

BOARD of SUPERVISORS



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MEMORANDUM

TO: Alaric Degrafinried, Interim Director, Public Works
Ben Rosenfield, City Controller
Naomi Kelly, City Administrator
Sailaja Kurella, Acting Director and Purchaser, Office of Contract Administration
Jeffrey Tumlin, Executive Director, Municipal Transportation Agency

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: July 29, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Stefani on July 21, 2019:

File No. 200787

Ordinance amending the Administrative Code to require notification to prequalified contractors and written documentation of contractor selection from pre-qualified lists, and written documentation of contractor selection for work assigned under as-needed Public Works professional services contracts; and to require the Controller to audit such selection documentation.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Offices of Supervisors Stefani and Mar
David Steinberg, Public Works
Jeremy Spitz, Public Works
Todd Rydstrom, Office of the Controller
Lynn Khaw, Office of the City Administrator
Lihmeei Leu, Office of the City Administrator
Tal Quetone, Office of the City Administrator
Florence Kyaun, Office of Contract Administration
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Joel Ramos, Municipal Transportation Agency

1 [Administrative Code - Selection of Contractors From a Pre-Qualified List and Under As-
2 Needed Public Works Professional Services Contract Reform]

3 **Ordinance amending the Administrative Code to require notification to prequalified**
4 **contractors and written documentation of contractor selection from pre-qualified lists,**
5 **and written documentation of contractor selection for work assigned under as-needed**
6 **Public Works professional services contracts; and to require the Controller to audit**
7 **such selection documentation.**

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

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

16 Section 1. Chapter 21 of the Administrative Code is hereby amended by revising
17 Section 21.4, to read as follows:

18 **SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

19 (a) **Authorization; Evaluation Criteria.** A Contracting Officer may issue a request for
20 Proposals, or request for qualifications, for the selection of Professional Service Contractors
21 following consideration of the evaluation factors set forth in the request for Proposals, which
22 may include cost, except as prohibited by law. If a department determines that it would be in
23 the best interests of the City to acquire combined Commodities and Services or General
24 Services by means of a request for Proposals or qualifications, rather than an invitation for
25 Bids, such request for Proposals or qualifications shall be issued by the Purchaser. A request

1 for Proposals or qualifications for Professional Services may be issued directly by the
2 department.

3 (b) **Negotiation.** The Contracting Officer is authorized to negotiate terms and
4 conditions, including price, with the highest ranked Proposer. If the Contracting Officer cannot
5 conclude a contract that, in the opinion of the Contracting Officer is in the City's best interest,
6 the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the
7 event that the Contracting Officer cannot conclude negotiations with the next highest ranked
8 Proposer on terms acceptable to the City, then the Contracting Officer may negotiate with
9 each successively ranked Pproposer.

10 (c) **Requests for Qualifications.** The Purchaser may issue a request for
11 qualifications ("RFQ") to determine the qualifications of prospective Contractors for particular
12 types of Commodities and/or Services to the City. A department may issue a RFQ to
13 determine the qualifications of prospective Contractors for Professional Services to be
14 provided to that department. In addition, the Purchaser may maintain City-wide lists of
15 prequalified contractors for Commodities and Services. Prequalification may be for the
16 following purposes: issuance of~~issuing~~ a further Solicitation to select a Contractor(s) from
17 among the prequalified entities for a particular contract, ~~or it may be for the purpose of~~
18 maintenance of~~maintaining~~ a list from which Contractors will be selected for future contracts as
19 needed by the City, or the ~~City may~~selection of Contractor(s) based on ranking of responses to
20 ~~the a RFP~~request for qualifications. If a Contractor is to be selected from a prequalified list for
21 Commodities and/or Services without a further Solicitation or based on ranking, the department
22 selecting from the prequalified list shall notify other prequalified list members for that contract and
23 document the selection process. At a minimum, the written documentation shall address the following:

24 (1) The Commodities and/or Services required to meet the department's needs;
25

1 (2) The proposed Contractor's unique qualifications or experience to provide the
2 Commodities and/or perform the Services, or why the nature of the Commodities and/or Services
3 requires use of the Contractor; and

4 (3) The anticipated cost to the City and the department's determination that such cost
5 will be in the best financial interest of the City.

6 The department shall submit the selection documentation along with the contract to the
7 Purchaser. The department shall maintain the selection documentation for at least three years after
8 termination or expiration of the contract. The Controller shall periodically audit the procurement of
9 these prequalified list contracts as provided in Charter Section FI.106.

10 **(d) Requests for Qualifications: Lists of Prequalified Entities Created by the City.**

11 —~~(1)~~ For the procurement of Commodities and Services for which lists of
12 prequalified entities are created by the City;

13 (1) Selection of a Contractor for a particular contract may be made without the
14 use of a further Solicitation if the list is maintained by issuing a new request for qualifications
15 at least once every two years.

16 (2) Notwithstanding the two-year limitation in subsection (c)(1), the City may
17 select a Contractor for a particular contract from a list of prequalified entities without the use of
18 a further Solicitation using a list that is up to four years old, if both the following two conditions
19 are met:

20 (A) The City re-opens the list by re-issuing the same RFQ within two
21 years of the original RFQ; and,

22 (B) The City uses the same panel of evaluators to score the responses
23 to the RFQ.

24 The City may not proceed under this subsection ~~(c)~~(2) if it does not use the
25 same RFQ and the same scoring panel. Entities included on the list of prequalified entities

1 pursuant to the original RFQ shall not be required to re-qualify under the re-issued RFQ, but
2 may choose to submit updated information regarding their qualifications when the RFQ is re-
3 issued. A list of pre-qualified entities may only be extended once under this subsection (~~ed~~)(2)
4 and may not be used for more than four years from the issuance of the original RFQ.

5 ~~(de)~~ **Content of Requests for Proposals.** A request for Proposals shall specify
6 evaluation criteria for selection, and shall reserve the right to reject or cancel the request for
7 Proposals in whole or in part.

8 ~~(ef)~~ **Mass-transit Vehicles.** Notwithstanding any other provision of the charter or laws
9 of the City, the Public Transportation Department-, through its department head and through
10 the Purchaser is authorized to include among its purchasing specifications the use of
11 negotiated procurement procedures for the purchase of mass-transit vehicles.

12
13 Section 2. Chapter 6 of the Administrative Code is hereby amended by revising
14 Section 6.43, to read as follows:

15 **SEC. 6.43. AS-NEEDED PROFESSIONAL SERVICES CONTRACTS.**

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

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

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

1 (1) A multiple-project as-needed Contract shall provide for a not-to-exceed
2 amount and a Contract term of not more than five years from the date of certification by the
3 Controller of the Contract, including all modifications. The cumulative modifications to a
4 multiple-project as-needed Contract shall not exceed 150% of the original not-to-exceed
5 amount. No contract service order or multiple contract service orders for services provided for
6 any single project, whether in one phase or multiple phases, shall cumulatively exceed the
7 Threshold Amount, including all modifications. A department may issue or modify any contract
8 service order(s) to exceed the foregoing limit only upon the Department Head's written
9 determination establishing the justification for proceeding under the as-needed Contract rather
10 than soliciting services through a formal competitive process.

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

15 (c) If a department has more than one as-needed multiple-project professional services
16 Contract for the same scope of services, prior to issuance of any contract service order under that
17 Contract, the department shall document the selection process of the Contractor from the other
18 Contractors holding contracts for the same scope of services. At a minimum, the written documentation
19 shall address the following:

- 20 (1) The work or services required to meet the department's needs;
21 (2) The proposed Contractor's unique qualifications or experience to perform the work
22 or services, or why the nature of the work or services requires use of the Contractor; and
23 (3) The anticipated cost to the City and the department's determination that such cost
24 will be in the best financial interest of the City.
25

1 The department shall maintain the selection documentation for at least three years after
2 termination or expiration of the Contract. The Controller shall periodically audit the procurement of
3 these as-needed Contracts as provided in Charter Section F1.106.

4
5 Section 3. Effective and Operative Dates.

6 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
7 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
8 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
9 Mayor’s veto of the ordinance.

10 (b) This ordinance shall become operative on December 1, 2020 and shall apply to all
11 Contracts and contract service orders awarded or initiated on or after this date.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /S/
24 YADIRA TAYLOR
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Selection of Contractors From a Pre-Qualified List and Under As-Needed Public Works Professional Services Contracts]

Ordinance amending the Administrative Code to require notification to prequalified contractors and written documentation of contractor selection from pre-qualified lists; require written documentation of contractor selection for work assigned under as-needed Public Works professional services contracts; and require the Controller to audit such selection documentation.

Existing Law

Section 21.4(c) of the Administrative Code authorizes the Purchaser to issue request for qualifications ("RFQ") to determine the qualifications of prospective Contractors for particular types of Commodities and/or Services to the City. Contractors may be selected from a RFQ by issuance of a further solicitation to select from among the prequalified entities for a particular contract, a department may select a Contractor from a list, or a Contractor may be selected based on ranking of responses to the RFQ.

Section 6.43 of the Administrative Code authorizes the public works departments to procure temporary as-needed professional services for public work or improvement projects under certain circumstances. Contractors are selected for these as-needed contracts through a competitive process based primarily on qualifications. Work is then assigned by contract service orders that include a scope of services, time, and a not-to-exceed fee. Multiple-project as-needed contracts are further limited to a maximum duration of five years, cannot be modified by greater than 150% of the original not-to-exceed amount, and no contract service order can exceed the threshold amount, currently \$706,000.

Amendments to Current Law

Prequalified Lists for Commodities and/or Services. This Ordinance would require that for Commodities and/or Services, when a Contractor is selected from prequalified list with no further solicitation or based on a prior ranking, the department must first notify all existing prequalified list entities and also document the selection process. The selection documentation prepared by the department must at minimum address the following:

- i. the Commodities and/or Services required to meet the department's needs;
- ii. the proposed Contractor's unique qualifications or experience to provide the Commodities and/or perform the Services, or explain why the nature of the Commodities and/or Services requires use of the selected Contractor; and
- iii. the anticipated cost to the City and determination that such cost will be in the best financial interest of the City.

The department would be required to submit the selection documentation to the Purchaser, and keep it for at least three years after expiration of the contract. The Controller would further be required to periodically audit the procurement of the prequalified lists contracts.

As-needed Professional Services for Public Works and Improvements. This Ordinance would require that when a public works department has more than one as-needed multiple-project professional services Contract, before it can issue any contract service order under than Contract, the department must document the selection process. The selection documentation must address the following:

- i. the work or services required to meet the department's needs;
- ii. the proposed Contractor's unique qualifications or experience to perform the services, or explain why the nature of the services requires use of the selected Contractor; and
- iii. the anticipated cost to the City and determination that such cost will be in the best financial interest of the City.

The department would be required to keep the selection documentation for at least three years after expiration of the Contract. The Controller would further be required to periodically audit the procurement of the prequalified lists Contracts.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only