

LEGISLATIVE DIGEST

[Revising Requirements for Purchasing Goods and Services.]

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

Existing Law

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

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

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

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

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

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

Amendments to Current Law

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

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

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

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

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

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

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

Background Information

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