

1 [Administrative Code - Chapter 6 Public Works Contracting]

2

3 **Ordinance amending the Administrative Code to comprehensively revise Chapter 6**
4 **Public Works Contracting Policies and Procedures to: 1) increase the Threshold**
5 **Amount from \$400,000 to \$600,000; 2) authorize sole source contracts under certain**
6 **conditions; 3) allow procurement of public works construction contracts under \$10,000**
7 **with no competitive solicitation; 4) increase the amount of emergency work a**
8 **department may authorize without Board of Supervisors approval from \$250,000 to**
9 **\$600,000 by linking it to the Threshold Amount; 5) increase the amount of time allowed**
10 **to issue a task order from three to four years, increase the limit of the amount of a task**
11 **order from \$400,000 to \$600,000 by linking it to the Threshold Amount, allow**
12 **subcontractors to be listed at time of bid or at time of issuance of a task order, and**
13 **allow for performance and payment bonds to incrementally increase throughout the**
14 **term of the contracts for Job Order Contracts and as-needed contracts; 6) authorize**
15 **execution of master as-needed construction contracts and master as-needed**
16 **inspection, maintenance and repair contracts of equipment and systems on an if-and-**
17 **as-needed basis; 7) increase the limit of the amount of a task order from \$400,000 to**
18 **\$600,000 by linking it to the Threshold Amount in master as-needed contracts on an if-**
19 **and-as-needed basis for services that the Department of Public Health and the Division**
20 **of Real Estate are authorized to procure; 8) provide greater flexibility and clarify**
21 **requirements for the design-build and construction manager/general contractor project**
22 **delivery methods; 9) authorize the Director of Transportation to procure rail grinding**
23 **and related services through a negotiated project delivery method; 10) allow**
24 **departments to advertise bids on a public website and/or in a local newspaper or**
25 **periodical; 11) add a procedure upon rejection or failure of professional services**

1 proposals and upon professional services contractor’s failure to deliver; and 12) make
2 various other changes and clarifications in Chapter 6.

3 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
4 **Additions to Codes** are in *single-underline italics Times New Roman font*.
5 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
6 **Board amendment additions** are in double-underlined Arial font.
7 **Board amendment deletions** are in ~~strikethrough Arial font~~.
8 **Asterisks (* * * *)** indicate the omission of unchanged Code
9 subsections or parts of tables.

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

10 Section 1. The Administrative Code is hereby amended by revising Chapter 6, to read
11 as follows:

12 **SEC. 6.0. SCOPE OF CHAPTER.**

13 Chapter 6 shall govern ~~p~~Public ~~W~~or ~~I~~mprovement contracting policies and
14 procedures, including the procurement of professional design, consulting and construction
15 management services for ~~p~~Public ~~W~~or ~~I~~mprovement projects.

16 **Sec. 6.1. DEFINITIONS.**

17 ~~(A)~~ **Advertisement For Bid.** An Advertisement For Bid is a set of documents which
18 includes without limitation the published ~~a~~Advertisement for ~~b~~Bids on a construction ~~e~~Contract;
19 the forms to be submitted with a ~~b~~Bid, as required by the contracting department and ~~the~~
20 ~~CMD~~Human Rights Commission; the construction ~~e~~Contract general and special conditions; and
21 the plans and specifications for the ~~p~~Public ~~w~~or ~~i~~mprovement.

22 ~~(B)~~ **Award.** The action taken by the City in conformance with the Administrative Code and
23 the Charter to enter into a Contract pursuant to this Chapter 6. For ~~e~~Contracts in excess of the
24 Threshold Amount ~~as defined below~~, a ~~e~~Contract is awarded by the City ~~and County of San~~
25 ~~Francisco~~ when the following events have occurred:

1 (1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has
2 approved the eContract for aAward and (b) the dDepartment hHead has then issued an order
3 of aAward;

4 (2) For departments empowered to Contract for Public Works or Improvements with
5 boards or commissions, (a) the dDepartment hHead has recommended to the board or
6 commission concerned a eContract for aAward and (b) such board or commission has then
7 adopted a resolution awarding the eContract.

8 For eContracts less than or equal to the Threshold Amount ~~as defined below~~, a
9 eContract is awarded when the dDepartment hHead either signs the eContract or issues an
10 order of aAward, whichever occurs first. Pursuant to Charter Section 3.105, all eContract
11 aAwards are subject to certification by the Controller as to the availability of funds.

12 ~~(C)~~ **Bid.** A sealed document submitted in response to an Advertisement For Bids.
13 No Bbid shall be deemed accepted by the City ~~and County of San Francisco~~ until such time as
14 the eContract is awarded in accordance with this Chapter.

15 ~~(D)~~ **Bidder.** One who submits a bBid in response to an Advertisement For Bids.

16 City. The City and County of San Francisco.

17 ~~(E)~~ **Construction Manager.** Any individual, firm, partnership, corporation,
18 association, joint venture or other legal entity permitted by law to furnish construction
19 management services to the City ~~and County~~.

20 ~~(F)~~ **Contract.** For the purposes of this Chapter, a eContract is an agreement in
21 writing between the City ~~and County of San Francisco~~ and any party to perform professional
22 design services, consultant services, construction management services or construction
23 services relative to a pPublic wWork or iImprovement. No eContract shall be deemed awarded
24 effective or binding on the City ~~and County of San Francisco~~ until such time as the requirements
25 for aAward are met, as provided in this Chapter 6.

1 **Contract Monitoring Division (CMD).** A division of the Office of the City Administrator to
2 which the City Administrator has delegated responsibility to implement Administrative Code Chapter
3 14B.

4 ~~(G)~~ **Contractor.** A party who contracts directly with the City ~~and County of San~~
5 ~~Francisco~~ to perform professional design services, consultant services, construction
6 management services or construction services relevant to a ~~p~~Public ~~w~~Work or ~~i~~Improvement.
7 A ~~e~~Contractor performing construction services may also be referred to as a "~~g~~General
8 ~~e~~Contractor" or a "~~p~~Prime eContractor."

9 ~~(H)~~ **Department Head.** The duly appointed General Manager, Director, or Executive
10 Director of a City ~~and County of San Francisco~~ department authorized to perform ~~p~~Public ~~w~~Work
11 ~~or Improvements~~ under this Chapter 6. For purposes of this Chapter only, an authorized
12 ~~d~~Department ~~h~~Head may designate an individual to execute on his or her behalf any
13 document referenced in this Chapter 6, including but not limited to Contracts, ~~e~~change
14 ~~o~~orders, ~~M~~modifications, ~~S~~service oorders, ~~F~~task oorders, approvals, progress payments, and
15 certificates of acceptance completion. Such designation shall be in writing and shall identify the
16 individual by name and title and the scope and term of the designation.

17 **Integrated Furniture, Fixtures, and Equipment (IFF&E).** Furniture, fixtures, and/or
18 equipment that require integration that significantly affects the building design and/or the design of
19 interior renovation of a Public Work or Improvement due to physical dimension, power connection, or
20 data communication, and/or coordination with construction trades, including but not limited to,
21 electrical, plumbing, mechanical, or building controls.

22 ~~(I)~~ **Prevailing Wage or Prevailing Rate of Wage.** ~~The prevailing wage, as used in this~~
23 ~~Chapter, is +~~The highest general prevailing rate of wage plus "per diem wages" and wages
24 paid for overtime and holiday work paid in private employment in the City ~~and County of San~~
25 Francisco for the various crafts and kinds of labor employed in the performance of any public

1 work or improvement ~~under this Chapter~~. "Per diem wages" are defined pursuant to Labor
2 Code ~~s~~Section 1773.1, as amended from time to time.

3 ~~(J)~~ **Public Work or Improvement.** ~~A public work or public work or improvement, as~~
4 ~~used in this Chapter, is a~~Any erection, construction, renovation, alteration, improvement,
5 demolition, excavation, installation, or repair of any public building, structure, infrastructure,
6 bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the
7 City ~~and County of San Francisco~~, the cost of which is to be paid wholly or partially out of
8 moneys deposited in the Treasury of the City ~~and County~~. A Public Work or Improvement may
9 include Integrated Furniture, Fixtures, and Equipment.

10 **Quote or Quotation.** A statement or proposal setting out the estimated cost for work or
11 services submitted in response to a request for a quote for a construction Contract for less than or
12 equal to the Threshold Amount.

13 ~~(K)~~ **Responsible.** A responsible ~~b~~Bidder or ~~e~~Contractor is one who (1) meets the
14 qualifying criteria required for a particular project, including without limitation the expertise,
15 experience, record of prior timely performance, license, resources, bonding and insurance
16 capability necessary to perform the work under the ~~e~~Contract and (2) at all times deals in good
17 faith with the City ~~and County~~ and shall submit ~~b~~Bids, estimates, invoices, claims, requests for
18 equitable adjustments, requests for change orders, requests for ~~e~~Contract modifications, or
19 requests of any kind seeking compensation on a City ~~e~~Contract only upon a good faith honest
20 evaluation of the underlying circumstances and a good faith, honest calculation of the amount
21 sought.

22 ~~(L)~~ **Responsive.** A responsive ~~b~~Bid is one that complies with the requirements of
23 the subject Advertisement For Bids without condition or qualification.

24 ~~(M)~~ **Threshold Amount.** The Threshold Amount, for the purposes of this Chapter, is
25 ~~\$400,000~~600,000. On January 1, 2020~~15~~, and every five years thereafter, the Controller shall

1 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
2 Consumer Price Index from January 1, 2015, rounded to the nearest \$1,000.

3
4 **SEC. 6.2. DEPARTMENTS OR COMMISSIONS EMPOWERED TO CONTRACT FOR**
5 **PUBLIC WORKS OR RELATED PROFESSIONAL SERVICES.**

6 Except as otherwise provided, the departments or commissions empowered on
7 behalf of the City ~~and County of San Francisco~~ to contract for ~~p~~Public ~~w~~Works or ~~i~~Improvements
8 or professional services related to a ~~p~~Public ~~w~~Work or ~~i~~Improvement are ~~the Department of San~~
9 Francisco Public Works, the Municipal Transportation Agency, and the Airport, Port, Public
10 Utilities, and Recreation and Park Commissions. All other departments or commissions must
11 procure construction or related professional services through ~~the Department of San Francisco~~
12 Public Works.

13
14 **SEC. 6.3. CONTRACTING POWERS AND PROCEDURE.**

15 **(Aa) Public Work or Professional Service Contracts Less Than or Equal to the**
16 **Threshold Amount.** The ~~d~~Department ~~h~~Head may ~~a~~Award any construction ~~e~~Contract or
17 professional services ~~e~~Contract of less than or equal to the Threshold Amount. For such
18 ~~e~~Contracts, approval of the Mayor, commission or board concerned is not required.

19 **(Bb) Public Work or Professional Service Contracts in Excess of the Threshold**
20 **Amount.**

21 **(1) Departments under the Mayor.** For departments under the Mayor, the Mayor
22 or the Mayor's designee shall approve for ~~a~~Award all ~~p~~Public ~~w~~Work and professional service
23 ~~e~~Contracts in excess of the Threshold Amount and the ~~d~~Department ~~h~~Head may then issue an
24 order of ~~a~~Award.

1 (2) **Departments under Boards or Commissions.** *For departments empowered to*
2 *Contract for Public Work or Improvements, the*~~The~~ *d*Department *h*Head shall recommend to the
3 board or commission concerned the ~~a~~Award of all *p*Public ~~w~~Work and professional service
4 *e*Contracts in excess of the Threshold Amount and such board or commission may then adopt
5 a resolution awarding the *e*Contract.

6 (c) **Certification Required.** In accordance with Section 3.105 of the San Francisco
7 Charter, all *e*Contract ~~a~~Awards are subject to certification by the Controller as to the
8 availability of funds.

9 (d) **Execution of Contracts.** Following all necessary approvals, orders or
10 resolutions and execution by the *e*Contractor, the ~~d~~Department *h*Head shall execute~~in~~
11 ~~duplicate~~ all *e*Contracts, modifications and change orders. All paper transactions under this
12 Chapter 6 shall be executed in duplicate. All electronic transactions shall be executed in accordance
13 with Section 21.06 of the Administrative Code.

14
15 **SEC. 6.4. PREFERENCE FOR LOCAL MANUFACTURERS AND INDUSTRY;**
16 **RECYCLED CONTENT MATERIALS.**

17 (a) **Local preference.** Whenever any preference in favor of local manufacturers or
18 industry is provided by State law or ordinance or resolution of the Board of Supervisors, the
19 same shall apply to *e*Contracts under this Chapter.

20 (b) **Recycled Content Materials.**

21 (1) **Requirement.** The ~~d~~Department *h*Head or officer calling for ~~b~~Bids shall specify
22 recycled content materials, rather than virgin materials, to the maximum extent feasible in the
23 Advertisement for Bids and plans for all *e*Contracts for *p*Public ~~w~~Works or ~~i~~Improvements.

24 (2) **Definitions.** For the limited purpose of this subsection, the following terms
25 shall have the following meanings: (A) "feasible" means that recycled content materials meet

1 the requirements of the California Building Code or other adopted standards or regulations for
2 each of the materials and its intended use, are permitted to be used in the manner specified in
3 the ~~b~~Bid specifications under Federal, State, and local law, are available within the project's
4 time line, and are comparable in price to virgin materials, and (B) "recycled content materials"
5 means a building component utilized in place of raw or virgin material that is either reclaimed
6 for reuse from a prior structure or assembly, or a building material or component
7 manufactured in part from waste materials and/or by-products recovered or diverted from
8 solid waste, excluding those materials and by-products generated from, and commonly
9 reused within, an original manufacturing process.

10 (3) **Department of the Environment, Reports.** ~~Departments~~Contract Awarding
11 ~~Authorities~~ shall (~~a~~A) consult with the Department of the Environment regarding available
12 recycled content products that meet the needs of the department; and (~~b~~B) include information
13 on recycled content material used on ~~p~~Public ~~W~~orks ~~e~~Contracts in the annual reporting to the
14 Department of the Environment specified in the Environment Code.

15
16 **SEC. 6.5. COMPLIANCE WITH LOCAL BUSINESS ENTERPRISE UTILIZATION AND**
17 **NONDISCRIMINATION PROVISIONS.**

18 (~~Aa~~) **Application of Administrative Code Chapters 12B, 12C, and 14B and ~~12D.A.~~**
19 Notwithstanding any other provision of this Administrative Code, all ~~e~~Contracts awarded under
20 this Chapter shall be awarded in accordance with the applicable requirements and procedures
21 established in this Chapter and Chapters 12B, 12C, and 14B and ~~12D.A.~~

22 ~~Any contract for the construction, reconstruction or repair of public buildings, streets, utilities~~
23 ~~or other public work or improvement estimated to cost in excess of \$10,000,000 shall be awarded in~~
24 ~~accordance with the provisions of this Chapter, except that the bid discount provisions of Chapter~~
25 ~~12D.A shall not be applicable.~~

1 **(Bb) Review by the Contract Monitoring Division** ~~Human Rights Commission~~. The
2 ~~Human Rights Commission~~ Contract Monitoring Division (the "CMDHRC") shall review all
3 eContracts under this Chapter to determine compliance with Chapter 12B, 12C, and
4 14B ~~Chapter 12D.A~~ of the ~~San Francisco~~ Administrative Code. Such review shall occur as soon
5 as practicable, but prior to award of any such eContract. ~~Noncompliance shall be resolved in~~
6 ~~accordance with Administrative Code section 12D.A.16.~~

7 ~~The HRC Director~~ CMD may waive the review of any eContract subject to this Chapter.
8 ~~The HRC Director~~ CMD shall transmit a memorandum to the ~~Human Rights Commission~~ City
9 Administrator as soon as possible reporting such waiver. ~~The Director~~ CMD's memorandum
10 regarding the review waiver shall be a public document. The City Administrator ~~Commission~~
11 may disapprove ~~the Director~~ CMD's decision to waive review. The ~~HRC's~~ City Administrator's
12 decision to disapprove must be made within 30 days of receipt of ~~the~~ CMD's memorandum but
13 in no event subsequent to the award of any eContract. Failure to complete the review of any
14 eContract within 60 days of the date Bids are received by the City shall constitute a waiver
15 under this subsection.

16 Any duties required of the City Administrator ~~HRC~~ under this subsection 6.5(b) may be
17 delegated by the City Administrator ~~Human Rights Commission~~ to the CMD Director ~~HRC Director~~.

18 19 **SEC. 6.6. FEDERALLY-FUNDED OR STATE-FUNDED CONTRACTS.**

20 **(Aa) Time for Award.** For all eContracts that are fully or partially funded by Federal
21 or State grants, loans or other governmental source, the department concerned shall not be
22 required to award such eContracts until 120 days from the date Bids are received. Such
23 time may only be extended prior to award of the eContract and only upon (a1) written
24 agreement of the apparent Responsible Bidder with the lowest Responsive Bid; (b2)
25 approval by the Mayor or the Mayor's Designee or by resolution of the board or commission

1 concerned; and (e3) any necessary approvals of the Federal, State or other governmental
2 funding agency.

3 (Bb) **Contract Terms.** In all eContracts for the construction of any pPublic wWork or
4 iImprovement which involves the use of any funds furnished, given or loaned by the
5 government of the United States or the State of California, all laws, rules and regulations of
6 the government of the United States or the State of California or of any of its departments
7 relative to the performance of such work and the conditions under which the work is to be
8 performed, shall prevail over the requirements of this Chapter when such laws, rules or
9 regulations are in conflict.

10
11 **SEC. 6.7. VOID CONTRACT.**

12 Any pPublic wWorks or related professional services eContract or subcontract that is
13 not aAwarded in accordance with the requirements or which does not comply with the
14 provisions of this Chapter shall be null and void; and no recovery shall be had thereon. Any
15 officer, board or commission who shall sign, execute or approve such a eContract shall be
16 deemed guilty of misfeasance in office.

17
18 **SEC. 6.8. SEVERABILITY.**

19 If any provision of this Chapter or any application thereof to any person or
20 circumstances is held invalid, such invalidity shall not affect other provisions or application of
21 this eChapter which can be given effect without the invalid provision or application, and to this
22 end the provisions of this Chapter are declared to be severable.

23 ///

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1 **SEC. 6.9. SUBCONTRACTOR AND SUBCONSULTANT LIMITATION OF RIGHTS.**

2 Except as otherwise expressly provided by law or eContract, no subcontractor,
3 subcontractant, supplier, or other person or business entity shall be a third-party beneficiary to
4 any eContract awarded in accordance with this Chapter, or to any modification or any
5 resolution of any claim arising out of any such eContract.

6
7 **ARTICLE II: CONSTRUCTION CONTRACTING**

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

9 **(Aa) Public Works In Excess of the Threshold Amount.** Except as otherwise
10 provided by the Charter or the Administrative Code, any pPublic wWork or iImprovement
11 estimated to cost more than the Threshold Amount shall be performed under eContract
12 awarded to the rResponsible bBidder submitting the lowest rResponsive bBid. To split or
13 divide any pPublic wWork or iImprovement into two or more eContracts for the purpose of
14 evading this sSection 6.20(a) shall constitute official misconduct.

15 **(Bb) Public Works Less Than or Equal to the Threshold Amount.** Any pPublic
16 wWork or iImprovement estimated to cost less than or equal to the Threshold Amount may be
17 performed (a1) under eContract or (b2) by City ~~and County~~ employees. If the work is to be
18 performed under eContract, the department shall obtain not fewer than three qQuotes and
19 shall aAward the eContract to the rResponsible bBidder offering the lowest qQuotation. If the
20 department is unable to obtain three qQuotes, the aAward may be based on the qQuote or
21 qQuotes received. For Contracts for Public Works or Improvements less than or equal to \$10,000, no
22 competitive solicitation is required. The department administering the eContract shall maintain
23 records as to whom the request for qQuotations was directed and the qQuotations received. It
24 is the policy of the Board of Supervisors for contracting departments to make every effort to
25 eradicate prejudice and favoritism in the aAward of City eContracts. In order to effectuate this

1 policy, ~~the department heads~~ Department Heads ~~authorized to enter into construction contracts~~ and
2 their staff members shall collaborate with ~~the HRC Director and HRC staff members~~ CMD
3 periodically to create a list of ~~Responsible~~ eContractors qualified to perform various types of
4 ~~Public~~ Work or Improvements for projects estimated to be less than the Threshold Amount,
5 making every effort to include qualified, ~~Responsible~~, and certified LBE eContractors on that
6 list. ~~The CMD HRC~~ shall be responsible for outreach efforts to make sure that certified LBE
7 eContractors are aware of the opportunity to be considered for the list. ~~The contract-awarding~~
8 departments or commissions shall be responsible for evaluating and determining whether
9 eContractors are ~~Responsible~~ and qualified to perform the various scopes of work. ~~The~~
10 ~~department heads authorized to execute construction contracts shall report quarterly to the Board of~~
11 ~~Supervisors regarding LBE inclusion on the list of responsible and qualified contractors for public~~
12 ~~work contracts estimated to be less than or equal to the Threshold Amount, a description of the scope~~
13 ~~of work and price for each contract awarded under this section, the name of the contractor awarded~~
14 ~~the contract and whether the contract was awarded to an LBE contractor. Such reports shall be~~
15 ~~referred to a Board committee for public hearing.~~

16 (C) **Estimates Required.** For ~~Public~~ Works or ~~Improvements~~ in excess of the
17 Threshold Amount, no ~~Department~~ Head shall recommend a construction eContract for or
18 issue an order of Award without preparing detailed program requirements and detailed
19 estimates for the work to be performed. There shall be a separate accounting for each work or
20 improvement, which accounting shall include all direct, indirect, and supervisory elements of
21 costs chargeable to such work or improvement. All such accounts shall be reported to the
22 Controller and to either the Mayor or the Mayor's ~~Designee~~ or to the board or commission
23 concerned, as appropriate.

24 (D) **Comparison of Bids on Basis of Time of Completion or Cost of Compensable**
25 **Delay.** ~~The department head~~ Department Heads ~~maye concerned is authorized to~~ compare Bids on

1 the basis of time of completion and/or the cost of any compensable delay, and any eContract
2 aAwarded in consideration, in whole or in part, of the relative time estimate of bBidders for
3 completion of the work and/or the cost of any compensable delay in completing the work, shall be
4 subject to the provisions of this Chapter.

5 (Ee) **Time for Award.** Except when a eContract is funded by Federal or State grants
6 or funds, all pPublic wWork eContracts shall be awarded within ~~ninety~~ (90) days of the date the
7 City ~~and County~~ receives the bBids. Such time may only be extended prior to aAward of the
8 eContract and only upon written agreement of the apparent responsible bBidder with the
9 lowest rResponsive bBid and approval by the dDepartment hHead.

10 (Ff) **Prequalification.** Department hHeads ~~authorized to execute public work contracts~~
11 may require that prospective bBidders be prequalified to bBid either on a specific project or on
12 an identified group of projects. The procedure for prequalification is as follows:

13 (1) The dDepartment hHead shall issue a prequalification statement. The
14 prequalification statement may, at the discretion of the dDepartment hHead, be issued in
15 conformance with California Public Contract Code sSection 20101 and/or the California
16 Department of Industrial Relations Model Pre-Qualification Questionnaire. The dDepartment
17 hHead may, at his/her own discretion, apply the Model Pre-Qualification Questionnaire Section
18 6.21 guidelines for scorable questions and scoring as the basis for any prequalification. The
19 dDepartment hHead may also, at his/her own discretion, issue the Model Pre-Qualification
20 Questionnaire with additional questions or may use an alternative questionnaire. The
21 dDepartment hHead responsible for the pPublic wWork may include in any questionnaire a
22 request for special qualifications, experience or expertise necessary to perform the project or
23 projects for which the prequalification is sought. For any project-specific information required,
24 the department shall set objective scoring criteria and incorporate the criteria into any scoring
25 procedure.

1 (2) The department responsible for the ~~p~~Public ~~w~~Work shall advertise any
2 prequalification questionnaire in the same manner required for ~~b~~Bids, as set forth in Section
3 6.21 ~~of this Chapter~~.

4 (3) Prequalification shall be valid for not more than two years following the date of
5 initial prequalification.

6 (4) A prospective ~~b~~Bidder may dispute a finding that he/she is not prequalified. The
7 dispute and request for review must be in writing and received by the department within ten
8 calendar days from the date the department issued notice of non-prequalification. The
9 department shall then provide the prospective ~~b~~Bidder with the basis for its finding and any
10 supporting evidence used in the determination. The department shall give the prospective
11 ~~b~~Bidder the opportunity to rebut the evidence provided and to present evidence as to why the
12 prospective ~~b~~Bidder should be found qualified. If a ~~b~~Bidder fails to avail itself of this dispute
13 process, the department's finding shall become final without further notice. Failure to be
14 prequalified shall not by itself preclude a prospective ~~b~~Bidder from participating in other or
15 future prequalifications.

16
17 **SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.**

18 (Aa) **Bids.** All Advertisements For Bids for construction ~~e~~Contracts in excess of the
19 Threshold Amount shall conform to and at a minimum require the following:

20 (1) **Published Advertisement.** The ~~d~~Department ~~h~~Head ~~authorized to execute the~~
21 ~~contract for the public work or improvement to be performed~~ shall advertise for competitive ~~b~~Bids
22 in at least one local newspaper, ~~or~~ periodical of general circulation, or on a publically available
23 website of the City's Office of Contract Administration or the department concerned. Such
24 advertisement shall be published not fewer than ~~ten~~(10) days prior to ~~b~~Bid opening. The
25

1 department may, in its discretion, include in the published advertisement the amount of the
2 engineer's estimate for the work to be performed.

3 (2) **Award and Certification Required.** All published advertisements and
4 Advertisements For Bid shall contain the following language [wording in brackets should be
5 chosen as appropriate to the department]:

6 In accordance with Administrative Code Chapter 6, no bid is accepted and no
7 contract in excess of [the Threshold Amount] is awarded by the City and County of San
8 Francisco until such time as [(1) for departments with boards or commissions, (a) the
9 department head recommends the contract for award and (b) the board or commission then
10 adopts a resolution awarding the contract]; or [(2) for departments under the Mayor, (a) the
11 Mayor or the Mayor's designee approves the contract for award and (b) the department head
12 then issues an order of award.] Pursuant to Charter Section 3.105, all contract awards are
13 subject to certification by the Controller as to the availability of funds.

14 Failure of a department to include such language in a published advertisement or
15 Advertisement For Bids does not give rise to a contract right by a *b*Bidder or *e*Contractor
16 outside of the requirements of the City Charter or Administrative Code ~~of the City and County of~~
17 ~~San Francisco.~~

18 (3) **Form of Bid.** All *b*Bids shall be sealed and directed to the *d*Department *h*Head
19 advertising for *b*Bids, in the format prescribed by the *d*Department *h*Head ~~with the authority to~~
20 ~~execute the contract.~~

21 (4) **Bid Security Requirement Bond.** All *b*Bids ~~in excess of \$25,000.00~~ shall be
22 accompanied by a corporate surety bond, or an irrevocable standby letter of credit on a bank
23 or trust company doing business and having an office in the State of California, having a
24 combined capital and surplus of at least \$50,000,000.00, and subject to supervision or
25 examination by Federal or State authority, or a certified check on a bank or trust company

1 doing business and having an office in the State of California, having a combined capital and
2 surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State
3 authority, payable on sight to the City and County of San Francisco, the amount of which
4 corporate surety bond, irrevocable standby letter of credit, or certified check shall be fixed by
5 the ~~d~~Department ~~h~~Head or officer as stated in the Advertisement For Bids, which amount shall
6 not be less than 10%~~percent~~ of the amount ~~b~~Bid for the cost of the proposed work of
7 improvement, and no ~~b~~Bid shall be considered unless accompanied by a corporate surety
8 bond or irrevocable standby letter of credit or certified check. Any irrevocable standby letter
9 submitted pursuant to this Chapter shall be on a form provided by the City ~~and County~~. If the
10 amount of security required is fixed by the ~~d~~Department ~~h~~Head or officer in an amount in
11 excess of \$15,000.00, the form of security required shall be that of a corporate surety bond or
12 irrevocable standby letter of credit. The requirement for a corporate surety bond, irrevocable
13 standby letter of credit, or certified check described in this subsection shall be referred to
14 collectively as the "bid security requirements."

15 Notwithstanding the above, the bid security requirements for a particular ~~e~~Contract
16 may be modified by the ~~d~~Department ~~h~~Head in accordance with Administrative Code Chapter
17 14B.

18 (5) **Fees.** The ~~d~~Department ~~h~~Head or officer calling for ~~b~~Bids may specify in the
19 Advertisement For Bids for any project a nonrefundable fee to be paid by each prospective
20 ~~b~~Bidder for each set of ~~b~~Bidding documents (including plans and specifications), such fee to
21 defray the cost of reproducing each set of ~~b~~Bidding documents as determined by the
22 ~~d~~Department ~~h~~Head or officer, and all such fees shall be deposited as an abatement of the
23 expenditure of the appropriation against which the cost of reproducing said ~~b~~Bidding
24 documents was charged.

25

1 (6) **License.** The ~~d~~Department ~~h~~Head shall specify in all Advertisements For Bids
2 and plans for ~~p~~Public ~~w~~Work projects the classification of the ~~e~~Contractor's license which a
3 ~~e~~Contractor shall possess at the time ~~b~~Bids are submitted. *Except as provided in California*
4 *Business and Professions Code Section 7000 et seq.,* ~~b~~Bidders and their subcontractors are
5 required to be properly licensed at the time of ~~b~~Bid.

6 (7) **Qualifications.** The ~~d~~Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work
7 shall require from all ~~b~~Bidders information concerning their experience and financial
8 qualifications, and shall take such information into consideration in the ~~a~~Award of any
9 ~~e~~Contract. At a minimum the ~~d~~Department ~~h~~Head shall require (~~1A~~) information concerning the
10 ~~e~~Contractor's experience, financial qualifications and ability to perform the terms and
11 conditions of the ~~e~~Contract, and (~~2B~~) information as to whether the ~~e~~Contractor possesses, or
12 can obtain in time to perform the ~~e~~Contract, the necessary equipment. *A Department Head may*
13 *satisfy this requirement through a Bidder prequalification process that meets the requirement of*
14 *Section 6.20(f). In the event that a bidder fails to provide such information within fourteen calendar*
15 *days of bid opening, or as otherwise required in the Advertisement For Bids, the department head*
16 *could find that the bidder is refusing to enter into the contract, resulting in a forfeiture of the bidder's*
17 *bid bond.*

18 (8) **Business Tax Registration Certificate.** All Advertisement For Bids shall
19 require that ~~b~~Bidders submit proof of a current Business Tax Registration Certificate. Failure
20 of a ~~b~~Bidder to provide such proof *prior to Award within fourteen (14) calendar days of bid opening,*
21 or as otherwise required in the Advertisement For Bids, could, at the discretion of the
22 ~~d~~Department ~~h~~Head, constitute a refusal to enter into the ~~e~~Contract and result in a forfeiture of
23 the ~~b~~Bid bond.

24 (9) **Designation of Subcontractors; Subcontracting and Subletting.** All
25 ~~b~~Bidders shall designate their subcontractors in accordance with and shall be subject to the

1 ~~California~~ Subletting and Subcontracting Fair Practices Act, at California Public Contract Code
2 §Section 4100 et seq., as amended from time-to-time. In addition to the penalties provided by
3 Public Contract Code §Section 4100 et seq., violation of this subsection may be grounds for a
4 determination of nonresponsibility under Article V of this Chapter.

5 (10) **Work to Be Performed by General Contractor.** The Advertisement For Bids
6 may specify the ~~portions~~scope of work which must be performed by the General Contractor
7 using his/her own forces, ~~or the.~~The specification may require the General Contractor to
8 perform with his/her own forces up to 25% of the base eContract work. Bidders must certify
9 with their ~~bBids~~ that, if awarded the eContract, they will perform with their own forces the
10 specified scope or percentage of the total ~~bBid~~ price (excluding alternate Bid items).

11 (~~Bb~~) **Quotes.** All requests for ~~qQuotes~~ for construction eContracts less than or equal
12 to the Threshold Amount ~~may shall~~ be posted with three-days' notice. Such requests shall at a
13 minimum require a eContractor's license, qualifications, a Business Tax Registration
14 Certificate, participation in an apprenticeship program and compliance with subcontractor
15 listing laws, all in accordance with the listed provisions of Sections 6.21 and 6.22.

16 (~~Cc~~) **Right to Reject Any or All Bids or Quotes.** The ~~dDepartment~~ hHead shall
17 have the right to reject any or all ~~bBids~~ or ~~qQuotes~~ for any reason or no reason. All
18 Advertisement For Bids shall reserve this right, but failure to make such reservation shall not
19 abrogate the right to reject.

20 (~~Dd~~) **Bid Protests.** Only a ~~bBidder~~ may submit a bid protest. The ~~dDepartment~~
21 hHead concerned shall prescribe in the Advertisement For Bids procedures for submitting bid
22 protests. Such procedures shall set the time by which bid protests must be received but may
23 not require that bid protests be submitted fewer than five ~~(5)~~ business days after the date
24 ~~bBids~~ are due.

1 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
2 **CONDITIONS.**

3 All construction ~~e~~Contracts awarded under this Chapter 6 by the City ~~and County of San~~
4 ~~Francisco~~ shall contain the following minimum terms and conditions:

5 (Aa) **Bonds.** Before the execution of any ~~e~~Contract for ~~p~~Public ~~w~~Work or
6 ~~i~~Improvement in excess of \$25,000, the ~~d~~Department ~~h~~Head ~~authorized to execute such contracts~~
7 shall require the successful ~~b~~Bidder to file corporate surety bonds for the faithful performance
8 thereof and to guarantee the payment of wages for services engaged and of bills contracted
9 for material, supplies and equipment used in the performance of the ~~e~~Contract. ~~Each~~ ~~The~~ bond
10 shall be for a sum not less than 100% ~~percent~~ of the awarded of Contract amount.

11 The City ~~and County of San Francisco~~, acting through the City Administrator ~~its Human~~
12 ~~Rights Commission ("HRC")~~, intends to provide guarantees to private bonding assistance
13 companies and financial institutions in order to induce those entities to provide required
14 bonding and financing to eligible ~~e~~Contractors bidding on and performing City ~~p~~Public ~~w~~Work
15 ~~e~~Contracts. This bonding and financial assistance program is subject to the provisions of
16 Administrative Code Chapter 14B.

17 (Bb) **Insurance.** All construction ~~e~~Contracts awarded under this Chapter must
18 conform to the insurance requirements established by the Risk Manager. The Risk Manager
19 shall develop uniform insurance requirements for City ~~e~~Contracts subject to this Chapter and
20 shall publish such requirements in the Risk Manager's Manual. The Risk Manager shall
21 review and update such insurance requirements on an annual basis.

22 Every ~~e~~Contractor and subcontractor shall comply with the provisions of California
23 Labor Code ~~s~~Section 3700. Prior to commencing the performance of work under any ~~p~~Public
24 ~~w~~Work ~~e~~Contract, the ~~e~~Contractor and all of its subcontractors shall file with the awarding
25

1 department a certificate of insurance against liability for workers compensation or proof of
2 self-insurance in accordance with the provisions of the California Labor Code.

3 (Cc) **Indemnification.** All construction eContracts awarded under this Chapter shall
4 require that the eContractor fully indemnify the City ~~and County~~ to the maximum extent
5 provided by law, such that each eContractor must save, keep, bear harmless and fully
6 indemnify the City ~~and County~~ and any of its officers or agents from any and all liability,
7 damages, claims, judgments or demands for damages, costs or expenses in law or equity that
8 may at any time arise.

9 This indemnification requirement may not be waived or abrogated in any way for any
10 eContract without the recommendation of the ~~City's~~ Risk Manager and the express permission
11 and approval of the Board of Supervisors.

12 (Dd) **Assignment.** No eContract shall be assigned except upon the recommendation
13 of the ~~d~~Department ~~h~~Head concerned and with the approval of the Mayor or the Mayor's
14 designee, relative to the department under the Mayor's jurisdiction, or the approval of the
15 board or commission concerned for departments not under the Mayor.

16 (Ee) **Prevailing Wages.**

17 (1) **Generally.** All eContractors and subcontractors performing a pPublic ~~w~~Work or
18 iImprovement for the City ~~and County of San Francisco~~ shall pay its workers on such projects
19 the pPrevailing ~~r~~Rate of ~~w~~Wages as provided below. For the purpose of pPrevailing ~~w~~Wage
20 requirements only, the definition of a public work shall include ~~those p~~Public ~~w~~Works or
21 iImprovements as defined in the ~~foregoing s~~Section 6.1, ~~of this Chapter~~ and shall also include
22 (~~a~~A) any trade work performed at any stage of construction (including preconstruction work)
23 and (~~b~~B) any public work paid for by the City ~~and County of San Francisco~~ with "the equivalent of
24 money" under the meaning of California Labor Code ~~s~~Section 1720(b).
25

1 (2) **Additional Projects Included Within Definition of "Public Work or**
2 **Improvement" for Purposes of Prevailing Wages.**

3 (~~a~~A) **Property Leased by the City.** For the limited purposes of this subsection
4 6.22(~~Ee~~), a "public work or improvement" also means and includes any construction work
5 done under private contract when all of the following conditions exist:

6 (i) The construction contract is between private persons; and

7 (ii) The property subject to the construction contract is privately owned, but
8 upon completion of the construction work will be leased to the City ~~and County of San Francisco~~
9 for its use; and

10 (iii) Either of the following conditions exist: (1) The lease agreement between
11 the lessor and the City ~~and County of San Francisco~~, as lessee, is entered into prior to the
12 construction contract, or (2) The construction work is performed according to the plans,
13 specifications, or criteria furnished by the City ~~and County of San Francisco~~, and the lease
14 agreement between the lessor and the City ~~and County of San Francisco~~ as lessee, is entered
15 into during, or upon completion, of the construction work.

16 (~~b~~B) **Public Works Under California Labor Code.** For the limited purposes of
17 this subsection 6.22(~~Ee~~) ~~and Section 6.24~~, a "public work or improvement" also means and
18 includes all projects for "public works" as defined in California Labor Code section 1720, and
19 projects for which ~~p~~Prevailing ~~w~~Wages are required to be paid ~~on "public works"~~ pursuant to
20 California Labor Code section 1782. This subsection 6.22(~~Ee~~)(2)(~~b~~B) is intended to have
21 prospective effect only, and shall not be interpreted to impair the obligations of any pre-
22 existing grant agreement, lease, development agreement or other contract entered into by the
23 City. Notwithstanding the prior sentence, this subsection shall apply to newly included work in
24 pre-existing grant agreements, leases, development agreements, or other contracts amended
25 on or after the operative date. The subsection shall apply to grant agreements, leases,

1 development agreements and other contracts entered into by the City on or after the operative
2 date. All grant agreements, leases, development agreements and other contracts which allow
3 for such construction on property owned by the City that the City enters after the operative
4 date of the subsection must contain a provision that such construction shall comply with this
5 subsection.

6 (3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of
7 Supervisors, from time to time and at least once during each calendar year, to fix and
8 determine the ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as follows:

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

1 In the event that the Board of Supervisors does not fix or determine the highest
2 general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages in any calendar year, the rates established by the
3 California Department of Industrial Relations for such year shall be deemed adopted.

4 (4) **Specifications to Include Wage Rate.** The ~~d~~Department ~~h~~Head ~~authorized to~~
5 ~~execute a construction contract under this Chapter~~ shall include in the contract specifications, or
6 make available in the offices of the department or at the job site, a detailed statement of the
7 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as fixed and determined by the Board of Supervisors at the time
8 the department issued the Advertisement For Bids on the contract. The contractor shall agree
9 to pay to all persons performing labor in and about the public work or improvement the
10 highest general ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as determined pursuant to this Chapter,
11 including wages for holiday and overtime work. If the specifications do not include the
12 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages, the specifications shall include a statement that copies of the
13 ~~p~~Prevailing ~~r~~Rate of ~~w~~Wages as fixed and determined by the Board of Supervisors are on file
14 at the department's principal office or at the job site and shall be made available to any
15 interested party on request.

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

23 (6) **Records to be Kept by Contractors and Subcontractors.** Every public
24 works contract or subcontract ~~awarded under this Chapter~~ for any public work or improvement
25 shall contain a provision that the contractor shall keep, or cause to be kept, for a period of four

1 years from the date of substantial completion of a public work, payrolls and basic records
2 including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax
3 forms and superintendent and foreman daily logs for all trades workers performing work at or
4 for a City ~~and County of San Francisco~~ public work or improvement. Such records shall include
5 the name, address and social security number of each worker who worked on the project,
6 including apprentices, his or her classification, a general description of the work each worker
7 performed each day, the rate of pay (including rates of contributions for, or costs assumed to
8 provide fringe benefits), daily and weekly number of hours worked, deductions made and
9 actual wages paid. Every subcontractor who shall undertake the performance of any part of a
10 public work or improvement shall keep a like record of each person engaged in the execution
11 of the subcontract.

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

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

22 Should the ~~d~~Department ~~h~~Head responsible for the public work or the Labor
23 Standards Enforcement Officer determine that a contractor or subcontractor is not in
24 compliance with the requirements of this subsection, the ~~d~~Department ~~h~~Head or the Labor
25 Standards Enforcement Officer shall issue written notification to the contractor or

1 subcontractor mandating compliance within not fewer than ten calendar days from the date of
2 the notification. Should the contractor or subcontractor fail to comply as required in the
3 notification, the ~~a~~Department ~~h~~Head who executed the ~~e~~Contract or the Labor Standards
4 Enforcement Officer may impose ~~a~~ ~~penalties of \$25.00~~ consistent with analogous provisions of
5 the California Labor Code, including Section 1776, as amended from time to time for each calendar
6 day of noncompliance, or portion thereof, for each worker. Upon the request of the
7 responsible ~~a~~Department ~~h~~Head or the Labor Standards Enforcement Officer, the Controller
8 shall withhold these penalties from progress payments then due or to become due.

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

1 forfeitures consistent with analogous provisions of the California Labor Code, including sSection
2 1776(g), as amended from time to time.

3 (8) **Non-compliance with Wage Provisions – Penalties.**

4 (aA) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or
5 neglect to pay to the several persons who shall perform labor under any contract, subcontract
6 or other arrangement on any public work or improvement as defined in this Chapter the
7 highest general prevailing rate of wages as fixed by the Board of Supervisors under authority
8 of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to
9 pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit
10 to the City ~~and County of San Francisco~~ back wages due plus the ~~penal penalties and forfeitures~~
11 consistent with analogous provisions of the California Labor Code as amended from time to time,
12 including Sections 1775 and 1813, but not less than ~~sum of~~\$50.00 per day for each laborer,
13 workman or mechanic employed for each calendar day or portion thereof, while they shall be
14 so employed and not paid said highest general prevailing rate of wages, and in addition shall
15 be subject to the penalties set forth in Article V of this Chapter, including debarment.

16 (bB) **Enforcement.** It shall be the duty of the officer, board or commission under
17 whose jurisdiction said public work or improvement is being carried on, made or constructed,
18 when certifying to the Controller any payment which may become due under said contract, to
19 deduct from said payment or payments the total amount of said forfeiture provided for in this
20 subsection. In doing so, the ~~d~~Department ~~h~~Head must also notify in writing the Labor
21 Standards Enforcement Officer of his/her action. The Labor Standards Enforcement Officer
22 may also upon written notice to the ~~d~~Department ~~h~~Head who is responsible for the project,
23 certify to the Controller any forfeiture(s) to deduct from any payment as provided for in this
24 Subsection 6.22(~~Ee~~)(8). Certification of forfeitures under this subsection shall be made only
25 upon an investigation and audit by the responsible ~~d~~Department ~~h~~Head or the Labor

1 Standards Enforcement Officer and upon service of written notice to the contractor that
2 includes identification of the grounds for the forfeiture or forfeitures ("Certification of
3 Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of
4 Forfeiture, but failure to append such documentation shall not invalidate the Certification.
5 Service of the Certification of Forfeiture shall be made by United States mail and the date of
6 service shall be the date of mailing. The Controller, in issuing any warrant for any such
7 payment, shall deduct from the amount which would otherwise be due on said payment or
8 payments the amount of said forfeiture or forfeitures as so certified.

9 (eC) **Recourse Procedure.** A contractor and/or a subcontractor may appeal from
10 a Certification of Forfeiture. The Controller shall adopt and maintain rules and regulations for
11 any appeal under this ~~§~~subsection 6.22(~~Ee~~)(8)(eC), which rules shall generally include the
12 following parameters for efficient and effective due process:

13 (i) Any Appeal from Certification of Forfeiture shall be filed in writing by the
14 contractor and/or subcontractor (referred to in this ~~§~~subsection 6.22(~~Ee~~)(8)(eC), whether
15 singular or plural, as the "Appellant") within 15 days of the date of service of the Certification
16 of Forfeiture. Appellant shall file the Appeal from Certification of Forfeiture with the City
17 Controller and serve a copy on the Labor Standards Enforcement Officer. Failure by the
18 contractor or subcontractor to submit a timely, written Appeal from Certification of Forfeiture
19 shall constitute concession to the forfeiture, and the forfeiture shall be deemed final upon
20 expiration of the 15-day period.

21 (ii) The Office of Labor Standards Enforcement shall promptly afford Appellant
22 an opportunity to meet and confer in good faith regarding possible resolution of the
23 Certification of Forfeiture in advance of further proceedings under this Subsection
24 6.22(~~Ee~~)(8)(eC), with the intention that such meeting occur within 30 days of the date the
25 Appeal from Certification of Forfeiture is filed.

1 (iii) After the expiration of 30 days following the date the Appeal from
2 Certification of Forfeiture is filed, any party may request in writing, with concurrent notice to all
3 other parties, that the Controller appoint a hearing officer to hear and decide the appeal. If no
4 party requests appointment of a hearing officer, the Certification of Forfeiture shall be deemed
5 final on the 60th day after the date the Appeal from Certification of Forfeiture is filed.

6 (iv) Within 15 days of receiving a written request for appointment of a hearing
7 officer under Section 6.22(~~Ee~~)(8)(~~eC~~)(iii), the Controller shall appoint an impartial hearing
8 officer and immediately notify the enforcing official and Appellant, and their respective counsel
9 or authorized representative if any, of the appointment. The appointed hearing officer shall be
10 an Administrative Law Judge with at least ten years experience with the City and not less than
11 two years experience in labor law, prevailing wage, and/or wage and hour matters; or shall be
12 an attorney with knowledge and not less than five years' experience in labor law, prevailing
13 wage, and/or wage and hour matters.

14 (v) The hearing officer shall promptly set a date for a hearing. The hearing
15 must commence within 45 days of the date the Controller notice of the hearing officer
16 appointment, and conclude within 75 days of such notice. The hearing officer shall conduct a
17 fair and impartial evidentiary hearing in conformance with the time limitations set forth in this
18 subsection 6.22(~~Ee~~)(8)(~~eC~~) and in the rules and regulations, so as to avoid undue delay in the
19 resolution of any appeal. The hearing officer shall have the discretion to extend the times
20 under this subsection 6.22(~~Ee~~)(8)(~~eC~~), and any time requirements under the rules and
21 regulations, only upon a showing of good cause.

22 (vi) Appellant has the burden of proving by a preponderance of the evidence
23 that the basis for the Certification of Forfeiture is incorrect, including any back wage and
24 penalty assessments that are at issue in the appeal.
25

1 (vii) Within 30 days of the conclusion of the hearing, the hearing officer shall
2 issue a written decision affirming, modifying, or dismissing the forfeiture. The decision of the
3 hearing officer shall consist of findings and a determination. The hearing officer's findings and
4 determination shall be final.

5 (viii) Appellant may appeal a final determination under this subsection 6.22(e)(8)
6 only by filing in the San Francisco Superior Court a petition for a writ of mandate under
7 California Code of Civil Procedure, Section 1084 et seq., as applicable and as may be
8 amended from time to time.

9 (~~d~~D) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as
10 provided in the foregoing paragraphs until such time as either the eContractor or
11 subcontractor has conceded to the forfeiture or, in the event of an appeal, there is a
12 determination no longer subject to judicial review. The Controller shall then distribute the
13 amounts withheld in the following order: (1) the Labor Standards Enforcement Officer shall
14 make best efforts to distribute back wages withheld to the individual workers identified as not
15 having been paid the proper wage rate; (2) the penal sums provided for above shall inure to
16 the benefit of the general fund of the City ~~and County of San Francisco~~; (3) the Controller shall
17 hold the balance of any back wages in escrow for workers whom the Labor Standards
18 Enforcement Officer, despite his ~~or~~ her best efforts, cannot locate. In the event back wages
19 are unclaimed for a period of three years, the Controller shall undertake administrative
20 procedures for unclaimed funds in conformance with California Government Code Section
21 50050 et seq., as may be amended from time to time.

22 (~~F~~f) **Hours and Days of Labor.**

23 (1) **Generally.** For the purpose of meeting prevailing conditions and enabling
24 employers to secure a sufficient number of satisfactory workers and artisans, no person
25 performing labor or rendering service in the performance of any eContract or subcontract for

1 any *p*Public *w*Work or *i*Improvement as defined in this Chapter shall perform labor for a longer
2 period than five days (Monday through Friday) of eight hours each, with two 10-minute breaks
3 per eight-hour day, except in those crafts in which a different work day or week now prevails
4 by agreement in private employment. Any person working hours in addition to the above shall
5 be compensated in accordance with the prevailing overtime standards and rates.

6 (2) **Noncompliance and Forfeiture.** Any *e*Contractor or subcontractor who shall
7 violate any of the provisions of this subsection shall be liable for the same penalties and
8 forfeits as those specified in *s*subsection 6.22(~~*E*~~*e*) of this Chapter; penalties and forfeits shall
9 be applicable for each laborer, mechanic or artisan employed for each calendar day or portion
10 thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more
11 than the days and hours specified herein. The provisions of this subsection shall be made a
12 part of all *e*Contracts and subcontracts for the construction of any *p*Public *w*Work or
13 *i*Improvement.

14 (3) **Contracts Outside City and County.** In the event that any *p*Public *w*Work or
15 *i*Improvement is to be constructed outside of the City ~~and County of San Francisco~~ and at such
16 a distance therefrom that those engaged in performing labor on ~~said the~~ *p*Public *w*Work or
17 *i*Improvement must under ordinary conditions remain at or near the site of ~~said the~~ *p*Public
18 *w*Work or *i*Improvement when not actually engaged in the performance of labor thereon, then
19 the officer, board or commission responsible for the construction of ~~said the~~ *p*Public *w*Work or
20 *i*Improvement may, in making specifications or letting *e*Contracts therefor, make provision
21 therein for days and hours of labor beyond the limitations provided for in ~~sub~~*sub*Section 6.22(~~*F*~~*f*)
22 of this Chapter 6; but not to exceed eight hours in any one calendar day, or six days in any
23 calendar week. In the event that emergency conditions shall arise, making a change
24 advisable during the performance of any such *e*Contract, or any portion thereof, the hours and
25 days of labor may be extended beyond the limits hereinabove expressed; but not to exceed

1 eight hours per day, upon the written authority of the officer, board or commission ~~awarding~~
2 such ~~Contract~~. Failure of the ~~Contractor~~ to perform such ~~Contract~~ within the time provided
3 shall not constitute an emergency.

4 (G) Local Hiring~~Short Title~~. This subsection 6.22(G) shall be known as and may be
5 cited as the San Francisco Local Hiring Policy for Construction ("Policy").

6 * * * *

7 (2) **Definitions.** For purposes of this subsection 6.22(G), the following terms
8 shall have the following meanings:

9 * * * *

10 (f) "Covered project" means a ~~Public~~ ~~Work~~ or ~~Improvement~~ project,
11 construction project, or part thereof to which this subsection 6.22(G) applies, under standards
12 set forth in subsection 6.22(G)(3).

13 * * * *

14 (3) **Coverage.**

15 (a) **Threshold for Public Work and Improvement Projects.** This Policy
16 applies to ~~Contracts~~ issued by the City with ~~Prime~~ ~~Contractors~~ for ~~Public~~ ~~Works~~ or
17 ~~Improvements~~ estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of
18 this Chapter, as that amount may be amended.

19 (b) **Threshold for Projects Constructed on Property Owned by the City.**
20 For purposes of subsection 6.22(G) only, this Policy applies to all construction projects on
21 property owned by the City that are estimated to cost in excess of the Threshold Amount set
22 forth in Section 6.1 of this Chapter, as that amount may be amended, including construction
23 contracts that are issued by an entity or individual other than the City. The following
24 construction projects are exempt from this subsection 6.22(G)(3)(b): (i) tenant improvement
25 projects estimated to cost less than \$750,000 per building permit, where the project is

1 undertaken and contracted for by the tenant; (ii) projects for special events where the special
2 event is three ~~(3)~~ or fewer consecutive or non-consecutive days within a two ~~(2)~~ week period;
3 (iii) construction projects for which the construction work is fully funded and performed by a
4 donor or donor's agent as a gift-in-place donation, where the gift agreement does not require
5 City funds to be used for the construction and where the gift agreement includes a
6 requirement that workers be paid the same ~~p~~Prevailing ~~#~~Rate of ~~W~~ages as would be required
7 a public work project; and (iv) projects that as of the effective date of this subsection
8 6.22(G)(3)(b) have a term sheet that has been endorsed by the Board of Supervisors and
9 have findings of fiscal feasibility, to the extent that such projects agree to be bound by a
10 legally enforceable document, enforceable by OEWD, committing the project to Local Hire
11 mandatory participation level of 30% per trade. All grant agreements, leases, development
12 agreements and other contracts that the City enters that allow for such non-exempt
13 construction projects on property owned by the City must contain a provision that such
14 construction shall comply with this Policy.

15 * * * *

16 (d) **Projects Utilizing Federal or State Funds.**

17 * * * *

18 (ii) **Alternative Terms in Case of Conflict.** Where the provisions of this
19 Policy would be prohibited by Federal or State law, or where the application of this Policy
20 would violate or be inconsistent with the terms or conditions of a grant or a contract with an
21 agency of the United States or the State of California, and where segregation of funds
22 pursuant to subsection 6.22 (G)(3)(d)(i) is not administratively feasible with regard to some or
23 all of the project in question, then OEWD, in consultation with the awarding department, shall
24 adapt requirements of this Policy into a set of contract provisions that advance the purposes
25 of this Policy to the maximum extent feasible without conflicting with federal or state law or

1 with terms or conditions of the State or Federal grant or contract in question. The awarding
2 department shall include this set of contract provisions in the ~~public works or improvement~~
3 contract for the covered project with regard to the project or portions of the project for which this
4 Policy would conflict with Federal or State requirements.

5 * * * *

6 (8) **Miscellaneous.**

7 * * * *

8 (e) **Existing Project Labor Agreements.** This Policy shall not apply to project
9 labor agreements entered into by awarding departments prior to the effective date of this
10 Policy ("Existing PLAs") or to ~~p~~P~~u~~b~~l~~i~~c~~W~~o~~r~~k~~s or ~~i~~m~~pr~~ov~~em~~en~~t contracts advertised for ~~b~~B~~i~~ds
11 after the effective date of this Policy that are covered by Existing PLAs, where the terms of the
12 Existing PLAs and this Policy are in conflict. Notwithstanding the foregoing, this Policy shall
13 apply to (i) any material amendment to an Existing PLA executed by an awarding department
14 after the effective date of this Policy; (ii) any new ~~p~~P~~u~~b~~li~~c~~W~~o~~r~~k~~s or ~~i~~m~~pr~~ov~~em~~en~~t contract
15 over the ~~t~~T~~h~~r~~e~~s~~h~~o~~l~~d ~~a~~A~~m~~o~~u~~n~~t set forth in subsection 6.22(G)(3)(a) that is added to the scope
16 of an Existing PLA based on a discretionary decision by the awarding department after the
17 effective date of this Policy.~~

18 * * * *

19 (~~H~~H) **Modifications - Requirements.** If it becomes necessary in the prosecution of
20 any ~~p~~P~~u~~b~~li~~c~~W~~o~~r~~k~~s or ~~i~~m~~pr~~ov~~em~~en~~t ~~u~~~~n~~~~d~~e~~r~~~~e~~c~~o~~n~~t~~r~~a~~c~~t to make alterations or modifications or to
21 provide for extras, such alterations, modifications or extras shall be made only on written
22 recommendation of the ~~d~~D~~e~~p~~a~~r~~t~~m~~e~~n~~t ~~h~~H~~e~~a~~d responsible for the supervision of the ~~e~~C~~o~~n~~t~~r~~a~~c~~t,
23 together with the approval of the Mayor or the Mayor's designee or the ~~B~~b~~o~~a~~r~~d or
24 ~~C~~c~~o~~~~m~~m~~i~~s~~s~~i~~o~~n, as appropriate to the department, and also the approval of the Controller,
25 except as hereafter provided. The Mayor or the ~~B~~b~~o~~a~~r~~d or ~~C~~c~~o~~~~m~~m~~i~~s~~s~~i~~o~~n, as appropriate to the~~

1 ~~D~~department, may delegate in writing the authority to approve such alterations, modifications
2 or extras to the Department ~~h~~Head, except as provided below. The Controller may delegate in
3 writing the authority to encumber funds from prior appropriations for such alterations,
4 modifications or extras to the Department ~~h~~Head prior to the certification for payment. Such
5 authority, when granted, will clearly state the limitations of the changes to be encompassed.

6 (1) **Increasing or Decreasing Price.** Alterations, modifications, or extras in any
7 ~~e~~Contract, which will increase or decrease the ~~e~~Contract cost or scope, may be made or
8 allowed only on the written recommendation of the ~~d~~Department ~~h~~Head responsible for the
9 supervision of the ~~e~~Contract stating the amount and basis for such increase or decrease. For
10 any cumulative increase or decrease in price in excess of ~~ten percent~~10% of the original
11 ~~e~~Contract price or scope, the Department ~~h~~Head shall obtain the approval of the Mayor or
12 Mayor's designee or the ~~B~~board or ~~C~~commission as appropriate and also the approval of the
13 Controller notwithstanding any delegation provided for above.

14 (2) **Extensions of Time.** Upon finding that work under a construction ~~e~~Contract
15 cannot be completed within the specified time because of an unavoidable delay as defined in
16 the ~~e~~Contract, the Department ~~h~~Head may extend the time for completion of the work. If the
17 cumulative extensions of time exceeds ~~ten percent~~10% of the original ~~e~~Contract duration, the
18 Department ~~h~~Head shall ~~first~~ obtain the approval of the Mayor, the Mayor's ~~D~~designee, ~~B~~board
19 or ~~C~~commission, as appropriate to the ~~D~~department notwithstanding any delegation provided
20 for above. The Department Head may seek such approval after completion of the work if the
21 Department Head makes a written finding in the time extension that no basis exists to assess liquidated
22 damages for delay against the Contractor. All time extensions shall be in writing, but in no event
23 shall any extension be granted subsequent to the issuance of a certificate of final
24 acceptance~~completion~~.

1 **(aA) Time Extension Not Waiver of City's Rights.** The granting of an extension
2 of time because of unavoidable delays shall in no way operate as a waiver on the part of the
3 City ~~and County~~ or the Department ~~hHead~~, Mayor, ~~Bb~~oard or ~~Ec~~ommission of the right to
4 collect liquidated damages for other delays or of the right to collect other damages or of any
5 other rights to which the City ~~and County~~ is entitled.

6 **(bB) No Extension Granted When Contract Based on Time Estimates.** When
7 any ~~aA~~ward of ~~eC~~ontract has been made in consideration, in whole or in part, of the relative
8 time estimates of ~~bB~~idders for the completion of the work, no extension of time may be
9 granted on such ~~eC~~ontract beyond the time specified for completion, unless the liquidated
10 damages for each day the work is uncompleted beyond the specified time shall be collected;
11 provided, however, that this shall not apply to unavoidable delays due to acts of God.

12 **(eC) Avoidable and Unavoidable Delay; Limitation of Damages for Delay.**
13 The ~~dD~~epartment ~~hH~~ead administering the ~~pP~~ublic ~~wW~~ork ~~or Improvement~~ shall have the
14 authority to specify in the ~~eC~~ontract the delays that shall be deemed avoidable or unavoidable.
15 The City ~~and County~~ shall not pay damages or compensation of any kind to a ~~eC~~ontractor
16 because of delays in the progress of the work, whether such delays be avoidable or
17 unavoidable; provided, however, the City ~~and County~~ may pay for ~~(1i)~~ delays caused to the
18 ~~eC~~ontractor by the City ~~and County~~ and ~~(2ii)~~ such unavoidable delays as may be specifically
19 stated in the ~~eC~~ontract. Such latter delays will be compensated for only under the conditions
20 specified in the ~~eC~~ontract.

21 **(dD) Notice of Delay Required.** The ~~eC~~ontractor shall promptly notify the
22 Department ~~hH~~ead in writing, of all anticipated delays in the prosecution of the work and, in
23 any event, promptly upon the occurrence of a delay, the notice shall constitute an application
24 for an extension of time only if the notice requests such extension and sets forth the
25 ~~eC~~ontractor's estimate of the additional time required together with a full recital of the causes

1 of unavoidable delays relied upon. The Department ~~h~~Head may take steps to prevent the
2 occurrence or continuance of the delay, may classify the delay as avoidable or unavoidable,
3 and may determine to what extent the completion of the work is delayed thereby.

4 (H) **Liquidated Damages.** Any ~~e~~Contract may provide a time within which the
5 ~~e~~Contract work, or portions thereof, shall be completed and may provide for the payment of
6 agreed liquidated damages to the City ~~and Count~~ for every calendar or working day thereafter
7 during which such work shall be uncompleted.

8 (Ji) ~~Retention of~~ **Progressive Payments Authorized; Retentions.** Any ~~e~~Contract for
9 construction services may provide for progressive or milestone payments, if the
10 Advertisement For Bids shall so specify. Each progress or milestone payment shall constitute
11 full compensation for the value of work performed and materials furnished for a specified
12 period, less amounts withheld as a result of dispute or as required by law.

13 (1) For all ~~e~~Contracts entered into on or after the effective date of this
14 ~~Ordinance~~ subsection 6.22(j), from every progress payment, the City shall hold ~~5% percent~~ in
15 retention.

16 (2) Notwithstanding the ~~subsection 6.22(j)(1) subparagraph~~ above, the City may hold
17 greater than ~~5% percent~~ but not more than ~~10% percent~~ in retention if the Department ~~h~~Head
18 responsible for the ~~p~~Public ~~w~~Work determines that the ~~Public~~ ~~w~~Work or ~~i~~Improvement is
19 substantially complex and therefore warrants a higher retention amount, and the retention
20 amount is specified in the Advertisement For Bids. For ~~e~~Contracts with retention amounts
21 greater than ~~5% percent~~, if the Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work
22 determines that the ~~e~~Contract is ~~50% percent~~ or more complete, that the ~~e~~Contractor is making
23 satisfactory progress, and that there is no specific cause for greater withholding, the
24 Department ~~h~~Head, upon the written request of ~~e~~Contractor, may authorize one of the
25 following two options: (~~a~~A) the City shall release part of the retention to the ~~e~~Contractor so that

1 the amount held in retention by the City, after release to the eContractor, is reduced to an
2 amount not less than ~~5% percent~~ of the total value of the labor and materials furnished, and
3 the City shall proceed to retain ~~5% percent~~ of any subsequent progress payment under the
4 eContract; or (~~bB~~) the City shall continue to hold the already withheld retention amount, up to
5 ~~5% percent~~ of the total eContract price, and shall not deduct further retention from progress
6 payments.

7 (3) The Department ~~hHead~~ shall authorize the release of retention, in whole or in
8 part, for work completed by subcontractors certified by ~~CMDthe HRC~~ as LBEs. The
9 Department Head shall do so only upon a written request by the eContractor certifying (~~iA~~) the
10 work by the certified LBE subcontractor is completed and satisfactory in accordance with the
11 plans and specifications for the project; (~~iiB~~) the total amount paid to the certified LBE
12 subcontractor by the eContractor as of the date of the written request and the total amount of
13 the subcontract; and (~~iiiC~~) the amount of retention associated with the work performed by the
14 certified LBE subcontractor. Following a release of such retention, and in order to calculate
15 retention and retention withholding from further progress or milestone payments, the City will
16 reduce the total retention required under the foregoing paragraphs (1) and (2) by the amount
17 paid to the certified LBE subcontractor(s) for whom the City released the retention. The
18 release of retention under this ~~subparagraph~~section 6.22(j)(3) shall not reduce the
19 responsibilities or liabilities of the eContractor or its surety under the eContract or applicable
20 law. ~~For any contract awarded under this Chapter prior to the enactment of this subparagraph, a~~
21 ~~Department head may in his or her sole discretion incorporate this subparagraph by change.~~

22 (4) The Department ~~hHead~~ shall authorize the release of retention, in whole or in
23 part, for work completed by subcontractors under any ~~pPublic~~ wWork eContract awarded under
24 this Chapter with a ~~construction~~ duration of more than two years. The Department ~~hHead~~ shall
25 do so only upon a written request by the eContractor certifying (~~iA~~) the work by the

1 subcontractor is completed and satisfactory in accordance with the plans and specifications
2 for the project; (ii) the total amount paid to the subcontractor by the eContractor as of the date
3 of the written request and the total amount of the subcontract; and (~~iii~~B) the amount of
4 retention associated with the work performed by the subcontractor. The City may issue or
5 authorize the release of retention within six months of the date of the request. Following a
6 release of such retention, and in order to calculate retention and retention withholding from
7 further progress or milestone payments, the City will reduce the total retention required under
8 the foregoing ~~paragraphs~~ subsections (1) and (2) by the amount paid to the subcontractor(s) for
9 whom the City released retention. The release of retention under this subsection 6.22(j)(4)
10 ~~subparagraph~~ shall not reduce the responsibilities or liabilities of the eContractor or its surety
11 under the eContract or applicable law. *For any contract awarded under this Chapter prior to the*
12 *enactment of this subparagraph with a construction duration of more than two years, a Department*
13 *head may in his or her sole discretion incorporate this subparagraph by change order.*

14 (5) Retention shall be withheld solely for the benefit and protection of the City.

15 (6) When the Department ~~h~~HHead responsible for the ~~p~~PPublic ~~w~~WWork determines
16 that the eContract is ~~98%~~ 98 percent or more complete, the Department ~~h~~HHead may reduce
17 retention funds to an amount equal to ~~200%~~ 200 percent of the estimated value of work yet to be
18 completed, plus any amount necessary to cover offsets by the City for liquidated damages,
19 defective work, stop notices, forfeitures, and other charges. The City shall release retention to
20 the eContractor upon the following conditions: (~~a~~A) the eContractor has reached final
21 completion under the eContract terms and conditions and (~~b~~B) the eContract is free of offsets
22 by the City for liquidated damages, defective work and the like, and is free of stop notices,
23 forfeitures, and other charges.

24 (7) For all eContracts awarded under this Chapter, in no event shall the City be
25 liable for interest or charges arising out of or relating to the date the City issues any progress,

1 milestone, or other payment, or the date the City releases all or part of the retention, except
2 that the City will pay interest at the legal rate, as set forth in ~~§~~Section 685.010(a) of the
3 California Code of Civil Procedure, as ~~that section~~ may be amended from time to time, on any
4 improperly withheld amounts commencing no earlier than 90 days after the date the City
5 should have made any progress payment or released all or part of the retention. Under no
6 circumstances shall the legal rate of interest paid by the City under this provision exceed 10%
7 ~~percent~~ per annum. The payment of interest under this provision is the limit of the City's liability
8 with respect to any claim for interest on improperly withheld amounts.

9 ~~(8) For contracts entered into between January 1, 2012 and the effective date of this~~
10 ~~Ordinance, upon the written request of the contractor, the Department head responsible for the public~~
11 ~~work shall have the discretion to reduce retention to 5 percent, pursuant to one of the two options set~~
12 ~~forth in subparagraph (2).~~

13 ~~(Kk)~~ **Inspection and Acceptance of Completed Work; Final Payment.** The

14 Department ~~h~~Head ~~authorized to execute any contract for public works or improvements~~ shall be
15 responsible for the inspection and acceptance of Public Works or Improvements~~such work~~ on
16 completion. Such acceptance shall be in writing and shall include the certificate of the
17 Department ~~h~~Head concerned that the work covered by the ~~e~~Contract has been fully and
18 satisfactorily completed in accordance with the plans and specifications therefor. Receipt of
19 copy of such acceptance in writing shall constitute the Controller's authority to complete any
20 payments due the ~~e~~Contractor under the ~~e~~Contract; provided that the Controller may make
21 such additional investigation or inspection as is provided by Administrative Code Section
22 10.07.

23 ~~(Ll)~~ **Termination for Convenience.** In all ~~e~~Contracts for the construction of any

24 ~~p~~Public ~~w~~Work or ~~i~~Improvement, the Department ~~h~~Head ~~authorized to execute any contract for~~
25 ~~any public work or improvement~~ may include in the specifications setting forth the terms and

1 conditions for the performance of the eContract a provision that the City ~~and County~~ may
2 terminate the performance of work under the eContract whenever the Department ~~h~~Head shall
3 determine, with the approval of the Mayor, the Mayor's designee or the ~~B~~board or
4 Commission concerned, that such termination is in the best interest of the City ~~and County~~.
5 Any such termination shall be effected by delivery to the eContractor of a notice of termination
6 specifying the extent to which performance of work under the eContract is terminated and the
7 date upon which such termination becomes effective. The Department ~~h~~Head is hereby
8 authorized to include within such construction eContract the appropriate language to
9 implement this subsection 6.22(l).

10 (Mm) **Articles Not to be Prison Made.** No article furnished under any eContract
11 awarded under the provisions of this Chapter shall have been made in a prison or by convict
12 labor except for articles made in prisons or by convicts under the supervision and control of
13 the California Department of Corrections and limited to articles for use by the City ~~and County~~'s
14 detention facilities.

15 (Nn) **Employment of Apprentices.** All construction eContracts awarded under this
16 Chapter shall require the Contractor to comply with the requirements of the State
17 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4
18 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,
19 and shall require the Contractor to include in its subcontracts the obligation for subcontractors
20 to comply with the requirements of the State Apprenticeship Program.

21 (Oo) **Safety.** All construction eContracts awarded under this Chapter 6 shall require
22 the Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
23 Health statutes and regulations.

24 Additionally, all construction eContracts awarded under this Chapter 6 shall require
25 the Contractor and all of its subcontractors to abide by the requirements of Administrative

1 Code Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with
2 exceptions.

3 (P~~2~~) **Claims.** The City shall consider only those claims for additional payment under
4 a ~~public work~~ eContract that are certified and that conform to the eContract requirements for
5 claims, pricing, and schedule.

6 (1) **Claims by Contractors.** The eContractor shall certify under penalty of perjury
7 that (~~A~~) the claim is made in good faith; (~~B~~) the supporting data are accurate and complete
8 to the best of Contractor's knowledge and belief; and (~~C~~) the amount request accurately
9 reflects the Contract adjustment for which the Contractor believes the City is liable. An
10 individual or officer authorized to act on behalf of the Contractor shall execute the certification.

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

16 (~~Q~~q) **Contractor Prompt Payment.** All construction eContracts under this Chapter
17 shall require the eContractor to pay its subcontractors within ~~seven~~7 calendar days after receipt
18 of each progress payment from the City, unless otherwise agreed to in writing in advance by
19 both eContractor and subcontractor. In the event that there is a good faith dispute over all or
20 any portion of the amount due on a progress payment from a eContractor to a subcontractor,
21 the eContractor may withhold the disputed amount but shall pay the undisputed amount.

22 Any eContractor who violates this subsection 6.22(q) shall pay to the subcontractor a
23 penalty of 2% of the amount due per month for every month or portion thereof that payment is
24 not made. This subsection 6.22(q) is enforceable in a court of competent jurisdiction, and is
25 not intended to create a private right of action against the City ~~and County of San Francisco~~.

1
2 **SEC. 6.23. PUBLIC WORKS TO BE PERFORMED BY THE CITY; BIDS BY CITY**
3 **DEPARTMENTS; PROCEDURE UPON REJECTION OR FAILURE OF BIDS.**

4 **(Aa) Public Works Less Than or Equal to the Threshold Amount.** Any ~~p~~Public
5 ~~w~~Work or ~~i~~Improvement estimated to cost less than or equal to the Threshold Amount may be
6 performed by the employment of the necessary labor and purchase of the necessary
7 materials and supplies directly by the City ~~and County~~.

8 **(Bb) Bids or Quotes by City Departments.** Appropriate City ~~and County~~ departments
9 may file ~~sealed~~ bBids or submit Quotes for the execution of any work to be performed under a
10 eContract and shall not be required to furnish security or submit information relative to
11 financial qualifications as provided in this Chapter. Any bBid submitted by a department of the
12 City ~~and County~~, if it is the lowest bBid, must be approved by the Controller before the aAward
13 of the eContract. If the bBid of a City ~~and County~~ department, as investigated and approved by
14 the Controller, is the lowest, the eContract shall be awarded to the department which shall
15 record accurate unit costs of all direct and indirect charges incurred under any such contract.
16 Such unit costs shall be reported to and audited by the Controller monthly and on completion
17 of the work.

18 The Controller shall maintain records of bBids filed by departments in relation to the
19 total direct and indirect cost of each such work and shall report thereon periodically to the
20 Mayor. The Controller may refuse to approve eContracts with a department shown to be
21 repeatedly underbidding on eContract work and failing to complete same within the eContract
22 price or time.

23 **(Cc) Procedure Upon Rejection or Failure of Bids.** When bBids have been
24 advertised pursuant to the required procedures and a department receives no bBids ~~are received~~,

1 or only one ~~r~~Responsive ~~b~~Bid ~~is received~~ from a ~~r~~Responsible ~~b~~Bidder, the ~~d~~Department ~~h~~Head
2 shall take the following actions, as appropriate:

3 (1) **No Bids Received.** If no ~~b~~Bids are received, the ~~d~~Department ~~h~~Head shall
4 determine (~~a~~A) whether further outreach efforts would result in contractors submitting ~~b~~Bids
5 and/or (~~b~~B) whether removal or modification of certain requirements in the ~~e~~Contract would
6 result in contractors submitting ~~b~~Bids, provided that such requirements are not required by
7 statute or law and their removal or modification would not compromise the interests of the City
8 ~~and County~~. If the ~~d~~Department ~~h~~Head determines that steps (~~a~~A) and/or (~~b~~B), above, would
9 likely result in contractors submitting ~~b~~Bids, then the ~~d~~Department ~~h~~Head shall re-bid the work.
10 If the ~~d~~Department ~~h~~Head determines that neither step (~~a~~A) nor (~~b~~B), above, would likely result
11 in contractors submitting ~~b~~Bids, then the ~~d~~Department ~~h~~Head, with the approval of the Mayor,
12 the Mayor's designee, or the board or commission concerned, as appropriate, may negotiate
13 with any qualified contractor or may order the work to be executed by the City ~~and County~~.

14 (2) **One Responsive Bid Received; No Other Bids Received.** If only one
15 ~~r~~Responsive ~~b~~Bid is received from a ~~r~~Responsible ~~b~~Bidder, and no other ~~b~~Bids are submitted
16 for the same work, the ~~d~~Department ~~h~~Head may recommend the ~~a~~Award of a ~~e~~Contract to the
17 sole ~~b~~Bidder at the ~~b~~Bid price received, provided that the ~~b~~Bid price does not exceed the
18 engineer's estimate for the work. If the ~~b~~Bid price received exceeds the engineer's estimate,
19 the ~~d~~Department ~~h~~Head shall determine (~~a~~A) whether further outreach efforts would result in
20 more than one ~~b~~Bid and/or (~~b~~B) whether removal or modification of certain requirements in the
21 ~~e~~Contract would result in more than one ~~b~~Bid, provided that such requirements are not
22 required by statute or law and their removal or modification would not compromise the
23 interests of the City ~~and County~~. If the ~~d~~Department ~~h~~Head determines that steps (~~a~~A) and/or
24 (~~b~~B), above, would likely result in more than one ~~b~~Bid at bid prices substantially lower than the
25 bid price received, then the ~~d~~Department ~~h~~Head shall re-bid the work. If the ~~d~~Department

1 hHead determines that neither step (aA) nor (bB), above, would likely result in more than one
2 bBid at bid prices substantially lower than the bid price received, then the dDepartment
3 hHead, with the approval of the Mayor, the Mayor's designee, or the board or commission for
4 the department concerned, as appropriate, may negotiate with the sole bBidder or any qualified
5 contractor, or may order the work to be executed by the City ~~and County~~. The cost of
6 negotiated work or the cost of work executed by the City ~~and County~~ shall not exceed any bid
7 price received for the same work.

8 (3) **One Responsive Bid Received; Other Nonresponsive Bids Received.** If

9 only one rResponsive bBid is received from a rResponsible bBidder and other, nonresponsive
10 bBids and/or bBids by nonresponsible bBidders are submitted for the same work, the
11 dDepartment hHead may recommend the aAward of a eContract to the sole rResponsive,
12 rResponsible bBidder at the bid price received, provided that the bid price does not exceed
13 the engineer's estimate for the work. If the rResponsive bid price received exceeds the
14 engineer's estimate, the dDepartment hHead shall determine (aA) whether the qualifications
15 for bBidders were too onerous and not necessary for the work and/or (bB) whether one or
16 more of the nonresponsive bBids could be easily cured and whether the bBidders that
17 submitted such bBids are still interested in bidding on the work. If the dDepartment hHead
18 determines that ~~the~~ steps (aA) and/or (bB), above, would likely result in more than one
19 rResponsive bBid by rResponsible bBidders, at bid prices substantially lower than the bid price
20 received, then the dDepartment hHead shall re-bid the work. If the dDepartment hHead
21 determines that neither step (aA) nor (bB), above, would result in more than one rResponsive
22 bBid by rResponsible bBidders at bid prices substantially lower than the bid price received,
23 then the dDepartment hHead, with the approval of the Mayor, the Mayor's designee, or the
24 board or commission concerned, as appropriate, may negotiate with the sole rResponsible
25 bBidder or any qualified contractor, or may order the work to be executed by the City ~~and~~

1 ~~County~~. The cost of negotiated work or the cost of work executed by the City ~~and County~~ shall
2 not exceed any bid price received for the same work.

3 (4) All ~~e~~Contracts ~~a~~Awarded under this subsection 6.23(~~C~~), including negotiated
4 ~~e~~Contracts, shall require that the substitution of subcontractors be in accordance with
5 California Public Contract Code ~~s~~Section 4107.

6
7 **SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT; PREVAILING**
8 **WAGE REQUIREMENTS.**

9 (~~Aa~~) Subject to the approval of the Mayor and Director of the Department of
10 Administrative Services, the Labor Standards Enforcement Officer shall develop and
11 administer a plan for the enforcement of the ~~p~~Prevailing ~~w~~Wage requirements and other labor
12 standards imposed by the Charter and this Chapter ~~6~~ on public work *or improvements as defined*
13 *in Section 6.22(e) ~~contractors~~*. The Labor Standards Enforcement Officer shall coordinate his or
14 her activities with federal and state labor standards agencies. The Labor Standards
15 Enforcement Officer shall direct the City's enforcement of the ~~p~~Prevailing ~~w~~Wage requirements
16 and other labor standards imposed by the Charter and this Chapter on ~~public work~~ contractors
17 as directed by the Mayor, and to this end all City departments shall cooperate with the Labor
18 Standards Enforcement Officer. The Labor Standards Enforcement Officer has the authority
19 to seek for violations of ~~p~~Prevailing ~~w~~Wage, working conditions and apprenticeship
20 requirements all of the penalties imposed by this Chapter, including the authority to file
21 charges, in the same manner and to the same extent as a ~~d~~Department ~~h~~Head, which may
22 lead to the debarment of the contractor under Article V of this Chapter. The Labor Standards
23 Enforcement Officer shall oversee the training of City personnel in the area of labor standards
24 enforcement. In accordance with applicable law, the Mayor may enter into a contract for
25 investigative and monitoring services to further the purposes of this ~~s~~Section 6.24. In

1 evaluating the qualifications of persons seeking that contract, the Mayor shall consider,
2 among other relevant factors, the experience of those persons in monitoring and investigating
3 labor standards compliance.

4 (Bb) Subject to the fiscal and budgetary provisions of the Charter, the Office of
5 Labor Standards Enforcement is authorized to receive from departments awarding ~~public work~~
6 contracts the amount reasonably calculated to pay for the costs, including litigation costs, of
7 enforcing the City ~~p~~Prevailing ~~W~~Wage requirements and other labor standards for contracts
8 awarded by those departments. The Labor Standards Enforcement Officer shall supervise the
9 expenditure of all funds appropriated for enforcement of ~~p~~Prevailing ~~W~~Wage requirements and
10 other labor standards imposed by the Charter and this Chapter 6 on ~~public works~~ contractors.

11 (Cc) The Labor Standards Enforcement Officer shall establish an administrative
12 procedure to address allegations of labor standards violations in connection with any ~~public~~
13 ~~work~~ contract under this Chapter 6. The Labor Standards Enforcement Officer shall have sole
14 authority over the administration of this complaint procedure. The complaint procedure shall
15 include but need not be limited to the following: (1) any person may file a complaint, written or
16 oral, alleging one or more violations of any labor standards requirement imposed by this
17 Chapter 6 on public work contractors; (2) before beginning to investigate the complaint, the
18 Labor Standards Enforcement Officer shall determine if the allegations of the complaint are
19 sufficient and based on that assessment shall determine to either dismiss it or proceed with
20 an investigation; (3) if the Labor Standards Enforcement Officer at any time determines that
21 the allegations contained in the complaint are without merit, the Labor Standards Enforcement
22 Officer shall notify the complainant; and (4) if the Labor Standards Enforcement Officer finds
23 that any allegations in a complaint have merit, the Labor Standards Enforcement Officer shall
24 proceed in accordance with the enforcement procedures under Section 6.22 of this Chapter.
25 This complaint procedure is applicable to allegations of labor standards violations in

1 connection with any public work contract under this Chapter 6, but is not applicable to those
2 matters under the administrative jurisdiction of the San Francisco Human Rights Commission.
3 This procedure shall not preclude the Labor Standards Enforcement Officer from initiating or
4 proceeding with an investigation on his or her own authority. All ~~public work e~~Contractors and
5 departments engaged in public work shall cooperate fully with the Office of Labor Standards
6 Enforcement in connection with any investigation of any complaint filed in accordance with
7 this complaint procedure. The Labor Standards Enforcement Officer may interview, either at
8 the worksite or elsewhere, any witness who may have information relative to a complaint.
9

10 **SEC. 6.25. CLEAN CONSTRUCTION.**

11 (a) In addition to the definitions of this Chapter, the following ~~D~~definitions apply to this
12 Section 6.25:

13 (1) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty
14 acids derived from vegetable oils or animal fats. designated B100 or "neat biodiesel", and
15 meeting the requirements of ASTM D 6751. B20 is a mixture of 20% biodiesel and 80%
16 petroleum.

17 ~~(2) "City" means the City and County of San Francisco.~~

18 (3) "Clean Construction" means performing all work required to be performed
19 under a ~~p~~Public ~~W~~Works ~~or Improvement e~~Contract (1) utilizing only off-road equipment and off-
20 road engines fueled by biodiesel fuel grade B20 or higher and (2) utilizing only high use
21 equipment that either (~~A~~) meets or exceed Tier 2 standards for off-road engines or (~~B~~)
22 operates with the most effective verified diesel emission control strategy.

23 (4) "Director" means the Director of the Department of the Environment, or his or
24 her designee.

1 ~~(5)~~—"High Use Vehicles" means off-road vehicles or off-road engines used an
2 aggregate of 20 or more hours during any portion of the project.

3 ~~(6)~~—"Major ~~e~~Construction ~~p~~Project" means a ~~p~~Public ~~W~~ork ~~or~~ Improvement to be
4 performed within the geographic limits of the City that is estimated to require ~~twenty~~(20) or
5 more cumulative days of work to complete.

6 ~~(7)~~—"Most effective verified diesel emission control strategy" means a device,
7 system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the
8 California Code of Regulations to achieve the highest level of pollution control from an off-
9 road vehicle.

10 ~~(8)~~—"Off-road engine" means a diesel internal combustion engine (including the fuel
11 system) including without limitation, internal combustion engines used to power excavators,
12 backhoes, bulldozers or similar equipment used in any project subject to this ~~Chapter~~Section
13 6.25. "Off-road engine" does not include portable engines or stationary engines (engines that
14 remain at one location for more than 12 months).

15 ~~(9)~~—"Off-road vehicle" means a vehicle that is propelled by an off-road engine of
16 twenty-five horsepower or greater, including, without limitation, excavators, backhoes,
17 bulldozers and similar equipment used in any project subject to this ~~Chapter~~Section 6.25. "Off-
18 road vehicle" does not include a horticultural maintenance vehicle used for landscaping
19 purposes that is powered by an off-road engine of ~~sixty-five~~65 horsepower or less and that is
20 not used in any construction program or project. "Off-road vehicle" does not include portable
21 equipment.

22 —~~(10)~~ ~~Public work means a contract for the erection, construction, renovation, alteration,~~
23 ~~improvement, demolition, excavation, installation, or repair of any public building, structure,~~
24 ~~infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility that is performed~~

1 ~~by or for the City, and the cost of which is to be paid wholly or partially out of moneys deposited in the~~
2 ~~City Treasury or out of trust monies under the control of or collected by the City.~~

3 (H)—"Sensitive Site" means a hospital or other medical institution with facilities for
4 inpatient care, a residential care facility providing lodging board and care for a period of 24
5 hours or more to seven or more persons, a child-care facility providing less than 24-hour care
6 for 13 or more children, or an elementary or secondary school, either public or private, or
7 residences.

8 (I2)—"Tier 2 Standards" are those standards for an off-road engine as described in
9 Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of
10 Regulations, as amended.

11 (b) **Clean Construction on Major Construction Projects.**

12 (1) **Requirement.** Clean Construction shall be required for all ~~public works contracts~~
13 ~~for m~~Major ~~e~~Construction ~~p~~Projects solicited on or after a date two years from the effective
14 date of this ~~Ordinance~~Section 6.25. For all ~~such e~~Contracts ~~for Major Construction Projects~~, the
15 ~~d~~Department ~~h~~Head or officer calling for ~~b~~Bids shall specify in the Advertisement for Bids that
16 Clean Construction is required for the performance of all work unless a waiver of all or part of
17 the requirements of this ~~Chapter~~Section 6.25 has been granted under ~~S~~subsection 6.25(b)(3).

18 (2) **Contract Provisions and liquidated damages.** Every ~~e~~Contract for which
19 Clean Construction is required under ~~this~~Section 6.25(b)(1)(A) ~~or Section 6.25(b)(1)(B)~~ shall
20 contain provisions, in a form to be approved by the City Attorney: (A) requiring Clean
21 Construction, (B) authorizing waivers as set forth in Section 6.25(b)(3), and (C) specifying
22 liquidated damages in the amount of \$100.00 per day per each piece of off-road equipment
23 and each off-road engine utilized to complete work on the project in violation of ~~the Clean~~
24 ~~Construction~~requirements of this Section.

1 (3) **Waivers.** Waivers from the requirements of this ~~Chapter~~Section 6.25 are
2 available under any of the following circumstances:

3 (A) **Emergency.** A contract awarding department may grant itself a waiver from
4 this ~~Chapter~~Section 6.25 when the contract awarding authority certifies in writing to the
5 Director, prior to the Controller's contract certification, that the ~~e~~Contract is being ~~a~~Awarded
6 under the emergency provisions of ~~Administrative Code~~ Section 6.60 and that there is no
7 immediately available contractor capable of performing the work as Clean Construction. In
8 such case, the contract awarding authority shall within two business days notify the Director in
9 writing of the emergency that prevented compliance with this ~~Chapter~~Section 6.25 and describe
10 steps being taken to safeguard public and City employee health during the noncomplying
11 work, and shall explain steps to reduce the likelihood that a similar emergency waiver would
12 be required in the future.

13 (B) **Performance Standards.** The Director may grant a waiver in whole or part
14 from this ~~Chapter~~Section 6.25 prior to the solicitation of ~~b~~Bids upon a showing by the contract
15 awarding authority that there are no complying off-road vehicles or off-road engines for some
16 or all of the required work, provided that the contract awarding authority provides a written
17 memorandum explaining the need for the waiver and the steps that will be taken to safeguard
18 public and City employee health during the noncomplying work.

19 (C) **Cost Prohibitive.** The Director may grant a waiver in whole or part from this
20 ~~Chapter~~Section 6.25 prior to the solicitation of ~~b~~Bids upon a showing by the contract awarding
21 authority that compliance would be cost prohibitive under the circumstances, provided that the
22 contract awarding authority provides a written memorandum explaining the need for the
23 waiver and the steps that will be taken to safeguard public and City employee health during
24 the noncomplying work.

1 (D) **Other.** The Director may grant a waiver in whole or part from this
2 ~~Chapter~~Section 6.25 prior to the solicitation of ~~b~~Bids or may waive the biodiesel and/or
3 emissions standards for Clean Construction in advance of any violation of the Clean
4 Construction requirements as to specific off-road equipment or off-road engines essential to
5 complete the work provided that the contract awarding authority provides a written
6 memorandum demonstrating a reasonable basis for the waiver including a reasonable plan to
7 minimize the use of noncomplying equipment or engines, and the steps that will be taken to
8 safeguard public and City employee health during the noncomplying work, and further
9 provided that such post-award waivers for specific equipment may not exceed 25% of the
10 total operating hours of all off-road vehicles or off-road engines used on the project.

11 (~~E4~~) **Rules and Regulations.** After a public hearing, the Director, in consultation
12 with the contract awarding authorities, may promulgate rules, regulations or guidelines as
13 necessary or appropriate to carry out the purposes and requirements of this ~~Chapter~~Section
14 6.25 and may adopt forms necessary to implement this ~~Chapter~~Section 6.25.

15 (~~F5~~) **Publication of Waivers Granted.** The Department of the Environment and
16 the contract awarding authorities shall maintain and post a list of all waivers granted on their
17 ~~D~~departmental ~~W~~websites in a manner that can easily be accessed by the public.

18 (~~46~~) **Clean Construction Projects encouraged for other City Contracts.** In recognition of
19 the health and other environmental benefits of Clean Construction, contract-awarding
20 authorities are encouraged to require contractors to meet the standards for Clean
21 Construction, as appropriate, in contracts not otherwise covered by this ~~Chapter~~Section 6.25.

22 (~~57~~) **Penalty.**

23 (A) Whenever any City department finds, after an investigation by the contract
24 awarding authority and the City Attorney, that a person or entity being considered for a
25 ~~e~~Contract, or under ~~e~~Contract, with the City has, in connection with the bidding, execution or

1 performance of any City eContract, falsely represented to the City the nature or character of
2 the off-road vehicles and/or off-road engines to be utilized, or utilized, on the eContract, the
3 City department shall have the authority to impose such sanctions or take such other actions
4 as are designed to ensure compliance with the provisions of this ~~Chapter~~Section 6.25.

5 (B) Measures which are available to the City to enforce this ~~Chapter~~Section 6.25
6 upon finding a violation pursuant to ~~Subsection~~6.25-(b)(57)(A) include, but are not limited to
7 the following:

- 8 (i) Refusal to certify the aAward of a eContract;
- 9 (ii) Suspension of a eContract;
- 10 (iii) Ordering the withholding of City funds due the eContractor under any City
11 contract;
- 12 (iv) Ordering the recession of a eContract based upon a material breach of
13 contract provisions or pertaining to representations made in bidding, execution or
14 performance of the eContract;
- 15 (v) Debarment of a bBidder, proposer or eContractor from eligibility for
16 providing commodities or services to the City for a period not to exceed ~~five~~5 years, with a
17 right to review and reconsideration by the City upon a showing of corrective action indicating
18 violations are not likely to reoccur.

19 (~~C~~) Nothing in this ~~Chapter~~Section 6.25 shall be construed to relieve a eContractor of
20 responsibility to perform the eContract.

21
22 **ARTICLE III: PROFESSIONAL SERVICES CONTRACTING**

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

1 Notwithstanding any other provision of this Administrative Code, when a department
2 is seeking outside temporary professional design, consultant or ~~e~~Construction ~~m~~Management
3 services for a ~~p~~Public ~~w~~Work or Improvement project, where the fee for such services shall
4 exceed the ~~m~~Minimum ~~e~~Competitive ~~a~~Amount, as defined below, the department shall procure
5 such services through a competitive process based primarily on qualifications.

6 (Aa) **Minimum ~~e~~Competitive ~~a~~Amount.** The ~~m~~Minimum ~~e~~Competitive ~~a~~Amount for
7 temporary outside professional service ~~e~~Contracts shall be ~~\$100,000~~\$110,000. On January 1,
8 ~~2015~~20, and every ~~five~~5 years thereafter, the Controller shall recalculate the ~~m~~Minimum
9 ~~e~~Competitive ~~a~~Amount to reflect any proportional increase in the Urban Regional Consumer
10 Price Index from January 1, 20105, rounded to the nearest \$1,000.

11 (Bb) **Selection Process.** For professional services ~~e~~Contracts in excess of the
12 ~~m~~Minimum ~~e~~Competitive ~~a~~Amount, the ~~d~~Department ~~h~~Head ~~for the department empowered to~~
13 ~~contract for the public work~~ shall designate one or more panels to review proposals ~~and~~
14 ~~interview~~ and rate respondents with respect to a request for proposals or qualifications for a
15 professional services ~~e~~Contract. A panel shall consist of not fewer than two persons. The
16 ~~d~~Department ~~h~~Head may establish a multi-tier selection process whereby, for example, a
17 technical panel recommends a shortlist of qualified respondents and a second panel ranks the
18 shortlist.

19 The ~~d~~Department ~~h~~Head shall ensure that all panel members are impartial and that
20 all respondents are treated fairly. The panel members rating the respondents shall do so
21 according to their independent assessment of the respondent's qualifications for the ~~p~~Public
22 ~~w~~Work project; questions relating to a respondent's expertise, qualifications and experience
23 shall remain within the sole purview of the panel members.

24 ~~Any rating sheet completed by any panel member may be considered a matter of public~~
25 ~~record, but the names of the individual panel members shall not. Any name appearing on a rating sheet~~

1 ~~produced in accordance with the Public Records Act or the San Francisco Sunshine Ordinance shall be~~
2 ~~redacted.~~

3 (c) **Negotiation.** Following the selection process outlined above, and should the
4 department concerned desire to enter into a ~~e~~Contract, the ~~d~~Department ~~h~~Head shall invite the
5 highest-ranked qualified respondent to negotiate a ~~professional services agreement~~Contract to the
6 extent provided for in the request for proposals. In the event that the ~~d~~Department ~~h~~Head
7 determines, in the ~~d~~Department ~~h~~Head 's sole discretion, that negotiations are unfruitful, the
8 ~~d~~Department ~~h~~Head shall terminate negotiations in writing and may then invite the next
9 highest-ranked respondent to negotiate a ~~e~~Contract. In such event, the ~~d~~Department ~~h~~Head
10 shall as soon as practicable make a report to the Mayor, Mayor's designee board or
11 commission as appropriate to the department.

12 (d) Procedure Upon Rejection or Failure of Proposals. If no Responsive proposals are
13 received from qualified proposers, the Department Head shall determine (1) whether further outreach
14 efforts would result in respondents submitting proposals and/or (2) whether removal or modification of
15 certain requirements in the Contract or request for proposals or qualifications would result in
16 respondents submitting responsive proposals, provided that such requirements are not required by law
17 and their removal or modification would not compromise the interests of the City. If the Department
18 Head determines that steps (1) and/or (2), above, would likely result in respondents submitting
19 responsive proposals, then the Department Head shall reissue the request for proposals or
20 qualifications. If the Department Head determines that neither step (1), nor (2) above, would likely
21 result in respondents submitting responsive proposals, then the Department Head, with the approval of
22 the Mayor, the Mayor's designee, or the board or commission concerned, as appropriate, may
23 negotiate with any qualified Contractor for the professional services sought by the request for
24 proposals or qualifications.

1 (e) Procedure Upon Contractor's Failure to Deliver. When a Contractor fails to deliver a
2 service of the quality, in the quantity, or in the manner specified in the Contract within the time
3 specified in the Contract, the department may terminate the Contract and/or procure such service from
4 any source. The department's authority to procure services from other sources as specified in this
5 subsection 6.40(e) shall not preclude the City's exercise of any other remedies, including termination of
6 the Contract.

7
8 **SEC. 6.41. REQUESTS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

9 All requests for competitive proposals or qualifications for temporary design,
10 consultant, or ~~e~~C~~onstruction~~ ~~m~~M~~anagement~~ services shall conform to and at a minimum
11 require the following:

12 (Aa) **Evaluation Criteria.** The ~~d~~D~~epartment~~ ~~h~~H~~ead~~ ~~authorized to execute the contract~~
13 shall determine the criteria by which the design, consultant, or ~~e~~C~~onstruction~~ ~~m~~M~~anagement~~
14 service professionals shall be evaluated, on a project-by-project basis. Such criteria shall be
15 included as a part of any request for proposals or qualifications. The criteria shall be based
16 primarily on qualifications and experience relevant to the services needed for the project.
17 Except as prohibited by law, the ~~d~~D~~epartment~~ ~~h~~H~~ead~~, in his ~~or~~ her sole discretion, may
18 determine that, in the best interests of the City ~~and County of San Francisco~~, a consultant who
19 participated in the master plan, conceptual phase or other preliminary work for a project, may
20 compete to provide professional services in future phases of such project. In such event, the
21 consultant may not use, nor may the selection panel consider, the consultant's prior work on
22 the project to establish its experience or qualifications in the competitive process.

23 (Bb) **Reservation of Rights to Reject or Cancel the Request for Proposals in**
24 **Whole or Part.** The ~~d~~D~~epartment~~ ~~h~~H~~ead~~ ~~authorized to execute the contract~~, upon approval of the
25 Mayor, the Mayor's designee or the board or commission, as appropriate, may reject any or

1 all proposals, in whole or in part, received in response to a request for proposals or
2 qualifications. The right to reject shall be reserved in any request for proposals or
3 qualifications, but the failure to include such reservation shall not abrogate the rights of the
4 ~~Department~~ ~~Head~~ under this ~~Section~~ 6.41 or give rise to any right by any respondent.

5 (c) **Award and Certification Required.** All requests for proposals or qualifications
6 shall contain the following language [wording in brackets should be chosen as appropriate to
7 the department]:

8 In accordance with San Francisco Administrative Code Chapter 6, no proposal is
9 accepted and no contract in excess of [the Threshold Amount] is awarded by the City and
10 County of San Francisco until such time as [(1) for departments with boards or commissions,
11 (a) the department head recommends the contract for award and (b) the board or commission
12 then adopts a resolution awarding the contract; or [(2) for departments under the Mayor, (a)
13 the Mayor or the Mayor's designee approves the contract for award and (b) the department
14 head then issues and order of award]. Pursuant to Charter Section 3.105, all contract awards
15 are subject to certification by the Controller as to the availability of funds.

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

19
20 **SEC. 6.42. PROFESSIONAL SERVICES CONTRACT TERMS.**

21 All ~~Contracts~~ for temporary design, consultant, and ~~Construction~~ ~~Management~~
22 services are professional services Contracts, which ("professional services") shall contain the
23 following minimum terms and conditions:

24 (Aa) **Guaranteed Maximum Costs.** Professional service ~~Contracts~~ shall provide
25 for a Guaranteed Maximum Cost, including fees, travel and related expenses as necessitated

1 by the project. Any modification to the Guaranteed Maximum Cost must be approved by the
2 ~~a~~Department ~~h~~Head in writing and approved by the Mayor, the Mayor's designee or the board
3 or commission concerned, as appropriate, and the Controller.

4 (Bb) **Insurance.** Notwithstanding any other provisions of this Chapter 6, all
5 professional service eContracts must conform to the insurance requirements established by
6 the Risk Manager. The Risk Manager shall develop uniform insurance requirements for City
7 eContracts subject to this Chapter 6 and shall publish such requirements in the Risk
8 Manager's Manual. The Risk Manager shall review and update such insurance requirements
9 on an annual basis.

10 (Cc) **Indemnification.** All professional services eContracts awarded under this
11 Chapter 6 shall require that the eContractor fully indemnify the City ~~and County~~ to the maximum
12 extent provided by law, such that each eContractor must save, keep, bear harmless and fully
13 indemnify the City ~~and County~~ and any of its officers or agents from any and all liability,
14 damages, claims, judgments or demands for damages, costs or expenses in law or equity that
15 may at any time arise.

16 This indemnification requirement may not be waived or abrogated in any way for
17 any eContract without the recommendation of the ~~City's~~ Risk Manager and the express
18 permission and approval of the Board of Supervisors.

19 (Dd) **Assignment.** No eContract shall be assigned except upon the recommendation
20 of the ~~a~~Department ~~h~~Head concerned and with the approval of the Mayor or the Mayor's
21 designee, relative to the department under the Mayor's jurisdiction or the approval of the
22 board or commission concerned for departments not under the Mayor.

23 (Ee) **Modifications.** Professional service eContracts may be modified only by written
24 instrument, granted and approved by the City ~~and County~~ in the same manner the underlying
25 eContract was awarded.

1 (~~F~~f) **Contractor Prompt Payment.** All professional services eContracts under this
2 Chapter 6 shall require the eContractor to pay its subcontractors within seven calendar days
3 after receipt of each progress payment from the City, unless otherwise agreed to in writing in
4 advance by both eContractor and subcontractor. In the event that there is a good faith dispute
5 over all or any portion of the amount due on a progress payment from a eContractor to a
6 subcontractor, the eContractor may withhold the disputed amount but shall pay the undisputed
7 amount.

8 Any eContractor who violates this subsection 6.42(f) shall pay to the subcontractor a
9 penalty of 2% of the amount due per month for every month or portion thereof that payment is
10 not made. This subsection 6.42(f) is enforceable in a court of competent jurisdiction, and is not
11 intended to create a private right of action against the City ~~and County of San Francisco~~.

12
13 **SEC. 6.43. AS-NEEDED PROFESSIONAL SERVICES CONTRACTS.**

14 Department Heads are authorized to procure as-needed professional services for temporary
15 professional services to supplement the expertise or experience of the department for one or more
16 Public Work or Improvement projects in conformance with Sections 6.40 through 6.42, with the
17 following limitations:

18 (a) The Department Head shall designate an as-needed professional service Contract as a
19 single-project or multiple-project Contract in the request for proposals or qualifications.

20 (b) Work shall be assigned by contract service orders. Contract service orders shall include a
21 scope of services, time, and a not-to-exceed fee.

22 (1) A multiple-project as-needed Contract shall provide for a not-to-exceed amount and
23 a Contract term of not more than five years from the date of certification by the Controller of the
24 Contract, including all modifications. The cumulative modifications to a multiple-project as-needed
25 Contract shall not exceed 150% of the original not-to-exceed amount. No contract service order or

1 multiple contract service orders for services provided for any single project, whether in one phase or
2 multiple phases, shall cumulatively exceed the Threshold Amount, including all modifications. A
3 department may issue or modify any contract service order(s) to exceed the foregoing limit only upon
4 the Department Head's written determination establishing the justification for proceeding under the as-
5 needed Contract rather than soliciting services through a formal competitive process.

6 (2) A single-project as-needed Contract shall provide for a not-to-exceed amount and
7 identify the public work. The scope of the contract service orders must be limited to that single Public
8 Work or Improvement. The limitations in subsection 6.43(b)(1) shall not apply to single-project as-
9 needed Contracts.

10
11 **ARTICLE IV: EXEMPTIONS FROM ARTICLES II AND III AND ALTERNATIVES TO**
12 **COMPETITIVE BIDDING**

13 **SEC. 6.60. EMERGENCY REPAIRS, WORK AND CONTRACTS.**

14 (Aa) **Declaration of Emergency.** The Board of Supervisors may declare an
15 emergency and may direct any ~~d~~Department ~~h~~Head to perform any repair or other emergency
16 work in any manner the Board determines to be in the best interests of the City ~~and County of~~
17 ~~San Francisco.~~

18 (Bb) **Other Determinations of Emergency.** In an actual emergency as defined or
19 described below, the Department Head responsible for addressing the emergency may declare an
20 emergency with immediate notice to the President of the Board of Supervisors, the Mayor, the
21 Controller, and the board or commission having jurisdiction over the area affected by the emergency, if
22 any. The Department Head responsible for addressing the emergency may execute the repair,
23 reconditioning or other work or ~~e~~Contract necessitated by the emergency ~~may be executed by the~~
24 ~~department head responsible for such work~~ in the most expeditious manner, in accordance with
25 the procedures set forth below.

1 (€c) **Emergency Defined.** For purposes of this Chapter, an "actual emergency"

2 means a sudden, unforeseeable and unexpected occurrence involving a clear and imminent
3 danger, demanding immediate action to prevent or mitigate loss of or damage to, life, health
4 property or essential public services. An "actual emergency" shall also mean the discovery of
5 any condition involving a clear and imminent danger to public health or safety, demanding
6 immediate action. Examples of an actual emergency may include, but are not limited to, the
7 following:

8 (1) Weather conditions, fire, flood, earthquake or other unforeseen occurrences of
9 unusual character; or

10 (2) The breakdown or imminent breakdown of any plant, equipment, structure,
11 street or public work necessitating immediate emergency repair or reconditioning to safeguard
12 the lives or property of the citizens; or the property of the City ~~and County~~; or to maintain the
13 public health or welfare; and

14 (~~a~~A) Including the installation, repair, construction and alteration of crossings and
15 switch work and special work in connection therewith at street and other railway crossings
16 and at street intersections when the same is to be done by or for the Municipal Transportation
17 Agency; or

18 (~~b~~B) Including the installation, repair, construction and alteration of the fire alarm,
19 police communication and traffic signal systems, when the same is to be performed by or for
20 the Department of Technology or the Municipal Transportation Agency; or

21 (~~e~~C) Including the work of making connections, installing gate valves, installing or
22 transferring services and performing such other work therewith to existing water pipes when
23 the same is to be done by or for the Public Utilities Commission and when such work will
24 leave one or more fire hydrants or water consumers without water; or

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

5 (~~Dd~~) **Approvals Required for Determination of Emergency.** If the estimated cost of
6 the emergency work is less than or equal to ~~\$250,000~~ the Threshold Amount the ~~d~~Department
7 ~~h~~Head may proceed with the work without additional approvals. If the estimated cost of the
8 emergency work exceeds ~~\$250,000~~ the Threshold Amount, the ~~d~~Department ~~h~~Head prior to
9 authorizing the commencement of the work, must first secure the approval in writing of the
10 Mayor or the Mayor's designee or the president of the board or commission concerned as
11 appropriate to the department. For all cases where the cost of the emergency work exceeds
12 ~~\$250,000~~ the Threshold Amount, the ~~d~~Department ~~h~~Head shall also obtain the approval of the
13 Board of Supervisors.

14 If the emergency does not permit the required approvals of the emergency determination
15 to be obtained before work is commenced or the ~~e~~Contract(s) entered into, such approvals
16 shall be obtained as soon thereafter as it is possible to do so. In such event, the ~~d~~Department
17 ~~h~~Head concerned shall notify the Controller immediately of the work involved or the
18 ~~e~~Contract(s) entered into and the estimated cost thereof and shall notify the Board of
19 Supervisors not more than seven days after work has been commenced.

20 (~~Ee~~) **Exemptions.** Contracts ~~a~~Awarded in accordance with this ~~s~~Section under
21 emergency circumstances as described and defined above are exempt from the requirements
22 of this Chapter 6 and Chapters 12A, 12B, 12C and Chapter 14B. ~~However, the department head~~
23 ~~must comply with the certification requirement of Administrative Code Chapter 14B.~~ It is, however,
24 the policy of the Board of Supervisors for contracting departments to make every effort to
25 comply with the provisions of Chapters 12A, 12B, 12C and Chapter 14B. In order to effectuate

1 this policy, the ~~d~~Department ~~h~~Heads ~~authorized to enter into construction contracts~~ and their staff
2 members shall collaborate with ~~CMD~~ ~~the HRC Director and HRC staff members~~ periodically to
3 create a list of responsible contractors qualified to perform various types of emergency work,
4 making every effort to include qualified, responsible, and certified LBE contractors on that list.
5 ~~The CMD~~ ~~HRC~~ shall be responsible for outreach efforts to make sure that certified LBE
6 contractors are aware of the opportunity to be considered for the list. The ~~e~~Contract ~~a~~Awarding
7 departments or commissions shall be responsible for evaluating and determining whether
8 contractors are responsible and qualified to perform the various scopes of work. The
9 ~~d~~Department ~~h~~Head s ~~of departments authorized to execute construction contracts~~ shall report
10 quarterly to the Board of Supervisors regarding LBE inclusion on the list of responsible and
11 qualified contractors for emergency ~~e~~Contracts, a description of each emergency ~~e~~Contract
12 ~~a~~Awarded, the reason why the work was performed under these emergency procedures, and
13 whether the emergency ~~e~~Contract was ~~a~~Awarded to an LBE contractor. Such reports shall be
14 referred to a Board committee for public hearing.

15 (Ff) **Indemnification For Emergency Contracts.** Department ~~h~~Heads responsible
16 for any emergency work are hereby authorized to (~~a~~1) waive any requirement that a
17 ~~e~~Contractor performing such emergency work indemnify the City ~~and County~~ and/or (~~b~~2) enter
18 into a ~~e~~Contract ~~which that~~ provides that the City ~~and County~~ indemnify such ~~e~~Contractor, except
19 that the City ~~and County~~ shall in no event indemnify a contractor for the contractor's gross
20 negligence or willful misconduct.

21
22 **SEC. 6.61. DESIGN-BUILD.**

23 Design-build is an approach to the procurement of design and construction services, whereby
24 a single entity, known as the "Design-Builder," is retained to provide both professional design services
25 and general contractor services. ~~The d~~Department ~~h~~Heads ~~authorized to execute contracts for public~~

1 ~~work projects~~ are authorized to seek bids or proposals from qualified private entities ("~~d~~Design-
2 ~~b~~Builders") for design-build construction and/or financing of public work projects under the
3 following conditions:

4 (Aa) Before the request for qualifications is issued, the ~~d~~Department ~~h~~Head shall
5 determine that a design-build ~~program~~delivery method is necessary or appropriate to achieve
6 anticipated cost savings or time efficiencies, or both, and that such a ~~process~~delivery method is
7 in the public's best interest. For projects involving financing of Public Work or Improvements
8 provided by the Design-Builder, the Department Head must first seek the approval of the board or
9 commission if the department is under the jurisdiction of a board or commission, or the City
10 Administrator, if the department is under the jurisdiction of the Mayor. The Department Head shall
11 consult with the Office of the Controller to establish criteria for evaluating private financing proposals.

12 (Bb) ~~If the proposed public work project is for the use or benefit of a department that is~~
13 ~~under the jurisdiction of a commission, then such commission shall first approve the solicitation of~~
14 ~~design-build and/or finance proposals. If the public work project is not for the use or benefit of a~~
15 ~~department under the jurisdiction of a commission, then the City Administrator must first approve this~~
16 ~~process.~~Competitive Bid or Fixed Budget Limit Procurement.

17 (C) **Pre-Qualification.** When selecting a Design-Builder based on competitive bid or
18 proposals for a fixed budget limit project, the Department ~~h~~Head~~s~~ shall ~~require that prospective~~
19 ~~design-builders be pre-qualified by~~ Design-Builders, or a combination of the Design-Builders and one or
20 more of their subcontractors prior to issuing an invitation to submit bids or proposals~~to submit~~
21 ~~proposals on a specific project.~~ The procedure for pre-qualification is as follows:

22 (1A) The ~~d~~Department ~~h~~Head shall issue a request for qualifications inviting
23 interested parties to submit their qualifications to perform the project. The request for
24 qualifications shall include criteria by which the prospective ~~d~~Design-~~b~~Builders will be
25 evaluated during the qualification process. The evaluation criteria shall be based on

1 qualifications and experience relevant to the services needed for the project, ~~including~~ The list
2 of criteria may include, but is not limited to the following: (i) qualifications to design-build the
3 proposed project; (ii) evidence of financial capacity; (iii) experience on similar projects; ~~(iv)~~
4 ~~commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14;~~
5 ~~(iv)~~ ability to collaboratively and cooperatively deliver projects on time and on budget; ~~(v)~~
6 history of liquidated damages for delay and other damages paid on prior projects, and prior
7 litigation ~~history~~; ~~(vi)~~ reputation with owners of prior projects; ~~(vii)~~ claims history with
8 insurance carriers and sureties; and ~~(ixviii)~~ ~~compliance with all of the requirements established in~~
9 ~~the request for qualifications and~~ other criteria that the ~~d~~Department ~~h~~Head may deem
10 appropriate. The ~~d~~Department ~~h~~Head shall set objective scoring criteria and incorporate the
11 criteria into any scoring procedure.

12 (2B) The ~~d~~Department ~~h~~Head shall designate a panel to review pre-qualification
13 responses ~~and interview~~ and rate respondents with respect to the request for qualifications.
14 The panel, at the Department Head's discretion, may interview respondents and evaluate designs,
15 concepts and/or approaches to the project as part of the pre-qualification process. Only those
16 respondents found to be qualified will be eligible to submit bids or proposals. The list of pre-
17 qualified respondents shall be valid for not more than two years following the date of initial
18 pre-qualification. The Department Head may restrict bidding or proposing to a shortlist of no fewer
19 than three pre-qualified Design-Builders.

20 ~~(3) The department head may establish a pre-qualification selection process whereby the~~
21 ~~panel ranks respondents and recommends a shortlist of no fewer than three (3) pre-qualified~~
22 ~~respondents. The department head may restrict bidding to short-listed respondents. The shortlist of pre-~~
23 ~~qualified respondents shall be valid for not more than two years following the date of initial pre-~~
24 ~~qualification.~~

1 **(D2) Request for ProposalsBids.** The ~~d~~Department ~~h~~Head shall issue a request for
2 ~~proposalsbids~~ inviting pre-qualified ~~d~~Design-~~b~~Builders to submit ~~proposalsbids~~ for the project in
3 conformance with the requirements set forth in Section 6.21(a), except that the Department Head is not
4 required to advertise for bids. The request for ~~proposalsbids~~ shall include a criteria package
5 describing preliminary design criteria and performance criteria for the project, as well as any
6 other information deemed necessary to describe adequately the City's needs for the project.
7 ~~————(E) Final Selection Process.~~The ~~d~~Department ~~h~~Head may recommend the award of a
8 ~~e~~Contract to the ~~r~~Responsible bidder submitting the lowest ~~r~~Responsive bid. If the award to
9 that bidder is not made for any reason, the ~~d~~Department ~~h~~Head may recommend the award of
10 a ~~e~~Contract to the ~~r~~Responsible bidder submitting the next lowest ~~r~~Responsive bid, and so
11 forth. ~~The department head may, at his or her sole discretion, conduct any negotiations that are~~
12 ~~necessary to effectuate the award of a contract.~~

13 **(3) Request for Proposals for Fixed Budget Limit Projects.** As an alternative to receiving
14 competitive bids, the Department Head may issue a request for proposals stating a fixed budget limit
15 for the project and inviting pre-qualified Design-Builders to submit proposals for the project. The
16 request for proposals shall provide a description of preliminary design criteria and performance
17 criteria for the base scope of the project. The request for proposals shall also provide a description of
18 preliminary design criteria and performance criteria for additional desired project enhancements. The
19 proposal shall include the Design-Builder's agreement to fully deliver the base scope of the project and
20 may also include any of the additional desired project enhancements the Design-Builder offers to fully
21 deliver within the fixed budget limit. The proposals shall be evaluated based upon stated objective
22 criteria, which may include qualifications, experience, design proposals, cost, and the value of the
23 proposed enhancements. The Department Head may recommend the award of a Contract to the
24 highest-ranked proposer. If the award to that proposer is not made for any reason, the Department
25 Head may recommend the award of a Contract to the next highest-ranked proposer, and so forth.

1 (4) Procurement of Trade Subcontractors. The Department head may require that all
2 subcontractors be listed at the time of bid or proposal or may identify specific trades for which the
3 Design-Builder must list subcontractors. Following award of the Contract, the Design-Builder shall
4 add or substitute trade subcontracts with a value exceeding 0.5% of the Contract amount applicable to
5 the construction work as follows:

6 (A) Unless otherwise authorized by the Department Head, each trade subcontract
7 opportunity shall be advertised as provided in Section 6.21(a)(1);

8 (B) The Design-Builder shall establish reasonable qualification criteria and standards;

9 (C) The Design-Builder may then award the subcontract either on a best value basis or to
10 the Responsible bidder with the lowest Responsive bid;

11 (D) All subcontractors, whether listed at the time of bid or proposal or added or
12 substituted under this subsection 6.61(b)(4), shall be afforded all of the protections of the California
13 Subletting and Subcontracting Fair Practices Act, at California Public Contract Code Section 4100 et
14 seq., as amended from time to time.

15 ~~(Fc) Alternative Final Selection Process~~**Best Value Procurement.** If the project seeks
16 private financing proposals and/or the ~~d~~Department ~~h~~Head determines that it is in the public's
17 best interest to consider qualifications and/or other subjective criteria (e.g., quality of design
18 proposal) as part of the final selection process, the ~~d~~Department ~~h~~Head shall require that
19 prospective proposers be pre-qualified pursuant to the process in Section 6.61(a)(1) or shall issue a
20 combined request for qualifications and proposals inviting ~~pre-qualified d~~Design-~~b~~Builders, or a
21 combination of Design-Builders and their Core Trade Subcontractors meeting specified minimum
22 qualification criteria, to submit design-build proposals, which will be evaluated based upon
23 qualifications, stated subjective criteria, and project and/or financing costs. The license and
24 business tax requirements of subsections 6.21(a)(6) and (8) shall apply to requests for proposals under
25 this subsection 6.61(c).

1 (1) ~~The Department Head may request design-builders to create partial designs, which~~
2 ~~will be evaluated as part of the final selection process. The department head may offer a reasonable~~
3 ~~stipend to short-listed design-builders to create partial designs. The receipt of a stipend shall be~~
4 ~~contingent upon a design-builder's proposal being responsive to the request for proposals.~~

5 ~~—————(2) The department head may require short-listed design-builders who are creating partial~~
6 ~~designs to participate in one or more confidential review meetings with City representatives and/or~~
7 ~~selection panel members during the proposal preparation period. The purpose of the review meetings~~
8 ~~will be to ensure that each design-builder's partial design is proceeding in a manner that is consistent~~
9 ~~with the requirements of the City as set forth in the criteria package. Discussions during review~~
10 ~~meetings shall be limited to objective elements of the criteria package.~~

11 ~~—————(3) Design-builders submitting private financing proposals shall provide evidence of the~~
12 ~~commitment of funds necessary to privately finance the proposed projects to completion.~~

13 ~~—————(4) The ~~d~~Department ~~h~~Head shall designate a qualified panel to evaluate design-~~
14 ~~build proposals and rank the proposals to determine which provides the overall best value to~~
15 ~~the City and County in regard to the following criteria: The non-cost evaluation criteria may include,~~
16 ~~but is not limited to the following: (iA) plan for expediency in completing the proposed project;~~
17 ~~(iiB) lifecycle cost to the City and County; (iiiC) qualifications to finance the proposed project;~~
18 ~~(ivD) quality of design proposal; (vE) compliance with the goals set by the Human Rights~~
19 ~~Commission and requirements of the Administrative Code Chapters 12 and 14; (vi) commitment to~~
20 ~~meet the City hiring goals (e.g., CityBuild or First Source Hiring); (viiF) if private financing is~~
21 ~~sought, commitment of funds, cost of funds and terms to the City; and (viiiG) compliance with~~
22 ~~all the requirements and other criteria established by the Department ~~h~~Head in the request for~~
23 ~~proposals. The cost criterion shall constitute not less than sixty five percent (6540%) of the~~
24 ~~overall evaluation.~~

25 ///

1 (2) Design proposals

2 (A) The Department Head may request Design-Builders to create partial designs, which
3 will be evaluated as part of the selection process. The Department Head may offer a reasonable stipend
4 to short-listed Design-Builders to create partial designs who are not awarded the Contract. The receipt
5 of a stipend shall be contingent upon a Design-Builder's proposal being responsive to the request for
6 proposals. Stipends paid in accordance with this subsection are exempt from the requirements of the
7 Administrative Code, including but not limited to this Chapter and Chapters 12B, 12C and Chapter
8 14B.

9 (B) The Department Head may require short-listed Design-Builders who are creating
10 partial designs to participate in one or more confidential review meetings with City representatives
11 and/or selection panel members during the proposal preparation period. The purpose of the review
12 meetings will be to ensure that each Design-Builder's partial design is proceeding in a manner that is
13 consistent with the requirements of the City as set forth in the criteria package. Discussions during
14 review meetings shall be limited to objective elements of the criteria package.

15 (3) Design-Builders submitting private financing proposals shall provide evidence of the
16 commitment of funds necessary to privately finance the proposed projects to completion.

17 (G4) The Department Head may, at his or her sole discretion, conduct any negotiations
18 that are necessary to effectuate the award of a Contract and that are fair and reasonable to the
19 competitive process. Subject to paragraph (K) below, ~~The~~ ~~Department~~ ~~Head~~ may recommend
20 the award of a ~~e~~Contract to the highest-ranked ~~design-builder~~ proposer. If the award to the
21 highest-ranked ~~design-builder~~ proposer is not made for any reason, the ~~Department~~ ~~Head~~
22 may recommend the award of a ~~e~~Contract to the next highest-ranked ~~design-builder~~ proposer,
23 and so forth. ~~The department head may, at his or her sole discretion, conduct any negotiations that~~
24 ~~are necessary to effectuate the award of a contract.~~

1 ~~(H) The City shall retain the absolute discretion to determine, at any time during the~~
2 ~~process, not to proceed with any proposed project, which right may be exercised without liability to~~
3 ~~design-builders for costs incurred during the entire pre-qualification, proposal and negotiation~~
4 ~~process, and such rights shall be reserved in all requests for qualifications and proposals.~~

5 ~~(I) The competitive bid requirements of this Chapter shall not apply to the selection of~~
6 ~~design-builders under this Section 6.61.~~

7 ~~(J) Design-builders shall comply with all applicable requirements set forth in San Francisco~~
8 ~~Administrative Code Chapters 12 and 14.~~

9 ~~(K) All final contracts for a public work project that involve a design-build and/or finance~~
10 ~~program shall be subject to the award provisions of Article I of this Chapter. If the proposed contract~~
11 ~~involves a financing program, the Capital Planning Committee must review and report on the proposed~~
12 ~~project before the board, commission, Mayor or his/her designee takes any action with respect to~~
13 ~~award of the contract.~~

14 **(L5) Procurement of Trade Subcontractors.** With the approval of the Department
15 ~~hHead~~s, ~~may require~~ the selected ~~dDesign-bBuilder~~ ~~to~~may procure trade work ~~contracts through a~~
16 ~~pre-qualification and competitive bid process, as~~in conformance with the following procedures:

17 ~~(1A) Pre-qualification~~Competitive Bid Procurement. The ~~dDepartment~~ ~~hHead~~ shall
18 require the ~~dDesign-bBuilder~~ to pre-qualify ~~all~~ trade subcontractors, subject to ~~the a process,~~
19 ~~which may be a minimum qualification application, pre-approved~~ ~~of~~by the ~~dDepartment~~ ~~hHead~~.
20 The ~~dDesign-bBuilder~~ shall attempt to establish a pool of no fewer than three pre-qualified
21 subcontractors for each trade package, ~~subject to the approval of the department head.~~

22 ~~—————(2) Competitive Bid.~~ The ~~department head shall require the dDesign-bBuilder~~ ~~to~~shall
23 receive sealed bids from the pre-qualified trade subcontractors. The bid security provisions of
24 Section 6.21 will not apply. ~~The design-builder shall award a trade package subcontract~~ All trade
25 packages procured pursuant to this subsection 6.61(c)(5)(A) shall be awarded to the ~~#~~Responsible

1 bidder submitting the lowest ~~responsive bid, except that the design-builder may negotiate and~~
2 ~~award a portion of the trade package subcontracts as provided in paragraph (3), below. Only those~~
3 ~~Administrative Code provisions that normally apply to subcontracts will apply to the trade package~~
4 ~~subcontracts.~~

5 (B) Core Trade Subcontractors. Upon approval of the Department Head, the Design-
6 Builder may procure design, preconstruction, or design-assist services from Core Trade
7 Subcontractors based on qualifications only. As soon as practical, or as otherwise approved by the
8 department, each Core Trade Subcontractor shall provide a written cost proposal for construction of
9 the related trade package. Before authorizing the Design-Builder to subcontract with a Core Trade
10 Subcontractor for the trade package, the department must validate the cost proposal by an independent
11 cost estimate. The Department Head, in his or her sole discretion, may require the Design-Builder to
12 competitively procure the trade package by competitive bid in conformance with subsection
13 6.61(b)(5)(A).

14 (C) Self-Performed Work. The Department Head may specify in the design-build request
15 for proposals one or more scopes of work that may be self-performed by the Design-Builder. Before
16 authorizing the Design-Builder to self-perform work, the Department Head must determine the cost of
17 the work to be fair and reasonable, either by an independent cost estimate or by a competitive bidding
18 process.

19 (3D) Direct Negotiations. The ~~d~~Department ~~h~~Head may authorize the ~~d~~Design-
20 ~~b~~Builder to negotiate subcontracts for trade work as appropriate for the project, up to an
21 amount not exceeding ~~seven and one-half percent~~ 7.5% of the total estimated construction
22 subcontract costs. The ~~d~~Department ~~h~~Head shall establish a maximum dollar value for each
23 negotiated trade subcontract as appropriate for the project.

24 (d) The City shall retain the absolute discretion to determine, at any time during the process,
25 not to proceed with any proposed project, which right may be exercised without liability to Design-

1 Builders for costs incurred at any point during the pre-qualification, proposal and negotiation process,
2 and such rights shall be reserved in all requests for qualifications and proposals.

3 (e) All Contract terms and working conditions of Section 6.22 shall apply to design-build
4 Contracts. Only those Administrative Code provisions that normally apply to subcontracts will apply to
5 the trade package subcontracts procured under this Section 6.61. The Design-Builder may request
6 permission from the Department Head to require corporate surety payment and performance bonds for
7 some or all subcontracts.

8 (f) Design-builders shall comply with all applicable requirements set forth in Administrative
9 Code Chapters 12 and 14.

10 (g) All Contracts procured under this Section 6.61 are subject to the award provisions of
11 Section 6.3. If the proposed Contract involves a financing program, the Capital Planning Committee
12 must review and report on the proposed project before the board, commission, Mayor or his/her
13 designee takes any action with respect to award of the Contract.

14 (Mh) All actions heretofore taken by a department head consistent with the
15 provisions of this section are hereby approved.

16 ~~(N) All design-build projects that are substantially underway as of the effective date of this~~
17 ~~Subsection 6.61(N) that do not comply with the mandatory pre-qualification requirements of Subsection~~
18 ~~6.61(C) are hereby approved, provided that the applicable department heads shall only consider~~
19 ~~proposals from qualified design-builders.~~

21 **SEC. 6.62. JOB ORDER CONTRACTS.**

22 The job order contracting system ("JOC") provides for an indefinite quantity eContract
23 with a predefined set of bBid items that are assigned on a periodic or task order basis for the
24 performance of ~~public work~~ maintenance, repair and minor construction projects. ~~The~~

1 ~~d~~Department ~~h~~Heads ~~authorized to execute contracts for public work projects~~ are authorized to
2 utilize JOC according to the procedures set forth below.

3 (Aa) Each JOC ~~e~~Contract is to be advertised for competitive ~~b~~Bids in accordance
4 with the procedures set forth in this Chapter 6 and awarded to the ~~r~~Responsible ~~b~~Bidder who
5 submits the lowest ~~r~~Responsive ~~b~~Bid.

6 (Bb) The Advertisement For Bids shall include unit prices and detailed technical
7 specifications for each construction task contemplated to be performed under the JOC
8 ~~e~~Contract. Each task item shall include direct costs for material, equipment and labor.
9 Construction tasks shall be grouped by trade.

10 (Cc) The Advertisement For Bids ~~for a JOC contract~~ shall contain the City's estimate
11 regarding the percentage of work under the JOC ~~e~~Contract that will be performed by each
12 trade. The Advertisement For Bids shall also require the Contractor to commit to an LBE
13 Subcontractor Participation Requirement Goal, as set by ~~CMD~~the Human Rights Commission, in the
14 performance of ~~service~~task orders under the JOC Contract. Upon completion of the JOC
15 Contract term, ~~the Human Rights Commission~~CMD shall verify compliance with the LBE
16 Subcontractor Participation Requirement under the provisions of Administrative Code Chapter 14B.
17 Departments may designate specific JOC Contracts as limited set asides for Micro-LBEs as
18 provided under Chapter 14B of the Administrative Code.

19 (Dd) ~~The~~ Contractor's ~~b~~Bid shall include a subcontractor list in conformance with
20 Section 6.21A ~~(a) of this Chapter~~ and Chapter 14B of the Administrative Code at the time of bid or
21 at the time of a task order as appropriate. All requests for substitutions of subcontractors shall
22 be made and considered under California Public Contract Code Section 4107, as may be
23 amended from time to time. Notwithstanding this requirement, if a listed subcontractor
24 confirms in writing that it is not available to perform one or more ~~work~~task orders, the
25 ~~e~~Contractor may request to add without penalty a subcontractor to perform under the ~~work~~task

1 order(s) at no additional cost to the City. The aggregate value of the work performed by
2 subcontractors added to substitute for listed but unavailable subcontractors shall not exceed
3 20% of the original eContract amount. Specialty trade work unanticipated at the time of bid,
4 requiring the addition of one or more subcontractors, shall be considered the performance of
5 a change order under California Public Contract Code Section 4107(c). The addition of any
6 subcontractor under any circumstances or for any purpose shall be effected by change order
7 or eContract modification. Prior to any added subcontractor performing any ~~service~~task order
8 work, the awarding department shall confirm the license, insurance coverage, and other
9 qualifying criteria as required by law.

10 (Ee) Contractors submitting bBids on the JOC eContract shall state in their bBids an
11 adjustment on a percentage basis either increasing or decreasing the unit prices for all
12 construction tasks set forth in the bBid documents. There may be a single adjustment factor
13 that applies to all tasks. For example, an adjustment factor of 25% below the unit prices
14 stated in the bBid documents would be bid as .75. All of the ~~contractor's~~ profit, overhead and
15 indirect costs shall be included in the adjusted unit prices.

16 (Ef) The Advertisement For Bids and the contract specifications shall contain a
17 maximum dollar amount of the JOC eContract, which maximum amount shall not exceed
18 \$5,000,000 five million dollars. In no case shall itThe cumulative modifications to a JOC eContract
19 ~~shall~~ result in a contract sum ~~not to exceeding one hundred fifty percent~~150% of the original
20 eContract amount.

21 (Gg) JOC eContracts shall provide for an expiration term of not more than five years,
22 including all modifications. However, the dDepartment hHead shall not issue any new worktask
23 orders under the JOC eContract after ~~three~~four years from the date the Contract is of
24 ~~award~~certified by the Controller.

1 (h) The contracting terms and working conditions of Section 6.22 shall apply to JOC
2 Contracts, except that the Department Head may authorize the Contractor to file the bonds required by
3 Section 6.22(a) after Contract execution but prior to the execution of any task order. The Department
4 Head shall require the Contractor to issue bonds for a sum of not less than 100% of the task orders
5 issued under the JOC Contract or 25% of the Contract amount, whichever is greater.

6 (i) Projects will be assigned under the JOC eContract on a ~~worktask~~ order basis at
7 the sole discretion of the ~~d~~Department ~~h~~Head concerned. Each ~~worktask~~ order shall include a
8 time certain for completion of the work and an appropriate sum for liquidated damages for
9 delay. Each ~~worktask~~ order shall also include a list of the subcontractors performing work
10 under such order, with each subcontractor's name, business address, San Francisco
11 business tax registration number, contractor license number, scope of work, and data as may
12 be required by ~~the Human Rights Commission~~CMD. The ~~worktask~~ order price shall be no more
13 than the calculated unit prices and the bid adjustment factor. No work order shall exceed
14 ~~\$400,000~~ the Threshold Amount, including all modifications. A department may issue or modify
15 any work order(s) to exceed the ~~foregoing limit~~Threshold Amount only upon the ~~d~~Department
16 ~~h~~Head's written ~~determination establishing the urgency of the work and the~~ justification for
17 proceeding under this Section 6.62 rather than by formal competitive process.

18 (i) A eContractor who enters into a JOC eContract with a particular City department
19 is not eligible during the term of such JOC eContract to submit a ~~b~~Bid on a subsequent JOC
20 eContract advertised by the same contracting department, except in the following circumstances:
21 ~~however, a contractor may submit a bid on a subsequent JOC contract advertised by the same~~
22 ~~contracting department if~~ (1) the eContractor's existing JOC eContract will expire in 120 days or
23 fewer; (2) ~~of if the contractor-contracting department~~ has ~~performed work~~issued task orders valued
24 by the City in an amount equal to or exceeding 90% of the maximum dollar amount of the
25 existing JOC eContract; or (3) the subsequent JOC Contract is funded by a different source of

1 government funds (e.g., Federal, State, Local) than the funding source used for the existing JOC
2 Contract. Nothing in this section shall preclude a Contractor from simultaneously bidding on multiple
3 JOC Contracts advertised by one City department prior to award of a JOC Contract by that
4 department.

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

7 Department Heads are authorized to execute Contracts for hazardous materials abatement
8 work ("Abatement Work") in accordance with the following procedures:

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

13 (Aa) ~~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
16 according to the requirements of this Chapter 6 and Chapters 12B, 12C and ~~14B-12D.A~~,
17 relevant to professional services Contracts.

18 (Bb) ~~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 for Abatement
21 Work on an "if-and as-needed" basis with those Contractors. Each master agreement for
22 Abatement Work shall state the maximum total dollar value of work each Contractor is
23 authorized to perform during the Contract period.

24 (Cc) When the Department Head determines that: (1) hazardous materials on public
25 property must be expeditiously abated; (2) there is inadequate time to issue an Advertisement for Bids

1 in accordance with this Chapter 6; and (3) the department personnel who will manage the work have
2 the appropriate training, then task orders for Abatement Work may be issued as follows:

3 The ~~D~~department shall seek price ~~q~~Quotations for performance of the Abatement
4 ~~W~~Work from at least three of the ~~e~~Contractors with master agreements. The ~~contract~~task order
5 for the Abatement ~~W~~Work will be ~~award~~issued to the ~~e~~Contractor submitting the lowest
6 ~~q~~Quotation, except as otherwise provided herein. The ~~D~~department shall keep a record of
7 such ~~q~~Quotations and a register of all ~~awards made thereunder~~task orders issued under master
8 agreements for Abatement Work. In the event that the ~~D~~department is unable to obtain three
9 ~~q~~Quotations, the ~~Director~~Department Head shall base the ~~award~~issuance of a task order on the
10 ~~q~~Quotation or ~~q~~Quotations received. If the ~~Director~~Department Head believes that the public
11 interest would best be served by accepting other than the lowest ~~q~~Quotation, he or she is
12 hereby authorized to accept the ~~q~~Quotation that in his or her discretion will best serve the
13 public interest. The ~~Director~~Department Head may reject any and all ~~q~~Quotations and request
14 new ~~q~~Quotations.

15 (d) The department may authorize the Contractor to file corporate surety bonds as required in
16 Section 6.22(a), or after Contract execution but prior to the issuance of any work. The bonds shall be
17 for a sum of not less than 100% of the cumulative value of all work issued under the master agreement.

18
19 **SEC. 6.64. AS-NEEDED CONSTRUCTION CONTRACTS.**

20 A Department Head is authorized to execute Contracts for construction services on an as-
21 needed basis, with definite or indefinite quantities of work, in accordance with the following
22 procedures:

23 (a) General As-Needed Contracts. A ~~d~~Department ~~h~~Head ~~authorized to execute public~~
24 ~~work and professional service contracts~~ may issue an Advertisement For Bids for construction
25 services ~~or a request for proposals or qualifications for professional services~~ on an as-needed

1 basis, with ~~definite or indefinite quantities of work.~~ Work shall be to be assigned on a by contract
2 service orders based on costs contained in the Bid. ~~None of the requirements of this Chapter or~~
3 ~~Administrative Code Chapters 12B, 12C or 12D.A are waived for as-needed contracts.~~ The ~~All~~ as-
4 needed ~~e~~ Contracts shall provide for a not-to-exceed ~~price~~ amount and an expiration term of not
5 more than five years, including all modifications. ~~However, t~~ The ~~d~~ Department ~~h~~ Head shall not
6 issue any new contract service order after ~~three~~ four years from the date ~~of award~~ the Contract
7 is certified by the Controller. Additionally, the cumulative modifications to ~~an~~ the as-needed
8 ~~e~~ Contract shall ~~result in a contract sum~~ not to exceed ~~one hundred fifty percent~~ 150% of the
9 original ~~e~~ Contract amount. ~~Before any item of work is commenced under an as-needed contract, the~~
10 ~~cost of such work must be certified by the Controller as to the availability of funds.~~ No contract
11 service order or multiple contract service orders for any single ~~p~~ Public ~~w~~ Work, whether in one
12 phase or multiple phases, shall cumulatively exceed \$200,000, ~~including all modifications.~~ ~~For~~
13 ~~departments with capital programs over \$1 Billion, no contract service order or multiple contract~~
14 ~~service orders, as described above, shall cumulatively exceed \$400,000, including all modifications~~ the
15 Threshold Amount. A department may issue or modify any contract service order(s) to exceed
16 the ~~foregoing limits~~ Threshold Amount only upon the ~~d~~ Department ~~h~~ Head's written determination
17 establishing the ~~urgency of the work and the~~ justification for proceeding under this Section 6.64
18 rather than by formal competitive process.

19 (b) Master As-Needed Agreements. The Department Head may execute master as-needed
20 agreements, on an "if-and-as-needed" basis with Contractors who can establish experience, expertise,
21 and quality of work. Master as-needed agreements shall provide for an expiration term of not more
22 than five years from the date of certification by the Controller, including all modifications. A
23 Contractor may apply for a master as-needed agreement under this subsection 6.64(b) by providing the
24 department with a statement of its experience and qualifications and other information as requested by
25

1 the department. Within 60 days of receiving such information, the department shall advise the applicant
2 of its eligibility for an award of a master as-needed agreement.

3 For performance of specific tasks, the department shall seek Quotations from at least three
4 of the Contractors with master as-needed agreements. The department shall issue a contract service
5 order for the work to the Contractor submitting the lowest Quotation, except as provided below. In the
6 event that the department is unable to obtain three quotations, the Department Head shall base the
7 issuance of the contract service order on the Quote or Quotes received. The Department Head may
8 reject any and all Quotations and request new Quotations. No contract service order or multiple
9 contract service orders for any single Public Work, whether in one phase or multiple phases, shall
10 cumulatively exceed the Threshold Amount, including all modifications. Additionally, the cumulative
11 modifications to an as-needed agreement shall not exceed 150% of the original Contract amount.

12 (c) Except as provided below, all of the requirements of this Chapter 6 and Administrative
13 Code Chapters 12B, 12C and 14B apply to as-needed Contracts.

14 (1) The Department Head may authorize the Contractor to file corporate surety bonds as
15 required in Section 6.22(a) after execution of the as-needed Contract, but prior to the execution of any
16 contract service order. The bonds shall be for a sum of not less than 100% of the cumulative value of
17 all issued contract service orders under the as-needed Contract or at least 25% of the Contract
18 amount, whichever is greater.

19 (2) The Department Head may require the Contractor to include a subcontractor list in
20 conformance with Section 6.21(a) and Chapter 14B of the Administrative Code at time of Bid or at the
21 time of contract service order, as appropriate to the Contract.

22 (d) ~~The d~~Department ~~h~~Heads ~~authorized to execute public work and professional service~~
23 ~~contracts~~ shall report quarterly to the Board of Supervisors regarding the department's use of
24 as-needed ~~e~~Contracts and the actual amount of participation of ~~MLBE and WBE~~ subcontractors
25 or subconsultants ~~that were listed on prime contractors' bid(s) or proposal(s)~~ to determine whether

1 ~~MBE/WLBE~~ Subcontractor Participation Requirements ~~subcontracting participation goals~~ are being
2 met on as-needed eContracts. Such reports shall be referred to a Board committee for public
3 hearing.

4
5 **SEC. 6.65. CONTRACTING FOR ~~ELEVATOR, ESCALATOR, SECURITY, FIRE~~**
6 **PROTECTION OR FIRE ALARM EQUIPMENT AND SYSTEMS, INSPECTION,**
7 **MAINTENANCE AND REPAIR WORK.**

8 Department ~~h~~Heads ~~who are authorized to execute public work contracts under this~~
9 ~~Chapter~~ are ~~hereby~~ authorized to award eContracts for the inspection, maintenance and repair
10 services of existing equipment or systems, including but not limited to: elevator, escalator,
11 security, fire protection, ~~or~~ fire alarm, power distribution, chillers, pumping, heating, ventilation and
12 air conditioning ("HVAC"), supervisory control and data acquisition ("SCADA"), public address,
13 airfield drainage, and sewage and freshwater systems ("special services") in accordance with the
14 following procedures:

15 (Aa) The department shall award master agreement eContracts, on an "if-and-as-
16 needed" basis to ~~special~~ service providers who can establish experience, expertise, and
17 quality of work. A potential ~~special~~ service provider may apply for a master agreement under
18 this ~~s~~Section 6.65 by providing the department with a statement of its experience and
19 qualifications and other information as requested by the department. Within 60 days of
20 receiving such information, the department shall advise the applicant of its eligibility for an
21 award of a master agreement. Master agreements for ~~special~~ services under this Section 6.65
22 shall conform to the insurance, indemnification and ~~p~~Prevailing ~~w~~Wage requirements of
23 Section 6.22 ~~of this Chapter~~. Master agreements shall provide for an expiration term of not
24 more than five years from the date ~~of the Contract is awarded~~ certified by the Controller, including all
25 modifications.

1 (Bb) For performance of specific tasks, the department shall seek price qQuotations
2 from at least three of the ~~special~~ service providers with master agreements. The department
3 shall issue a contract service order for the work to the provider submitting the lowest
4 qQuotation, except as provided below. In the event that the department is unable to obtain
5 three qQuotations, the dDepartment hHead shall base the issuance of the contract service
6 order on the qQuote or qQuotes received. If the dDepartment hHead believes that the public
7 interest would best be served by accepting other than the lowest qQuotation, he or she is
8 hereby authorized to accept the qQuotation that in his or her discretion will best serve the
9 public interest. The dDepartment hHead may reject any and all qQuotations and request new
10 qQuotations.

11
12 **SEC. 6.66. CONVENTION FACILITY PUBLIC WORKS.**

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

15 (Aa) Bids will be requested from not fewer than three bBidders for a construction
16 eContract. The eContract will be awarded to the rResponsible bBidder with the lowest
17 rResponsive bBid. A record of all bBids received and a register of all aAwards made under this
18 ~~sub~~Section 6.66 shall be maintained. In the event three bBids cannot be obtained, the aAward
19 shall be based on the bBid or bBids received. Any or all bBids may be rejected and new bBids
20 may be requested.

21 (Bb) Authority to undertake the contracting process and enter into eContract directly
22 with the eContractor may be delegated to the operator/manager of the convention facilities. In
23 such event, the City Administrator or his or her designee shall first review the propriety of the
24 process and shall approve the aAward of any eContract.

1 (€c) In no event shall the ~~a~~Award of ~~e~~Contracts by the procedures set forth in this
2 ~~subs~~Section 6.66 exceed the cumulative sum of ~~three million dollars~~ (\$3,000,000) in any fiscal
3 year.

4 Except as provided herein, any ~~e~~Contract ~~a~~Awarded under this ~~subs~~Section must
5 comply with this Chapter 6 and with Administrative Code Chapters 12B, 12C and ~~12D.A14B~~.

6 All of the ~~e~~Contracts awarded and work performed under this ~~subs~~Section 6.66 shall be
7 reported to the Board of Supervisors on a quarterly basis.

8
9 **SEC. 6.67. COMPARISON OF BIDS ON BASIS OF CLEAN CONSTRUCTION.**

10 To minimize the adverse impact to the surrounding environment, Department
11 ~~h~~Heads ~~authorized to execute contracts for public works~~ are authorized to compare ~~b~~Bids on the
12 basis that the work will be performed utilizing off-road equipment and off-road engines that
13 meet or exceed the standards for Clean Construction set forth in Section 6.25 ("Clean
14 Construction Comparative Bidding"). Department ~~h~~Heads are particularly encouraged to
15 utilize Clean Construction Comparative Bidding wherever the project is located within 500 feet
16 of a Sensitive Site and the construction activity will occur for more than 20 days. The
17 Department ~~h~~Head or officer calling for ~~b~~Bids shall specify in the Advertisement for Bids the
18 monetary value that the ~~D~~department will attribute to Clean Construction and shall evaluate
19 ~~r~~Responsive ~~b~~Bids accordingly. Any ~~e~~Contract awarded in consideration, in whole or in part,
20 on the basis of Clean Construction Comparative Bidding shall include provisions (~~1a~~) requiring
21 the ~~e~~Contractor to certify that all work has been undertaken in compliance with the
22 requirements for Clean Construction set forth in Section 6.25, (~~2b~~) providing procedures to
23 request a waiver of the biodiesel fuel and/or emissions standards as to specific, necessary
24 equipment as set forth in Section 6.25(b)(3)(D), and (~~3c~~) providing for liquidated damages in
25 the amount of \$100.00 per day per vehicle operated at the project site in violation of Clean

1 Construction standards. Except as provided herein, ~~e~~Contracts awarded on the basis of Clean
2 Construction Comparative Bidding shall be subject to all provisions of this Chapter 6 ~~of the~~
3 ~~Administrative Code.~~

4
5 **SEC. 6.68. CONSTRUCTION MANAGER/GENERAL CONTRACTOR INTEGRATED**
6 **PROJECT DELIVERY**

7 Construction Manager/General Contractor Integrated project delivery is an approach to
8 the procurement of construction services whereby a construction manager/general contractor
9 ("CM/GC") is retained during the design process to review and provide comments as to the
10 constructability of the Architect/Engineer's design within the established budget. ~~The~~
11 Department ~~Heads~~ ~~heads authorized to execute contracts for public work projects~~ are authorized to
12 seek proposals from qualified CM/GCs for construction of public work projects ~~using an~~
13 ~~integrated project delivery~~ under the following conditions:

14 (aA) Before the request for qualifications ~~or proposals~~ is issued, the Department
15 ~~h~~Head shall determine that ~~an integrated~~ CM/GC project delivery method is necessary or
16 appropriate to achieve anticipated cost savings or time efficiencies, or both, and that such a
17 ~~delivery method process~~ is in the public's best interest.

18 (B) ~~If the proposed public work project is for the use or benefit of a Department that is under~~
19 ~~the jurisdiction of a commission, then such commission shall first approve the solicitation of integrated~~
20 ~~project delivery proposals. If the public work is for the use or benefit of a Department not under the~~
21 ~~jurisdiction of a commission, then the City Administrator must first approve this process.~~

22 (b) Procurement of CM/GC. Department Heads are authorized to procure CM/GC
23 services through one of the following three methods:

24 (1) Cost Only Procurement.

1 ~~(C) Pre-qualification.~~ Department ~~h~~Head shall require that prospective proposers be
2 pre-qualified to submit proposals on a specific project. The procedure for pre-qualification and
3 final selection is as follows:

4 (A) Pre-qualification.

5 ~~(1)~~ The Department ~~h~~Head shall issue a request for qualifications inviting
6 interested parties to submit their qualifications to perform the project. The request for
7 qualifications shall include criteria by which the prospective proposers shall be evaluated. The
8 evaluation criteria shall be based on qualifications and experience relevant to the services
9 needed for the particular project. The list of criteria may include, but is not limited to the
10 following: (i) ability to perform required pre-construction and construction phase services; (ii)
11 evidence of financial capacity; (iii) experience on projects of similar size and complexity; (iv)
12 ~~commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14;~~ (v)
13 ability to collaboratively and cooperatively deliver projects on time and on budget; (vi) history
14 of liquidated damages for delay and other damages paid on prior projects, and prior litigation
15 history; (vi) reputation with owners of prior projects; (vii) claims history with insurance carriers
16 and sureties; and ~~(ixviii) compliance with all of the requirements established in the request for~~
17 ~~qualifications and~~ other criteria that the Department ~~h~~Head ~~in consultation with the Human Rights~~
18 ~~Commission~~ may deem appropriate. The Department ~~h~~Head shall set objective scoring criteria
19 and incorporate the criteria into any scoring procedure.

20 ~~(2)~~ The Department ~~h~~Head shall designate a qualified panel to review pre-
21 qualification responses and ~~interview and~~ rate respondents with respect to the request for
22 qualifications. The panel, at the department's discretion, may interview respondents as part of the pre-
23 qualification process. Only those respondents found to be qualified will be eligible to submit
24 proposals. The list of pre-qualified respondents shall be valid for not more than two years
25

1 following the date of initial pre-qualification. The Department Head may establish a shortlist of no
2 fewer than three pre-qualified respondents.

3 (BD) Request for Proposals and Selection Process. The Department ~~Head~~
4 shall issue a request for proposals inviting pre-qualified CM/GCs to submit competitive cost
5 proposals for the project. The request for proposals shall include information describing the
6 scope of pre-construction and construction phase services for the project. The request for
7 proposals shall request the following minimum ~~cost~~ information from each proposer: (i) fees for
8 pre-construction services; and (ii) fees for construction phase services, such as including
9 overhead, profit ~~and~~ general conditions, and (iii) the qualitative criteria as described in (1) below.
10 The Department Head may recommend the award of a Contract to the Responsible proposer submitting
11 the lowest Responsive cost proposal.

12 (2) Best Value Procurement. The Department Head shall require that prospective CM/GCs
13 be pre-qualified according to the process in subsection 6.68(b)(1)(A), or shall issue a combined request
14 for qualifications and proposals inviting CM/GCs to submit competitive proposals for the project. In
15 the case of a combined request for qualifications and proposals, the Department may include a set of
16 minimum qualifications that all potential proposers must meet in order for their proposals to be
17 evaluated. The request for proposals shall include information describing the scope of pre-construction
18 and construction phase services for the project. The request for proposals shall request the following
19 minimum information from each proposer: (A) fees for pre-construction services; (B) fees for
20 construction phase services, such as profit or general conditions; and (C) the qualitative criteria
21 described in subsection 6.68(b)(2) (A).

22 (A+) The Department ~~Head~~ shall designate a qualified panel to evaluate
23 integrated project delivery proposals and rank the proposals to determine which provides the
24 overall best value to the City with respect to non-cost and cost criteria. In cases where
25 proposers were pre-qualified in advance, this panel may be the same panel that reviewed the pre-

1 qualification responses, or may include different qualified panelists. The list of non-cost criteria may
2 include but is not limited to the following: (i) plan for expediency in completing the proposed
3 project; (ii) quality of proposal; and (iii) ~~commitment to comply with the goals set by the Human~~
4 ~~Rights Commission and requirements of Administrative Code Chapters 12 and 14;~~ (iv) ~~commitment to~~
5 ~~meet City hiring goals (e.g. City Build or First Source Hiring); and (v) ~~compliance with all the~~~~
6 ~~requirements and other~~ criteria established by the Department ~~Head~~ ~~or HRC~~ in the request for
7 proposals. The ~~Department~~ ~~Head~~ shall set objective scoring criteria and incorporate the
8 criteria into any scoring procedure. The cost criterion shall constitute not less than 40%~~sixty-~~
9 five percent (65%) of the overall evaluation.

10 (B) The Department Head may recommend the award of a Contract to the highest-
11 ranked CM/GC. If award to such CM/GC is not made for any reason, the Department Head may
12 recommend the award of a Contract to the next highest-ranked CM/GC.

13 (3) **CM/GC Team Best Value Procurement.** The Department Head may select a CM/GC
14 team made up of the CM/GC and specified Core Trade Subcontractors. The Department Head shall
15 require that prospective teams be pre-qualified according to the process in subsection 6.68(b)(1)(A),
16 and then issue a request for proposals inviting pre-qualified CM/GC teams to submit competitive cost
17 proposals for the project. Alternatively, the Department Head shall issue a combined request for
18 qualifications and proposals inviting prospective teams to submit competitive proposals for the project.
19 In the case of a combined request for qualifications and proposals, the department may include a set of
20 minimum qualifications that all potential CM/GCs and their Core Trade Subcontractors must meet in
21 order for their proposals to be evaluated.

22 The request for proposals shall include information describing the scope of pre-construction
23 and construction phase services for the project. The request for proposals shall request the following
24 minimum information from each team: (i) fees for pre-construction services; (ii) fees for construction
25

1 phase services, such as profit or general conditions; and (iii) the qualitative criteria as described in
2 subsection 6.68(b)(2)(A).

3 (A) The Department Head may recommend the award to the highest-ranked CM/GC
4 team in accordance with the selection process in subsection 6.68(b)(2)(A) and (B).

5 ~~(2) The Department head shall set forth in the request for proposals and in the contract~~
6 ~~liquidated damages to be assessed against the successful CM/GC in the event it fails to fulfill the~~
7 ~~commitments made in its proposal.~~

8 ~~(3) The Department head may recommend the award of a contract to the highest-ranked~~
9 ~~CM/GC whose total proposed fee is not more than twenty percent (20%) greater for contracts the~~
10 ~~estimated cost of which is \$10 million or less, or is not more than ten percent (10%) greater for~~
11 ~~contracts the estimated cost of which is in excess of \$10 million, than the total proposed fee of the~~
12 ~~lowest responsive bid. If award to such CM/GC is not made for any reason, the Department head may~~
13 ~~recommend the award of a contract to the next highest-ranked CM/GC whose total proposed fee is not~~
14 ~~more than ten percent (10%) greater than the total proposed fee of the lowest responsive bid, and so~~
15 ~~forth. In making the final determination, the Department head shall apply the LBE discount to~~
16 ~~proposals submitted by LBEs, in accordance with Administrative Code Chapter 14B.~~

17 ~~(E) Alternate Request for Proposals and Selection Process. If the department head~~
18 ~~determines that it is in the City's best interest to exclude consideration of non-cost criteria as part of~~
19 ~~the final selection process, the Department head shall issue a request for proposals inviting pre-~~
20 ~~qualified CM/GCs to submit integrated project delivery proposals, which will be evaluated based upon~~
21 ~~project costs only. If the proposed public work project is for the use or benefit of a Department that is~~
22 ~~under jurisdiction of a commission, then such commission shall approve the use of this alternate~~
23 ~~process. If the public work is for the use or benefit of a Department not under the jurisdiction of a~~
24 ~~commission, then the City Administrator must approve the use this alternate process.~~

1 ~~(F) The City shall retain the absolute discretion to determine, at any time during the process,~~
2 ~~not to proceed with any proposed project, which right may be exercised without liability to CM/GCs for~~
3 ~~costs incurred during the entire pre-qualification, proposal and negotiation process, and such rights~~
4 ~~shall be reserved in all requests for qualifications and proposals.~~

5 ~~(G) The bid security and subcontractor listing requirements of section 6.21 will not apply to~~
6 ~~the selection of CM/GCs under this section 6.68. Any resulting contract with a CM/GC shall comply~~
7 ~~with section 6.22.~~

8 ~~(cH) Procurement of Trade Subcontractors.~~ Department ~~h~~Head shall require the
9 selected CM/GC to procure trade work contracts through one or more of the following methods~~a~~
10 ~~pre-qualification and competitive bid process, as follows:~~

11 (1) **Pre-qualification and Competitive Bid.** The ~~d~~Department ~~h~~Head shall require
12 the CM/GC to pre-qualify ~~all~~ trade subcontractors, subject to ~~the~~ a process pre-approved by
13 ~~approval of~~ the Department ~~h~~Head. The CM/GC shall attempt to establish a pool of no fewer
14 than three pre-qualified subcontractors for each trade package, ~~subject to the approval of the~~
15 ~~department head. Unless otherwise authorized by the Department Head, each trade package pre-~~
16 ~~qualification opportunity shall be advertised as provided in subsection 6.21(a)(1).~~

17 ~~(2) Competitive Bid.~~ The Department ~~h~~Head shall require the CM/GC to receive
18 sealed bids from the pre-qualified trade subcontractors. Unless otherwise provided for in the
19 advertisement or notice for bids, the~~The~~ bid security provisions of ~~s~~Section 6.21 will not apply. The
20 CM/GC shall award a trade package subcontract to the ~~r~~Responsible bidder submitting the
21 lowest ~~r~~Responsive bid, ~~except that the CM/GC may negotiate and award a portion of the trade~~
22 ~~package subcontracts as provided in paragraph (3), below. Only those Administrative Code provisions~~
23 ~~that normally apply to subcontracts will apply to the trade package subcontracts.~~

24 (2) Core Trade Subcontractors. The Department Head may authorize the CM/GC to enter
25 into subcontracts with Core Trade Subcontractors to provide pre-construction, design-assist, or

1 design-build services as appropriate for the project. Before the CM/GC may award trade package
2 subcontracts for construction services to the Core Trade Subcontractors, including Core Trade
3 Subcontractors selected as part of the CM/GC team in subsection 6.68(b)(3), the Core Trade
4 Subcontractors' bids must be validated against an independent cost estimate.

5 (3) **Direct Negotiation.** The Department ~~h~~Head may authorize the CM/GC to
6 negotiate subcontracts for trade work as appropriate for the project, up to an amount not
7 exceeding ~~seven and one half percent~~7.5% of the total estimated construction subcontract costs.
8 The Department ~~h~~Head shall establish a maximum dollar value for each negotiated trade
9 subcontract as appropriate for the project.

10 (4) **Self-Performed Work.** The Department Head may authorize the CM/GC to self-
11 perform work after determining the cost of the work to be fair and reasonable, either by an independent
12 cost estimate or by a competitive bidding process.

13 (d) Except for the bid security and subcontractor listing requirements in subsections
14 6.21(a)(4) and 6.21(a)(9), the requirements of Section 6.21 will apply to the selection of CM/GCs under
15 this Section 6.68. Any resulting Contract with a CM/GC shall comply with Section 6.22, except that the
16 bond shall be for a sum not less than 100% of the costs of construction and must be filed with the
17 department prior to notice to proceed with construction. Only those Administrative Code provisions
18 that normally apply to subcontracts will apply to the trade package subcontracts, except that the
19 Department Head may authorize the CM/GC to require corporate surety payment and performance
20 bonds for some or all trade package subcontracts.

21 (e) The City shall retain the absolute discretion to determine, at any time during the process,
22 not to proceed with any proposed project, which right may be exercised without liability to CM/GC for
23 costs incurred at any point during the selection process, and such rights shall be reserved in all request
24 for qualifications or proposals.

1 (~~f~~) All actions heretofore taken by a ~~d~~Department ~~h~~Head consistent with the
2 provisions of this ~~s~~Section 6.68 are hereby approved.

3
4 **SEC. 6.69. DEPARTMENT OF PUBLIC HEALTH PUBLIC WORK.**

5 For ~~p~~Public ~~w~~Work or Improvement necessary to maintain or repair health facilities
6 under the jurisdiction of the Health Commission, the Department of Public Health (DPH) may
7 award master agreement ~~e~~Contracts, for work to be performed on an "if-and-as-needed"
8 basis, to qualified ~~construction~~ ~~e~~Contractors in conformance with the following procedures:

9 (Aa) **Contract Award.** The Director of DPH may award master agreement
10 ~~e~~Contracts, on an "if-and-as-needed" basis to construction ~~e~~Contractors who can establish all
11 of the licensing, qualifications, experience, and certifications, as required by the Director of
12 DPH. A ~~e~~Contractor may apply for a master agreement under this Section 6.69 by providing
13 DPH with a statement of its experience and qualifications and other information as requested
14 by DPH. Within 60 days of receiving such information, DPH shall advise the applicant of its
15 eligibility for an award of a master agreement.

16 (Bb) **Contract Terms.** Master agreements ~~a~~Awarded under this Section 6.69 shall
17 conform to the requirements of Section 6.22 ~~of this Chapter 6~~ and shall conform to
18 Administrative Code Chapter 14B, as applicable. Master agreements shall provide for an
19 expiration term of not more than ~~three~~five years from the date of ~~a~~Award, including all
20 modifications. All master agreements shall provide for a maximum total dollar value of work
21 each ~~e~~Contractor is authorized to perform during the ~~e~~Contract period. No master agreement
22 may be modified to exceed 150% of the original ~~e~~Contract amount. Master agreements shall
23 contain no minimum dollar amount. Master agreements shall provide that DPH may assign
24 work on a task order basis, "if-and-as-needed, " through competition among master
25 agreement ~~e~~Contractors.

1 (Ec) **Task Order Competitive Solicitation.** To assign work under master
2 agreement ~~e~~Contracts, DPH shall solicit ~~q~~Quotations from no fewer than three qualified master
3 agreement ~~e~~Contractors. Solicitations shall conform to Section 6.21 ~~of this Chapter 6~~, except
4 that neither a published advertisement nor ~~a~~bid ~~security bond~~ shall be required. Solicitations
5 shall include a description of the proposed task order scope of work, including plans or
6 specifications, if any, and may include provisions for liquidated damages for delay if and as
7 appropriate to the particular project. Responsive ~~q~~Quotations must include subcontractor
8 listing, if any, in conformance with Section 6.21(Aa)(9).

9 (Dd) **Task Order Award.** The Director of DPH shall ~~award~~ issue a task order for the
10 performance of work under a master agreement to the ~~e~~Contractor submitting the lowest
11 ~~#~~Responsive ~~q~~Quotation. In the event that DPH is unable to obtain three ~~q~~Quotations, the
12 Director of DPH shall base the award on the ~~q~~Quotations or ~~q~~Quotations received. If the
13 Director of DPH believes that the public interest would best be served, by accepting other
14 than the lowest ~~q~~Quotation, he or she is hereby authorized to accept the ~~q~~Quotation that in his
15 or her discretion will best serve the public interest.

16 (Ee) **Task Order Terms.** No task order or multiple task orders for any single ~~p~~Public
17 ~~w~~Work, whether in one phase or multiple phases, shall cumulatively exceed ~~\$400,000.00~~the
18 Threshold Amount, including all modifications. The Director of DPH may issue or modify a task
19 order to exceed the foregoing imitation only upon the Director's written determination
20 establishing the urgency of the work and the justification for proceeding under this Section
21 6.69, rather than through the Department of Public Works, in conformance with Section 6.2 ~~of~~
22 ~~this Chapter~~.

23 ///

24 ///

25

1 **SEC. 6.70. REAL ESTATE DIVISION PUBLIC WORK.**

2 For public work necessary to maintain or repair facilities and real property under the
3 jurisdiction of the Real Estate Division ("RED"), RED may award master agreement
4 eContracts for ~~special~~ services under ~~Administrative Code~~ Section 6.65, or may award master
5 agreement eContracts for work to be performed on an "if-and-as-needed" basis, to qualified
6 construction contractors in conformance with the following procedures:

7 **(Aa) Contract Award.** The Director of RED may award master agreement
8 eContracts, on an "if-and-as-needed" basis to ~~construction~~ eContractors who can establish all
9 of the licensing, qualifications, experience, and certifications, as required by the RED Director.
10 A eContractor may apply for a master agreement under this Section 6.70 by providing RED
11 with a statement of its experience and qualifications and other information as requested by
12 RED. Within 60 days of receiving such information, RED shall advise the applicant of its
13 eligibility for an award of a master agreement.

14 **(Bb) Contract Terms.** Master agreements awarded under this Section 6.70 shall
15 conform to the requirements of Section 6.22 ~~of this Chapter~~ and shall conform to Administrative
16 Code Chapter 14B, as applicable. Master agreements shall provide for an expiration term of
17 not more than ~~three~~five years from the date of ~~a~~Award, including all modifications. All master
18 agreements shall provide for a maximum total dollar value of work each eContractor is
19 authorized to perform during the contract period. No master agreement may be modified to
20 exceed 150% of the original contract amount. Master agreements shall contain no minimum
21 dollar amount. Master agreements shall provide that RED may assign work on a task order
22 basis, "if-and-as-needed," through competition among master agreement eContractors.

23 **(Cc) Task Order Competitive Solicitation.** To assign work under master
24 agreement eContracts, RED shall solicit ~~q~~Quotations from no fewer than three ~~Q~~qualified
25 master agreement eContractors. Solicitations shall conform to Section 6.21 ~~of this Chapter 6,~~

1 except that neither a published advertisement nor a bid ~~security bond~~ shall be required.

2 Solicitations shall include a description of the proposed task order scope of work including
3 plans or specifications, if any, and may include provisions for liquidated damages for delay if
4 and as appropriate to the particular project. Responsive ~~q~~Quotations must include
5 subcontractor listing, if any, in conformance with Section 6.21(Aa)(9).

6 (Dd) **Task Order Award.** The Director of RED shall ~~award~~ issue a task order for the
7 performance of work under a master agreement to the ~~e~~C Contractor submitting the lowest
8 responsive ~~q~~Quotation. In the event that RED is unable to obtain three ~~q~~Quotations, the
9 Director of RED shall base the award on the ~~q~~Quotation or ~~q~~Quotations received. If the
10 Director of RED believes that the public interest would best be served by accepting other than
11 the lowest ~~q~~Quotation, he or she is hereby authorized to accept the ~~q~~Quotation that in his or
12 her discretion will best serve the public interest.

13 (Ee) **Task Order Terms.** No task order or multiple task orders for any single ~~p~~Public
14 ~~w~~Work, whether in one phase or multiple phases, and whether under this Section 6.70 or for
15 ~~special S~~services under Section 6.65. shall cumulatively exceed ~~\$400,000~~ the Threshold Amount,
16 including all modifications. The Director of RED may issue or modify a task order to exceed
17 the foregoing limitation only upon the Director's written determination establishing the urgency
18 of the work and the justification for proceeding under this Section 6.70, rather than through the
19 Department of Public Works, in conformance with Section 6.2 ~~of this Chapter~~.

20
21 **SEC. 6.71. PIER REPAIR WORK.**

22 (Aa) The Port is authorized to use the Port's Maintenance Division employees and
23 equipment to perform demolition, repair and replacement work on piers under the jurisdiction
24 of the Port Commission, including pile-supported pier structures, substructures, aprons,
25 wharves, decks, fenders and associated utilities. The competitive ~~b~~Bid requirements of

1 Sections 6.20(Aa) and 6.23(~~Bb~~) shall not apply to the Port's self-performance of such pier
2 demolition, repair and replacement work.

3 (~~Bb~~) All actions previously taken by the Port consistent with this section are hereby
4 approved.

5 (~~Cc~~) Nothing in this Section 6.71 shall prohibit the Port from using the procedures
6 described elsewhere in this Chapter 6 for the performance of pier demolition, repair and
7 replacement work.

8
9 **SEC. 6.72. RAIL GRINDING**

10 The Director of Transportation is authorized to issue requests for proposals for rail grinding
11 and related services. Proposals will be evaluated based upon qualifications, cost, and any other
12 criteria stated in the request for proposals. The Director of Transportation may negotiate with the
13 highest-ranking proposers and seek best and final offers after negotiation to determine which proposer
14 will provide the best value to the City. Contracts awarded under this Section 6.72 are subject to the
15 Award requirements of Section 6.3 and shall conform to the requirements of Section 6.22.

16
17 **SEC. 6.73. OTHER PROCUREMENTS**

18 Notwithstanding any other provision of this Code, a department may contract for works or
19 services governed by this Chapter 6 other than through open and full competition ("Sole Source"),
20 subject to the requirements of this provision. None of the requirements of applicable provisions of the
21 Municipal Code, including but not limited to requirements of Chapters of 12B, 12C or 14B of the
22 Administrative Code, are waived for Sole Source Contracts.

23 (a) Approval. For departments under the jurisdiction of a commission or a board, the
24 Department Head shall recommend to the commission or board concerned the approval and award of
25 a Sole Source Contract and such commission or board may then adopt a resolution approving the

1 justification of the Sole Source and awarding the Contract. For departments with no commission or
2 board, the Department Head, with the approval of the Mayor or Mayor's Designee, may award a Sole
3 Source Contract. The Department Head's recommendation must provide specific and comprehensive
4 information, as provided under Section 6.73(d) below, justifying the necessity of a Sole Source
5 Contract.

6 (b) **When Prohibited.** Sole Source contracting shall not be justified on the basis of: (1) a
7 lack of advance planning by the department, or (2) expediency or convenience of the department.

8 (c) **When Allowable.** Before a department begins negotiations for a Sole Source Contract,
9 the Department Head shall make a written justification that a Sole Source procurement is necessary or
10 appropriate based on one or more of the following circumstances:

11 (1) Work or services are available from only one source as justified by the results of a
12 solicitation or advertisement designed to attract as many potential sources qualified to compete on the
13 procurement as appropriate, whether through a Request for Interest, Request for Qualifications or
14 other form of advertisement or solicitation;

15 (2) Documented rights in or singular ownership of data, intellectual property, processes,
16 systems, or similar circumstances make the work or services, or maintenance of such work or services,
17 available from only one source;

18 (3) Work or services deemed to be available only from the original source in the case of a
19 follow-on Contract for the continued work or services, when it is likely that award to any other source
20 would result in: (A) substantial duplication of cost to the City that is not expected to be recovered
21 through competition; (B) unacceptable delays in fulfilling the City's requirements; or (C) loss of
22 warranty protection;

23 (4) Work or services required by statute or government regulation to be from a specific
24 public entity or accrediting agency. For purposes of this Section 6.73, an accrediting agency is defined
25

1 as a government-controlled or privately supported agency authorized to certify compliance with
2 statutes or government regulations required for Public Works or Improvements; or

3 (5) Work or services needed on an expedited basis in order to use State or Federal funding
4 made available to the department that otherwise will expire, where the need for expediency is not
5 caused by action or inaction of the City.

6 (d) **Justification Requirements.** The Department Head's written justification for a Sole
7 Source procurement shall be valid for no more than two years, prior to award of a Contract.
8 Departments must assess the validity of the determination as often as is appropriate. The determination
9 shall remain valid during the term of an executed Sole Source Contract. At a minimum, the written
10 justification of the Department Head described in Section 6.73(c) shall address the following:

11 (1) The work or services required to meet the department's needs, including the estimated
12 value;

13 (2) The proposed Contractor's unique qualifications to perform the work or services or why
14 the nature of the work or services requires use of the procurement through a Sole Source;

15 (3) The anticipated cost to the City and the department's determination that such cost will
16 be in the best financial interest of the City;

17 (4) The solicitation issued to determine that the procurement is justified as a Sole Source
18 pursuant to Section 6.73(c)(1) or a statement as to why issuing a solicitation or advertisement is
19 impracticable, along with the results of any market research conducted;

20 (5) When Section 6.73(c)(3) is cited for follow-on work or services, the department shall
21 prepare an explanation justifying why use of a competitive process would not be in the public's best
22 interests, including: (A) a detailed estimate of the costs to the City that would be duplicated; (B) an
23 estimate of the delay that would occur; and/or (C) loss of warranty protection that would result.

1 (f) Exceptions.

2 (1) The designation of particular materials, products, things or services in specifications
3 for Contracts for Public Works or Improvements shall be subject to the provisions of California Public
4 Contract Code Section 3400, as amended from time to time.

5 (2) In Contracts that involve the use of any funds furnished, given or loaned by the
6 Government of the United States or the State of California, all laws, rules and regulations of the
7 Government of the United States or the State of California or of any of its departments relative to the
8 performance of such work and the conditions under which the work is to be performed, shall prevail
9 over the requirements of this Section 6.73 when such laws, rules or regulations are in conflict.

10
11 **ARTICLE V: VIOLATIONS OF ADMINISTRATIVE CODE CHAPTER 6; FALSE**
12 **CLAIMS; PROCEDURES FOR DEBARMENT; MONETARY PENALTIES**

13 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
14 **PENALTIES.**

15 Any contractor, subcontractor, supplier, consultant or subconsultant^s who fails to
16 comply with the terms of its contract with the City ~~and County~~; or who violates any provision of
17 ~~Administrative Code~~this Chapter 6; or who fails to abide by any rules and/or regulations
18 adopted pursuant to ~~Administrative Code~~this Chapter 6; or who submits false claims; or who
19 has violated against any government entity a civil or criminal law relevant to its ability to
20 perform under or comply with the terms and conditions of a contract with the City ~~and County~~,
21 may be declared an irresponsible ~~b~~Bidder or an unqualified consultant and debarred
22 according to the procedures set forth in Chapter 28 of this Administrative Code. Additionally,
23 any ~~e~~Contractor, subcontractor, supplier, consultant or subconsultant who submits a false
24 claim to the City ~~and County~~ may also be subject to monetary penalties, investigation and
25 prosecution as described below.

1 In the event that such a violation of this Chapter, including the submission of one or
2 more false claims, comes to the attention of a ~~board or commission or responsible~~ Ddepartment
3 Hhead ~~or board or commission concerned~~ responsible for public work, the Ddepartment Hhead
4 must investigate the matter. The Ddepartment Hhead must report the findings of any such
5 investigation by letter to the Board of Supervisors within 30 days of the completion of the
6 investigation. The investigation letter to the Board of Supervisors must state the name of the
7 eContractor, subcontractor, supplier, consultant or subconsultant; the nature of the violation;
8 the results of the investigation; and the Ddepartment Hhead's plan for addressing the
9 violation, if any. A hearing shall also be called in the Audit Committee of the Board of
10 Supervisors to report on this investigation.

11
12 **SEC. 6.81. COLLUSION IN CONTRACTING.**

13 If, at the determination of the Mayor, the Ddepartment Hhead who executed the
14 ~~construction or professional services~~ eContract or the board or commission who awarded such
15 eContract, and pursuant to the debarment procedures set forth below, any party or parties to
16 whom a eContract has been awarded has been ~~guilty~~ found to have engaged in of collusion with
17 any officer or representative of the City ~~and County~~, or any other party or parties, in the
18 submission of any bBid or in preventing of any other being made, or in knowingly receiving
19 preferential treatment by any officer or an employee of the City ~~and County~~, then any eContract
20 so awarded, if not completed, may be declared null and void by the Board of Supervisors on
21 the recommendation of the Mayor, Ddepartment Hhead or the board or commission
22 concerned, and no recovery shall be had thereon. The Ddepartment Hhead concerned may
23 then readvertise for bBids for the uncompleted portion of the work. The matter may also be
24 referred to the City Attorney for such action as may be necessary. Any party or parties ~~guilty~~

1 ~~offound to have engaged in~~ such collusion shall not be permitted to participate in or to bid on any
2 future ~~p~~Public ~~w~~Work, ~~i~~Improvement, or purchase to be made by the City ~~and County~~.

3
4 **SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**

5 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
6 action, any ~~e~~Contractor, subcontractor, supplier, consultant or subconsultant directly or
7 indirectly subject to the provisions of this Chapter 6 may be determined irresponsible and
8 disqualified from contracting with the City ~~and County of San Francisco~~ in accordance with the
9 provisions of Chapter 28 of this Administrative Code.

10
11 **SEC. 6.83. ASSESSMENT OF MONETARY PENALTIES FOR FALSE CLAIMS:**
12 **INVESTIGATION AND PROSECUTION.**

13 (a) Notwithstanding and not exclusive or preclusive of any other administrative or
14 legal action taken by the City ~~and County~~, a ~~e~~Contractor may be assessed monetary penalties
15 for submitting false claims. The ~~d~~Department ~~h~~Head responsible for the ~~p~~Public ~~w~~Work or
16 Improvement may withhold such penalties from amounts due or retained under the ~~e~~Contract.
17 Notwithstanding and not exclusive or preclusive of any administrative or other legal action, the
18 City Attorney may investigate and prosecute in a civil action any submission of a false claim.

19 (b) The submission of a false claim occurs when a ~~e~~Contractor, subcontractor,
20 supplier, consultant or subconsultant commits any of the following acts enumerated below: ;
21 ~~In such event, the eContractor, subcontractor, supplier, consultant or subconsultant shall be liable to~~
22 ~~the City and County for (1) three times the amount of damages which the City and Count sustains~~
23 ~~because of the act(s) of that eContractor, subcontractor, supplier, consultant or subconsultant; and (2)~~
24 ~~the costs, including attorney's fees of a civil action brought to recover any of those penalties or~~
25

1 ~~damages. Such Contractor, subcontractor, supplier, consultant or subconsultant may also be liable to~~
2 ~~the City and County for a civil penalty of up to \$10,000 for each false claim.~~

3 (1) Knowingly presents or causes to be presented to an officer or employee of the
4 City ~~and County~~ a false claim or request for payment or approval;

5 (2) Knowingly makes, uses, or causes to be made or used a false record or
6 statement to get a false claim paid or approved by the City ~~and County~~;

7 (3) Conspires to defraud the City ~~and County~~ by getting a false claim allowed or
8 paid by the City ~~and County~~;

9 (4) Knowingly makes, uses, or causes to be made or used a false record or
10 statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to
11 the City ~~and County~~;

12 (5) Is a beneficiary of an inadvertent submission of a false claim to the City ~~and~~
13 ~~County~~, subsequently discovers the falsity of the claim, and fails to disclose the false claim to
14 the City ~~and County~~ within a reasonable time after discovery of the false claim.

15 (c) In such event, the Contractor, subcontractor, supplier consultant or subconsultant shall be
16 liable to the City for: (1) three times the amount of damages which the City sustains because of the
17 act(s) of that Contractor, subcontractor, supplier, consultant or subconsultant; and (2) the costs,
18 including attorney's fees of a civil action brought to recover any of those penalties or damages. Such
19 Contractor, subcontractor, supplier, consultant or subconsultant may also be liable to the City for a
20 civil penalty of up to \$10,000 for each false claim. Liability under this §Section 6.83 shall be joint
21 and several for any act committed by two or more persons.

22 (d) For purposes of this §Section, "claim" includes any request or demand for money,
23 property or services made to any employee, officer, or agent of the City ~~and County~~, or to any
24 ~~Contractor, subcontractor, grantee or other recipient, whether under contract or not, if any~~
25

1 portion of the money, property, or services requested or demanded issued from, or was
2 provided by, the City ~~and County~~.

3 (e) For purposes of this ~~s~~Section, "knowingly" means that a ~~e~~Contractor,
4 subcontractor, supplier, consultant or subconsultant with respect to information does any of
5 the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of
6 the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of
7 the information. Proof of specific intent is not required and reliance on the claim by the City
8 ~~and County~~ is also not required.

9
10 Section 2. The Administrative Code is hereby amended by revising Section 21.02, to
11 read as follows:

12 **SEC. 21.02. DEFINITIONS.**

13 * * * *

14 (j) "Minimum Competitive Amount" shall mean (i) for the procurement of
15 Commodities and Professional Services, the "Minimum Competitive Amount" as defined in
16 Section 6.40(~~a~~A) of the Administrative Code, which shall be ~~\$100,000~~110,000 and (ii) for the
17 procurement of General Services, an amount equivalent to the "Threshold Amount" as defined
18 in ~~Chapter~~Section 6.1(~~M~~) of the Administrative Code which shall be ~~\$400,000~~600,000, provided
19 that on January 1, ~~2015~~20 and every five years thereafter, the Controller shall recalculate the
20 Minimum Competitive Amount (and the Threshold Amount from which the Minimum
21 Competitive Amount for General Services is calculated) to reflect any proportional increase in
22 the Urban Regional Consumer Price Index from January 1, 20105, rounded to the nearest
23 \$1,000.

24 * * * *

1 Section 3. The Administrative Code is hereby amended by revising Section 14B.2, to
2 read as follows:

3 **SEC. 14B.2. DEFINITIONS.**

4 * * * *

5 "Minimum Competitive Amount" means (1) for the procurement of commodities,
6 professional services, and architect/engineering services, the "Minimum Competitive Amount"
7 as defined in Section 6.40(~~a~~A) of the Administrative Code, which shall be ~~\$100,000~~110,000 and
8 (2) for the procurement of general services, an amount equivalent to the "Threshold Amount"
9 as defined in ~~Chapter~~Section 6.1(~~M~~) of the Administrative Code which shall be ~~\$400,000~~600,000,
10 provided that on January 1, 201~~5~~20, and every five years thereafter, the Controller shall
11 recalculate the applicable Minimum Competitive Amount (and the Threshold Amount from
12 which the Minimum Competitive Amount for general services is calculated) to reflect any
13 proportional increase in the Urban Regional Consumer Price Index from January 1, 20105,
14 rounded to the nearest \$1,000.

15 * * * *

16 "Threshold Amount" means, for public works/construction projects, the "Threshold
17 Amount" as defined in Administrative Code Section 6.1(~~M~~) ~~of the Administrative Code~~ which shall
18 be ~~\$400,000~~600,000 provided that on January 1, 201~~5~~20, and every five years thereafter, the
19 Controller shall recalculate the Threshold Amount to reflect any proportional increase in the
20 Urban Regional Consumer Price Index from January 1, 20105, rounded to the nearest \$1,000.

21
22 Section 4. Effective and Operative Dates. This ordinance shall become effective 30
23 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
24 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
25 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall

1 become operative on July 1, 2015, and shall apply to all contracts first advertised or initiated
2 on or after this date.

3

4 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10

11

12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 Yadira Taylor
16 Deputy City Attorney

17 n:\legana\as2015\1500461\00988633.doc

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