lease as herein provided, and further includes a bailee under a bailment agreement
22 providing a rental for personal property; provided, that the lease or bailment involves property
23 under the jurisdiction of the San Francisco Airports Commission.

24 "Permit" shall mean and include an authorization by or on behalf of the City and County
25 of San Francisco through the San Francisco Airports Commission authorizing a person to

1 engage in such activity or to perform such personal services as are specified in such
2 authorization on property under the jurisdiction of the San Francisco Airports Commission.

3 "Person" shall include any individual, firm, proprietorship, partnership, corporation or
4 combination thereof.

5 "Personal services" shall mean and include all labor other than executive or managerial
6 services or labor on public works and improvements.

7 "Prevailing rate of wage" shall be that rate of compensation being paid to a majority of
8 workers engaged in a specified category of personal services, if a majority of such workers be
9 paid at a single rate; if there be no single rate being paid to a majority, then the prevailing rate
10 shall be that single rate being paid the greatest number of workers. Prevailing rate of wage
11 shall have the same meaning as set forth in Section 16012, Title 8, California Administrative
12 Code.

13 "Subcontract" shall mean and include any agreement under or subordinate to a prime
14 contract, lease, franchise, concession, permit or other agreement awarded, let or granted for
15 or on behalf of the City and County of San Francisco by the San Francisco Airports
16 Commission.

17 "Subcontractor" shall mean and include any person who enters into an agreement with
18 a contracting party to perform services authorized or allowed by the contract, lease, franchise,
19 concession, permit or other agreement as defined by this ordinance.

20 "Sublease" shall mean and include a lease (as herein defined) by which a lessee or
21 tenant grants or lets to another person part or all of the leased property for a shorter term than
22 the original lease and under which said lessee or tenant retains some right or interest under
23 the original lease.

24 "Verified complaint" shall mean a written complaint alleging violation of this ordinance.
25 This verified complaint shall name the injured party or parties, the specified category of

1 personal services about which the complaint is being filed, and the party alleged to be
2 violating this ordinance. The verified complaint shall also contain supporting evidence
3 including facts and figures on compensation paid for private sector employment in the
4 specified category of personal services, including the names and addresses of those firms
5 cited. This statement shall be accompanied by an affidavit attesting to its truth and accuracy
6 by the party filing the complaint.

7 (b) **Determination of Prevailing Rate of Wage.** The Civil Service Commission
8 shall, upon request, assist a prospective bidder, contracting party or subcontractor to
9 determine the prevailing rate of wage for a given category of personal services by: (1) sharing
10 the results of pertinent prevailing wages surveys or determinations which the Civil Service
11 Commission has conducted or obtained, or (2) referring the prospective bidder, contracting
12 party or subcontractor to agencies or organizations that might assist them in determining the
13 prevailing rate of wage.

14 Upon receipt of a verified complaint from the San Francisco Airports Commission, the
15 Civil Service Commission shall determine the specified category of personal services for
16 which the complaint is being filed. If the Civil Service Commission determines that the
17 complaining party is performing personal services in a specified category other than the one
18 listed in the complaint, the complaining party shall be given 30 days to further supplement the
19 evidence already submitted in his or her verified complaint.

20 The Civil Service Commission, shall, within 45 days of receipt of the complaint,
21 determine the prevailing rate of wage for the specified category of personal services, and
22 immediately forward that determination to the San Francisco Airports Commission.

23 In furtherance of this purpose, the Civil Service Commission shall conduct or obtain a
24 survey of wages and benefits paid in private sector employment for similar work in the San
25 Francisco Standard Metropolitan Statistical Area. Where similar work is not being performed

1 in the San Francisco Standard Metropolitan Statistical Area or is being performed in such
2 insignificant quantities as to render data unreliable for purposes of comparison, the Civil
3 Service Commission shall determine the prevailing rate of wage in San Mateo County.

4 In conducting a survey to determine the prevailing rate of wage for a specified category
5 of personal services, the Civil Service Commission, or any contracting agency thereof, shall
6 exclude from its survey the wages and benefits paid by the responding party.

7 In making its determination with respect to the prevailing rate of wage for a specified
8 category of personal services, the Civil Service Commission shall consider, but its
9 determination shall not be limited to, wages and benefits established through bona fide
10 collective bargaining agreements for similar work in the San Francisco Standard Metropolitan
11 Statistical Area.

12 The Civil Service Commission may make an initial determination that the complaint
13 provides insufficient evidence to suggest a possible violation of this ordinance and may
14 dismiss the complaint on that basis, furnishing the complaining party a written explanation of
15 its determination.

16 The determination of the prevailing rate of wage by the Civil Service Commission shall
17 be final and binding on all other boards and commissions of the City and County of San
18 Francisco.

19 (c) **Complaints; Investigation and Hearing.** Any affected employee, job applicant,
20 contractor, or employee organization representing employees or applicants shall have
21 standing to pursue the enforcement of the prevailing wage provisions of this ordinance against
22 any person, lessor, franchisor, contractor, concessionaire, subcontractor, lessee or franchisee
23 before the San Francisco Airports Commission.

24 Upon the filing of a verified complaint with the San Francisco Airports Commission, with
25 proof of service on the responding party or parties by certified or registered mail, by any

1 person or organization, as described herein, alleging a violation of the provisions of this
2 ordinance, the San Francisco Airports Commission shall request a determination by the Civil
3 Service Commission of the prevailing rate of wage applicable to the personal services that are
4 the subject matter of the complaint, and forward a copy of the verified complaint to the Civil
5 Service Commission.

6 Promptly upon receipt of the prevailing wage determination by the Civil Service
7 Commission, the San Francisco Airports Commission shall make a full investigation of the
8 matter and shall, within 15 days of receipt of the determination of the Civil Service
9 Commission, hold a hearing thereon. Said hearing shall afford to the responding party or
10 parties and the complaining party or parties a full and adequate opportunity to submit
11 evidence regarding the alleged violations of the provisions of this ordinance. Said hearings,
12 however, may not inquire into the Civil Service Commission's determination of the prevailing
13 rate of wage.

14 The President of the San Francisco Airports Commission shall have the power to
15 administer oath to witnesses in said hearings under this Section. In the event that any person
16 shall fail or refuse to appear as a witness in any such proceeding after being requested to do
17 so, and if it shall appear to the San Francisco Airports Commission that his or her testimony,
18 or books, records, documents or other things under his or her control are material and
19 relevant as evidence in the matter under consideration in the proceeding, the presiding officer
20 may subpoena such person, requiring his or her presence at the proceeding, and requiring
21 him or her to bring such books, records, documents or other things under his or her control.

22 If any contracting party or subcontractor shall fail to appear at said hearing after having
23 been given written notice to appear, such failure to appear shall be grounds for cancellation of
24 the contract or subcontract and such contracting party or subcontractor shall be deemed to
25 have forfeited all rights, benefits, and privileges thereunder.

1 Within 15 days of the close of the hearing, the San Francisco Airports Commission
2 shall issue a written decision regarding the alleged violation, and shall serve copies on all
3 parties to the proceedings.

4 (d) **Violation of Ordinance; Option of Awarding Officer, Board or Commission;
5 Cancellation or Penalty or Both.** Any contracting party or subcontractor found to have
6 violated the provisions of this ordinance shall have the opportunity to correct the violation
7 within 30 days and shall submit to the San Francisco Airports Commission documentary
8 evidence, including but not limited to payroll records, the truth and accuracy of which is
9 attested to by affidavit, as proof of compliance with the provisions of this ordinance. Failure to
10 correct the violation of this ordinance or failure to submit certified proof of compliance, or
11 misrepresentation of proof of compliance shall constitute a material breach of contract and the
12 San Francisco Airports Commission is empowered to: (1) cancel the contract, or (2) require
13 the forfeiture by the contracting party or subcontractor of \$100 per day for such laborer
14 employed for each calendar day or portion thereof while he or she shall be so employed and
15 not paid the prevailing rate of wage or, in the alternative, assess a penalty in an amount not
16 more than 10 percent of the dollar amount of the contract or subcontract, such sums to be
17 deposited in the fund out of which the contract is awarded, or (3) both cancel the contract and
18 assess the forfeiture or penalty. The contractor and subcontractor shall be jointly and
19 severally liable for any dollar penalty or forfeiture assessed against the subcontractor. If the
20 San Francisco Airports Commission cancels the contract, no recovery shall be had thereon by
21 the contractor or subcontractor.

22 (e) **Additional Penalty; Irresponsible Contractors; Disqualification.** In addition
23 to any other penalties herein provided for violation of the provisions of this ordinance, any
24 person obligated to pay prevailing wages hereunder who is found willfully to have failed and
25 neglected to pay said prevailing wages shall be declared an irresponsible bidder by the San

1 Francisco Airports Commission and shall not be awarded, let or granted any contract, lease,
2 franchise, permit or concession by or on behalf of the City and County for a period of two
3 years thereafter.

4 (f) **City and County Not Liable in Money Damages.** In undertaking to impose on
5 its contractors and subcontractors the above-described obligation to pay prevailing rates of
6 wage, the City and County of San Francisco is assuming an undertaking only to promote the
7 general welfare. It is not assuming, nor is it imposing on its officers and employees, an
8 obligation for breach of which it is liable in money damages to any person who claims that
9 such breach proximately caused injury.

10 (g) **Application to Existing Contracts.** To the extent permitted by law, as of its
11 effective date this ordinance shall apply to all existing contracts, with or on behalf of the City
12 and County of San Francisco subject to the jurisdiction of the San Francisco Airports
13 Commission, and to all subcontracts existing pursuant thereto, to the extent those contracts
14 are expressly subject to the application of lawful ordinances enacted after the date the
15 contracts were executed. No person performing personal services as described herein shall
16 suffer a reduction in wages, working conditions, practices or fringe benefits as a result of the
17 adoption of this ordinance.

18 (h) **Notification.** The San Francisco Airports Commission shall notify all prospective
19 bidders and all contracting parties of their requirements under this ordinance.

20 (i) **Empowerment.** The San Francisco Civil Service Commission is hereby granted
21 the power to do all acts and exercise all powers referred to in Section 6.1-3(b) hereof.

22 The San Francisco Airports Commission is hereby granted the power to do all acts and
23 exercise all powers referred to in Section 6.1-3(c), (d), and (e) hereof.

24 (j) **Small Business Exemption.** This ordinance shall not apply to any contracting
25 party employing less than 10 employees. Subcontractors or contracting parties are not subject

1 to this exemption unless the number of employees of the contracting party and subcontractor
2 combined is still less than 10. For purposes of this exemption, the term "employees" excludes
3 owner-operators and members of the owner-operators' immediate family.

4 The San Francisco Airports Commission is hereby authorized and empowered to
5 relieve a contracting party from the provisions of this ordinance if the party is operating an air
6 carrier service exclusively utilizing aircraft having a passenger capacity of not more than 60
7 seats or a payload capacity of not more than 18,000 pounds and if the Airports Commission
8 finds, after a noticed public hearing, that the application of the provisions of this ordinance to
9 such contracting party would impose a disproportionately heavier financial burden on such
10 contracting party than on other air carriers.

11 (k) **Nonprofit Making Enterprises Exemption.** Contracting parties who are
12 nonprofit making enterprises are not subject to the requirement to pay prevailing rates of
13 wage pursuant to the provisions of this ordinance. This exemption, however, merely denotes a
14 determination by the Board of Supervisors that wage policies of nonprofit making enterprises
15 require consideration of different factors and should be addressed by separate legislation.

16 (l) **Pre-emption; Collective Bargaining Agreements.** The prevailing wage provisions
17 of this ordinance shall apply to all persons performing personal services covered hereunder,
18 regardless of whether there is a collective bargaining agreement establishing the hours,
19 wages and other terms and conditions of employment of said persons, to the extent the
20 prevailing rate of wage as determined hereunder is higher than the wages and benefits
21 established by the collective bargaining agreement. However, this ordinance shall not confer
22 upon the City and County of San Francisco or any officer, board, commission or other agency
23 thereof any power not otherwise provided by law to determine the legality of any collective
24 bargaining agreement, nor shall anything in this ordinance be interpreted or applied so as to
25 create any power or duty in conflict with the pre-emptive effectiveness of any federal or state

1 law.

2 (m) **Severability.** If any part or provision of this ordinance or the application thereof
3 to any person or circumstance is held to be invalid, the remainder of the ordinance, including
4 the application of such part or provision to other persons or circumstances, shall not be
5 affected thereby and shall continue in full force and effect. To this end, the provisions of this
6 ordinance are severable.

7 (n) **Post-Adoption Review.** The San Francisco Airports Commission and the San
8 Francisco Civil Service Commission shall submit reports to the Board of Supervisors not later
9 than 12 months after the ordinance goes into effect. These reports shall discuss generally the
10 effectiveness of this ordinance in addressing the problems outlined in the findings, the need
11 for further legislation, and alternative methods whereby the objectives of the ordinance can be
12 more effectively carried out. These reports shall further contain recommended legislative
13 changes as deemed appropriate by the Airports Commission and the Civil Service
14 Commission. (Added by Ord. 140-84, App. 4/11/84; amended by Ord. 470-86, App. 12/8/86)))

15 ((**SEC. 6.1-4. FINANCIAL AND BOND COUNSEL CONTRACTS.** (Added by Ord. 445-
16 86, App. 11/13/86. Repealed by Ord. 156-99, App. 5/19/99)))

17 ((**SEC. 6.1-5. TIME FOR AWARD OF CONTRACTS REQUIRING THE APPROVAL OF**
18 **THE RECREATION AND PARK COMMISSION.** Notwithstanding the provisions of Section
19 6.1 of this Chapter, for any public work contract requiring the approval of the Recreation and
20 Park Commission of the City and County of San Francisco, the Director of Public Works, upon
21 the approval of the Mayor or Mayor's designee, may award the contract up to a period of 120
22 days where that period of time is specified in the Special Provisions for any such contract, or
23 within an extended period beyond that specified in the Special Provisions for any such
24 contract, with the consent of the successful bidder. (Added by Ord. 229-94, App. 6/9/94;
25 amended by Ord. 278-96, App. 7/3/96)))

1 ((**SEC. 6.2. LETTING OF CONTRACTS FOR DEMOLITION OF CITY-OWNED**

2 **BUILDINGS.** The Director of Property shall be the department head empowered to award all
3 contracts, subject to the provisions of this Chapter, for the demolition and razing of all city-
4 owned buildings which have little or no salvage value and which must be destroyed in order to
5 effectuate a public improvement. (Ord. No. 6330 (1939), Sec. 1)))

6 ((**SEC. 6.2-1. INSURANCE REQUIREMENTS IN CITY CONTRACTS.** Notwithstanding
7 any other provisions of Chapter 6 of this Code, all City contracts subject to this Chapter must
8 conform to the insurance requirements established by the Risk Manager.

9 The Risk Manager shall develop uniform insurance requirements for City contracts
10 subject to this Chapter and shall publish such requirements in the Risk Manager's Manual.
11 The Risk Manager shall review and update said insurance requirements annually. (Added by
12 Ord. 554-88, App. 12/27/88)))

13 ((**SEC. 6.3. ACCEPTANCE OF OTHER THAN LOWEST BIDS; REPORTS.** If the
14 officer or department head empowered to award a contract exceeding \$15,000 believes that
15 the public interest would be best served by accepting other than the lowest gross price or unit
16 cost bid, and the contract is entered into with another bidder, written report shall be made
17 immediately to the Director of Administrative Services, the Mayor and the Controller by the
18 officer authorized to execute the contract, with the reasons for failure to accept such lowest
19 bid. (Amended by Ord. 104-82, App. 3/5/82; Ord. 278- 96, App. 7/3/96)))

20 ((**SEC. 6.4. QUALIFYING AWARDS OF CONTRACT REQUIRING FEDERAL**

21 **AGENCY APPROVAL.** Whenever a department head, board or commission has advertised
22 for bids under this Chapter and the performance of the work is dependent upon the approval
23 of any federal agency and such approval has not been received at the time of making the
24 award of contract, the department head, board or commission shall in making the award of
25 contract as provided in Sections 6.1 and 6.3 of this Code, qualify the award of contract as

1 follows:

2 This award of contract shall be subject to all of the laws, rules, regulations and
3 provisions of the United States government or any of its agencies, and in the event the
4 award of contract may be found to be in conflict therewith, no liability shall attach to the
5 City and County of San Francisco, its officers, boards or commissions. If within 60 days
6 of the award of contract, permission is not granted by the federal agency to proceed
7 with the work, the responsible department head, board or commission shall cancel the
8 award of contract and there shall be no liability upon the City and County of San
9 Francisco by reason of the cancellation of said award of contract.

10 (Ord. 9046 (1939), Sec. 3)))

11 ((**SEC. 6.5. COMPARISON OF BIDS ON BASIS OF TIME OF COMPLETION; NOTICE**
12 **OF AWARD TO BE PUBLISHED.** The department head concerned is authorized to compare
13 bids on the basis of time of completion, and any contract awarded in consideration, in whole
14 or in part, of the relative time estimate of bidders for completion of the work, shall be subject
15 to the provisions of Section 7.203 of the Charter. Notice of award shall be published. (Ord. No.
16 4792 (1939), Sec. 4)))

17 ((**SEC. 6.6. ALTERATIONS, MODIFICATIONS, ETC., INCREASING OR**
18 **DECREASING PRICE; EXCESS COST ON UNIT COST BASIS.** (a) **Increasing Contract**
19 **Price.** Alterations, modifications or extras in any contract, which will increase the contract
20 cost, may be made or allowed only on the written recommendation of the department head
21 responsible for the supervision of the contract, together with the approval of the Mayor or
22 Mayor's designee or the board or commission, as the case may be, and also the approval of
23 the Controller, stating the increased price to be paid by reason thereof.

24 (b) **Decreasing Contract Price.** Allowances, modifications or credits in any
25 contract which will decrease the contract cost may be made or allowed only upon

1 recommendation of the department head responsible for the supervision of the contract,
2 together with the approval of the Mayor or Mayor's designee or board or commission, as the
3 case may be, and also the approval of the Controller, stating the amount to be deducted from
4 the amount to be paid under the contract.

5 (c) **Unit Cost Basis.** In the performance of any contract awarded on the unit and
6 the unit cost basis, if the department head concerned ascertains that the amount of work done
7 or to be done shall exceed the estimated amount of the contract by 10 percent or more, the
8 excess cost shall be provided for as prescribed by Section 9.113 of the Charter, relative to
9 supplemental appropriations. (Ord. No. 4792 (1939), Sec. 6; amended by Ord. 278-96, App.
10 7/3/96)))

11 ((**SEC. 6.7. GRANT OF EXTENSION IN TIME; EXTENSIONS TO BE IN WRITING.**

12 The awarding officer, board or commission may extend the time for completion of the work
13 under a contract, upon the awarding officer, board or commission finding that such work
14 cannot be completed within the specified time because of an unavoidable delay, as restricted
15 in this Chapter. Such extensions shall be in writing, but in no event shall any extension be
16 granted subsequent to the issuance of a certificate of final acceptance. (Ord. No. 9484 (1939),
17 Sec. 1)))

18 ((**SEC. 6.8. CONTRACTOR TO GIVE NOTICE OF DELAY; NOTICE TO CONSTITUTE**

19 **APPLICATION FOR EXTENSION.** The contractor shall promptly notify the awarding officer,
20 board or commission, in writing, of all anticipated delays in the prosecution of the work and, in
21 any event, promptly upon the occurrence of a delay, the notice shall constitute an application
22 for an extension of time only if the notice requests such extension and sets forth the
23 contractor's estimate of the additional time required, together with a full recital of the causes of
24 unavoidable delays relied upon. The awarding officer, board or commission may take steps to
25 prevent the occurrence or continuance of the delay, may classify the delay as avoidable or

1 unavoidable and may determine to what extent the completion of the work is delayed thereby.
2 (Ord. No. 9484 (1939), Sec. 1))

3 ((**SEC. 6.9. DELAYS DEEMED UNAVOIDABLE.** Unavoidable delay is an interruption
4 of the work beyond the control of a contractor and which interruption the contractor could not
5 have avoided by the exercise of care, prudence, foresight and diligence.

6 Such delays include and are limited to acts of God; acts of the public enemy; adverse
7 weather conditions; fires; floods; windstorms; tornadoes; wars, riots; insurrections; epidemics;
8 quarantine restrictions; strikes; lockouts; sitdowns; slowdowns; other labor trouble; labor
9 shortages; inability of contractor to procure labor; material shortages; inability of contractor to
10 procure material; fuel shortages; freight embargoes; accidents; acts of a governmental
11 agency; priorities or privileges established for the manufacture, assembly or allotment of
12 materials by order, decree or otherwise of the United States or by any department, bureau,
13 commission, committee, agent or administrator of any legally constituted public authority;
14 changes in the work ordered by the contracting officer, board or commission insofar as they
15 necessarily require additional time in which to complete the entire work; the prevention by the
16 City and County of a contractor from commencing or prosecuting the work; the prevention of a
17 contractor from commencing or prosecuting the work because of the acts of others, excepting
18 the contractor's subcontractors; the prevention of a contractor from commencing or
19 prosecuting the work because of the failure of the City and County to furnish the necessary
20 materials, when required by the terms of a contract and when requested by the contractor in
21 the manner provided in the contract; and, inability to procure or failure of public utility service.

22 The duration of unavoidable delays shall be limited to the extent that the
23 commencement, prosecution and completion of the work are delayed thereby, as determined
24 by the awarding officer, board or commission. (Ord. No. 9484 (1939), Sec. 1))

25 ((**SEC. 6.10. EXTENSION OF TIME FOR DELAYS NOT STATED IN PRECEDING**

1 **SECTION.** Upon the recommendation of the awarding officer, board or commission, the Board
2 of Supervisors may provide by resolution for extensions of time relating to specific contracts
3 for causes other than those stated in the preceding section which the contractor could not
4 have avoided by the exercise of care, prudence, foresight and diligence. (Ord. No. 9484
5 (1939), Sec. 1))

6 ((**SEC. 6.11. AVOIDABLE DELAYS IN COMPLETING CONTRACTS.** Avoidable
7 delays in the prosecution or completion of any work shall include:

8 (a) All delays which could have been avoided by the exercise of care, prudence,
9 foresight and diligence on the part of the contractor;

10 (b) Delays in the prosecution of parts of the work, which may in themselves be
11 unavoidable, but do not necessarily prevent or delay the prosecution of other parts of the
12 work, nor the completion of the whole work within the time specified;

13 (c) Reasonable delays resulting from time required by the City and County for
14 approval of plans submitted by the contractor and for the making of surveys, measurements
15 and inspections; and

16 (d) Delays arising from interruptions occurring in the prosecution of the work on
17 account of the reasonable interference from other contractors employed by the City and
18 County, which do not necessarily prevent the completion of the whole work within the time
19 specified. (Ord. No. 9484 (1939), Sec. 1))

20 ((**SEC. 6.12. TIME EXTENSION NOT WAIVER OF CITY'S RIGHTS.** The granting of an
21 extension of time because of unavoidable delays shall in no way operate as a waiver on the
22 part of the City and County or the awarding officer, board or commission of the right to collect
23 liquidated damages for other delays or of the right to collect other damages or of any other
24 rights to which the City and County is entitled. (Ord. No. 9484 (1939), Sec. 1))

25 ((**SEC. 6.13. LIQUIDATED DAMAGES.** Any contract may provide a time within which

1 the contract work, or portions thereof, shall be completed and may provide for the payment of
2 agreed liquidated damages to the City and County for every calendar or working day
3 thereafter during which such work shall be uncompleted.

4 In every contract for construction, repair, or renovation exceeding the amount specified
5 in Section 6.1 of this Chapter, there shall be a provision establishing a time for completion in
6 calendar or working days and establishing liquidated damages to the City and County for
7 every calendar day thereafter during which such work shall be uncompleted.

8 The execution of a contract by a contractor shall constitute his or her acknowledgment
9 and agreement that the City and County will sustain damages not less than the amount fixed
10 in the contract for each and every day of delay beyond the expiration of the time fixed for such
11 completion or extensions of such time as have been allowed pursuant to the provisions of this
12 Chapter.

13 When the actual progress of the work indicates that completion of the work may be
14 delayed beyond the original or extended contract time for completion of the entire work, a sum
15 representing the projected liquidated damages shall be deducted from any money due or to
16 become due to the contractor should the contractor fail to demonstrate to the contracting
17 authority's satisfaction that the work will be completed within the contract time.

18 Such deduction shall be considered not as a penalty, but as the agreed monetary
19 damage sustained by the people of the City and County because the contractor failed to
20 perform and complete the work within the time fixed for completion or such extensions of such
21 times as have been allowed pursuant to the provisions of this Chapter.

22 Should the money due or to become due to the contractor be insufficient to cover such
23 agreed liquidated damages, then the contractor forthwith shall pay the remainder to the City
24 and County. (Amended by Ord. No. 499-79, App. 10/12/79)))

25 ((**SEC. 6.14. CITY WILL NOT PAY DAMAGES FOR DELAYS EXCEPT UNDER**

1 **SPECIAL CIRCUMSTANCES.** No damages or compensation of any kind shall be paid to a
2 contractor because of delays in the progress of the work, whether such delays be avoidable or
3 unavoidable; provided, however, the City and County may pay for (1) delays caused to the
4 contractor by the City and County; and (2) such unavoidable delays as may be specifically
5 stated in the contract. Such latter delays will be compensated for only under the conditions
6 specified in the contract. (Amended by Ord. No. 499-79, App. 10/12/79)))

7 ((**SEC. 6.14-1. TERMINATION FOR CONVENIENCE.** In all contracts for the
8 construction of any public work or improvement, the awarding officer, board or commission
9 authorized to let or enter into any contract for any public work or improvement may include in
10 the specifications setting forth the terms and conditions for the performance of said contract a
11 provision that the City and County may terminate the performance of work under the contract
12 whenever the awarding officer, board or commission shall determine that such termination is
13 in the best interest of the City and County. Any such termination shall be effected by delivery
14 to the contractor of a notice of termination specifying the extent to which performance of work
15 under the contract is terminated and the date upon which such termination becomes effective.
16 The awarding officer, board or commission is hereby authorized to include within such
17 construction contract the appropriate language to implement this Section. (Added by Ord. No.
18 499-79, App. 10/12/79)))

19 ((**SEC. 6.15. NO EXTENSIONS GRANTED WHEN CONTRACT BASED ON TIME**
20 **ESTIMATES; EXCEPTIONS.** When any award of contract has been made in consideration,
21 in whole or in part, of the relative time estimates of bidders for the completion of the work, the
22 provisions of Sections 6.9, 6.10 and 6.11 of this Code shall not apply and no extension of time
23 may be granted on such contract beyond the time specified for completion, unless the
24 liquidated damages for each day the work is uncompleted beyond the specified time shall be
25 collected; provided, however, that this shall not apply to unavoidable delays due to acts of

FILE NO. _____

ORDINANCE NO. _____

1 God. (Ord. No. 9484 (1939), Sec. 1)))

2 ((**SEC. 6.16. INCORPORATION OF PROVISIONS OF ARTICLE IN CONTRACTS FOR**
3 **PUBLIC WORK.** The provisions of Sections 6.7 to 6.15 of this Code shall be included in
4 every contract or specification for every public work or improvement, as public work or
5 improvement is defined in Ordinance No. 9.0923 and Part II, Chapter X, Article 3, Section 75
6 of the San Francisco Municipal Code, whenever such contract and the published notice
7 soliciting sealed bids therefor provide for liquidated damages to the City and County for every
8 day during which the contract is uncompleted beyond a specified time. (Ord. No. 9484 (1939),
9 Sec. 1)))

10 ((**SEC. 6.17. CONTRACT MAY PROVIDE THAT UNAVOIDABLE DELAYS SHALL**
11 **NOT APPLY.** The awarding officer, board or commission may provide in any particular
12 contract, using specific language, that interruption of the work due to one or more of the
13 causes of unavoidable delays set forth in Section 6.9 of this Code is not a cause of an
14 unavoidable delay under that particular contract. The awarding officer, board or commission
15 may also provide in any contract that one or more causes of unavoidable delay set forth in
16 Section 6.9 of this Code shall be restricted to circumstances specified in the contract. (Ord.
17 No. 9484 (1939), Sec. 1)))

18 ((**SEC. 6.18. REJECTION OF BIDS; EXECUTION OF WORK BY CITY.** The
19 department head, with the approval of the Mayor or the Mayor's designee, or the department
20 head, with the approval of the board or commission to which he or she is responsible, may
21 reject any and all bids and readvertise for bids. When bids have been invited pursuant to the
22 required procedure and no bid is received, or where all bids received are for the same total
23 amount or unit price, the department head, with the approval of the Mayor or the Mayor's
24 designee, or the department head, with the approval of the board or commission to which he
25 or she is responsible, may order the related work to be executed in the most expeditious

1 manner, provided, however, that the price paid for such work shall not exceed any bid price
2 received for the same work. (Ord. No. 6600 (1939), Sec. 1; amended by Ord. 278- 96, App.
3 7/3/96)))

4 ((**SEC. 6.19. SURETY TO ACCOMPANY BID; NOTICE INVITING BID; FORM OF**
5 **BIDS.** (a) In any case when the expenditure for the construction, reconstruction or repair of
6 public buildings, streets, utilities or other public works or improvements shall, as estimated by
7 the department head, exceed the sum of \$15,000, the bids referred to by this Chapter shall be
8 sealed, directed to the department head or officer calling the bids, and shall be accompanied
9 by a corporate surety bond, or an irrevocable letter of credit on a bank or trust company doing
10 business and having an office in the State of California, having a combined capital and
11 surplus of at least \$50,000,000, and subject to supervision or examination by federal or State
12 authority, or a certified check on a bank or trust company doing business and having an office
13 in the State of California, having a combined capital and surplus of at least \$50,000,000, and
14 subject to supervision or examination by federal or State authority, payable on sight to the City
15 and County, the amount of which corporate surety bond, irrevocable letter of credit or certified
16 check shall be fixed by the department head or officer as stated in the advertisement, which
17 amount shall not be less than 10 percent of the amount bid for the cost of the proposed work
18 of improvement, and no proposal shall be considered unless accompanied by a corporate
19 surety bond or irrevocable letter of credit or certified check. Any irrevocable letter submitted
20 pursuant to this Chapter shall be on a form provided by the City and County. If the amount of
21 security required is fixed by the department head or officer in an amount in excess of \$15,000,
22 the form of security required shall be that of a corporate surety bond or irrevocable letter of
23 credit. The requirement for a corporate surety bond, irrevocable letter of credit or certified
24 check described in this Subsection (a) shall be referred to collectively as the "bid security
25 requirements."

1 (b) Notwithstanding Subsection (a) above, the bid security requirements for a
2 particular contract may be modified by the department head upon satisfaction of all of the
3 following conditions:

4 (1) The contract in question shall have been set aside by the "contract review
5 committee" (the "committee") established in Administrative Code Section 12D.8(A)(3), in
6 accordance with the provisions of Administrative Code Section 12D.15(F).

7 (2) At the time of the set-aside determination made in Subsection (b)(1), the
8 committee shall have determined whether the department head should allow modification of
9 the bid security requirements.

10 (3) If the committee recommends that the department head allow a modification of
11 the bid security requirements, the department head may include in the contract specifications
12 a request that contractors seeking modification of the bid security requirements provide the
13 information specified in Administrative Code Section 6.19(b)(4).

14 (4) A contractor seeking modification of the bid security requirements shall have bid
15 on the proposed contract in accordance with the requirements of applicable law, with the
16 exception of the compliance with the bid security requirements. Such contractor shall have
17 included with the bid (i) a request for a modification of the bid security requirements, (ii) a brief
18 statement to the department head explaining the circumstances warranting such modification,
19 and (iii) information describing the contractor's financial condition and ability to perform the
20 proposed contract.

21 (5) The department head shall have determined that strict compliance with the bid
22 security requirements would result in undue economic hardship to the bidding contractor.
23 Such a finding may be based in whole or part on information provided to the department by
24 the bidding contractor under Subsection (4), together with any other information the
25 department head reasonably requests of the contractor. The contractor shall provide such

1 additional information to the department head within 10 business days of the department
2 head's request.

3 (6) The department head shall have determined that modification of the bid security
4 requirements would not result in an unjustifiable hardship to the City. Such hardship may
5 include, but shall not be limited to, financial risks to the City, a risk of nonperformance by the
6 bidding contractor, and/or whether a modification of the bid security requirements would result
7 in an unreasonable delay in the performance of the contract.

8 (c) Upon satisfaction of the conditions in Subsection (b), the department head may
9 modify the bid security requirements in any one of the following manners:

10 (1) The department head may postpone, for a period of up to 10 days from the date
11 of the bid acceptance date for the contract in question, the contractor's compliance with the
12 bid security requirements. The contractor shall otherwise comply in all respects with the
13 requirements of Chapter 6 of the Administrative Code.

14 (2) The department head may require that the contractor provide a certified check in
15 the amount of \$5,000 payable on sight to the City and County of San Francisco. The
16 contractor shall remit the check to the department head within 10 business days of the
17 department head's request. The department head shall retain such check under the
18 circumstances described in the last paragraph of Administrative Code Section 6.20. Otherwise
19 the department head shall return such check to the contractor.

20 (d) Any contractor which fails to strictly comply with the requirements of Section
21 6.19(b) shall not be eligible to receive a modification of the bid security requirements.

22 (e) Notices inviting sealed bids under the conditions of this Section must be
23 published for two consecutive days in the official newspaper, and at least five calendar days
24 must intervene between the date of the last publication and the time for filing such sealed bids
25 or proposals. Such notices shall state in general terms the conditions of the proposed

1 contract, including whether the department awarding the contract will consider modifications
2 of the bid security requirements of Administrative Code Section 6.19(a), and if progressive
3 payments are to be provided under any contract in accordance with Section 7.202 of the
4 Charter, or if any contract is to be let on the basis of a gross price or cost per unit of work to
5 be performed or on the basis of time of completion, with liquidated damages for every day
6 during which the contract is uncompleted beyond such specified date in accordance with
7 Section 7.203 of the Charter, such notice shall so state. Each advertisement for bids shall
8 contain the reservation of the right to reject any and all bids.

9 (f) All bids shall be filed on forms furnished by the department head concerned, and
10 all bids not so filed shall be rejected. All bids received as herein provided shall be publicly
11 opened by the proper department head or officer at the time and place to be stated in the
12 advertisement for proposals, and after tabulation, bidders may inspect the accepted low bid.
13 When specifications do not include alternative proposals, statements or communications
14 accompanying bids which serve to qualify such bids shall not be considered in making
15 awards, and will disqualify bidders.

16 Any bidder protesting the validity of another bid shall file such protest with the
17 department awarding the contract within 10 working days of the date of opening of bids. Such
18 protest shall include a full and complete written statement specifying in detail the grounds for
19 the protest and the facts in support thereof.

20 (g) These amendments shall be effective for a period of two years from the date of
21 final adoption by the Board of Supervisors and Mayor. The Human Rights Commission shall
22 submit written reports to the Board of Supervisors every six months, beginning January 1,
23 1995, advising the Board of the status of the implementation of these amendments and an
24 analysis of whether these amendments are proving to be useful and needed. (Amended by
25 Ord. No. 104-82, App. 3/5/82; Ord. 37-84, App. 1/31/84; Ord. 182-94, App. 5/5/94; Ord. 381-

1 94, App. 11/10/94)))

2 ((**SEC. 6.19-1. NONREFUNDABLE FEES FOR BIDDING DOCUMENTS.** The
3 department head or officer calling for bids may specify in the advertisement for bids for any
4 project a nonrefundable fee to be paid by each prospective bidder for each set of bidding
5 documents (including plans and specifications), such fee to defray the cost of reproducing
6 each set of bidding documents as determined by the department head or officer, and all such
7 fees shall be deposited as an abatement of the expenditure of the appropriation against which
8 the cost of reproducing said bidding documents was charged. (Added by Ord. No. 137-77,
9 App. 4/22/77)))

10 ((**SEC. 6.20. SURETY BOND REQUIREMENTS FOR PUBLIC WORKS' CONTRACTS;
11 APPROVAL BY CONTROLLER; FAILURE TO FILE BOND.** Before the execution of any
12 contract for public works or improvements, the department head or officer authorized to enter
13 into such contracts shall require the successful bidder to file corporate surety bonds for the
14 faithful performance thereof and to guarantee the payment of wages for services engaged and
15 of bills contracted for material, supplies and equipment used in the performance of the
16 contract. The bond shall be for a sum not less than 50 percent of the award.

17 The Controller shall approve the sufficiency and qualifications of all sureties as required
18 under the provisions of this Chapter.

19 If any bidder to whom the contract is awarded under the provisions of this Chapter shall
20 for 10 days after such award fail or neglect to enter into the contract and file the required
21 bond, the department head or officer in whom authority to execute the contract is vested shall
22 deposit the corporate surety bond or certified check referred to in Section 6.19 of this Code
23 with the Treasurer for collection and the proceeds thereof shall be retained by the City and
24 County as liquidated damages for the failure of such bidder to enter into such contract, unless
25 upon recommendation of the department head or officer authorized to execute the contract,

1 together with the approval of the Mayor or Mayor's designee, board or commission, the Board
2 of Supervisors, by resolution, approves the return of such bond or check. (Ord. No. 4792
3 (1939), Sec. 9; amended by Ord. 278-96, App. 7/3/96)))

4 ((**SEC. 6.20-1. FORFEITURE; PORT COMMISSION CONTRACTS.** If forfeiture is made
5 under Section 6.20 by a bidder on a proposed contract with the Port Commission, the funds
6 forfeited shall be deposited in the Harbor Trust Fund created under Section 6.406 of the
7 Charter. (Added by Ord. 118-70, App. 4/8/70)))

8 ((**SEC. 6.20-2. BONDING ASSISTANCE PROGRAM.** (A) **Program Description.** The
9 City and County of San Francisco, acting through its Human Rights Commission ("HRC"),
10 intends to provide guarantees to private bonding assistance companies and financial
11 institutions in order to induce those entities to provide required bonding and financing to
12 eligible contractors bidding on and performing City public works contracts. This bonding and
13 financial assistance program is subject to the provisions of this Section 6.20-2.

14 (B) **Eligible Contracts.** The assistance described in this Section 6.20-2 shall be
15 available for City public works contracts.

16 (C) **Eligible Contractors.** Contractors must meet the following criteria to qualify for
17 assistance under this Section 6.02-2:

18 (1) The contractor may be either a prime contractor or subcontractor construction
19 firm; and

20 (2) The contractor must be certified by the HRC as a Minority Business Enterprise
21 ("MBE"), Woman Business Enterprise ("WBE") or Local Business Enterprise ("LBE")
22 according to the requirements of San Francisco Administrative Code Chapter 12D;

23 (3) The contractor may be required to participate in a "bonding assistance training
24 program" as offered by the HRC, which is anticipated to provide the following:

25 (a) Bond application assistance,

- 1 (b) Assistance in developing financial statements,
- 2 (c) Assistance in development of a pre-bond surety profile,
- 3 (d) Identification of internal financial control systems,
- 4 (e) Development of accurate financial reporting tools, and
- 5 (f) Development of systems to track costs and fund controls for jobs in progress.

6 (D) **Agreements Executed by the Human Rights Commission.** The HRC is
7 hereby authorized to enter into the following agreements in order to implement the bonding
8 and financial assistance program described in Section 6.20-2:

9 (1) With respect to a surety bond, the agreement to guaranty up to 40 percent of the
10 face amount of the bond or \$750,000, whichever is less;

11 (2) With respect to a construction loan to be made to a contractor, an agreement to
12 guaranty up to 50 percent of the original principal amount of the construction loan or 50
13 percent of the actual loss suffered by the financial institution as a result of a loan default,
14 whichever is less; provided that in any event the City's obligations with respect to a guaranty
15 shall not exceed \$750,000;

16 (3) Any other documents deemed necessary by the HRC to carry out the objectives
17 of this program, provided that such documents shall be subject to review and approval by the
18 City Attorney's Office.

19 (E) **Monitoring and Enforcement.** The HRC shall maintain records on the use and
20 effectiveness of this program, including but not limited to (1) the identities of the contractors
21 and bonding companies participating in this program, (2) the types and dollar amounts of
22 public works contracts for which the program is utilized, and (3) the types and dollar amounts
23 of losses which the City is required to fund under this program. The HRC shall submit written
24 reports to the Board of Supervisors every six months, beginning January 1, 1998, advising the
25 Board of the status of this program and its funding capacity, and an analysis of whether this

1 program is proving to be useful and needed.

2 (F) **Funding.** The Board of Supervisors has appropriated or will appropriate funds
3 for the operation of this program. In addition, the City will pursue private contributions to assist
4 in implementation of this program, including both technical assistance to participating entities
5 and monetary contributions to support credit enhancement. In the event the City desires to
6 provide credit enhancement under this Section for a period in excess of one fiscal year, the
7 full aggregate amount of the City's obligations under such credit enhancement must be set
8 aside in a segregated account, encumbered solely by the City's obligations under such credit
9 enhancement.

10 (G) **Term of Bonding Assistance Program.** The HRC is authorized to enter into
11 the agreements described in this Section for a period ending on the earlier of (1) June 30,
12 2000, or (2) the date on which the Controller is no longer able to certify the availability of funds
13 for any new guarantee agreement. (Added by Ord. 183-94, App. 5/5/94; amended by Ord. 29-
14 7-97, App. 7/25/97)))

15 ((**SEC. 6.21. CITY TO BE SAVED HARMLESS FROM DAMAGES, COSTS,**
16 **INFRINGEMENT ON PATENT RIGHTS, COPYRIGHTS, ETC.; EXCEPTIONS AS TO**
17 **AIRPORT LIGHTING SYSTEM.** Each contractor must save, keep, bear harmless and fully
18 indemnify the City and County and any of its officers or agents from all damages or claims for
19 damages, costs or expenses in law or equity that may at any time arise or be set up for any
20 infringement of the patent rights, copyright or trademark of any person in consequence of the
21 use by the City and County, or any of its officers or agents, of articles to be supplied under the
22 contract and of which the contractor is not the patentee or assignee or has not the lawful right
23 to sell the same; except, at the option of the department head concerned and with the
24 approval of the City Attorney and the Mayor, board or commission concerned, any contractor
25 may be exempted from the provisions of this Section in consequence of the use of the

1 installation of projectors for a high intensity airport lighting system for the landing and takeoff
2 of aircraft if such system is in accordance with the requirements of the specifications of the
3 United States of America in projects wherein federal funds are granted and used; and,
4 provided, that funds are available and have been set aside by the Controller to meet any
5 liability which may exist in connection with such installation. (Ord. No. 5918 (1939), Sec. 1;
6 amended by Ord. 278-96, App. 7/3/96)))

7 ((**SEC. 6.22. ARTICLES NOT TO BE PRISON MADE; EXCEPTION.** No article
8 furnished under any contract made under the provisions of this Chapter shall have been made
9 in a prison or by convict labor except for articles made in prisons or by convicts under the
10 supervision and control of the California Department of Corrections and limited to articles for
11 use by the City and County's detention facilities. (Amended by Ord. 304-68, App. 10/25/68)))

12 ((**SEC. 6.22-1. ASSIGNMENT OF CONTRACTS.** No contract shall be assigned except
13 upon the recommendation of the department head concerned and with the approval of the
14 Mayor or the Mayor's designee, relative to the department under the Mayor's jurisdiction, or
15 the approval of the board or commission concerned for departments not under the Mayor.
16 (Added by Ord. 304-68, App. 10/25/68; amended by Ord. 278-96, App. 7/3/96)))

17 ((**SEC. 6.23. INVESTIGATION OF BIDDER'S QUALIFICATIONS.** The officer
18 responsible for the awarding of any contract shall require from all bidders information
19 concerning their experience and financial qualifications, as provided by general law relative to
20 such investigations authorized by the Director of Public Works, and shall take such
21 information into consideration in the award of any contract. No contract shall be awarded to a
22 bidder who does not have a current Business Tax Registration Certificate. (Ord. No. 4792
23 (1939), Sec. 12; Amended by Ord. 345-88, App. 8/4/88)))

24 ((**SEC. 6.24. CONTRACTS TO BE IN TRIPLICATE; DISPOSITION OF COPIES.** All
25 contracts, extras and credits shall be executed in triplicate; the original to be retained by the

1 officer or department head making the award; one copy to be filed with the Controller and one
2 copy to be given to the contractor. (Ord. No. 4792 (1939), Sec. 13))

3 ((**SEC. 6.26. BIDS BY CITY DEPARTMENTS.** Appropriate City and County
4 departments may file sealed bids for the execution of any work to be performed under a
5 contract and shall not be required to furnish security or submit information relative to financial
6 qualifications as provided in this Chapter. Any bid submitted by a department of the City and
7 County, if it is the lowest bid, must be approved by the Controller before the award of contract.
8 If the bid of a City and County department, as investigated and approved by the Controller, is
9 the lowest, the contract shall be awarded to the department and accurate unit costs shall be
10 kept of all direct and indirect charges incurred by the department under any such contract,
11 which unit costs shall be reported to and audited by the Controller monthly and on completion
12 of the work; provided, that in the execution and performance of any contract awarded to a City
13 and County department under the provisions of Section 7.200 of the Charter, not less than the
14 wage scale fixed by the Board of Supervisors in the prevailing wage resolution in effect at the
15 time of the award of the contract shall be paid to employees performing work under such
16 contract. (Ord. No. 4792 (1939), Sec. 15))

17 ((**SEC. 6.27. INSPECTION AND ACCEPTANCE OF COMPLETED WORK;**
18 **ACCEPTANCE IN WRITING CONSTITUTES AUTHORITY TO PAY.** The department head
19 authorized to award any contract for public works or improvements shall be responsible for
20 the inspection and acceptance of such work on completion. Such acceptance shall be in
21 writing and shall include the certificate of the department head concerned that the work
22 covered by the contract has been fully and satisfactorily completed in accordance with the
23 plans and specifications therefor. Receipt of copy of such acceptance in writing shall
24 constitute the Controller's authority to complete any payments due the contractor under the
25 contract; provided that the Controller may make such additional investigation or inspection as

1 is provided by Section 6.303 of the Charter. (Ord. No. 4792 (1939), Sec. 16)))

2 ((**SEC. 6.28. AUTHORIZATION AND PERFORMANCE OF WORK COSTING LESS**
3 **THAN FIFTY THOUSAND DOLLARS TO BE PERFORMED BY CITY. Generally.** Any

4 construction, reconstruction or repair of public buildings, streets, utilities or other public work
5 or improvement estimated to cost less than \$50,000 may be performed under contract or
6 written order or by the employment of the necessary labor and purchase of the necessary
7 materials and supplies directly by the City and County.

8 **Unit Cost to be Determined.** It shall be the duty of the Controller to determine, where
9 practicable, the unit cost of work done by the City and County for the purpose of determining
10 whether similar work could be done under public contract at a lower cost.

11 **Records and Approval.** The Controller shall maintain records of bids filed by
12 departments in relation to the total direct and indirect cost of each such work and shall report
13 thereon periodically to the Mayor. The Controller may refuse to approve contracts with a
14 department shown to be repeatedly underbidding on contract work and failing to complete
15 same within the contract price. (Amended by Ord. 404-86, App. 10/3/86; Ord. 278- 96, App.
16 7/3/96)))

17 ((**SEC. 6.29-1. PUBLIC WORKS CONTRACTS IN EXCESS OF \$50,000 AND NOT**
18 **EXCEEDING \$10,000,000.** Pursuant to Charter Section 7.200, the Board of Supervisors
19 hereby raises from \$50,000 to \$10,000,000 the dollar amount specified in paragraph 3 of
20 Charter Section 7.200 for the award of any contract for the construction, reconstruction or
21 repair of public buildings, streets, utilities or other public work or improvement. Contracts for
22 any construction, reconstruction or repair of public buildings, streets, utilities or other public
23 work or improvement estimated to cost in excess of \$50,000 and not to exceed \$10,000,000
24 shall be awarded in accordance with the applicable procedures established in this Code,
25 including but not limited to Section 6.1, titled "Bidding Required on Contracts Exceeding

1 \$50,000; Time for Bidding,” and Chapter 12D. Nothing herein shall be construed or is
2 intended to affect the procedures established in the Charter and this Code, including but not
3 limited to Sections 6.28 and 6.29, for the award of any public work estimated to cost not in
4 excess of \$50,000. (Added by Ord. 424-89, App. 11/22/89)))

5 ((**SEC. 6.29-2. PUBLIC WORKS CONTRACTS IN EXCESS OF \$10,000,000.** Any
6 contract for the construction, reconstruction or repair of public buildings, streets, utilities or
7 other public work or improvement estimated to cost in excess of \$10,000,000 shall be
8 awarded in accordance with the provisions of the Charter and this Code, except that the bid
9 preference provisions of Chapter 12D shall not be applicable. (Added by Ord. 424- 89, App.
10 11/22/89)))

11 ((**SEC. 6.30. EMERGENCY REPAIRS, WORK AND CONTRACTS.** A. The Board of
12 Supervisors hereby declares that in an actual emergency caused by:

- 13 1. Weather conditions, fire, flood or other unforeseen occurrences of unusual
14 character; or
- 15 2. The breakdown of any plant, equipment, structure, street or public work
16 necessitating immediate emergency repair or reconditioning to safeguard the lives or property
17 of the citizens; or the property of the City and County; or to maintain the public health or
18 welfare; and
 - 19 a. Including the installation, repair, construction and alteration of crossings and
20 switch work and special work in connection therewith, at street and other railway crossings
21 and at street intersections, when the same is to be done by or for the Municipal Railway; and
 - 22 b. Including the installation, repair, construction and alteration of the fire alarm,
23 police communication and traffic signal systems, when the same is to be performed by or for
24 the Department of Electricity; and
 - 25 c. Including the work of making connections, installing gate valves, installing or

1 transferring services and performing such other work therewith to existing water pipes, when
2 the same is to be done by or for the San Francisco Water Department and when such work
3 will leave one or more fire hydrants or water consumers without water; or

4 3. Unforeseen occurrences of unusual character resulting in an insufficient number
5 of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental health or
6 hospital ancillary services so as to leave patients of the City and County without required
7 hospital or medical services.

8 Such repair, reconditioning or other emergency work or contract may be executed in
9 the most expeditious manner by the department head responsible therefor, who shall, if the
10 emergency permits, first secure the approval in writing of the Mayor or the Mayor's designee,
11 if the emergency work or contract is to be done or ordered by any department under his or her
12 jurisdiction; or, for the departments not under the Mayor, the approval in writing of the
13 president of the board or commission concerned or of the Mayor; provided, however, that in
14 all cases wherein the anticipated cost of the emergency work exceeds \$25,000, the
15 department head shall first obtain the approval of the Board of Supervisors.

16 B. If the emergency does not permit such approvals to be obtained before work is
17 commenced or the contract entered into, such approvals as hereinabove mentioned shall be
18 obtained as soon thereafter as it is possible to do so. The department head concerned shall
19 notify the Controller immediately of the work involved or the contract entered into and the
20 estimated cost thereof; and shall notify the Board of Supervisors not more than seven days
21 after work has been commenced.

22 C. For purposes of this Section, "an actual emergency" means a sudden,
23 unforeseeable and unexpected occurrence involving a clear and imminent danger, demanding
24 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or
25 essential public services.

1 An "actual emergency" shall also mean the discovery of any condition involving a clear
2 and imminent danger to public health or safety, demanding immediate action, which discovery
3 was sudden and unforeseen and which would not have been made in the regular course of
4 business. (Amended by Ord. 18-86, App. 2/7/86; Ord. 315-87, App. 7/17/87; Ord. 278-96,
5 App. 7/3/96)))

6 ((**SEC. 6.31. PREFERENCE FOR LOCAL MANUFACTURERS AND INDUSTRY.**

7 Whenever any preferential in favor of local manufacturers or industry is provided by State law
8 or ordinance or resolution of the Board of Supervisors, the same shall apply to contracts
9 under this Chapter. (Ord. No. 4792 (1939), Sec. 19)))

10 ((**SEC. 6.32. CHAPTER NOT APPLICABLE TO WORK PAID FOR BY ASSESSMENT**
11 **OF PRIVATE PROPERTY.** (Ord. No. 4792 (1939), Sec. 20. Repealed by Ord. 156-99, App.
12 5/19/99)))

13 ((**SEC. 6.33. APPLICABILITY OF SECTION 7.204 OF CHARTER.** All the terms and
14 provisions of Section 7.204 of the Charter shall be applicable to and become a part of any and
15 all contracts or written orders entered into pursuant to the terms and provisions of this
16 Chapter. (Ord. No. 86-83, App. 3/4/83)))

17 ((**SEC. 6.34. RULES AND REGULATIONS.** Pursuant to Section 7.204 of the Charter
18 the following regulations are made and adopted relative to contracts for public work or
19 improvements, exclusive of purchases, which are to be performed at the expense of the City
20 and County of San Francisco or the costs of which are paid out of moneys deposited in the
21 treasury of said city and county. (Added by Ord. 28-63, App. 2/15/63)))

22 ((**SEC. 6.35. CHARTER AND STATE LAW REGARDING MATERIAL SHALL BE A**
23 **PART OF EVERY CONTRACT.** Every contract for every public work or improvement
24 performed at the expense of the City and County of San Francisco, or the cost of which is
25 paid for out of moneys deposited in the treasury of said city and county, whether such work or

1 improvement is to be done directly under contract awarded or indirectly by or under
2 subcontract, subpartnership, day labor, station work, piece work, or any other arrangement
3 whatsoever, shall contain, in addition to the provisions hereinafter set forth, all and singular,
4 the conditions contained in Section 7.204 of the Charter as well as the terms and conditions of
5 Article 1, Chapter 4, Division 5, Title 1, of the Government Code of the State of California;
6 provided, however, that the requirement for American manufacture set forth in said
7 Government Code provisions shall not apply in any instance where enforcement thereof
8 would conflict with any law to which the said Government Code provisions are subordinated.
9 (Added by Ord. 28-63, App. 2/15/63))

10 ((**SEC. 6.36. DEFINITIONS OF "PUBLIC WORK" AND "IMPROVEMENT."** The term
11 "public work or improvement" as used in this Chapter shall include any public work or
12 improvement to be done for or performed by the City and County of San Francisco where the
13 cost thereof is to be paid out of moneys deposited in the treasury of said city and county, and
14 shall also include all parts of said public work or improvement which are especially made,
15 wrought, constructed or prepared to become a part of, or to be attached to, said public work or
16 improvement as a part thereof, when the same are made, wrought, constructed or prepared,
17 according to plans and specifications, details or drawings prepared or used for the
18 construction of said public work or improvement, irrespective as to whether said parts are
19 made, wrought, constructed or prepared at the place where said public work or improvement
20 is being erected or constructed or at any other place. Any arrangement made or entered into
21 by the contractor with any other person for the furnishing of any part of said public work or
22 improvement to be made, wrought, constructed or prepared in accordance with said plans,
23 specifications, details or drawings shall be deemed to be a subcontract. The term "public work
24 or improvement," as used in Sections 6.34, 6.35 and 6.37 to 6.45, inclusive, of this Chapter
25 shall also include the operation of a public off-street parking lot or garage under a lease,

1 management agreement or other contractual arrangement with the City and County of San
2 Francisco, the Parking Authority of the City and County of San Francisco or a nonprofit
3 corporation formed for the purpose of constructing and operating a public off-street parking lot
4 or garage. As used in this Section, the term "public off- street parking lot or garage" shall
5 mean an off-street parking lot or garage that is owned by the City and County of San
6 Francisco, the Parking Authority of the City and County of San Francisco or a nonprofit
7 corporation formed for the purpose of constructing and operating such a parking lot or garage.
8 (Added by Ord. 28-63, App. 2/15/63; amended by Ord. 125-89, App. 4/26/89))

9 ((**SEC. 6.36-A. PREVAILING WAGES FOR CONSTRUCTION WORK ON LEASED**
10 **PROPERTY.** For the limited purposes of the prevailing wage provisions of Subsection (b) of
11 Section 7.204 of the Charter, "public work or improvement" also means and includes any
12 construction work done under private contract when all of the following conditions exist:
13 (a) The construction contract is between private persons;
14 (b) The property subject to the construction contract is privately owned, but upon
15 completion of the construction work will be leased to the City and County of San Francisco for
16 its use;
17 (c) Either of the following conditions exist:
18 (1) The lease agreement between the lessor and the City and County of San
19 Francisco, as lessee, is entered into prior to the construction contract,
20 (2) The construction work is performed according to the plans, specifications, or
21 criteria furnished by the City and County of San Francisco, and the lease agreement between
22 the lessor and the City and County of San Francisco as lessee, is entered into during, or upon
23 completion, of the construction work. (Added by Ord. 67-92, App. 3/4/92))

24 ((**SEC. 6.37. PREVAILING WAGE RATE — PROCEDURE.** It shall be the duty of the
25 Board of Supervisors, from time to time and at least once during each calendar year, to fix

1 and determine the highest general prevailing rate of wages paid in private employment in the
2 City and County of San Francisco as said terms are used in Section 7.204 of the Charter,
3 including such rate of wages paid for overtime and holiday work, which said highest general
4 prevailing rate of wages shall be fixed and determined as follows:

5 The Civil Service Commission shall furnish to the Board of Supervisors, on or before
6 the first Monday in November of each year, data as to the highest general prevailing rate of
7 wages of the various crafts and kinds of labor as paid in private employment in the City and
8 County of San Francisco, including said wages for overtime and holiday work, and the Board
9 of Supervisors shall, upon receipt of such data, fix and determine the highest general
10 prevailing rate of wages for said various crafts and kinds of labor as paid for similar work in
11 the City and County of San Francisco in private employment. Such highest general prevailing
12 rate of wages as so fixed and determined by said Board of Supervisors shall remain in force
13 and shall be deemed to be the highest general prevailing rate of wages paid in private
14 employment for similar work, until the same is changed by said Board of Supervisors.

15 In determining the highest general prevailing rate of wages, 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 said
18 board shall deem proper and thereupon base its determination upon any or all of the data or
19 evidence considered. (Amended by Ord. 411-70, App. 12/18/70))

20 ((**SEC. 6.38. SPECIFICATIONS TO INCLUDE WAGE RATE.** The officer, board or
21 commission authorized to let or enter into any contract for any public work or improvement
22 mentioned in Section 6.35 of this Chapter shall include in the specifications setting forth the
23 terms and conditions for the performance of said contract a detailed statement of such highest
24 general prevailing rate of wages, including said wages for holiday and overtime work, as
25 determined by said Board of Supervisors for the several kinds of labor to be used or employed

1 in the performance of said contract. The contractor to whom said contract is awarded shall
2 agree in said contract to pay, to all persons performing labor in and about the public work or
3 improvement provided for in said contract, the said highest general prevailing rate of wages
4 as set forth in said specifications, including said wages for holiday and overtime work. (Added
5 by Ord. 28-63, App. 2/15/63; amended by Ord. 308-94, App. 8/17/94)))

6 ((**SEC. 6.39. SUBCONTRACTORS BOUND BY WAGE PROVISIONS.** Every contract
7 for any public work or improvement shall also contain a provision that the contractor shall
8 insert in every subcontract or other arrangement which he or she may make for the
9 performance of any work or labor on said public work or improvement described in said
10 original contract. This provision shall be that said subcontractor shall pay to all persons
11 performing labor or rendering service under said subcontract or other arrangement the highest
12 general prevailing rate of wages as fixed and determined by said Board of Supervisors for
13 said labor or services. (Added by Ord. 28-63, App. 2/15/63; amended by Ord. 308-94, App.
14 8/17/94)))

15 ((**SEC. 6.40. RECORDS TO BE KEPT BY CONTRACTORS AND**
16 **SUBCONTRACTORS.** Every contract or subcontract provided for in Section 6.35 of this
17 Article shall contain a provision that the contractor shall keep, or cause to be kept, an
18 accurate record showing the name, place of residence, citizenship, occupation and per diem
19 pay of each person engaged in the execution of said contract. Every subcontractor who shall
20 undertake the performance of any part of said original contract shall keep a like record of each
21 person engaged in the execution of said subcontract. All of said records shall at all times be
22 open to the inspection of and examination of the duly authorized officers and agents of the
23 City and County of San Francisco. (Added by Ord. 28-63, App. 2/15/63)))

24 ((**SEC. 6.41. NONCOMPLIANCE WITH WAGE PROVISIONS VOIDS CONTRACT —**
25 **PENALTY.** Any contract or subcontract for any public work or improvement mentioned in

1 Section 6.35 of this Chapter which does not comply with the provisions of this Chapter shall
2 be null and void; and no recovery shall be had thereon. Any officer, board or commission who
3 shall sign, execute or approve any such contract shall be deemed guilty of misfeasance in
4 office. (Added by Ord. 28-63, App. 2/15/63; amended by Ord. 308-94, App. 8/17/94)))

5 ((**SEC. 6.42. PENALTY AND FORFEITURE ON FAILURE OF CONTRACTOR TO PAY**
6 **SUCH WAGE — ENFORCEMENT.** Any contractor or subcontractor who shall fail or neglect
7 to pay to the several persons who shall perform labor under any contract, subcontract or other
8 arrangement on any public work or improvement specified in Section 6.35 of this Chapter the
9 highest general prevailing rate of wages as fixed by the Board of Supervisors under authority
10 of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to
11 pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit
12 to the City and County of San Francisco the sum of \$25 per day for each laborer, workman or
13 mechanic employed for each calendar day or portion thereof, while they shall be so employed
14 and not paid said highest general prevailing rate of wages.

15 It shall be the duty of the officer, board or commission under whose jurisdiction said
16 public work or improvement is being carried on, made or constructed, when certifying to the
17 Controller any payment which may become due under said contract, to deduct from said
18 payment or payments the total amount of said forfeiture provided for in this Section. The
19 Controller, in issuing any warrant for any such payment, shall deduct from the amount which
20 would otherwise be due on said payment or payments the amount of said forfeiture or
21 forfeitures as so certified. (Amended by Ord. 32-73, App. 1/26/73; Ord. 308-94, App. 8/17/94)
22))

23 ((**SEC. 6.43. HOURS AND DAYS OF LABOR.** For the purpose of meeting prevailing
24 conditions and enabling employers to secure a sufficient number of satisfactory workers and
25 artisans, no person performing labor or rendering service in the performance of any contract

1 or subcontract for any public work or improvement mentioned in Section 6.35 of this Chapter
2 shall perform labor for a longer period than 40 hours per week, or five days of eight hours
3 each, except in those crafts in which a shorter work day now prevails by agreement in private
4 employments.

5 Any contractor or subcontractor who shall violate any of the provisions of this Section
6 shall be liable for the same penalties and forfeits as those specified in Section 6.42 of this
7 Chapter, penalties and forfeits shall be applicable for each laborer, mechanic or artisan
8 employed for each calendar day or portion thereof whereon such laborer, mechanic or artisan
9 is compelled or permitted to work more than the days and hours specified herein. The
10 provisions of this Section shall be made a part of all contracts and subcontracts for the
11 construction of any public work or improvement. (Added by Ord. 28-63, App. 2/15/63;
12 amended by Ord. 308-94, App. 8/17/94)))

13 ((**SEC. 6.44. CONTRACTS OUTSIDE CITY AND COUNTY.** In the event that any public
14 work or improvement is to be constructed outside of the City and County of San Francisco,
15 and at such a distance therefrom that those engaged in performing labor on said public work
16 or improvement must under ordinary conditions remain at or near the site of said work or
17 improvement when not actually engaged in the performance of labor thereon, then the officer,
18 board or commission responsible for the construction of said public work or improvement may,
19 in making specifications or letting contracts therefor, make provision therein for days and
20 hours of labor beyond the limitations provided for in Section 6.43 of this Chapter; but not to
21 exceed eight hours in any one calendar day, or six days in any calendar week. In the event
22 that emergency conditions shall arise, making a change advisable during the performance of
23 any such contract, or any portion thereof, the hours and days of labor may be extended
24 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the
25 written authority of the officer, board or commission awarding such contract. Failure of the

1 contractor to perform such contract within the time provided shall not constitute an
2 emergency. (Added by Ord. 28-63, App. 2/15/63; amended by Ord. 308-94, App. 8/17/94)))

3 ((**SEC. 6.46. CONTRACTORS AND SUBCONTRACTORS TO FURNISH**

4 **QUALIFICATIONS.** In the awarding of any contract or written order for any public work or
5 improvement mentioned in this Chapter, the awarding officer, board or commission shall
6 require from all contractors and subcontractors offering or agreeing to perform any work on
7 said public improvement, (1) proof of participation as a signatory to a recognized
8 apprenticeship and/or training program under Chapter 4 (commencing at Section 3070),
9 Division 3, of the California Labor Code and certified by the State of California Division of
10 Apprenticeship Standards, where such programs exist for the work to be performed; (2)
11 information concerning their experience, financial qualifications, including proof of a current
12 Business Tax Registration Certificate, and ability to perform said contract or said subcontract;
13 (3) information as to whether said contractor or subcontractor possesses, or can obtain in time
14 to perform said contract or subcontract, the necessary equipment.

15 The apprenticeship provisions of this Section shall not apply to contracts of general
16 contractors involving less than \$30,000 or 20 working days or to contracts of specialty
17 contractors not bidding for work through a general or prime contractor, involving less than
18 \$2,000 or fewer than five working days. (Amended by Ord. 86-83, App. 3/4/83; Ord. 345-88,
19 App. 8/4/88; Ord. 308-94, App. 8/17/94)))

20 ((**SEC. 6.47. BID MAY BE REJECTED FOR LACK OF QUALIFICATIONS OR**

21 **EQUIPMENT.** Should said awarding officer, board or commission determine that said
22 contractor or any subcontractor is not a signatory to a recognized apprenticeship and/or
23 training program under Chapter 4 (commencing at Section 3070), Division 3, of the California
24 Labor Code and certified by the State of California Division of Apprenticeship Standards,
25 where such programs exist for the work to be performed, does not possess the necessary

1 experience and financial qualifications, including a current Business Tax Registration
2 Certificate, to perform said contract or subcontract, or that he or she does not possess, or
3 cannot obtain in due time the necessary equipment to perform said contract or subcontract,
4 said awarding officer, board or commission may reject the bid of any such contractor and,
5 should said determination affect only a subcontractor, then said awarding officer, board or
6 commission may compel said contractor to substitute a subcontractor who is a signatory to a
7 recognized apprenticeship and/or training program under Chapter 4 (commencing at Section
8 3070), Division 3, of the California Labor Code and certified by the State of California Division
9 of Apprenticeship Standards, where such programs exist for the work to be performed, or
10 who, in the opinion of said awarding officer, board or commission, possesses the necessary
11 experience, financial qualifications, including a current Business Tax Registration Certificate,
12 and equipment to perform the said subcontract.

13 The apprenticeship provisions of this Section shall not apply to contracts of general
14 contractors involving less than \$30,000 or 20 working days or to contracts of specialty
15 contractors not bidding for work through a general or prime contractor, involving less than
16 \$2,000 or fewer than five working days. (Amended by Ord. 86-83, App. 3/4/83; Ord. 345-88,
17 App. 8/4/88)))

18 ((**SEC. 6.48. PROVISION IN BID OR OFFER FOR DESIGNATION OF**
19 **SUBCONTRACTORS.** Any officer, department, board or commission taking bids for the
20 construction of any public work or improvement shall provide in the specifications prepared for
21 the work or improvement or in the general conditions under which bids will be received for the
22 doing of the work incident to the public work or improvement that any person making a bid or
23 offer to perform the work, shall, in his or her bid or offer, set forth:

24 (a) The name, Business Tax Registration Certificate number and the location of the
25 place of business of each subcontractor who will perform work or labor or render service to

1 the general contractor in or about the construction of the work or improvement in an amount in
2 excess of 1/2 of one percent of the general contractor's total bid.

3 (b) A brief description of the work which will be done by each such subcontractor
4 under this Section.

5 (c) The amount to be paid to each subcontractor for his or her said work, labor or
6 service. (Added by Ord. 28-63, App. 2/15/63; Amended by Ord. 345-88, App. 8/4/88)))

7 ((**SEC. 6.49. FAILURE TO SPECIFY SUBCONTRACTOR; EFFECT.** If a general
8 contractor fails to specify a subcontractor for any portion of the work to be performed under
9 the contract in excess of 1/2 of one percent of the general contractor's total bid, he agrees to
10 perform that portion himself. (Added by Ord. 28-63, App. 2/15/63)))

11 ((**SEC. 6.50. SUBSTITUTION, ASSIGNMENT, OR SUBLETTING; CONSENT TO**
12 **SUBSTITUTION.** No general contractor whose bid is accepted shall, without the consent of
13 the awarding officer, board or commission, either:

14 (a) Substitute any person as subcontractor in place of the subcontractor designated
15 in the original bid.

16 (b) Permit any such subcontract to be assigned or transferred or allow it to be
17 performed by anyone other than the original subcontractor listed in the bid.

18 (c) Sublet or subcontract any portion of the work in excess of 1/2 of one percent of
19 the general contractor's total bid as to which his original bid did not designate a subcontractor.

20 (d) The awarding authority may consent to the substitution of another person as
21 subcontractor, when the subcontractor named in the bid after having had a reasonable
22 opportunity to do so, fails or refuses to execute a written contract, when said written contract,
23 based upon the general terms, conditions, plans and specifications for the project involved, or
24 the terms of such subcontractor's written bid, is presented to the awarding authority by the
25 contractor. (Added by Ord. 28-63, App. 2/15/63)))

1 ((**SEC. 6.51. SUBLETTING OR SUBCONTRACTING PORTION OF WORK.** Subletting
2 or subcontracting of any portion of the work in excess of $\frac{1}{2}$ of one percent of the general
3 contractor's total bid as to which no subcontractor was designated in the original bid shall only
4 be permitted in cases of public emergency or necessity; and then only after a written report to
5 the Mayor, the Controller and the board or commission concerned, if any, setting forth the
6 facts constituting the emergency or necessity. (Added by Ord. 28-63, App. 2/15/63; amended
7 by Ord. 278-96, App. 7/3/96)))

8 ((**SEC. 6.52. VIOLATION OF CHAPTER; OPTION OF AWARDING OFFICER, BOARD
9 OR COMMISSION; CANCELLATION OR PENALTY OR BOTH.** A general contractor
10 violating any of the provisions of Sections 6.48, 6.49, 6.50, or 6.51 of this Chapter violates his
11 or her contract and the awarding officer, board or commission shall have the right to (1)
12 cancel the contract; or (2) assess the general contractor a penalty in an amount not more than
13 10 percent of the amount of the subcontract involved and this penalty shall be deposited in the
14 fund out of which the prime contract is awarded; or (3) both cancel the contract and assess
15 the penalty. (Added by Ord. 28-63, App. 2/15/63; amended by Ord. 308-94, App. 8/17/94)))

16 ((**SEC. 6.53. GOVERNMENT FUNDS USED — LAW OF UNITED STATES TO
17 PREVAIL.** In all contracts for the construction of any public work or improvement which
18 involves the use of any funds furnished, given or loaned by the government of the United
19 States or the State of California, all laws, rules and regulations of the said government of the
20 United States or the State of California, or of any of its departments, relative to the doing of
21 such work and the conditions under which the same is to be performed, shall prevail over the
22 conditions set forth in this Article when the same are in conflict. (Added by Ord. 28-63, App.
23 2/15/63; amended by Ord. 343- 89, App. 10/4/89)))

24 ((**SEC. 6.54. AUTHORIZING THE ASSUMPTION OF DAMAGES DUE TO
25 EARTHQUAKE IN ALL PUBLIC WORK OR IMPROVEMENT CONTRACTS.** In all contracts

1 for the construction of any public work or improvement, the cost of which is paid for out of
2 monies deposited in the treasury of said City and County of San Francisco, including the use
3 of any funds furnished, given or loaned by the government of the United States, the officer,
4 board or commission authorized to let or enter into any contract for any public work or
5 improvement may, when so authorized by resolution of the Board of Supervisors, include in
6 the specifications setting forth the terms and conditions for the performance of said contract a
7 statement that if any such public work or improvement is proximately damaged or destroyed
8 by an earthquake while said construction is underway, the City and County of San Francisco
9 shall bear the net cost of restoring such public work or improvement substantially to its
10 condition prior to the occurrence of said event. (Added by Ord. 87-71, App. 4/15/71))

11 ((**SEC. 6.55. COMPLIANCE WITH NONDISCRIMINATION PROVISIONS.** (a) Subject
12 to the provisions of Subsection (c) of this Section, as soon as practical prior to awarding any
13 contract subject to this Chapter, the Human Rights Commission ("Commission") shall review
14 any such contract to insure compliance with Chapter 12B of the San Francisco Administrative
15 Code. Subject to the provisions of Subsection (c) of this Section, as soon as practical, prior to
16 awarding any contract subject to Chapter 12B of the San Francisco Administrative Code, the
17 Human Rights Commission may review any such contract to insure compliance with the
18 nondiscrimination provisions of Chapter 12B of the San Francisco Administrative Code;
19 further provided that the Commission shall review any such contract when requested to do so
20 by the Mayor, or a member of the Board of Supervisors. If the Commission determines that
21 there is cause to believe that a proposed contract or subcontract does not comply with any
22 requirements of Chapter 12B of the Administrative Code, the Commission shall notify the
23 contract awarding officer and attempt to resolve the noncompliance through conciliation. If the
24 noncompliance cannot be resolved, the Commission shall submit to the contract awarding
25 officer and the contractor a written Finding of Noncompliance. The Commission shall give the

1 contractor an opportunity to appeal the Finding. Upon reaching a decision in any appeal, the
2 Commission shall give written notice thereof, to the contract awarding officer, and the
3 appellant or appellants. The decision of the Commission shall be final unless within 15 days of
4 the filing and service of written notice thereof, appropriate legal proceedings are filed in a
5 court of competent jurisdiction by any party to this contract.

6 (b) Pending any investigation or appeal conducted pursuant to this Section, the
7 Human Rights Commission may, by written notice to the contract awarding officer, stay the
8 award of any contract that is the subject of any investigation or appeal.

9 (c) The Director of the Commission may waive the review of any contract subject to
10 this Chapter. The Director shall transmit a memorandum to the Commission as soon as
11 possible reporting such waiver. The Director's memorandum regarding the review waiver shall
12 be a public document. The Commission may disapprove the Director's decision to waive
13 review. Commission decision to disapprove must be made within 30 days of receipt of the
14 Director's memorandum but in no event subsequent to the award of any contract.

15 (d) Any duties required of the Commission under this Section may be delegated by
16 the Commission to the Director. (Added by Ord. 249-87, App. 7/2/87; amended by Ord. 386-
17 88, App. 8/26/88)))

18 ((**SEC. 6.56. LOCAL HIRING.** (a) All contracts between the City and County of San
19 Francisco and a contractor for the construction, reconstruction or repair of public buildings,
20 streets, utilities or other public works or improvements within the boundaries of the City and
21 County of San Francisco shall contain the following provisions:

22 Contractor promises to make a good-faith effort, with the assistance of community
23 organizations designated by the City or local labor union hiring halls, to hire qualified
24 individuals who are residents of the City and County of San Francisco to comprise no less
25 than 50% of each contractor's total construction work force, measured in labor work hours,

1 and contractor promises to give special preference to minorities, women and economically
2 disadvantaged individuals.

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

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

9 A failure to abide by these contract provisions may result in the imposition of sanctions
10 and penalties, including those enumerated in San Francisco Administrative Code Sections
11 6.25 and 6.45.

12 (b) **Definitions.**

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

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

24 (3) "Economically disadvantaged" shall mean an individual who has been unable to
25 secure employment in his or her trade for more than 20 working days in the past six months,

1 or whose annual maximum income falls within the income limits established by the Mayor's
2 Office of Community Development for the Community Development Block Grant (CDBG)
3 programs.

4 (c) The Human Rights Commission shall be the City agency charged with the
5 monitoring and enforcement of the provisions of this ordinance. (Added by 286-94, App.
6 8/4/94)))

7 ((**SEC. 6.57. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.** (a) Any
8 contractor, subcontractor or consultant who commits any of the following acts shall be liable to
9 the City for three times the amount of damages which the City sustains because of the act of
10 that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who
11 commits any of the following acts shall also be liable to the City for the costs, including
12 attorney's fees, of a civil action brought to recover any of those penalties or damages, and
13 may be liable to the City for a civil penalty of up to \$10,000 for each false claim:

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

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

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

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

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

1 (b) This Section does not apply to any controversy involving an amount of less than
2 \$500 in value. For purposes of this Subdivision, "controversy" means any one or more false
3 claims submitted by the same contractor, subcontractor or consultant in violation of this
4 Section.

5 (c) Every contract performed at the expense of the City and County of San
6 Francisco, or the cost of which is paid for out of monies deposited in the treasury of said City
7 and County, whether directly awarded or indirectly by or under subcontract, subpartnership,
8 day labor, station work, piece work, or any other arrangement whatsoever, shall contain a
9 clause reciting the provisions of Subdivision (a).

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

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

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

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

- 23 (1) Has actual knowledge of the information;
- 24 (2) Acts in deliberate ignorance of the truth or falsity of the information;
- 25 (3) Acts in reckless disregard of the truth or falsity of the information.

1 Proof of specific intent is not required and reliance on the claim by the City is also not
2 required. (Added by Ord. 308-94, App. 8/17/94))

3 ((**SEC. 6.58. DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS; EFFECT**
4 **OF DISQUALIFICATION.** Any contractor or consultant who fails to comply with the terms of
5 its contract with the City, or contractor, subcontractor or consultant who violates any provision
6 in Chapter 6, or who fails to abide by any rules and/or regulations adopted pursuant to
7 Chapter 6, may be declared an irresponsible bidder by the department head, board or
8 commission responsible for the public work or improvement at issue. Upon such
9 determination, the contractor, subcontractor or consultant (or any other entity with
10 substantially the same officers, directors, owners or principals) shall not be permitted to act as
11 a contractor, subcontractor or consultant on any public work or improvement for the City and
12 County of San Francisco for a period of up to five years as determined by the department
13 head, board or commission. The contract of any such person or entity may, at the option of
14 the department head, board or commission, be canceled and in the event of such
15 cancellation, no recovery shall be had thereon by the contractor, subcontractor, or consultant.
16 (Added by Ord. 308-94, App. 8/17/94))

17 ((**SEC. 6.59. CONDUCT REQUIRED OF RESPONSIBLE CONTRACTORS.** The
18 covenant of good faith and fair dealing is contained in every City contract, and contractors,
19 subcontractors and consultants shall at all times deal in good faith with the City and shall
20 submit claims, requests for equitable adjustments, requests for change orders, requests for
21 contract modifications or requests of any kind seeking increased compensation on a City
22 contract only upon a good faith, honest evaluation of the underlying circumstances and a
23 good faith, honest calculation of the amount sought. Violation of this Section subjects the
24 contractor, subcontractor or consultant to the penalties set forth in Chapter 6, including
25 disqualification. The act of knowingly submitting a false, untrue or misleading claim, request

1 for equitable adjustment, request for contract modification, request for change order or
2 request of any kind seeking increased compensation is sufficient of itself to subject the
3 contractor, subcontractor or consultant to the penalties stated in Chapter 6, regardless of the
4 City's reliance on, or response to the submission. (Added by Ord. 308-94, App. 8/17/94)

5 ((**SEC. 6.60. PROCEDURES FOR DISQUALIFICATION OF IRRESPONSIBLE**

6 **CONTRACTORS.** When charges are brought for violation of Sections 6.57, 6.58 or 6.59 of
7 Chapter 6, the contractor, subcontractor or consultant shall be given notice of the charges and
8 of all evidence supporting such charges. The contractor, subcontractor or consultant or its
9 attorney shall be entitled to offer rebuttal evidence and any other evidence in support of its
10 position. The department head, board or commission shall conduct a hearing, where the
11 charges and all evidence shall be presented. In the alternative, the department head, board of
12 commission may appoint a hearing officer to conduct such a hearing and make written
13 findings of fact to be submitted to the department head, board or commission, who shall
14 render the final decision. Following any decision finding a contractor, subcontractor or
15 consultant irresponsible, the department head, board or commission who made the finding of
16 irresponsibility retains authority to modify the decision. (Added by Ord. 308-94, App. 8/17/94)

17))

18 ((**SEC. 6.62. DISPOSITION OF INDIGENT DEAD.** (Added by Ord. 176-95, App. 6/2/95.
19 Repealed by Ord. 156-99, App. 5/19/99)))

20 ((**SEC. 6.63-1. CONTRACTS FOR PRIVATE USE OF CITY PROPERTY;**

21 **POSSESSORY INTEREST TAXES.** All agreements permitting the use for private gain of real
22 property situated in the City and County of San Francisco and owned by the City and County
23 of San Francisco, including any agency thereof, shall contain a clear and unequivocal
24 understanding that a possessory interest subject to taxation may be created and that the party
25 with the right to use such property shall pay any and all possessory interest taxes levied upon

1 his or her interest therein pursuant to an assessment lawfully made by the Assessor.

2 However, the Board of Supervisors may by resolution or ordinance specifically authorize and
3 approve to be included in such agreement a provision for the City and County's assumption of
4 the payment of such possessory interest taxes, in whole or in part, or for an offset against
5 revenues otherwise due and payable to the City and County under such agreement in an
6 amount equal to all or a portion of such possessory interest taxes.

7 Such agreement shall also provide that the holder of such interest shall, upon request,
8 furnish the information required in Section 6.63-2 to the City and County within 30 days of any
9 transaction that is subject to the reporting requirements of Section 6.63-2.

10 Within 60 days after execution of an agreement pertaining to the use of City property
11 as further described above, the agency executing such agreement on behalf of the City and
12 County shall forward, or cause the holder of such interest to forward, a copy of the agreement
13 to the Assessor of the City and County of San Francisco, as required in Section 6.63-2 below.

14 As used in this Section and in Section 6.63-2 below, the term "agreement" shall mean
15 any written contract, agreement or other document permitting the possession, occupancy or
16 use of City real property including, but not limited to, leases, subleases, easements, licenses,
17 use permits, permits to enter, concession agreements, franchise agreements and
18 management agreements. (Added by Ord. 304-96, App. 7/25/96)))

19 ((**SEC. 6.63-2. TAXABLE POSSESSORY INTERESTS IN TAX-EXEMPT REAL**
20 **PROPERTY; REPORT OF AGREEMENT AND CHANGE OF OWNERSHIP OR EXTENSION**
21 **OF AGREEMENT.** In accordance with Revenue and Taxation Code Section 480.5, every
22 owner of tax-exempt real property shall report to the Assessor of the City and County of San
23 Francisco the creation, renewal, extension, assignment, sublease or other transfer of any
24 interest granted under an agreement to use such property, within 60 days of the transaction.
25 The report shall be on such form as the Assessor may prescribe and shall include, at a

1 minimum, all of the following:

2 (a) The name and address of the owner;

3 (b) The names and addresses of all other parties to the transaction, including an
4 identification of each party and of his or her interest under the agreement;

5 (c) The type of transaction, whether creation, renewal, extension, sublease,
6 assignment, transfer or otherwise;

7 (d) A description of the property, which is the subject of the agreement;

8 (e) The effective date of the transaction;

9 (f) A summary of the essential terms of the transaction, including, but not limited to,
10 all of the following:

11 (1) The consideration for the interest, whether paid in money or otherwise,

12 (2) The term of the agreement, including any renewal or extension options,

13 (3) If a sublease or other agreement subject to an underlying agreement, the
14 original terms, remaining term and consideration paid for the master lease or other master
15 agreement,

16 (4) If an assignment or other transfer, the original term, remaining term, and the
17 consideration paid for the underlying lease or agreement. (Added by Ord. 304-96, App.
18 7/25/96)))

19 ((**SEC. 6.64. CONTRACTING; PROGRESSIVE PAYMENTS.** Any contract may provide
20 for progressive payments, if the advertisement for sealed proposals shall so specify. No
21 progressive payments under any contract shall be made which, with prior payments, shall
22 exceed in amount, 90 percent of the value of the work and labor and materials furnished;
23 provided, however, that when the department head who is authorized to approve or sign the
24 contract pursuant to Section 6.05 (hereafter called the "City representative") determines that
25 the contract is 50 percent or more complete, contractor is making satisfactory progress and

1 there is no specific cause for greater withholding, progressive payments may be made not to
2 exceed in amount the lesser of either 95 percent of the value of the work and labor and
3 material furnished or 95 percent of the contract price, and provided further that when the City
4 representative determines that the contract is 95 percent complete, funds withheld may be
5 reduced to an amount equal to 125 percent of the estimated value of the work yet to be
6 completed as determined by the City representative.

7 If the advertisement for sealed proposals shall so specify and if adequate provisions
8 are made to protect the City and County from loss, any contract may provide for progressive
9 payments for equipment and material purchased by the contractor for the project and stored
10 by the contractor prior to actual physical incorporation into the project. (Added by Ord. 439-96,
11 App. 11/8/96. Amended by Ord. 156-99, App. 5/19/99)))

12 ((**SEC. 6.65. COLLUSION IN CONTRACTING.** If any party or parties to whom a
13 contract has been awarded has been guilty of collusion with any officer or representative of
14 the City and County, or any other party or parties, in the submission of any bid or in
15 preventing of any other being made, or in knowingly receiving preferential treatment by any
16 officer or an employee of the City and County, then any contract so awarded, if not completed,
17 may be declared null and void by the Board of Supervisors on the recommendation of the
18 Purchasing Agent or the department head concerned, as the case may be, and the Purchaser
19 of Supplies or the department head concerned shall thereupon readvertise for bids for said
20 work for the uncompleted portion thereof. If the work under such contract shall have been
21 completed, the matter shall be referred to the City Attorney for such action as may be
22 necessary. Any party or parties guilty of such collusion shall not be permitted to participate in
23 or to bid on any future public work, improvement or purchase to be made by the City and
24 County. (Added by Ord. 439-96, App. 11/8/96)))

1 Section 2. Chapter 6 of the San Francisco Administrative Code is hereby amended by
2 adding the following Articles and Sections:

3
4 **ARTICLE I**
5 **GENERAL PROVISIONS**

6 **6.0. SCOPE OF CHAPTER.**

7 Chapter 6 shall govern public work or improvement contracting policies and
8 procedures, including the procurement of professional design, consulting and construction
9 management services for public work projects.

10 **6.1. DEFINITIONS.**

11 **A. Advertisement For Bid.** An Advertisement For Bid is a set of documents which
12 includes without limitation the published advertisement for bids on a construction contract; the
13 forms to be submitted with a bid, as required by the contracting department and the Human
14 Rights Commission; the construction contract general and special conditions; and the plans
15 and specifications for the public work or improvement.

16 **B. Award.** For contracts in excess of the Threshold Amount as defined below, a
17 contract is awarded by the City and County of San Francisco when the following events have
18 occurred: (1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has
19 approved the contract for award and (b) the department head has then issued an order of
20 award; (2) for departments with boards or commissions, (a) the department head has
21 recommended to the board or commission concerned a contract for award and (b) such board
22 or commission has then adopted a resolution awarding the contract. For contracts less than
23 or equal to the Threshold Amount as defined below, a contract is awarded when the
24 department head either signs the contract or issues an order of award, whichever occurs first.
25

1 Pursuant to Charter section 3.105, all contract awards are subject to certification by the
2 Controller as to the availability of funds.

3 **C. Bid.** A sealed document submitted in response to an Advertisement For Bids.
4 No bid shall be deemed accepted by the City and County of San Francisco until such time as
5 the contract is awarded in accordance with this Chapter.

6 **D. Bidder.** One who submits a bid in response to an Advertisement For Bids.

7 **E. Construction Manager.** Any individual, firm, partnership, corporation,
8 association, joint venture or other legal entity permitted by law to furnish construction
9 management services to the City and County.

10 **F. Contract.** For the purposes of this Chapter, a contract is an agreement
11 between the City and County of San Francisco and any party to perform professional design
12 services, consultant services, construction management services or construction services
13 relative to a public work or improvement. No contract shall be deemed awarded, effective or
14 binding on the City and County of San Francisco until such time as the requirements for
15 award are met, as provided in this Chapter.

16 **G. Contractor.** A party who contracts directly with the City and County of San
17 Francisco to perform professional design services, consultant services, construction
18 management services or construction services relevant to a public work or improvement. A
19 contractor performing construction services may also be referred to as a "general contractor"
20 or a "prime contractor."

21 **H. Public Work or Improvement.** A public work or public work or improvement,
22 as used in this Chapter, is any erection, construction, renovation, alteration, improvement,
23 demolition, excavation or repair of any public building, structure, infrastructure, bridge, road,
24 street, park, dam, tunnel, utility or similar public facility performed by or for the City and
25

1 County of San Francisco, the cost of which is to be paid wholly or partially out of moneys
2 deposited in the treasury of the City and County.

3 **I. Responsible.** A responsible bidder or contractor is one who (1) meets the
4 qualifying criteria required for a particular project, including without limitation the expertise,
5 experience, record of prior timely performance, license, resources, bonding and insurance
6 capability necessary to perform the work under the contract and (2) at all times deals in good
7 faith with the City and County and shall submit bids, estimates, invoices, claims, requests for
8 equitable adjustments, requests for change orders, requests for contract modifications or
9 requests of any kind seeking compensation on a City contract only upon a good faith, honest
10 evaluation of the underlying circumstances and a good faith, honest calculation of the amount
11 sought.

12 **J. Responsive.** A responsive bid is one that complies with the requirements of the
13 subject Advertisement For Bids without condition or qualification.

14 **K. Threshold Amount.** The Threshold Amount, for the purposes of this Chapter,
15 is \$100,000. On January 1, 2005, and every five years thereafter, the Controller shall
16 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
17 Consumer Price Index from January 1, 2000, rounded to the nearest \$1,000.

18 **6.2. DEPARTMENTS OR COMMISSIONS EMPOWERED TO CONTRACT FOR PUBLIC**
19 **WORKS OR RELATED PROFESSIONAL SERVICES.** _

20 Except as otherwise provided, the departments or commissions empowered on behalf
21 of the City and County of San Francisco to contract for public works or improvements or
22 professional services related to a public work or improvement are the Department of Public
23 Works and the Airport, Port, Public Utilities and Public Transportation Commissions. All other
24 departments or commissions must procure construction or related professional services
25 through the Department of Public Works.

1 **6.3. CONTRACTING POWERS AND PROCEDURE.**

2 **A. Public Work or Professional Service Contracts Less Than or Equal to the**
3 **Threshold Amount.** The department head may award any construction contract or
4 professional services contract of less than or equal to the Threshold Amount. For such
5 contracts, approval of the Mayor, commission or board concerned is not required.

6 **B. Public Work or Professional Service Contracts in Excess of the Threshold**
7 **Amount.**

8 **1. Departments under the Mayor.** For departments under the Mayor, the
9 Mayor or the Mayor's designee shall approve for award all public work and professional
10 service contracts in excess of the Threshold Amount and the department head may
11 then issue an order of award.

12 **2. Departments under Boards or Commissions.** The department head
13 shall recommend to the board or commission concerned the award of all public work
14 and professional service contracts in excess of the Threshold Amount and such board
15 or commission may then adopt a resolution awarding the contract.

16 **C. Certification Required.** In accordance with section 3.105 of the San Francisco
17 Charter, all contract awards are subject to certification by the Controller as to the availability of
18 funds.

19 **D. Execution of Contracts.** Following all necessary approvals, orders or
20 resolutions and execution by the contractor, the department head shall execute in duplicate all
21 contracts, modifications and change orders.

22 **6.4. PREFERENCE FOR LOCAL MANUFACTURERS AND INDUSTRY.**

23 Whenever any preference in favor of local manufacturers or industry is provided by
24 State law or ordinance or resolution of the Board of Supervisors, the same shall apply to
25 contracts under this Chapter.

1 **6.5. COMPLIANCE WITH NONDISCRIMINATION PROVISIONS.**

2 **A. Application of Administrative Code Chapters 12B, 12C and 12D.A.**

3 Notwithstanding any other provision of this Administrative Code, all contracts awarded under
4 this Chapter shall be awarded in accordance with the applicable requirements and procedures
5 established in this Chapter and Chapters 12B, 12C and 12D.A.

6 Any contract for the construction, reconstruction or repair of public buildings,
7 streets, utilities or other public work or improvement estimated to cost in excess of
8 \$10,000,000 shall be awarded in accordance with the provisions of this Chapter, except that
9 the bid discount provisions of Chapter 12D.A shall not be applicable.

10 **B. Review by the Human Rights Commission.** The Human Rights Commission
11 (the "HRC") shall review all contracts under this Chapter to determine compliance with
12 Chapter 12B, 12C and Chapter 12D.A of the San Francisco Administrative Code. Such
13 review shall occur as soon as practicable, but prior to award of any such contract.
14 Noncompliance shall be resolved in accordance with Administrative Code section 12D.A.16.

15 The HRC Director may waive the review of any contract subject to this Chapter.
16 The HRC Director shall transmit a memorandum to the Human Rights Commission as soon
17 as possible reporting such waiver. The Director's memorandum regarding the review waiver
18 shall be a public document. The Commission may disapprove the Director's decision to waive
19 review. The HRC's decision to disapprove must be made within 30 days of receipt of the
20 Director's memorandum but in no event subsequent to the award of any contract. Failure to
21 complete the review of any contract within 60 days of the date bids are received by the City
22 shall constitute a waiver under this subsection.

23 Any duties required of the HRC under this section may be delegated by the
24 Human Rights Commission to the HRC Director.

1 **6.6. FEDERALLY-FUNDED OR STATE-FUNDED CONTRACTS.**

2 **A. Time for Award.** For all contracts that are fully or partially funded by Federal or
3 State grants, loans or other governmental source, the department concerned shall not be
4 required to award such contracts until 120 days from the date bids are received. Such time
5 may only be extended prior to award of the contract and only upon (a) written agreement of
6 the apparent responsible bidder with the lowest responsive bid; (b) approval by the Mayor or
7 the Mayor's Designee or by resolution of the board or commission concerned; and (c) any
8 necessary approvals of the Federal, State or other governmental funding agency.

9 **B. Contract Terms.** In all contracts for the construction of any public work or
10 improvement which involves the use of any funds furnished, given or loaned by the
11 government of the United States or the State of California, all laws, rules and regulations of
12 the government of the United States or the State of California, or of any of its departments,
13 relative to the performance of such work and the conditions under which the work is to be
14 performed, shall prevail over the requirements of this Chapter when such laws, rules or
15 regulations are in conflict.

16 **6.7. VOID CONTRACT.**

17 Any public works contract or subcontract awarded under this Chapter which does not
18 comply with the provisions of this Chapter shall be null and void; and no recovery shall be had
19 thereon. Any officer, board or commission who shall sign, execute or approve any such
20 contract shall be deemed guilty of misfeasance in office.

21
22 [sections 6.8 – 6.19 reserved]
23
24
25

1 **ARTICLE II**

2 **CONSTRUCTION CONTRACTING**

3 **6.20. PUBLIC WORK CONTRACTS SUBJECT TO COMPETITIVE BIDDING.**

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

10 **B. Public Works Less Than or Equal to the Threshold Amount.** Any public
11 work or improvement estimated to cost less than or equal to the Threshold Amount may be
12 performed (a) under contract or (b) by City and County employees. If the work is to be
13 performed under contract, the department shall obtain not fewer than three quotes and shall
14 award the contract to the responsible bidder offering the lowest quotation. If the department is
15 unable to obtain three quotes, the award may be based on the quote or quotes received. The
16 department administering the contract shall maintain records as to whom the request for
17 quotations was directed and the quotations received. It is the policy of the Board of
18 Supervisors for contracting departments to make every effort to eradicate prejudice and
19 favoritism in the award of City contracts. In order to effectuate this policy, the department
20 heads authorized to enter into construction contracts and their staff members shall collaborate
21 with the HRC Director and HRC staff members periodically to create a list of responsible
22 contractors qualified to perform various types of public work for projects estimated to be less
23 than the Threshold Amount, making every effort to include qualified, responsible MBE and
24 WBE contractors on that list. The HRC shall be responsible for outreach efforts to make sure
25 that MBE and WBE contractors are aware of the opportunity to be considered for the list. The

1 contract awarding departments or commissions shall be responsible for evaluating and
2 determining whether contractors are responsible and qualified to perform the various scopes
3 of work. The department heads authorized to execute construction contracts shall report
4 quarterly to the Board of Supervisors regarding MBE/WBE inclusion on the list of responsible
5 and qualified contractors for public work contracts estimated to be less than or equal to the
6 Threshold Amount, a description of the scope of work and price for each contract awarded
7 under this section, the name of the contractor awarded the contract and whether the contract
8 was awarded to an MBE or WBE contractor. Such reports shall be referred to a Board
9 committee for public hearing.

10 **C. Estimates Required.** For public works or improvements in excess of the
11 Threshold Amount, no department head shall recommend a construction contract for or issue
12 an order of award without preparing detailed program requirements and detailed estimates for
13 the work to be performed. There shall be a separate accounting for each work or
14 improvement which accounting shall include all direct, indirect and supervisory elements of
15 costs chargeable to such work or improvement. All such accounts shall be reported to the
16 Controller and to either the Mayor or the Mayor's Designee or to the board or commission
17 concerned, as appropriate.

18 **D. Comparison of Bids on Basis of Time of Completion.** The department head
19 concerned is authorized to compare bids on the basis of time of completion, and any contract
20 awarded in consideration, in whole or in part, of the relative time estimate of bidders for
21 completion of the work, shall be subject to the provisions of this Chapter.

22 **E. Time for Award.** Except when a contract is funded by Federal or State grants
23 or funds, all public work contracts shall be awarded within ninety (90) days of the date the City
24 and County receives the bids. Such time may only be extended prior to award of the contract
25 and only upon (a) written agreement of the apparent responsible bidder with the lowest

1 responsive bid and (b) approval by the Mayor, the Mayor's Designee or by resolution of the
2 board or commission concerned.

3 **6.21. BID REQUIREMENTS.**

4 All Advertisements For Bids for construction contracts in excess of the Threshold
5 Amount shall conform to and at a minimum require the following:

6 **A. Published Advertisement.** The department head authorized to execute the
7 contract for the public work or improvement to be performed shall advertise for competitive
8 bids in at least one local newspaper or periodical of general circulation. Such advertisement
9 shall be published not fewer than ten (10) days prior to bid opening. The department may, in
10 its discretion, include in the published advertisement the amount of the engineer's estimate for
11 the work to be performed.

12 **B. Award and Certification Required.** All published advertisements and
13 Advertisements For Bid shall contain the following language [wording in brackets should be
14 chosen as appropriate to the department]:

15 In accordance with San Francisco Administrative Code Chapter 6,
16 no bid is accepted and no contract in excess of [the Threshold
17 Amount] is awarded by the City and County of San Francisco until
18 such time as [(1) for departments with boards or commissions, (a)
19 the department head recommends the contract for award and (b)
20 the board or commission then adopts a resolution awarding the
21 contract]; or [(2) for departments under the Mayor, (a) the Mayor or
22 the Mayor's designee approves the contract for award and (b) the
23 department head then issues an order of award]. Pursuant to
24 Charter section 3.105, all contract awards are subject to
25 certification by the Controller as to the availability of funds.

1 Failure of a department to include such language in a published advertisement
2 or Advertisement For Bids does not give rise to a contract right by a bidder or contractor
3 outside of the requirements of the Charter or Administrative Code of the City and County of
4 San Francisco.

5 **C. Form of Bid.** All bids shall be sealed and directed to the department head
6 advertising for bids, in the format prescribed by the department head with the authority to
7 execute the contract.

8 **D. Bid Bond.** All bids in excess of \$25,000 shall be accompanied by a corporate
9 surety bond, or an irrevocable letter of credit on a bank or trust company doing business and
10 having an office in the State of California, having a combined capital and surplus of at least
11 \$50,000,000, and subject to supervision or examination by Federal or State authority, or a
12 certified check on a bank or trust company doing business and having an office in the State of
13 California, having a combined capital and surplus of at least \$50,000,000, and subject to
14 supervision or examination by Federal or State authority, payable on sight to the City and
15 County of San Francisco, the amount of which corporate surety bond, irrevocable letter of
16 credit or certified check shall be fixed by the department head or officer as stated in the
17 Advertisement For Bids, which amount shall not be less than 10 percent of the amount bid for
18 the cost of the proposed work of improvement, and no bid shall be considered unless
19 accompanied by a corporate surety bond or irrevocable letter of credit or certified check. Any
20 irrevocable letter submitted pursuant to this Chapter shall be on a form provided by the City
21 and County. If the amount of security required is fixed by the department head or officer in an
22 amount in excess of \$15,000, the form of security required shall be that of a corporate surety
23 bond or irrevocable letter of credit. The requirement for a corporate surety bond, irrevocable
24 letter of credit or certified check described in this subsection shall be referred to collectively as
25 the "bid security requirements."

1 Notwithstanding the above, the bid security requirements for a particular
2 contract may be modified by the department head in accordance with Administrative Code
3 section 12D.A.9.(A)(4).

4 **E. Fees.** The department head or officer calling for bids may specify in the
5 Advertisement For Bids for any project a nonrefundable fee to be paid by each prospective
6 bidder for each set of bidding documents (including plans and specifications), such fee to
7 defray the cost of reproducing each set of bidding documents as determined by the
8 department head or officer, and all such fees shall be deposited as an abatement of the
9 expenditure of the appropriation against which the cost of reproducing said bidding
10 documents was charged.

11 **F. License.** The department head shall specify in all Advertisements For Bids and
12 plans for public work projects the classification of the contractor's license which a contractor
13 shall possess at the time bids are submitted.

14 **G. Qualifications.** The department head responsible for the public work shall
15 require from all bidders information concerning their experience and financial qualifications,
16 and shall take such information into consideration in the award of any contract. At a minimum,
17 the department head shall require (1) information concerning the contractor's experience,
18 financial qualifications and ability to perform the terms and conditions of the contract and (2)
19 information as to whether the contractor possesses, or can obtain in time to perform the
20 contract, the necessary equipment. In the event that a bidder fails to provide such information
21 within fourteen calendar days of bid opening, or as otherwise required in the Advertisement
22 For Bids, the department head could find that the bidder is refusing to enter into the contract,
23 resulting in a forfeiture of the bidder's bid bond.

24 **H. Business Tax Registration Certificate.** All Advertisements For Bids shall
25 require that bidders submit proof of a current Business Tax Registration Certificate. Failure of

1 a bidder to provide such proof within fourteen calendar days of bid opening, or as otherwise
2 required in the Advertisement For Bids, could, at the discretion of the department head,
3 constitute a refusal to enter into the contract and result in a forfeiture of the bid bond.

4 **I. Apprenticeship Program or Fund.** All Advertisements For Bids shall require
5 that bidders submit a declaration affirming the bidder's commitment on behalf of itself and its
6 subcontractors, as a material term of the contract, to fully comply with the requirements of the
7 State Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4
8 (commencing at section 3070) and section 1777.5. Such declaration shall provide either (1)
9 that the contractor and its subcontractors hold current approval certificates issued by the joint
10 apprenticeship committee administering the apprenticeship standards of the craft or trade to
11 be performed under the contract approving the contractor and its subcontractors for the
12 employment and training of apprentices or (2) that the contractor and its subcontractors shall
13 apply to the joint apprenticeship committee administering the apprenticeship standards of the
14 craft or trade in the area of the site of the public work, prior to performing any of the work
15 under the contract, for a certificate approving the contractor or subcontractor for the
16 employment and training of apprentices. The declaration shall also include a provision that
17 the contractor and its subcontractors shall contribute to a fund or funds to administer and
18 conduct the apprenticeship program in any craft or trade in the area of the site of the public
19 work, to which fund or funds other contractors in the area of the site of the public work are
20 contributing in the same amount and on the same basis and in the same manner as the other
21 contractors do, but where the trust fund administrators are unable to accept the funds,
22 contractors not signatory to the trust agreement shall pay a like amount to the California
23 Apprenticeship Council.

24 Failure to provide such declaration within fourteen calendar days of bid opening,
25 or as otherwise required by the Advertisement For Bids, could, at the discretion of the

1 department head, constitute a refusal to enter into the contract and result in a forfeiture of the
2 bid bond.

3 **J. Designation of Subcontractors; Subcontracting and Subletting.** All bidders
4 shall designate their subcontractors in accordance with and shall be subject to the California
5 Subcontracting and Subletting Act, at Government Code §4000, et seq., as amended from
6 time-to-time. In addition to the penalties provided by Government Code §4000, et seq.,
7 violation of this subsection may be grounds for a determination of nonresponsibility under
8 Article V of this Chapter.

9 **K. Right to Reject Any or All Bids.** The department head shall have the right to
10 reject any or all bids for any reason or no reason. All Advertisements For Bids shall reserve
11 this right, but failure to make such reservation shall not abrogate the right to reject. For public
12 work contracts in excess of the Threshold Amount, the department head shall obtain the
13 approval of the Mayor or the Mayor's Designee or the board or commission, as appropriate, in
14 the rejection of bids.

15 **L. Bid Protests.** Only a bidder may submit a bid protest. The department head
16 concerned shall prescribe in the Advertisement For Bids procedures for submitting bid
17 protests. Such procedures shall set the time by which bid protests must be received, but may
18 not require that bid protests be submitted fewer than five (5) business days after the date bids
19 are due.

20 **6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
21 **CONDITIONS.**

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

24 **A. Bonds.** Before the execution of any contract for public works or improvements,
25 the department head authorized to execute such contracts shall require the successful bidder

1 to file corporate surety bonds for the faithful performance thereof and to guarantee the
2 payment of wages for services engaged and of bills contracted for material, supplies and
3 equipment used in the performance of the contract. The bond shall be for a sum not less than
4 100 percent of the award.

5 The City and County of San Francisco, acting through its Human Rights
6 Commission ("HRC"), intends to provide guarantees to private bonding assistance companies
7 and financial institutions in order to induce those entities to provide required bonding and
8 financing to eligible contractors bidding on and performing City public work contracts. This
9 bonding and financial assistance program is subject to the provisions of Administrative Code
10 section 12D.A.9.

11 **B. Insurance.** All construction contracts awarded under this Chapter must conform
12 to the insurance requirements established by the Risk Manager. The Risk Manager shall
13 develop uniform insurance requirements for City contracts subject to this Chapter and shall
14 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and
15 update such insurance requirements on an annual basis.

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

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

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

5 **E. Prevailing Wages.**

6 **1. Generally.** All contractors performing a public work or improvement for
7 the City and County of San Francisco shall pay its workers on such projects the highest
8 rate of prevailing wage as provided below.

9 **2. Leased Property Included.** For the limited purposes of this subsection,
10 a "public work or improvement" also means and includes any construction work done
11 under private contract when all of the following conditions exist:

12 **a.** The construction contract is between private persons; and

13 **b.** The property subject to the construction contract is privately
14 owned, but upon completion of the construction work will be leased to the City
15 and County of San Francisco for its use; and

16 **c.** Either of the following conditions exist:

17 **(1)** The lease agreement between the lessor and the
18 City and County of San Francisco, as lessee, is entered into prior
19 to the construction contract, or

20 **(2)** The construction work is performed according to the
21 plans, specifications, or criteria furnished by the City and County of
22 San Francisco, and the lease agreement between the lessor and
23 the City and County of San Francisco as lessee, is entered into
24 during, or upon completion, of the construction work.

1 **3. Determination of the Prevailing Wage.** It shall be the duty of the Board
2 of Supervisors, from time to time and at least once during each calendar year, to fix
3 and determine the highest general prevailing rate of wages paid in private employment
4 in the City and County of San Francisco, including such rate of wages paid for overtime
5 and holiday work, which said highest general prevailing rate of wages shall be fixed
6 and determined as follows:

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

23 In the event that the Board of Supervisors does not fix or determine the
24 highest general prevailing rate of wages in any calendar year, the rates established by
25

1 the California Department of Industrial Relations for such year shall be deemed
2 adopted.

3 **4. Specifications to Include Wage Rate.** The department head authorized
4 to execute a construction contract under this Chapter shall include in the contract
5 specifications, or make available in the offices of the department or at the job site, a
6 detailed statement of the highest general prevailing rate of wages, including the wages
7 for holiday and overtime work, as determined by the Board of Supervisors for the
8 several kinds of labor to be used or employed in the performance of said contract. The
9 contractor shall agree to pay to all persons performing labor in and about the public
10 work or improvement the highest general prevailing rate of wages as set forth in the
11 specifications, including wages for holiday and overtime work.

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

20 **6. Records to be Kept by Contractors and Subcontractors.** Every public
21 works contract or subcontract awarded under this Chapter shall contain a provision that
22 the contractor shall keep, or cause to be kept, an accurate record showing the name,
23 place of residence, citizenship, occupation and per diem pay of each person engaged
24 in the execution of said contract. Every subcontractor who shall undertake the
25 performance of any part of said original contract shall keep a like record of each person

1 engaged in the execution of said subcontract. All such records shall at all times be
2 open to the inspection and examination of the duly authorized officers and agents of
3 the City and County of San Francisco.

4 **7. Non-compliance with Wage Provisions – Penalties.**

5 **a. Penalty and Forfeiture.** Any contractor or subcontractor who
6 shall fail or neglect to pay to the several persons who shall perform labor under
7 any contract, subcontract or other arrangement on any public work or
8 improvement as defined in this Chapter the highest general prevailing rate of
9 wages as fixed by the Board of Supervisors under authority of this Chapter, shall
10 forfeit; and, in the case of any subcontractor so failing or neglecting to pay said
11 wage, the original contractor and the subcontractor shall jointly and severally
12 forfeit to the City and County of San Francisco the sum of \$25 per day for each
13 laborer, workman or mechanic employed for each calendar day or portion
14 thereof, while they shall be so employed and not paid said highest general
15 prevailing rate of wages.

16 **b. Enforcement.** It shall be the duty of the officer, board or
17 commission under whose jurisdiction said public work or improvement is being
18 carried on, made or constructed, when certifying to the Controller any payment
19 which may become due under said contract, to deduct from said payment or
20 payments the total amount of said forfeiture provided for in this subsection. The
21 Controller, in issuing any warrant for any such payment, shall deduct from the
22 amount which would otherwise be due on said payment or payments the amount
23 of said forfeiture or forfeitures as so certified.

24 **F. Hours and Days of Labor.**

1 **1. Generally.** For the purpose of meeting prevailing conditions and
2 enabling employers to secure a sufficient number of satisfactory workers and artisans,
3 no person performing labor or rendering service in the performance of any contract or
4 subcontract for any public work or improvement as defined in this Chapter shall
5 perform labor for a longer period than 40 hours per week, or five days of eight hours
6 each, except in those crafts in which a shorter work day now prevails by agreement in
7 private employment. Any person working hours in addition to the above shall be
8 compensated in accordance with the California Department of Labor overtime
9 standards and rates.

10 **2. Noncompliance – Penalties and Forfeiture.** Any contractor or
11 subcontractor who shall violate any of the provisions of this subsection shall be liable
12 for the same penalties and forfeits as those specified in subsection 6.22(E) of this
13 Chapter, penalties and forfeits shall be applicable for each laborer, mechanic or artisan
14 employed for each calendar day or portion thereof whereon such laborer, mechanic or
15 artisan is compelled or permitted to work more than the days and hours specified
16 herein. The provisions of this subsection shall be made a part of all contracts and
17 subcontracts for the construction of any public work or improvement.

18 **3. Contracts Outside City and County.** In the event that any public work
19 or improvement is to be constructed outside of the City and County of San Francisco,
20 and at such a distance therefrom that those engaged in performing labor on said public
21 work or improvement must under ordinary conditions remain at or near the site of said
22 work or improvement when not actually engaged in the performance of labor thereon,
23 then the officer, board or commission responsible for the construction of said public
24 work or improvement may, in making specifications or letting contracts therefor, make
25 provision therein for days and hours of labor beyond the limitations provided for in

1 section 6.22(F) of this Chapter; but not to exceed eight hours in any one calendar day,
2 or six days in any calendar week. In the event that emergency conditions shall arise,
3 making a change advisable during the performance of any such contract, or any portion
4 thereof, the hours and days of labor may be extended beyond the limits hereinabove
5 expressed; but not to exceed eight hours per day, upon the written authority of the
6 officer, board or commission awarding such contract. Failure of the contractor to
7 perform such contract within the time provided shall not constitute an emergency.

8 **G. Local Hiring.**

9 **1. Contract Requirements.** All construction contracts for public works or
10 improvements to be performed within the boundaries of the City and County of San
11 Francisco shall contain the following provisions:

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

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

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

4 A failure to abide by these contract provisions may result in
5 the imposition of sanctions and penalties, including those provided
6 for in San Francisco Administrative Code section 6.80.

7 **2. Definitions.**

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

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

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

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

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

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

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

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

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

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

19 **c. Avoidable and Unavoidable Delay; Limitation of Damages for**
20 **Delay.** The department head administering the public work shall have the
21 authority to specify in the contract the delays that shall be deemed avoidable or
22 unavoidable. The City and County shall not pay damages or compensation of
23 any kind shall to a contractor because of delays in the progress of the work,
24 whether such delays be avoidable or unavoidable; provided, however, the City
25 and County may pay for (1) delays caused to the contractor by the City and

1 County; and (2) such unavoidable delays as may be specifically stated in the
2 contract. Such latter delays will be compensated for only under the conditions
3 specified in the contract.

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

13 **I. Liquidated Damages.** Any contract may provide a time within which the
14 contract work, or portions thereof, shall be completed and may provide for the payment of
15 agreed liquidated damages to the City and County for every calendar or working day
16 thereafter during which such work shall be uncompleted.

17 **J. Retention of Progressive Payments.** Any contract may provide for
18 progressive payments, if the Advertisement For Bids shall so specify. No progressive
19 payments under any contract shall be made which, with prior payments, shall exceed in
20 amount 90 percent of the value of the work and labor and materials furnished. However, if the
21 department head responsible for the public work determines that the contract is 50 percent or
22 more complete, that the contractor is making satisfactory progress and that there is no
23 specific cause for greater withholding, progressive payments may be made not to exceed in
24 amount the lesser of either 95 percent of the value of the work and labor and material
25 furnished or 95 percent of the contract price. When the department head responsible for the

1 public work determines that the contract is 95 percent complete, funds withheld may be
2 reduced to an amount equal to 200 percent of the estimated value of the work yet to be
3 completed as determined by the department head.

4 **K. Inspection and Acceptance of Completed Work; Final Payment.** The
5 department head authorized to execute any contract for public works or improvements shall
6 be responsible for the inspection and acceptance of such work on completion. Such
7 acceptance shall be in writing and shall include the certificate of the department head
8 concerned that the work covered by the contract has been fully and satisfactorily completed in
9 accordance with the plans and specifications therefor. Receipt of copy of such acceptance in
10 writing shall constitute the Controller's authority to complete any payments due the contractor
11 under the contract; provided that the Controller may make such additional investigation or
12 inspection as is provided by Administrative Code section 10.07.

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

1 **M. Violations of Chapter 6; False Claims.** Every public work contract performed
2 at the expense of the City and County of San Francisco, or the cost of which is paid for out of
3 monies deposited in the treasury of the City and County, whether directly awarded or
4 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
5 other arrangement whatsoever, shall contain a clause incorporating the provisions of section
6 6.80 of this Chapter.

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

12 **6.23. PUBLIC WORKS TO BE PERFORMED BY THE CITY; BIDS BY CITY**

13 **DEPARTMENTS.**

14 **A. Public Works Less Than or Equal to the Threshold Amount.** Any public
15 work or improvement estimated to cost less than or equal to the Threshold Amount may be
16 performed by the employment of the necessary labor and purchase of the necessary
17 materials and supplies directly by the City and County.

18 **B. Bids by City Departments.** Appropriate City and County departments may file
19 sealed bids for the execution of any work to be performed under a contract and shall not be
20 required to furnish security or submit information relative to financial qualifications as provided
21 in this Chapter. Any bid submitted by a department of the City and County, if it is the lowest
22 bid, must be approved by the Controller before the award of contract. If the bid of a City and
23 County department, as investigated and approved by the Controller, is the lowest, the contract
24 shall be awarded to the department which shall record accurate unit costs of all direct and
25

1 indirect charges incurred under any such contract. Such unit costs shall be reported to and
2 audited by the Controller monthly and on completion of the work.

3 The Controller shall maintain records of bids filed by departments in relation to
4 the total direct and indirect cost of each such work and shall report thereon periodically to the
5 Mayor. The Controller may refuse to approve contracts with a department shown to be
6 repeatedly underbidding on contract work and failing to complete same within the contract
7 price or time.

8 **C. Execution Of Work By City Upon Rejection or Failure of Bids.** When bids
9 have been advertised pursuant to the required procedure and no responsive bid is received,
10 or where only one responsive bid has been received, the department head, with the approval
11 of the Mayor or the Mayor's designee, or the department head, with the approval of the board
12 or commission to which he or she is responsible, may order the related work to be executed
13 by the City and County in the most expeditious manner, provided, however, that the cost of
14 such work shall not exceed any bid price received for the same work.

15
16 [sections 6.24 – 6.39 reserved]

17 **ARTICLE III**

18 **PROFESSIONAL SERVICES CONTRACTING**

19 **6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR PUBLIC** 20 **WORK PROJECTS.**

21 Notwithstanding any other provision of this Administrative Code, when a department is
22 seeking outside temporary professional design, consultant or construction management
23 services for a public work project, where the fee for such services shall exceed \$10,000, the
24 department shall procure such services through a competitive process based on
25 qualifications.

1 **A. Selection Process.** For professional services contracts in excess of \$10,000,
2 the department head for the department empowered to contract for the public work shall
3 designate one or more panels to review proposals and interview and rate respondents with
4 respect to a request for proposals or qualifications for a professional services contract. A
5 panel shall consist of not fewer than two persons. The department head may establish a
6 multi-tier selection process whereby, for example, a technical panel recommends a shortlist of
7 qualified respondents and a second panel ranks the shortlist.

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

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

17 **B. Negotiation.** Following the process outlined in subsection 6.40(A), and should
18 the department concerned desire to enter into a contract, the department head shall invite the
19 highest-ranked qualified respondent to negotiate a professional services agreement. In the
20 event that the department head determines, in the department head's sole discretion, that
21 negotiations are unfruitful, the department head shall terminate negotiations in writing and
22 may then invite the next-ranked respondent to negotiate a contract. In such event, the
23 department head shall as soon as practicable make a report to the Mayor, board or
24 commission as appropriate to the department.

25 **6.41. REQUESTS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

1 All requests for competitive proposals or qualifications for temporary design, consultant
2 or construction management services shall conform to and at a minimum require the
3 following:

4 **A. Evaluation Criteria.** The department head authorized to execute the contract
5 shall determine the criteria by which the design, consultant or construction management
6 service professionals shall be evaluated, on a project-by-project basis. Such criteria shall be
7 included as a part of any request for proposals or qualifications. The criteria shall be based
8 primarily on qualifications and experience relevant to the services needed for the project.

9 **B. Reservation of Rights to Reject or Cancel the Request for Proposals in**
10 **Whole or Part.** The department head authorized to execute the contract, upon approval of
11 the Mayor, the Mayor's designee or the board or commission, as appropriate, may reject any
12 or all proposals, in whole or in part, received in response to a request for proposals or
13 qualifications. The right to reject shall be reserved in any request for proposals or
14 qualifications, but the failure to include such reservation shall not abrogate the rights of the
15 department head under this section or give rise to any right by any respondent.

16 **C. Award and Certification Required.** All requests for proposals or qualifications
17 shall contain the following language [wording in brackets should be chosen as appropriate to
18 the department]:

19 In accordance with San Francisco Administrative Code Chapter 6,
20 no proposal is accepted and no contract in excess of [the Threshold
21 Amount] is awarded by the City and County of San Francisco until
22 such time as [(1) for departments with boards or commissions, (a)
23 the department head recommends the contract for award and (b)
24 the board or commission then adopts a resolution awarding the
25 contract]; or [(2) for departments under the Mayor, (a) the Mayor or

1 the Mayor's designee approves the contract for award and (b) the
2 department head then issues and order of award]. Pursuant to
3 Charter section 3.105, all contract awards are subject to
4 certification by the Controller as to the availability of funds.

5 Failure of a department to include such language in a request for proposals or
6 qualifications does not give rise to a contract right by a respondent or contractor outside of the
7 requirements of the Charter or Administrative Code of the City and County of San Francisco.

8 **6.42. PROFESSIONAL SERVICES CONTRACT TERMS.**

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

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

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

22 **C. Indemnification.** All professional services contracts awarded under this
23 Chapter shall require that the contractor fully indemnify the City and County to the maximum
24 extent provided by law, such that each contractor must save, keep, bear harmless and fully
25 indemnify the City and County and any of its officers or agents from any and all liability.

1 damages, claims, judgments or demands for damages, costs or expenses in law or equity that
2 may at any time arise.

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

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

10 **E. Violations of Chapter 6; False Claims.** Every professional service contract
11 performed at the expense of the City and County of San Francisco, or the cost of which is
12 paid for out of monies deposited in the treasury of the City and County, whether directly
13 awarded or indirectly by or under subcontract, subpartnership, subconsultancy or any other
14 arrangement whatsoever, shall contain a clause incorporating the provisions of section 6.80 of
15 this Chapter.

16
17 [sections 6.43 – 6.59 reserved]

18
19 **ARTICLE IV**

20 **EXEMPTIONS FROM AND**

21 **ALTERNATIVES TO COMPETITIVE BIDDING**

22 **6.60. EMERGENCY REPAIRS, WORK AND CONTRACTS.**

23 **A. Declaration of Emergency.** The Board of Supervisors may declare an
24 emergency and may direct any department head to perform any repair or other emergency

1 work in any manner the Board determines to be in the best interests of the City and County of
2 San Francisco.

3 **B. Other Determinations of Emergency.** In an actual emergency as defined or
4 described below, the repair, reconditioning or other work or contract necessitated by the
5 emergency may be executed by the department head responsible for such work in the most
6 expeditious manner, in accordance with the procedures set forth below.

7 **C. Emergency Defined.** For purposes of this Chapter, an "actual emergency"
8 means a sudden, unforeseeable and unexpected occurrence involving a clear and imminent
9 danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health,
10 property or essential public services. An "actual emergency" shall also mean the discovery of
11 any condition involving a clear and imminent danger to public health or safety, demanding
12 immediate action, which discovery was sudden and unforeseen and which would not have
13 been made in the regular course of business. Examples of an actual emergency may include,
14 but are not limited to, the following:

15 1. Weather conditions, fire, flood, earthquake or other unforeseen
16 occurrences of unusual character; or

17 2. The breakdown of any plant, equipment, structure, street or public work
18 necessitating immediate emergency repair or reconditioning to safeguard the lives or
19 property of the citizens; or the property of the City and County; or to maintain the public
20 health or welfare; and

21 a. Including the installation, repair, construction and alteration of
22 crossings and switch work and special work in connection therewith, at street
23 and other railway crossings and at street intersections, when the same is to be
24 done by or for the Public Transportation Commission; or

1 b. Including the installation, repair, construction and alteration of the
2 fire alarm, police communication and traffic signal systems, when the same is to
3 be performed by or for the Department of Telecommunications and Information
4 Services or the Department of Parking and Traffic; or

5 c. Including the work of making connections, installing gate valves,
6 installing or transferring services and performing such other work therewith to
7 existing water pipes, when the same is to be done by or for the Public Utilities
8 Commission and when such work will leave one or more fire hydrants or water
9 consumers without water; or

10 3. Unforeseen occurrences of unusual character resulting in an insufficient
11 number of hospital beds or the lack of hospital beds or the lack of hospital, surgical,
12 mental health or hospital ancillary services so as to leave patients of the City and
13 County without required hospital or medical services.

14 **D. Approvals Required.** If the estimated cost of the emergency work is less than
15 or equal to \$250,000, the department head may proceed with the work without additional
16 approvals. If the estimated cost of the emergency work exceeds \$250,000, the department
17 head, prior to authorizing the commencement of the work, must first secure the approval in
18 writing of the Mayor or the Mayor's designee or the president of the board or commission
19 concerned, as appropriate to the department. For all cases where the cost of the emergency
20 work exceeds \$250,000, the department head shall also obtain the approval of the Board of
21 Supervisors.

22 If the emergency does not permit the required approvals to be obtained before
23 work is commenced or the contract entered into, such approvals shall be obtained as soon
24 thereafter as it is possible to do so. In such event, the department head concerned shall
25 notify the Controller immediately of the work involved or the contract entered into and the

1 estimated cost thereof and shall notify the Board of Supervisors not more than seven days
2 after work has been commenced.

3 **E. Exemptions.** Contracts awarded in accordance with this section under
4 emergency circumstances as described and defined above are exempt from the requirements
5 of this Chapter and Chapters 12A, 12B, 12C and 12D.A. However, the department head must
6 comply with the certification requirement of Administrative Code section 12D.A.15(A)(2). It is,
7 however, the policy of the Board of Supervisors for contracting departments to make every
8 effort to comply with the provisions of Chapters 12A, 12B, 12C and 12D.A. In order to
9 effectuate this policy, the department heads authorized to enter into construction contracts
10 and their staff members shall collaborate with the HRC Director and HRC staff members
11 periodically to create a list of responsible contractors qualified to perform various types of
12 emergency work, making every effort to include qualified, responsible MBE and WBE
13 contractors on that list. The HRC shall be responsible for outreach efforts to make sure that
14 MBE and WBE contractors are aware of the opportunity to be considered for the list. The
15 contract awarding departments or commissions shall be responsible for evaluating and
16 determining whether contractors are responsible and qualified to perform the various scopes
17 of work. The department heads of departments authorized to execute construction contracts
18 shall report quarterly to the Board of Supervisors regarding MBE/WBE inclusion on the list of
19 responsible and qualified contractors for emergency contracts, a description of each
20 emergency contract awarded, the reason why the work was performed under these
21 emergency procedures, and whether the emergency contract was awarded to an MBE or
22 WBE contractor. Such reports shall be referred to a Board committee for public hearing.

23 **F. Indemnification For Emergency Contracts.** Department heads responsible
24 for any emergency work are hereby authorized to (a) waive any requirement that a contractor
25 performing such emergency work indemnify the City and County and/or (b) enter into a

1 contract which provides that the City and County indemnify such contractor, except that the
2 City and County shall in no event indemnify a contractor for the contractor's gross negligence
3 or willful misconduct.

4 **6.61. DESIGN-BUILD.**

5 The Department heads authorized to execute contracts for public work projects are
6 authorized to seek proposals from qualified private entities ("developers") for design-build
7 construction and/or financing of public work projects under the following conditions:

8 A. Before the request for proposals is issued, the department head shall determine
9 that a design-build program is necessary or appropriate to achieve anticipated cost savings or
10 time efficiencies, or both, and that such a process is in the public's best interest. The
11 department head shall notify the Board of Supervisors of his or her intention to seek design-
12 build and/or finance proposals by generally describing the proposed program and the reasons
13 for it in a letter to the Clerk of the Board.

14 B. If the proposed public work project is for the use or benefit of a department that
15 is under the jurisdiction of a commission, then such commission shall first approve the
16 solicitation of design-build and/or finance proposals. If the public work project is not for the
17 use or benefit of a department under the jurisdiction of a commission, then the Mayor must
18 first approve this process.

19 C. Developers submitting design-build proposals shall offer evidence of
20 qualifications in the field of design and construction of similar projects. The department head
21 may request developers to create partial designs, which will be evaluated as part of the
22 selection process.

23 D. Developers submitting private financing proposals shall provide evidence of the
24 commitment of funds necessary to privately finance the proposed projects to completion.
25

1 E. Developers shall comply with all applicable requirements set forth in San
2 Francisco Administration Code Chapters 12B, 12C and 12D.A. The request for proposals
3 shall require developers to demonstrate good faith efforts to utilize MBE and WBE
4 subcontractors/subconsultants pursuant to San Francisco Administrative Code Chapter
5 12D.A.

6 F. The department head shall evaluate developers' proposals and rank the
7 proposals to determine which provides the best overall value to the City and County in regard
8 to the following criteria: (1) plan for expediency in completing the proposed project; (2) life-
9 cycle cost to the City and County; (3) qualifications the developers to design-build and, if
10 applicable, finance the proposed project; (4) qualifications of the developers to construct the
11 proposed project; (5) quality of design proposal; (6) compliance with the goals and
12 requirements of Administrative Code Chapters 12B, 12C and 12D.A; (7) commitment to meet
13 the City hiring goals (e.g., welfare-to-work); (8) if private financing is sought, commitment of
14 funds, cost of funds and terms to the City; and (9) compliance with all the requirements and
15 criteria established by the Department head in the request for proposals.

16 G. The competitive bid requirements of this Chapter shall not apply to the selection
17 of developers under this subsection 6.61.

18 H. Subject to paragraph (I) below, the department head is authorized to negotiate
19 all proposed contracts necessary or appropriate for the proposed project with the highest-
20 ranked developer. If the department head determines that contract negotiations with the
21 highest-ranked developer are not proceeding satisfactorily, the department head may
22 terminate such negotiations and enter into negotiations with the next-highest-ranked
23 developer. If the department head deems a contract to have successfully been negotiated
24 with a developer, the department head may then recommend such proposed contract to the
25 Board of Supervisors for approval. The City shall retain the absolute discretion to determine

1 not to proceed with any proposed project, which right may be exercised without liability to
2 developers for costs incurred during the entire proposal and negotiation process, and such
3 rights shall be reserved in all requests for proposals.

4 I. All final contracts for a public work project that involve a design-build and/or
5 finance program shall be subject to approval of the Board of Supervisors, by resolution. If the
6 proposed contract involves a financing program, the Capital Improvement Advisory
7 Committee must review and report on the proposed project before the Board of Supervisors
8 considers the proposed resolution concerning the contract.

9 J. All actions heretofore taken by a department head consistent with the provisions
10 of this section are hereby approved.

11 **6.62. JOB ORDER CONTRACTS.**

12 The job order contracting system ("JOC") provides for an indefinite quantity contract
13 with a predefined set of bid items that are assigned on a periodic or task order basis for the
14 performance of public work maintenance, repair and minor construction projects. The
15 department heads authorized to execute contracts for public work projects are authorized to
16 utilize JOC according to the procedures set forth below.

17 A. Each JOC contract is to be advertised for competitive bids in accordance with
18 the procedures set forth in this Chapter and awarded to the responsible bidder who submits
19 the lowest responsive bid.

20 B. The Advertisement For Bids shall include unit prices and detailed technical
21 specifications for each construction task contemplated to be performed under the JOC
22 contract. Each task item shall include direct costs for material, equipment and labor.
23 Construction tasks shall be grouped by trade.

24 C. The Advertisement For Bids for a JOC contract shall contain the City's estimate
25 regarding the percentage of work under the JOC contract that will be performed by each

1 trade. The Human Rights Commission shall set goals for MBE/WBE subcontractor
2 participation in accordance with Administrative Code Chapter 12D.A. Calculation of whether a
3 contractor's bid has met the goals will be based on the City's estimate of the amount of work
4 that will be performed by each trade.

5 D. Contractor's bid shall identify by trade group which tasks will be performed by
6 contractor and which tasks will be performed under subcontract. Contractor shall identify in its
7 bid all subcontractors to be utilized, including the subcontractors' name, business tax
8 registration certificate number, license number and the location of the place of business of
9 each subcontractor. Contractor agrees that it is qualified for and will perform with its own
10 forces work of all trades for which a subcontractor is not listed in the bid. This paragraph
11 supercedes the listing requirements of section 6.21(J). Substitutions of JOC subcontractors
12 shall be in accordance with California Public Contract Code section 4107. Penalties set forth
13 in Administrative Code sections 6.22 and 6.80 shall apply to JOC contracts for violation of this
14 section.

15 E. Contractors submitting bids on the JOC contract shall state in their bids an
16 adjustment on a percentage basis either increasing or decreasing the unit prices for all
17 construction tasks set forth in the bid documents. There may be a single adjustment factor
18 that applies to all tasks. For example, an adjustment factor of 25% below the unit prices
19 stated in the bid documents would be bid as .75. All of the contractor's profit, overhead and
20 indirect costs shall be included in the adjusted unit prices.

21 F. The Advertisement For Bids and the contract specifications shall contain a
22 maximum dollar amount of the JOC contract, which maximum amount shall not exceed three
23 million dollars. The cumulative modifications to a JOC contract shall result in a contract sum
24 not to exceed one hundred fifty percent of the original contract amount.

1 G. JOC contracts shall provide for an expiration term of not more than three years,
2 including all modifications.

3 H. Projects will be assigned under the JOC contract on a work order basis at the
4 sole discretion of the department head concerned.

5 **6.63. HAZARDOUS MATERIALS ABATEMENT WORK.**

6 When the Director of Public Works (the "Director") determines: (1) that hazardous
7 materials on public property must be expeditiously abated (the "work"); and (2) that there is
8 inadequate time to advertise and competitively bid the work in accordance with this Chapter,
9 then the work may be performed in accordance with the following procedures:

10 A. The Department of Public Works shall advertise for and receive proposals from
11 hazardous materials abatement contractors, which proposals shall address the qualifications
12 of the contractors to perform the abatement work. The proposals shall be evaluated
13 according to the requirements of this Chapter and Chapters 12B, 12C and 12D.A, relevant to
14 professional services contracts.

15 B. The Department of Public Works shall select a sufficient number of qualified
16 contractors to perform the amount of hazardous materials abatement work anticipated to be
17 required in the upcoming one or more years and enter into master agreements on an "if- and
18 as-needed" basis with those contractors. Each master agreement shall state the maximum
19 total dollar value of work each contractor is authorized to perform during the contract period.

20 C. The Department shall seek price quotations for performance of the work from at
21 least three of the contractors with master agreements. The contract for the work will be
22 awarded to the contractor submitting the lowest quotation, except as otherwise provided
23 herein. The Department shall keep a record of such quotations and a register of all awards
24 made thereunder. In the event that the Department is unable to obtain three quotations, the
25 Director shall base the award on the quotation or quotations received. If the Director believes

1 that the public interest would best be served by accepting other than the lowest quotation, he
2 or she is hereby authorized to accept the quotation that in his or her discretion will best serve
3 the public interest. The Director may reject any and all quotations and request new
4 quotations.

5 **6.64. AS-NEEDED CONTRACTS.**

6 A department head authorized to execute public work and professional service
7 contracts may issue an Advertisement For Bids for construction services or a request for
8 proposals or qualifications for professional services on an as-needed basis, with definite or
9 indefinite quantities of work. None of the requirements of this Chapter or Administrative Code
10 Chapters 12B, 12C or 12D.A are waived for as-needed contracts. All as-needed contracts
11 shall provide for a not-to-exceed price and an expiration term of not more than three years,
12 including all modifications. Additionally, the cumulative modifications to an as-needed
13 contract shall result in a contract sum not to exceed one hundred fifty-percent of the original
14 contract amount. Before any item of work is commenced under an as-needed contract, the
15 cost of such work must be certified by the Controller as to the availability of funds. The
16 department heads authorized to execute public work and professional service contracts shall
17 report quarterly to the Board of Supervisors regarding the department's use of as-needed
18 contracts and the actual amount of participation of MBE and WBE subcontractors or
19 subconsultants that were listed on prime contractors' bid(s) or proposal(s) to determine
20 whether MBE/WBE subcontracting participation goals are being met on as-needed contracts.
21 Such reports shall be referred to a Board committee for public hearing.

22 **6.65. CONTRACTING FOR ELEVATOR, ESCALATOR OR FIRE ALARM SYSTEMS**
23 **INSPECTION, MAINTENANCE AND REPAIR WORK.**

24 The department heads of departments empowered to contract for public works or
25 improvements are authorized to execute contracts for elevator, escalator or fire alarm service

1 inspection, maintenance and repair work ("special services") in accordance with the following
2 procedures:

3 A. The competitive bid requirements of this Chapter shall not apply to the
4 procurement of contracts for special services. The department head may negotiate contracts
5 for the service of existing elevators, escalators or fire alarm systems with the manufacturer of
6 the elevators to be serviced or may seek bids for such work. Prior to commencing such
7 negotiations, the department head must first obtain approval of the Mayor or the Mayor's
8 designee or the board or commission, as appropriate.

9 B. The determination for award of special service contracts shall be based on
10 expertise, quality of work and economical pricing.

11 C. Special service contracts shall provide for an expiration terms of not more than
12 three years. At the end of the contract period, the department head may elect to renew the
13 contract for a period of not more than two years or to initiate a new procurement process for
14 special services pursuant to this subsection.

15 **6.66. CONVENTION FACILITY PUBLIC WORKS.**

16 When construction work is required for the City-owned convention facilities, such
17 services may be procured in accordance with the following procedures:

18 A. Bids will be requested from not fewer than three bidders for a construction
19 contract. The contract will be awarded to the responsible bidder with the lowest responsive
20 bid. A record of all bids received and a register of all awards made under this subsection shall
21 be maintained. In the event three bids cannot be obtained, the award shall be based on the
22 bid or bids received. Any or all bids may be rejected and new bids may be requested.

23 B. Authority to undertake the contracting process and enter into contract directly
24 with the contractor may be delegated to the operator/manager of the convention facilities. In

1 such event, the City Administrator or his or her designee shall first review the propriety of the
2 process and shall approve the award of any contract.

3 C. In no event shall the award of contracts by the procedures set forth in this
4 subsection exceed the cumulative sum of three million dollars (\$3,000,000) in any fiscal year.

5 Except as provided herein, any contract awarded under this subsection must comply
6 with this Chapter and with Chapters 12B, 12C and 12D.A.

7 All of the contracts awarded and work performed under this subsection shall be
8 reported to the Board of Supervisors on a quarterly basis.

9
10 [sections 6.67 – 6.79 reserved]

11
12 **ARTICLE V**

13 **VIOLATIONS OF ADMINISTRATIVE CODE**

14 **CHAPTER 6; FALSE CLAIMS; PROCEDURES**

15 **FOR DEBARMENT; MONETARY PENALTIES**

16 **6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY PENALTIES.**

17 Any contractor, supplier, consultant or subconsultant who fails to comply with the terms
18 of its contract with the City and County, or contractor, subcontractor, supplier, consultant or
19 subconsultant who violates any provision of Administrative Code Chapter 6, or who fails to
20 abide by any rules and/or regulations adopted pursuant to Administrative Code Chapter 6 or
21 who submits false claims, may be declared an irresponsible bidder or an unqualified
22 consultant and debarred according to the procedures set forth below. Additionally, any
23 contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim to
24 the City and County may also be subject to monetary penalties, investigation and prosecution
25 as described below.

1 **6.81. COLLUSION IN CONTRACTING.**

2 If, at the determination of the Mayor, the department head who executed the
3 construction or professional services contract or the board or commission who awarded such
4 contract, and pursuant to the debarment procedures set forth below, any party or parties to
5 whom a contract has been awarded has been guilty of collusion with any officer or
6 representative of the City and County, or any other party or parties, in the submission of any
7 bid or in preventing of any other being made, or in knowingly receiving preferential treatment
8 by any officer or an employee of the City and County, then any contract so awarded, if not
9 completed, may be declared null and void by the Board of Supervisors on the
10 recommendation of the Mayor, department head or the board or commission concerned, and
11 no recovery shall be had thereon. The department head concerned may then readvertise for
12 bids for the uncompleted portion of the work. The matter may also be referred to the City
13 Attorney for such action as may be necessary. Any party or parties guilty of such collusion
14 shall not be permitted to participate in or to bid on any future public work, improvement or
15 purchase to be made by the City and County.

16 **6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**

17 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
18 action, the Mayor, board or commission or department head responsible for the public work
19 may bring charges against a contractor, subcontractor, supplier, consultant or subconsultant
20 for violation of a contract, for violation of Chapter 6, for submitting a false claim or for
21 engaging in collusion. The department head, upon approval of the Mayor or the board or
22 commission concerned, as appropriate to the department, shall give written notice to the
23 contractor, subcontractor, supplier, consultant or subconsultant of the charges and of all
24 evidence supporting such charges. The contractor, subcontractor, supplier, consultant or
25 subconsultant, and/or his or her attorney or other authorized representative shall be entitled to

1 offer rebuttal evidence and any other evidence in support of his or her position. The
2 department head or the board or commission, as appropriate to the department, shall conduct
3 a hearing where the charges and all evidence shall be presented. In the alternative, such
4 department head, board or commission may appoint a hearing officer to conduct such a
5 hearing and make written findings of fact to be submitted to the department head, board or
6 commission. For departments under the Mayor, the department head shall then render a final
7 written decision. For departments under boards or commissions, the commission president or
8 his or her designee shall render a written decision which shall become final upon adoption by
9 resolution of the board or commission concerned.

10 Any final written decision by a department head, board or commission that includes a
11 determination of nonresponsibility or disqualification shall provide for a term of debarment. A
12 contractor, subcontractor, supplier, consultant or subconsultant (or any other entity with
13 substantially the same officers, directors, owners or principals) may be debarred for a period
14 of up to five years. During such debarment period, the contractor, subcontractor, supplier,
15 consultant or subconsultant shall not be permitted to act as a contractor or consultant at any
16 tier, directly or indirectly, for any public work or improvement for the City and County.

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

22 Following any decision finding a contractor, subcontractor, supplier, consultant or
23 subconsultant nonresponsible, the department head, board or commission who made the
24 finding of nonresponsibility retains authority to modify the decision.
25

1 **6.83. ASSESSMENT OF MONETARY PENALTIES FOR FALSE CLAIMS;**

2 **INVESTIGATION AND PROSECUTION.**

3 Notwithstanding and not exclusive or preclusive of any other administrative or legal
4 action taken by the City and County, a contractor may be assessed monetary penalties for
5 submitting false claims. The department head responsible for the public work may withhold
6 such penalties from amounts due or retained under the contract. Notwithstanding and not
7 exclusive or preclusive of any administrative or other legal action, the City Attorney may
8 investigate and prosecute in a civil action any submission of a false claim.

9 The submission of a false claim occurs when a contractor, subcontractor, supplier,
10 consultant or subconsultant commits any of the following acts enumerated below. In such
11 event, the contractor, subcontractor, supplier consultant or subconsultant shall be liable to the
12 City and County for (1) three times the amount of damages which the City and County
13 sustains because of the act(s) of that contractor, subcontractor, supplier, consultant or
14 subconsultant; and (2) the costs, including attorney's fees, of a civil action brought to recover
15 any of those penalties or damages. Such contractor, subcontractor, supplier, consultant or
16 subconsultant may also be liable to the City and County for a civil penalty of up to \$10,000 for
17 each false claim.

18 1. Knowingly presents or causes to be presented to an officer or employee
19 of the City and County a false claim or request for payment or approval;

20 2. Knowingly makes, uses, or causes to be made or used a false record or
21 statement to get a false claim paid or approved by the City and County;

22 3. Conspires to defraud the City and County by getting a false claim allowed
23 or paid by the City and County;

1 4. Knowingly makes, uses, or causes to be made or used a false record or
2 statement to conceal, avoid, or decrease an obligation to pay or transmit money or
3 property to the City and County;

4 5. Is a beneficiary of an inadvertent submission of a false claim to the City
5 and County, subsequently discovers the falsity of the claim, and fails to disclose the
6 false claim to the City and County within a reasonable time after discovery of the false
7 claim.


8 Liability under this section shall be joint and several for any act committed by two or
9 more persons.

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

15 For purposes of this section, "knowingly" means that a contractor, subcontractor,
16 supplier, consultant or subconsultant with respect to information, does any of the following:
17 (1) Has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or
18 falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the
19 information. Proof of specific intent is not required and reliance on the claim by the City and
20 County is also not required.

21
22 APPROVED AS TO FORM:

23 LOUISE H. RENNE, City Attorney

24 By: 
25 SHERYL L. BREGMAN
 Deputy City Attorney

SUPERVISOR KAUFMAN
BOARD OF SUPERVISORS



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 991645

Date Passed:

Ordinance amending Chapter 6 of the San Francisco Administrative Code to delete out-dated references and obsolete provisions; to re-organize, re-number and consolidate existing provisions for a revised Chapter 6, to add provisions defining terms relevant to public works contracting; to add provisions clarifying the requirements and procedures for competitive bidding and the award of public work and related temporary professional service contracts; to increase the threshold for competitive bidding and award of public work contracts to \$100,000; to revise the procedures for and increase to \$250,000 emergency contracting authority; to add new procedures for job order contracts, as needed contracts, elevator, escalator and fire alarm service contracts and convention facility public work contracts; to clarify penalties and procedures for violations of Chapter 6 and the submission of false claims.

October 12, 1999 Board of Supervisors — CONTINUED

Ayes: 9 - Ammiano, Becerril, Bierman, Brown, Kaufman, Leno, Newsom, Teng, Yee

Absent: 2 - Katz, Yaki

October 18, 1999 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 9 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Teng, Yaki, Yee

Absent: 2 - Becerril, Newsom

October 18, 1999 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Teng, Yaki, Yee

Absent: 2 - Becerril, Newsom

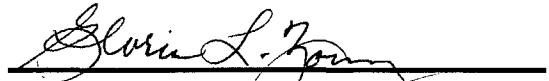
October 25, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

Absent: 1 - Becerril

File No. 991645

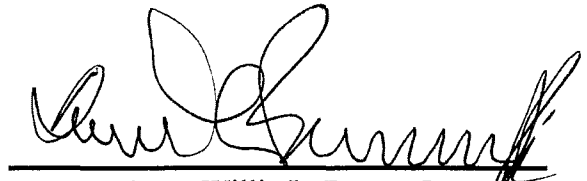
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on **October 25, 1999**
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

NOV - 5 1999

Date Approved



Mayor Willie L. Brown Jr.