

File No. 101007

Committee Item No. 4
Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 6, 2010

Board of Supervisors Meeting Date December 14, 2010

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Small Business Commission Recommendation Letter

Completed by: Alisa Somera Date December 3, 2010
 Completed by: Alisa Somera Date December 9, 2010

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

1 [Administrative Code - Revising Requirements for Purchasing Goods and Services]

2
3 Ordinance amending Administrative Code Chapters 21 and 21C to conform Purchasing
4 requirements to Administrative Code Chapter 14B by defining minimum competitive
5 amounts of \$100,000 for professional services and commodities contracts and
6 \$400,000 for general services contracts, clarify "bid-splitting," and make miscellaneous
7 changes to City procurement requirements; to clarify information technology
8 purchases; to update and conform references to Administrative Code Chapter 14B; to
9 rescind the Sealer of Weights and Measures' authority under Section 21.32 to donate
10 food purchases; to rescind the local tax adjustment set forth in Administrative Code
11 Chapter 21C; to enact a new Section 21.32 to adjust bids likely to result in local sales
12 tax revenue; to reenact and renumber Administrative Code Sections 21.25, 21.25-1,
13 21.25-2, 21.25-3, 21.25-4, and 21.25-x regarding prevailing wage requirements as
14 Chapter 21C; and to make certain technical corrections.

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

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

19 Section 1. The San Francisco Administrative Code is hereby amended by amending
20 Section 21.02, to read as follows:

21 **SEC. 21.02. - DEFINITIONS.**

22 As used in this Chapter the following words shall have the following respective
23 meanings:

24 (a) "Bid" shall mean a bid, quotation, or other offer, other than a Proposal, from a
25 person or entity to sell a Commodity or Service to the City at a specified price.

1 (b) "Bidder" shall mean any person or entity which submits a Bid.

2 (c) "City" shall mean the City and County of San Francisco.

3 (d) "Code" or "this Code" shall mean the most current version of the San Francisco Charter
4 and the San Francisco Municipal Code ~~"COIT" shall mean the Committee on Information Technology~~
5 ~~of the City and County of San Francisco.~~

6 (e) "Commodity" shall mean products, including materials, equipment and supplies,
7 purchased by the City. "Commodity" shall specifically exclude legal and litigation related
8 contracts or contracts entered into pursuant to settlement of legal proceedings, and employee
9 benefits, including, without limitation, health plans, retirement or deferred compensation
10 benefits, insurance and flexible accounts, provided by or through the City's Human Resources
11 Department or the Retirement Board.

12 ~~(f) "Computer Store" shall mean the City wide, multiple award contract for the~~
13 ~~procurement of certain Commodities and Services, which is administered by COIT for the benefit of~~
14 ~~City departments, awarded pursuant to the "Request for Proposal for Computer Hardware, Software,~~
15 ~~Peripherals and Appropriate Network, Consulting, Maintenance, Training and Support Services," and~~
16 ~~any successor contracts thereto.~~

17 (g) "Contractor" shall mean any corporation, partnership, individual, sole
18 proprietorship, joint venture or other legal entity which enters into a contract to sell
19 Commodities or Services to the City.

20 (h) "Contracting Officer" shall mean the City employee who is authorized to execute
21 a contract, which may be either the department head or a person designated in writing by the
22 department head, board or commission as having the authority to sign contracts for the
23 department. A designation of authority to sign contracts on behalf of a department may
24 specify authority to sign a single contract, specified classes of contracts, or all contracts
25 entered into by a department.

1 ~~"Disadvantaged Business Enterprise" or "DBE" shall mean a private business located in and~~
2 ~~doing business in San Francisco with current revenues equal to or less than the limits set for similar~~
3 ~~businesses eligible for certification by the Human Rights Commission as Minority Owned Business~~
4 ~~Enterprises (MBEs) or Women Owned Business Enterprises (WBEs). DBE status shall be based only on~~
5 ~~economic criteria, and shall not include consideration of race or gender. The Purchaser shall verify the~~
6 ~~DBE status of any Offeror to whom a small business set aside contract is proposed to be awarded prior~~
7 ~~to award.~~

8 (j) "Electronic" shall mean electrical, digital, magnetic, optical, electromagnetic or
9 other similar technology for conveying documents or authorizations, excluding facsimile.

10 (k) "General Services" shall mean those services that are not Professional
11 Services. ~~Examples of~~ General Services include, but are not limited to, janitorial, security guard,
12 pest control, parking lot ~~attendants~~ management, and landscaping services.

13 (l) "Minimum Competitive Amount" shall mean (i) for the procurement of Commodities and
14 Professional Services, the "Minimum Competitive Amount" as defined in Section 6.40(A) of the
15 Administrative Code, which shall be \$100,000 and (ii) for the procurement of General Services, an
16 amount equivalent to the "Threshold Amount" as defined in Chapter 6.1(M) of the Administrative Code
17 which shall be \$400,000, provided that on January 1, 2015 and every five years thereafter, the
18 Controller shall recalculate the Minimum Competitive Amount (and the Threshold Amount from which
19 the Minimum Competitive Amount for General Services is calculated) to reflect any proportional
20 increase in the Urban Regional Consumer Price Index from January 1, 2010, rounded to the nearest
21 \$1,000.

22 (m) "Offer" shall mean a Bid or Proposal submitted to the City in response to an
23 invitation for Bids or a Request for ~~P~~proposals. "Offer" may include a response to a request for
24 qualifications if no further ranking prior to Contractor selection is contemplated by the
25 procurement process.

1 (ml) "Offeror" shall mean a person or entity that submits an Offer to the City to
2 provide Commodities or Services.

3 (nm) "Professional Services" shall mean those services which require extended
4 analysis, the exercise of discretion and independent judgment in their performance, and/or the
5 application of an advanced, specialized type of knowledge, expertise, or training customarily
6 acquired either by a prolonged course of study or equivalent experience in the field. *Examples*
7 *of Professional service providers include, but are not limited to,* licensed professionals such
8 as architects, engineers, and accountants, and non-licensed professionals such as software
9 developers and financial ~~and other~~ consultants.

10 (en) "Proposal" shall mean a response to a request for Pproposals issued by the City
11 for Commodities or Services, or a response to a request for qualifications if no further ranking
12 prior to Contractor selection is contemplated by the procurement process.

13 (po) "Proposer" shall mean a person or entity that submits a Proposal in response to
14 a request for Pproposals issued by the City.

15 (pd) "Purchase Order" shall mean an authorization document designated as such by
16 the Purchaser for the procurement of Commodities or Services, whether issued in a paper or
17 electronic format, including blanket purchase orders for purchases involving multiple
18 payments.

19 (pq) "Purchaser" shall mean the Purchaser of Commodities or Services Supplies of the
20 City and County of San Francisco, or his or her designee(s).

21 (sq) "Quotation" shall mean an Bid Offer to supply for Commodities or Services to the
22 City for a specified price (and possibly subject to other terms and conditions) which is acquired
23 without the use of advertising to solicit Bids.

24 (ts) "Services" shall mean Professional Services and General Services. "Services"
25 shall specifically exclude grants to a nonprofit entity to provide services to the community

1 ~~agreements making a grant of City funds to private entities for the purpose of providing a benefit to the~~
2 ~~public~~, which may include incidental purchases of commodities; legal and litigation related
3 services or contracts entered into pursuant to settlement of legal proceedings; and services
4 related to employee benefits, including, without limitation, health plans, retirement or deferred
5 compensation benefits, insurance and flexible accounts, provided by or through the City's
6 Human Resources Department or the Retirement Board.

7 (ut) "Solicitation" shall mean an invitation for Bids, request for Quotations, request
8 for qualifications, or request for Proposals issued by the City for the purpose of soliciting Bids,
9 Quotations, or Proposals to perform a City contract.

10 (u) "Technology Store" shall mean the City-wide, multiple award contract for the
11 procurement of certain Commodities and Services awarded pursuant to the "Request for Proposal for
12 Computer Hardware, Software, Peripherals and Appropriate Network, Consulting, Maintenance,
13 Training and Support Services," and any successor contracts thereto.

14
15 Section 2. The San Francisco Administrative Code is hereby amended by amending
16 Section 21.03, to read as follows:

17 **SEC. 21.03 GENERAL AUTHORITY OF THE PURCHASER OF SUPPLIES.**

18 (a) **Approval of Purchases.** The Purchaser shall purchase all Commodities or
19 Services required by City departments and offices of the City, except as otherwise provided in
20 ~~the Charter and Municipal Code of San Francisco~~ this Code. The Purchaser shall, by regulation,
21 designate and authorize appropriate department personnel to exercise the Purchaser's
22 approval authority for contracts approved as provided in this section.

23 (b) **Purchases to be Made on Requisitions; Exception for Large Quantities or**
24 **Common Use.** All purchases made by the Purchaser shall be made on the basis of
25 requisitions of ordering departments; except that Commodities and Services in common use

1 by more than one department, or used in large quantities by a department may be purchased
2 on the basis of the total of such requisitions or estimates previously filed from the various
3 departments. The Purchaser is authorized to enter into City-wide requirements contracts for
4 the purchase of indefinite quantities of Commodities or Services for the period of time and at
5 prices set forth in the contract, under which any department may elect to order such
6 Commodities or Services.

7 (c) **Standardization of Purchases.** The Purchaser may establish specifications, terms
8 and conditions, and product tests to cover all Commodities and Services purchases of (i) large
9 quantities, or (ii) recurring purchases, or (iii) Commodities or Services in common use by more
10 than one department. The Purchaser may, as far as is practicable, standardize Commodities
11 according to the use to which they are to be put, when two or more types, brands or kinds are
12 specified or requested by individual departments.

13 (d) **Purchases of Commodities.** Purchases of Commodities shall be made in
14 accordance with selection criteria or specifications furnished by the department requiring such
15 Commodities whenever the need for particular selection criteria or specifications is peculiar to
16 such department. For patented or proprietary Commodities sold by brand name, the
17 Purchaser may require each department requisitioning same by such brand name to furnish
18 specifications of the Commodity requisitioned, and may advertise for Offers on the basis of
19 such specifications, under conditions permitting manufacturers of, or dealers in other products
20 made and sold for the same purpose, to make Offers on such specifications or on the
21 specifications of their own product. If the Purchaser recommends the acceptance of the
22 lowest or best Offer, stating the Purchaser's reasons in writing therefor, and if the department
23 head concerned recommends the acceptance of any other Offer on such proprietary
24 Commodities, stating the department's reasons in writing therefor, the award shall be
25 determined by the Controller.

1 (e) **Procurement of Vehicles for Use of City Officials And Employees.**

2 (1) When purchasing, leasing, or otherwise procuring passenger vehicles, including
3 passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and
4 including one ton in payload, departments shall request vehicles of the same functional type
5 and passenger capacity approved by the Board of Supervisors in the budget.

6 (2) In evaluating vehicle purchase requests, the Purchaser is authorized to consider
7 the price, durability, fuel efficiency, resale value, expected repair and maintenance cost, and
8 all other factors, including options and accessories that may among other considerations
9 enhance the safety and resale value of the vehicle and that bear directly on the total cost to
10 the City of the vehicle in relationship to the service it will render.

11 (3) The Purchaser may develop sets of general specifications, including optional
12 equipment, for purchases of compact, mid-size and full-size passenger cars or may specify
13 vehicles by proprietary brand name when purchasing additional vehicles for an existing fleet.
14 The specifications shall note the major items of standard equipment of such vehicles and may
15 include, in the Purchaser's discretion, optional equipment which the Purchaser has
16 determined should be ordered on City passenger cars. When procuring passenger cars, the
17 purchaser shall include this group of options, to the extent possible, even if the department
18 which will use the car does not request them.

19 If a department requests optional equipment that is not part of the Purchaser's group of
20 options and which would cost in excess of a dollar limit to be set by the Purchaser in
21 regulations, the department must either:

22 (A) Itemize the equipment in the description of the vehicle itself, when the vehicle
23 purchase is reviewed as part of the City's annual budget process, and obtain the Board's
24 approval of the vehicle as equipped; or
25

1 (B) Obtain the approval of the Mayor's Budget Office before submitting a requisition to
2 the Purchaser.

3 (4) If a department desires to procure a passenger vehicle that is upgraded in terms of
4 the functional type or capacity from what was approved in the budget, then the department
5 must first obtain the approval of the Mayor's Budget Office before submitting a requisition to
6 the Purchaser.

7 (5) This section shall not apply to the procurement of mass transit vehicles over one
8 ton or other specialized vehicles as defined in the Purchaser's regulations.

9 (f) **Payment procedures.** The Purchaser and Controller shall establish procedures to
10 approve all bills and vouchers for Commodities and Services. All approvals required pursuant
11 to such procedures must be obtained before the Controller shall draw and approve warrants
12 therefor.

13 (g) **Storerooms and Garages.** The Purchaser shall have charge of a garage and
14 shop for the repair of City equipment, and of the Purchaser's storerooms and warehouses for
15 the City and the personnel assigned thereto.

16 (h) **Leasing Of Equipment From Non-profit Corporations Without Competitive**
17 **Bidding.** Notwithstanding any other provisions of this Code, the Purchaser is authorized to
18 award a Contract, without issuing Solicitations, to a non-profit corporation for the leasing of
19 equipment; provided, that the non-profit corporation has been formed for the purpose of aiding
20 and assisting the City, and the formation of the non-profit corporation has been approved by
21 resolution of the Board of Supervisors.

22 (i) **Disposal of Surplus.** Commodities which have been determined to be surplus to
23 City needs shall be disposed of in a manner which will best serve the interests of the City. For
24 the purposes of this section, the interests of the City shall include the City's ability to maximize
25 the City's economic return on surplus Commodities, the City's interest in maximizing the re-

1 use of surplus Commodities by public entities, non-profit organizations and schools, and the
2 City's interest in avoiding any unnecessary additions to the waste stream by maximizing the
3 re-use and recycling of surplus Commodities. Disposal of surplus Commodities may include
4 sales to, exchanges with, or donation to public entities, non-profit organizations, and private
5 organizations for a public purpose, or donation to private entities for recycling of parts or
6 materials. The Purchaser may maintain lists of all known local resources for transfer of
7 surplus Commodities to public entities, non-profit organizations, and private organizations for
8 a public purpose, and for the recycling of parts. The Purchaser shall have the authority to
9 require the transfer of surplus property in any department to the Purchaser's stores or to other
10 departments.

11 (1) The Purchaser ~~of supplies~~ shall have the authority to exchange Used
12 Commodities to the advantage of the City, to advertise for Bids, and to sell Commodities
13 belonging to the City on the recommendation of a department head that such Commodities
14 are surplus to the needs of the department.

15 (2) The Purchaser shall have the authority to donate obsolete, used or surplus
16 Commodities if a department head states in writing that such Commodities are surplus to the
17 needs of the department. The Purchaser shall document in writing each donation.

18 (A) Donations of Commodities meeting the criteria listed above may be offered to
19 public entities, non-profit organizations, or private organizations serving the public. The order
20 of priority for donations shall be to entities or organizations:

21 (i) Engaged in distributing the surplus Commodities offered at no cost or for a nominal
22 fee to non-profit organizations, schools, or low-income individuals or families that are
23 physically located in San Francisco;

1 (ii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal
2 fee to non-profit organizations, schools, or low-income individuals or families that are
3 physically located in the Bay Area;

4 (iii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal
5 fee to non-profit organizations, schools, or low-income individuals or families that are
6 physically located in the United States;

7 (iv) Engaged in distributing the surplus Commodities offered at no cost or for a nominal
8 fee to non-profit organizations, schools, or low-income individuals or families that are
9 physically located in foreign countries;

10 (v) Engaged in recycling the surplus Commodities, including parts or materials.

11 (B) Surplus medical supplies that are no longer in compliance with Federal Drug
12 Administration regulations may be offered to entities and organizations which are engaged in
13 distributing or administering the surplus medical supplies at no cost or for a nominal fee to
14 low-income individuals or families in foreign countries.

15 (C) To the extent that more than one organization meets the criteria in a category
16 listed above, surplus Commodities shall be made available on a rotational basis to entities
17 and organizations in the same category. If there is a need to dispose of surplus Commodities
18 and no entity or organization meeting the criteria noted in Section 21.03(i)(2)(A) can be
19 located to receive a donation, the Purchaser is authorized to utilize other means that may be
20 available to dispose of such Commodities in a manner that will best serve the interests of the
21 City.

22 (j) **Information Technology Purchases.** All contracts for the acquisition of information
23 technology Commodities or Services shall be made by the Purchaser, ~~under the direction and~~
24 ~~supervision of COIT "Information technology" Commodities and Services which are subject to this~~
25

1 ~~requirement shall be defined in regulations adopted by the Purchaser, the Department of~~
2 ~~Telecommunication and Information Services and COIT.~~

3 (k) **Rules And Regulations.** The Purchaser, with the approval of the Director of
4 Administrative Services and the Controller, shall establish rules and regulations for the
5 purpose of implementing the provisions of this Chapter.

6 Section 3. The San Francisco Administrative Code is hereby amended by amending
7 Section 21.3, to read as follows:

8 **SEC. 21.3. - COMPETITIVE SEALED BIDDING.**

9 (a) **Invitation for Bids.** Except as otherwise authorized in this Code, for any
10 Commodity or General Services purchase estimated to cost in excess of ~~\$50,000~~ the Minimum
11 Competitive Amount, an invitation for Bids ~~may~~ shall be issued to solicit Bids and shall include a
12 purchase description and all contractual terms and conditions applicable to the procurement,
13 including a reservation of the City's right to reject all Offers. ~~It shall constitute official misconduct~~
14 ~~to divide any purchase into two or more units with the intent of evading the requirements of this~~
15 ~~section.~~

16 (b) **Bid Opening.** Bids shall be opened publicly by the Contracting Officer at the
17 time and place designated in the Invitation for Bids in the presence of all Bidders who attend.
18 Relevant information as the Purchaser may specify by regulation shall be recorded. Except for
19 materials protected from disclosure pursuant to Administrative Code Section 67.24, the record
20 and each Bid shall be open to public inspection following Bid opening.

21 (c) **Bid Evaluation.** Bids shall be evaluated based on the requirements and
22 specifications set forth in the Invitation for Bids, which may include criteria to determine
23 acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a
24 particular purpose. Those criteria that will affect the Bid price and be considered in evaluation
25

1 for award shall be objectively measurable, such as discounts, transportation costs, conversion
2 costs and total or life cycle costs.

3 (d) **Correction, Withdrawal, or Rejection of Bids; Cancellation of Awards.**

4 Correction or withdrawal of inadvertently erroneous Bids before or after award, or cancellation
5 of awards or contracts based on such Bid mistakes, shall be permitted in accordance with
6 regulations promulgated by the Purchaser. After Bid opening, no changes in Bid prices or
7 other provisions of Bids prejudicial to the interest of the City or fair competition shall be
8 permitted. Except as otherwise provided by regulation, all decisions to permit the correction or
9 withdrawal of Bids, or to cancel awards or Contracts based on Bid mistakes, shall be
10 supported by a written determination made by the Purchaser. The Purchaser may reject all
11 Bbids at any time prior to award.

12 (e) **Award.** *Except for a showing of good cause, a The Contract shall be awarded not*
13 *less than five (5)-working days after Bid opening by written notice to the lowest responsible*
14 *and responsive Bidder whose Bid meets the requirements and criteria set forth in the*
15 *Invitation for Bids. ~~Notice of all awards made pursuant to the provisions of this section shall be~~*
16 *published as required by the Charter.* In the event that all Bids exceed available funds and the
17 lowest responsible and responsive Bbidder does not exceed such funds by more than ten 10
18 percent (10%), the Purchaser is authorized in situations where time and economic
19 considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment
20 of the Bid price, including changes in the Bid requirements, with the low responsive and
21 responsible Bidder, in order to bring the Bid within the amount of available funds.

22 (f) **Awards in the Public Interest.** If the Purchaser finds that the public interest
23 would be best served by accepting other than the lowest total or unit price the Purchaser is
24 authorized to accept the Bid(s) that in the Purchaser's opinion will best serve the public
25 interest, to make the awards and to enter into the necessary contracts. Prior to making an

1 award to a Bidder other than the lowest Bidder(s), the Purchaser shall submit a written
2 statement of the basis for the finding to the Director of Administrative Services.

3 (g) **Additional Purchases.** Where the quantity of Commodities or General Services
4 to be provided under a contract is fixed, the Contracting Officer may, within one year after
5 award and subject to the Contractor's consent, purchase additional quantities of the specific
6 Commodities or General Services for which award was made at the award price or a lower
7 price, in accordance with the Purchaser's regulations.

8 (h) **Multi-step Bidding.** A Contracting Officer may prequalify Bidders prior to
9 issuing an Invitation for Bids based on prequalification criteria set forth in a Solicitation.

10 (i) **Bid Protests.** The procedure for resolving Bbid protests shall be established by
11 regulations adopted by the Purchaser.

12
13 Section 4. The San Francisco Administrative Code is hereby amended by amending
14 Section 21.5, to read as follows:

15 **SEC. 21.5. - OTHER PURCHASES.**

16 Notwithstanding any other provision of this ~~Chapter Code~~, procurement of the following
17 shall be made in accordance with the Purchaser's regulations:

18 (a) Commodities or services where the total amount of the purchase does not
19 exceed ~~100,000~~ the Minimum Competitive Amount. It shall constitute official misconduct to divide
20 any proposed procurement in excess of the Minimum Competitive Amount into two or more units for
21 the purpose of evading this Code's competitive solicitation requirements.

22 (b) Commodities or services available only from a sole source.

23 (c) Perishable foods.

24 (d) Proprietary articles.

1 (e) Contracts involving a pilot project with a term not to exceed two years; provided,
2 however, that any further procurement beyond the pilot project phase shall be subject to all
3 applicable competitive procurement requirements.

4 (f) Contracts set aside for competitive award to Micro-LBEs in accordance with
5 Chapter 14B.7(K) of the Administrative Code.

6 (g) Commodities or Services purchased with federal grant funds when an informal
7 solicitation is consistent with Federal contracting requirements. Federal grant funds include
8 federal monies awarded to the City through the state or other governmental entities. This
9 subsection does not cover Commodities or Services identified by the grant as an
10 administrative or management cost or expense.

11
12 Section 5. The San Francisco Administrative Code is hereby amended by amending
13 Section 21.8, to read as follows:

14 **SEC. 21.8 - MULTIPLE AWARD CONTRACTS**

15 (a) **Generally.** A Contracting Officer may award contracts to more than one Offeror if
16 the Contracting Officer determines that it is in the City's best interest to have more than one
17 Contractor provide one or more similar Commodities and/or Services and the Solicitation
18 states that the contract may be subject to multiple award. The Contracting Officer may either
19 require all multiple award contractors to do business with the City under a single set of terms
20 and conditions, or if the Solicitation is made by means of a request for Proposals, may
21 negotiate separate terms and conditions with each Offeror for specified Commodities and/or
22 Services. Following multiple award and in the administration of multiple award contracts, the
23 Contracting Officer shall use best efforts to fulfill the policies of Chapter ~~12-D-A14B~~ of this
24 Code.

1 (b) Computer Technology Store. Any department or other entity ordering Commodities or
2 Services through the Computer Technology Store shall pay an administrative fee of up to one
3 and nine tenths ~~1.9~~ percent (1.9%) of the total purchase price of Commodities and Services
4 purchased through the Computer Technology Store. Such administrative fee shall be used
5 solely to pay ~~the City's~~ for actual costs of administering the Computer Technology Store contracts
6 for the benefit of City departments. ~~Beginning in fiscal year 1999-2000, COIT shall annually review~~
7 ~~the administrative costs from the previous fiscal year and may reduce the administrative fee to conform~~
8 ~~to projections of actual administrative costs for the succeeding fiscal year. Any excess funds collected~~
9 ~~during one fiscal year shall be applied by COIT to reduce the administrative fee in the following fiscal~~
10 ~~year. Such administrative fee shall be collected from procuring departments by Computer Technology~~
11 ~~Store vendors for each transaction and shall be paid to and disbursed by the Controller in accordance~~
12 ~~with procedures to be established by the Controller.~~

13
14 Section 6. The San Francisco Administrative Code is hereby amended by deleting
15 Section 21.24 in its entirety.

16 ~~SEC. 21.24. CONTRACT TERMS CONTRACTS EXCEEDING \$10,000,000.~~

17 ~~Chapter 12 D.A shall not be applicable to any contract for the purchase of Commodities or~~
18 ~~Services estimated to cost in excess of \$10,000,000.~~

19
20 Section 7. The San Francisco Administrative Code is hereby amended by amending
21 Section 21.35, to read as follows:

22 **SEC. 21.35 - SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.**

23 (a) The covenant of good faith and fair dealing is contained in every City Commodities
24 or Services Contract, and Contractors and subcontractors shall at all times deal in good faith
25 with the City and shall submit claims, requests for equitable adjustments, requests for change

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

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

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

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

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

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

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

24 (c) Every Contract for Commodities or Services performed at the expense of the City
25 or the cost of which is paid for out of monies deposited in the treasury of City, whether directly

1 awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece
2 work, or any other arrangement whatsoever, is subject to the requirements of Subdivision (a).

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

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

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

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

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

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

21
22 Section 8. The San Francisco Administrative Code is hereby amended by deleting
23 Section 21.32 in its entirety and replacing it with a new Section 21.32 to read as follows:

24 ~~SEC. 21.32 FOOD PURCHASED BY THE SEALER OF WEIGHTS AND MEASURES.~~
25

1 ~~Food purchased by the Sealer of Weights and Measures in the course of official duties shall be~~
2 ~~delivered for use at public institutions of the City and County of San Francisco, or at non profit~~
3 ~~organizations, in accordance with procedures established by the Director of Administrative Services.~~
4

5 **SEC. 21.32 PRICE ADJUSTMENT FOR ANTICIPATED LOCAL TAX REVENUE**

6 (a) Local Bidder Defined. For the purposes of determining eligibility for the price adjustment
7 set forth in this Section 21.32 only, "Local Bidder" shall mean a business that is physically located at,
8 and registered with the Office of the Treasurer & Tax Collector's Business Registration records as at,
9 an address located within the geographic limits of the City.

10 (b) Bids for the purchase of Commodities with an estimated value in excess of \$1,000 submitted
11 by Local Bidders shall be reduced by an amount equal to 1.25% of the Bid amount for the purpose of
12 determining the lowest responsible Bidder.

13 (c) For Bids from Local Bidders for purchase of Commodities of an indefinite quantity, the
14 Purchaser shall select a fixed quantity of the identified Commodity based on the minimum amount of
15 the Commodity the Purchaser estimates, in his or her sole discretion, the City will purchase over the
16 term of the contract, and apply the 1.25% price adjustment required by Paragraph (b) to Bids from
17 Local Bidders to that same fixed quantity for the purpose of comparing prices offered.

18 (d) For Bids from Local Bidders for General or Professional Services which include the
19 purchase of Commodities with an estimated value of Commodities in excess of \$1,000, the Purchaser
20 shall reduce the Bid price of the included Commodities only by 1.25% for the purpose of determining
21 the lowest responsible bidder. No bid adjustment shall be made for Services Contracts that will be
22 awarded according to criteria other than lowest price.

23 (e) The Bid adjustment required by Paragraph (b) shall be in addition to any other discounts,
24 preferences, or adjustments required by City law.
25

1 (f) Exception. The following Commodities purchases shall not be subject to the 1.25% price
2 adjustment: (1) purchases paid for with City Retirement or Health Services System trust funds; (2)
3 purchases where the City is entering into a cooperative procurement with one or more other
4 jurisdiction; and (3) purchases where the price adjustment would conflict with conditions contained in
5 federal or state grants or violate preemptive federal or state law or the City Charter.

6
7 Section 9. Chapter 21C of the San Francisco Administrative Code is hereby rescinded.

8
9 Section 10. The San Francisco Administrative Code is hereby amended repealing
10 Sections 21.25, 21.25-1, 21.25-2, 21.25-3, 21.25-4, and 21.25-x, replacing them with a new
11 Chapter 21C to be titled "Miscellaneous Prevailing Wage Requirements." Sections 21.25,
12 21.25-1, 21.25-2, 21.25-3, 21.25-4, and 21.25-x will be renumbered as follows:

13
14

SECTION RENUMBERING	
Former Section Number	New Section Number
21.25	21C.1
21.25-1	21C.2
21.25-2	21C.3
21.25-3	21C.4
21.25-5	21C.5
21.25-x	21C.6

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

24 By: 
25 CATHARINE S. BARNES
Deputy City Attorney

Supervisor Chu
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Revising Requirements for Purchasing Goods and Services.]

Ordinance amending Administrative Code Chapters 21 and 21C to conform Purchasing requirements to Administrative Code Chapter 14B by defining minimum competitive amounts of \$100,000 for professional services and commodities contracts and \$400,000 for general services contracts, clarify "bid-splitting," and make miscellaneous changes to City procurement requirements; to clarify information technology purchases; to update and conform references to Administrative Code Chapter 14B; to rescind the Sealer of Weights and Measures' authority under Section 21.32 to donate food purchases; to rescind the local tax adjustment set forth in Administrative Code Chapter 21C; to enact a new Section 21.32 to adjust bids likely to result in local sales tax revenue; to reenact and renumber Administrative Code Sections 21.25, 21.25-1, 21.25-2, 21.25-3, 21.25-4, and 21.25-x regarding prevailing wage requirements as Chapter 21C; and to make certain technical corrections.

Existing Law

Chapter 21 governs the City's acquisition of non-construction related services and commodities. Recent amendments to the City's Local Business Enterprise (LBE) and Non-discrimination in Contracting Ordinance," Administrative Code Section 14B, including the City's enactment of Ordinance 20-10, necessitate better coordination between the City's purchasing ordinances and the programs under Chapter 14B to increase LBE participation in city contracting, particularly in the definitions of contracts subject to the City's various requirements. Under current law, the dollar value for contracts required to be competitively bid is fixed at either \$50,000 or, upon Purchaser's regulations, \$100,000.

Current law authorizes certain technology purchases to be made through a "Computer Store," which has been restructured in scope and administration under the Purchaser's valid regulations as the Technology Store.

Current law contains a complex bid adjustment in Chapter 21C intended to compare bids based on the City's net, after tax costs by reducing bids from businesses subject to the city's sales taxes by the amount of tax the bidder would be paying.

Current law authorizes the Sealer of Weights and Measures to donate food "purchased ...in the course of official duties" to public or non-profit organizations.

Current law contains prevailing wage requirements in scattered sections at the end of Chapter 21 making these sections difficult to locate.

Current law contains numerous technical errors such as references to earlier versions of the City's LBE Ordinances, errors in codification and inconsistent use of the terminology.

Amendments to Current Law

This ordinance replaces fixed dollar amounts in the current law with a variable "minimum competitive amount" and "threshold amount" from Administrative Code Chapters 6 and 14B for contracts subject to competitive bidding and HRC bid discount, set-aside and subcontracting programs. The "minimum competitive amount" currently is \$100,000 for professional services and commodities contracts and \$400,000 for general services contracts. The minimum competitive amount for general services is based on the "threshold amount" for construction/public works contracts of \$400,000. The minimum competitive amount and threshold amount are subject to future increases by the Controller without further action by the Board of Supervisors.

This Ordinance updates Chapter 21 to reflect current City procedures for making information technology purchases under the authority of the Purchaser through the Technology Store.

This Ordinance clarifies that the prohibition against "bid-splitting" to avoid competitive bidding requirements applies to all types of contracts by moving the prohibition from Section 21.3 to Section 21.5.

This Ordinance rescinds the Sealer of Weights and Measures' authority under Section 21.32 to donate food purchases as antiquated. Assuming that State law allows the "repurposing" of foods as contemplated by the existing ordinance, modern testing methods generally do not require the Sealer of Weights and Measures to purchase food, or food in a quantity that it would be practical to redirect to public or non-profit users.

This Ordinance replaces the local tax adjustments in Chapter 21C with a new Section 21.32 which simplifies the City's treatment of bids that would ordinarily result in tax revenue to the City by applying a 1.25% price adjustment to Commodities bids from businesses located within the geographic limits of the City. The new price adjustment is a policy decision and does not depend upon, or require the City to establish, the actual tax liability of the business and transaction contemplated by the bid or the actual anticipated tax revenue.

This Ordinance moves (without any changes) the prevailing wage requirements that were codified in the middle of Chapter 21 to a new Chapter 21C to increase the visibility of these sections.

This Ordinance makes technical corrections to eliminate references to the former MBE/WBE/LBE Ordinance (including deleting Section 21.24 in its entirety).

Background Information

This Ordinance corrects and updates Chapter 21 to conform with existing City law and pending amendments to Administrative Code Chapter 14B. This Ordinance also retains the City's policy of comparing prices of commodities bids net of sales tax revenue that the City would likely received but replaces a complex bid adjustment process based on variable taxes and tax rates which has been costly and difficult to implement accurately with a fixed bid adjustment that is intended to achieve the same results for the same local bidders. This Ordinance also retains all prevailing wage requirements of Chapter 21 and moves these requirements to Chapter 21C to increase their visibility.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

September 17, 2010

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 101007 [Revising Requirements for Purchasing Goods and Services]

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On September 13, 2010, the Small Business Commission heard and recommended approval of Board of Supervisors File No. 101007.

The SBC thanks Supervisors Chu and Chiu, the Office of Contract Administration, and the Human Rights Commission for their continued support of local small businesses.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Supervisors Chu, Chiu
Starr Terrell, Mayor's Office
Alisa Somera, Clerk of the Economic and Land Use Committee.

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681
(415) 554-6408

