

[Economic stimulus measures for capital project acceleration.]

1
2 **Ordinance amending Administrative Code Chapter 6, Public Works Contracting**
3 **Policies and Procedures, Section 6.1, to add a definition for a department head and**
4 **designee and to increase the Threshold Amount for sealed competitively bid**
5 **construction contracts from \$100,000 to \$400,000, with a future increase by the**
6 **Controller in 2015; amending Section 6.20, to update and conform references to**
7 **Administrative Code Chapter 14B; amending Section 6.21, to update and conform**
8 **references to Administrative Code Chapter 14B; amending Section 6.22(A), to clarify**
9 **and conform to state law the minimum contract amount requiring performance and**
10 **payment bonds to \$25,000; amending Section 6.22(J), to allow for early release of**
11 **retention to subcontractors certified by the Human Rights Commission as Local**
12 **Business Enterprises or subcontractors on multi-year construction projects; amending**
13 **Section 6.40, to increase the minimum competitive amount for the procurement of**
14 **professional services for public work projects from \$25,000 to \$100,000, with a future**
15 **increase in 2015 by the Controller; amending Section 6.60 to update and conform**
16 **references to the Municipal Transportation Agency; amending Section 6.62, Job Order**
17 **Contracts, to amend the Local Business Enterprise goal enforcement procedure and**
18 **allow for micro-LBE set-asides, to increase the maximum contract amount from \$3**
19 **Million to \$5 Million and the maximum contract time to five years, to increase the**
20 **maximum service order amount from \$200,000 or \$400,000 (depending on the program)**
21 **to \$400,000 for all purposes, and adding new subcontractor listing and subcontractor**
22 **substitution requirements.**

23 NOTE: Additions are single-underline italics Times New Roman;
24 deletions are ~~strike-through italics Times New Roman~~.
25 Board amendment additions are double-underlined;

Board amendment deletions are ~~striketrough~~ normal.

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

Section 1. The San Francisco Administrative Code is hereby amended by amending Section 6.1, at subsection (L), to read as follows:

SEC. 6.1. DEFINITIONS.

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

(B) Award. For contracts in excess of the Threshold Amount as defined below, a contract is awarded by the City and County of San Francisco when the following events have occurred:

(1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has approved the contract for award and (b) the department head has then issued an order of award;

(2) For departments with boards or commissions, (a) the department head has recommended to the board or commission concerned a contract for award and (b) such board or commission has then adopted a resolution awarding the contract.

For contracts less than or equal to the Threshold Amount as defined below, a contract is awarded when the department head either signs the contract or issues an order of award, whichever occurs first. Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

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

4 (D) Bidder. One who submits a bid in response to an Advertisement For Bids.

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

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

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

19 (H) Department Head. The duly appointed General Manager, Director, or Executive Director
20 of a City and County of San Francisco department authorized to perform public work under this
21 Chapter. For purposes of this Chapter only, an authorized department head may designate a Deputy
22 General Manager or Deputy Director to execute on his or her behalf any document referenced in this
23 Chapter, including but not limited to Contracts, Change Orders, Modifications, Service Orders, Task
24 Orders, approvals, progress payments, and certificates of completion. Such designation shall be in
25

1 writing and shall identify the individual deputy by name and title and the scope and term of the
2 designation.

3 (HI) Prevailing Wage or Prevailing Rate of Wage. The prevailing wage, as used in this
4 Chapter, is the highest general prevailing rate of wage plus "per diem wages" and wages paid
5 for overtime and holiday work paid in private employment in the City and County of San
6 Francisco for the various crafts and kinds of labor employed in the performance of any public
7 work or improvement under this Chapter. "Per diem wages" are defined pursuant to Labor
8 Code section 1773.1, as amended from time to time.

9 (HJ) Public Work or Improvement. A public work or public work or improvement, as
10 used in this Chapter, is any erection, construction, renovation, alteration, improvement,
11 demolition, excavation, installation, or repair of any public building, structure, infrastructure,
12 bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the
13 City and County of San Francisco, the cost of which is to be paid wholly or partially out of
14 moneys deposited in the treasury of the City and County.

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

24 (KL) Responsive. A responsive bid is one that complies with the requirements of the
25 subject Advertisement For Bids without condition or qualification.

1 (LM) Threshold Amount. The Threshold Amount, for the purposes of this Chapter, is
2 \$~~100,000~~400,000. On January 1, ~~2005~~2015, and every five years thereafter, the Controller shall
3 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
4 Consumer Price Index from January 1, ~~2000~~10, rounded to the nearest \$1,000.

5 Section 2. The San Francisco Administrative Code is hereby amended by amending
6 Section 6.20, to read as follows:

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

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

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

1 qualified to perform various types of public work for projects estimated to be less than the
2 Threshold Amount, making every effort to include qualified, responsible, and certified MBE and
3 WBE-LBE contractors on that list. The HRC shall be responsible for outreach efforts to make
4 sure that certified MBE and WBE-LBE contractors are aware of the opportunity to be considered
5 for the list. The contract awarding departments or commissions shall be responsible for
6 evaluating and determining whether contractors are responsible and qualified to perform the
7 various scopes of work. The department heads authorized to execute construction contracts
8 shall report quarterly to the Board of Supervisors regarding MBE/WBE LBE inclusion on the list
9 of responsible and qualified contractors for public work contracts estimated to be less than or
10 equal to the Threshold Amount, a description of the scope of work and price for each contract
11 awarded under this section, the name of the contractor awarded the contract and whether the
12 contract was awarded to an MBE or WBE LBE contractor. Such reports shall be referred to a
13 Board committee for public hearing.

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

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

1 (E) Time for Award. Except when a contract is funded by Federal or State grants or
2 funds, all public work contracts shall be awarded within ninety (90) days of the date the City
3 and County receives the bids. Such time may only be extended prior to award of the contract
4 and only upon written agreement of the apparent responsible bidder with the lowest
5 responsive bid and approval by the department head.

6 (F) Prequalification. Department heads authorized to execute public work contracts
7 may require that prospective bidders be prequalified to bid either on a specific project or on an
8 identified group of projects. The procedure for prequalification is as follows:

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

20 (2) The department responsible for the public work shall advertise any prequalification
21 questionnaire in the same manner required for bids, as set forth in Section 6.21 of this
22 Chapter.

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

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

11 Section 3. The San Francisco Administrative Code is hereby amended by amending
12 Section 6.21, to read as follows:

13 **SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.**

14 (A) Bids. All Advertisements For Bids for construction contracts in excess of the
15 Threshold Amount shall conform to and at a minimum require the following:

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

22 (2) Award and Certification Required. All published advertisements and
23 Advertisements For Bid shall contain the following language [wording in brackets should be
24 chosen as appropriate to the department]:
25

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

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

13 (3) Form of Bid. All bids shall be sealed and directed to the department head
14 advertising for bids, in the format prescribed by the department head with the authority to
15 execute the contract.

16 (4) Bid Bond. All bids in excess of \$25,000.00 shall be accompanied by a corporate
17 surety bond, or an irrevocable letter of credit on a bank or trust company doing business and
18 having an office in the State of California, having a combined capital and surplus of at least
19 \$50,000,000.00, and subject to supervision or examination by Federal or State authority, or a
20 certified check on a bank or trust company doing business and having an office in the State of
21 California, having a combined capital and surplus of at least \$50,000,000, and subject to
22 supervision or examination by Federal or State authority, payable on sight to the City and
23 County of San Francisco, the amount of which corporate surety bond, irrevocable letter of
24 credit or certified check shall be fixed by the department head or officer as stated in the
25 Advertisement For Bids, which amount shall not be less than 10 percent of the amount bid for

1 the cost of the proposed work of improvement, and no bid shall be considered unless
2 accompanied by a corporate surety bond or irrevocable letter of credit or certified check. Any
3 irrevocable letter submitted pursuant to this Chapter shall be on a form provided by the City
4 and County. If the amount of security required is fixed by the department head or officer in an
5 amount in excess of \$15,000.00, the form of security required shall be that of a corporate
6 surety bond or irrevocable letter of credit. The requirement for a corporate surety bond,
7 irrevocable letter of credit or certified check described in this subsection shall be referred to
8 collectively as the "bid security requirements."

9 Notwithstanding the above, the bid security requirements for a particular contract may
10 be modified by the department head in accordance with Administrative Code *Section*
11 ~~12D.A.9.(A)(4)~~ Chapter 14B.

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

19 (6) License. The department head shall specify in all Advertisements For Bids and
20 plans for public work projects the classification of the contractor's license which a contractor
21 shall possess at the time bids are submitted. Bidders and their subcontractors are required to
22 be properly licensed at the time of bid.

23 (7) Qualifications. The department head responsible for the public work shall require
24 from all bidders information concerning their experience and financial qualifications and shall
25 take such information into consideration in the award of any contract. At a minimum the

1 department head shall require (1) information concerning the contractor's experience,
2 financial qualifications and ability to perform the terms and conditions of the contract and (2)
3 information as to whether the contractor possesses, or can obtain in time to perform the
4 contract, the necessary equipment. In the event that a bidder fails to provide such information
5 within fourteen calendar days of bid opening, or as otherwise required in the Advertisement
6 For Bids, the department head could find that the bidder is refusing to enter into the contract,
7 resulting in a forfeiture of the bidder's bid bond.

8 (8) Business Tax Registration Certificate. All Advertisements For Bids shall require
9 that bidders submit proof of a current Business Tax Registration Certificate. Failure of a bidder
10 to provide such proof within fourteen (14) calendar dues of bid opening, or as otherwise
11 required in the Advertisement For Bids, could, at the discretion of the department head,
12 constitute a refusal to enter into the contract and result in a forfeiture of the bid bond.

13 (9) Designation of Subcontractors; Subcontracting and Subletting. All bidders shall
14 designate their subcontractors in accordance with and shall be subject to the California
15 Subletting and Subcontracting Fair Practices Act, at Public Contract Code § 4100 et seq., as
16 amended from time-to-time. In addition to the penalties provided by Public Contract Code §
17 4100 et seq., violation of this subsection may be grounds for a determination of
18 nonresponsibility under Article V of this Chapter.

19 (10) Work to Be Performed by General Contractor. The Advertisement For Bids may
20 specify the portion of work which must be performed by the General Contractor using his/her
21 own forces. The specification may require the General Contractor to perform with his/her own
22 forces up to 25% of the base contract work. Bidders must certify with their bids that, if
23 awarded the contract, they will perform with their own forces the specified percentage of the
24 total bid price (excluding alternates).

1 (B) Quotes. All requests for quotes for construction contracts less than or equal to the
2 Threshold Amount shall be posted with three-days' notice. Such requests shall at a minimum
3 require a contractor's license, qualifications, a Business Tax Registration Certificate,
4 participation in an apprenticeship program and compliance with subcontractor listing laws, all
5 in accordance with the listed provisions of Sections 6.21 and 6.22.

6 (C) Right to Reject Any or All Bids or Quotes. The department head shall have the
7 right to reject any or all bids or quotes for any reason or no reason. All Advertisements For
8 Bids shall reserve this right, but failure to make such reservation shall not abrogate the right to
9 reject.

10 (D) Bid Protests. Only a bidder may submit a bid protest. The department head
11 concerned shall prescribe in the Advertisement For Bids procedures for submitting bid
12 protests. Such procedures shall set the time by which bid protests must be received but may
13 not require that bid protests be submitted fewer than five (5) business days after the date bids
14 are due.

15 Section 4. The San Francisco Administrative Code is hereby amended by amending
16 Section 6.22, to read as follows:

17 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
18 **CONDITIONS.**

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

21 (A) Bonds. Before the execution of any contract for public works or improvements *in*
22 *excess of \$25,000*, the department head authorized to execute such contracts shall require the
23 successful bidder to file corporate surety bonds for the faithful performance thereof and to
24 guarantee the payment of wages for services engaged and of bills contracted for material,
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1 supplies and equipment used in the performance of the contract. The bond shall be for a sum
2 not less than 100 percent of the award.

3 The City and County of San Francisco, acting through its Human Rights Commission
4 ("HRC"), intends to provide guarantees to private bonding assistance companies and financial
5 institutions in order to induce those entities to provide required bonding and financing to
6 eligible contractors bidding on and performing City public work contracts. This bonding and
7 financial assistance program is subject to the provisions of Administrative Code ~~Section~~
8 12D.A.9 Chapter 14B.

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

14 Every contractor and subcontractor shall comply with the provisions of California Labor
15 Code section 3700. Prior to commencing the performance of work under any public work
16 contract, the contractor and all of its subcontractors shall file with the awarding department a
17 certificate of insurance against liability for workers compensation or proof of self-insurance in
18 accordance with the provisions of the California Labor Code.

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

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

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

8 (E) Prevailing Wages.

9 (1) Generally. All contractors and subcontractors performing a public work or
10 improvement for the City and County of San Francisco shall pay its workers on such projects
11 the prevailing rate of wages as provided below. For the purpose of prevailing wage
12 requirements only, the definition of a public work shall include those public works or
13 improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a)
14 any trade work performed at any stage of construction (including preconstruction work) and
15 (b) any public work paid for by the City and County of San Francisco with "the equivalent of
16 money" under the meaning of Labor Code section 1720(b).

17 (2) Leased Property Included. For the limited purposes of this subsection, a "public
18 work or improvement" also means and includes any construction work done under private
19 contract when all of the following conditions exist:

20 (a) The construction contract is between private persons; and

21 (b) The property subject to the construction contract is privately owned, but upon
22 completion of the construction work will be leased to the City and County of San Francisco for
23 its use; and

24 (c) Either of the following conditions exist: (1) The lease agreement between the
25 lessor and the City and County of San Francisco, as lessee, is entered into prior to the

1 construction contract, or (2) The construction work is performed according to the plans,
2 specifications, or criteria furnished by the City and County of San Francisco, and the lease
3 agreement between the lessor and the City and County of San Francisco as lessee, is
4 entered into during, or upon completion, of the construction work.

5 (3) Determination of the Prevailing Wage. It shall be the duty of the Board of
6 Supervisors, from time to time and at least once during each calendar year, to fix and
7 determine the prevailing rate of wages as follows:

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

1 In the event that the Board of Supervisors does not fix or determine the highest general
2 prevailing rate of wages in any calendar year, the rates established by the California
3 Department of Industrial Relations for such year shall be deemed adopted.

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

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

22 (6) Records to be Kept by Contractors and Subcontractors. Every public works
23 contract or subcontract awarded under this Chapter shall contain a provision that the
24 contractor shall keep, or cause to be kept, for a period of four years from the date of
25 substantial completion of a public work, payrolls and basic records including time cards, trust

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

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

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

21 Should the department head responsible for the public work or the Labor Standards
22 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
23 requirements of this subsection, the department head or the Labor Standards Enforcement
24 Officer shall issue written notification to the contractor or subcontractor mandating compliance
25 within not fewer than ten calendar days from the date of the notification. Should the contractor

1 or subcontractor fail to comply as required in the notification, the department head who
2 executed the contract or the Labor Standards Enforcement Officer may impose a penalty of
3 \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon the
4 request of the responsible department head or the Labor Standards Enforcement Officer, the
5 Controller shall withhold these penalties from progress payments then due or to become due.

6 (7) Additional Required Contract Provisions. Every public works contract shall contain
7 provisions stating that (1) the contractor will cooperate fully with the Labor Standards
8 Enforcement Officer and other City employees and agents authorized to assist in the
9 administration and enforcement of the prevailing wage requirements and other labor
10 standards imposed on public works contractors by the Charter and Chapter 6 of the San
11 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
12 Enforcement Officer and his or her designees, in the performance of their duties, shall have
13 the right to engage in random inspections of job sites and to have access to the employees of
14 the contractor, employee time sheets, inspection logs, payroll records and employee
15 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
16 employees are present on the job site; (4) the contractor shall prominently post at each job-
17 site a sign informing employees that the project is subject to the City's prevailing wage
18 requirements and that these requirements are enforced by the Labor Standards Enforcement
19 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
20 contractor as he or she reasonably deems necessary to determine compliance with the
21 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
22 works contractors. Failure to comply with these requirements may result in penalties and
23 forfeitures consistent with California Labor Code section 1776(g), as amended from time to
24 time.

25 (8) Non-compliance with Wage Provisions--Penalties.

1 (a) Penalty and Forfeiture. Any contractor or subcontractor who shall fail or neglect to
2 pay to the several persons who shall perform labor under any contract, subcontract or other
3 arrangement on any public work or improvement as defined in this Chapter the highest
4 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this
5 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said
6 wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City
7 and County of San Francisco back wages due plus the penal sum of \$50.00 per day for each
8 laborer, workman or mechanic employed for each calendar day or portion thereof, while they
9 shall be so employed and not paid said highest general prevailing rate of wages, and in
10 addition shall be subject to the penalties set forth in Article V of this Chapter, including
11 debarment.

12 (b) Enforcement. It shall be the duty of the officer, board or commission under whose
13 jurisdiction said public work or improvement is being carried on, made or constructed, when
14 certifying to the Controller any payment which may become due under said contract, to deduct
15 from said payment or payments the total amount of said forfeiture provided for in this
16 subsection. In doing so, the department head must also notify in writing the Labor Standards
17 Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also,
18 upon written notice to the department head who is responsible for the project, certify to the
19 Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.
20 Certification of forfeitures under this subsection shall be made only upon an investigation by
21 the responsible department head or the Labor Standards Enforcement Officer and upon
22 written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The
23 Controller, in issuing any warrant for any such payment, shall deduct from the amount which
24 would otherwise be due on said payment or payments the amount of said forfeiture or
25 forfeitures as so certified.

1 (c) Recourse Procedure. If the contractor or subcontractor disagrees with the
2 forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
3 applies:

4 (i) The contractor or subcontractor may request a hearing in writing within 15 days of
5 the date of the notification of forfeiture. The request shall be directed to the City Controller.
6 Failure by the contractor or subcontractor to submit a timely, written request for a hearing
7 shall constitute concession to the assessment and the forfeiture shall be deemed final upon
8 expiration of the 15-day period;

9 (ii) Within 15 days of receiving a proper request, the Controller shall appoint a hearing
10 officer with knowledge and not less than five years' experience in labor law, prevailing wage,
11 and/or wage and hour issues, and shall so advise the enforcing official and the contractor or
12 subcontractor, and/or their respective counsel or authorized representative;

13 (iii) The hearing officer shall promptly set a date for a hearing. The hearing must
14 commence within 45 days of the notification of the appointment of the hearing officer and
15 conclude within 75 days of such notification unless all parties agree to an extended period;

16 (iv) The contractor or subcontractor shall have the burden of proving that the basis for
17 the back wage and penalty assessment is incorrect;

18 (v) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
19 written decision affirming, modifying, or dismissing the assessment. The decision of the
20 hearing officer shall consist of findings and a determination. The hearing officer's findings and
21 determination shall be final.

22 (vi) The contractor or subcontractor may appeal a final determination under this
23 section only by filing in the San Francisco Superior Court a petition for a writ of mandate
24 under California Code of Civil Procedure, section 1084, et seq., as applicable and as may be
25 amended from time to time.

1 (d) Distribution of Forfeiture. The Controller shall withhold any forfeiture as provided in
2 the foregoing paragraphs until such time as either the contractor or subcontractor has
3 conceded to the forfeiture or, in the event of an objection, there is a determination no longer
4 subject to judicial review. The Controller shall then distribute the amounts withheld in the
5 following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to
6 distribute back wages withheld to the individual workers identified as not having been paid the
7 proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the
8 general fund of the City and County of San Francisco; (3) the Controller shall hold the balance
9 of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
10 despite his/her best efforts, cannot locate; funds so held for two years or more shall be
11 dedicated to the enforcement of the prevailing wage requirements.

12 (F) Hours and Days of Labor.

13 (1) Generally. For the purpose of meeting prevailing conditions and enabling
14 employers to secure a sufficient number of satisfactory workers and artisans, no person
15 performing labor or rendering service in the performance of any contract or subcontract for
16 any public work or improvement as defined in this Chapter shall perform labor for a longer
17 period than five days (Monday through Friday) of eight hours each, with two 10-minute breaks
18 per eight-hour day, except in those crafts in which a different work day or week now prevails
19 by agreement in private employment. Any person working hours in addition to the above shall
20 be compensated in accordance with the prevailing overtime standards and rates.

21 (2) Noncompliance--Penalties and Forfeiture. Any contractor or subcontractor who
22 shall violate any of the provisions of this subsection shall be liable for the same penalties and
23 forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits shall be
24 applicable for each laborer, mechanic or artisan employed for each calendar day or portion
25 thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more

1 than the days and hours specified herein. The provisions of this subsection shall be made a
2 part of all contracts and subcontracts for the construction of any public work or improvement.

3 (3) Contracts Outside City and County. In the event that any public work or
4 improvement is to be constructed outside of the City and County of San Francisco and at such
5 a distance therefrom that those engaged in performing labor on said public work or
6 improvement must under ordinary conditions remain at or near the site of said work or
7 improvement when not actually engaged in the performance of labor thereon, then the officer,
8 board or commission responsible for the construction of said public work or improvement may,
9 in making specifications or letting contracts therefor, make provision therein for days and
10 hours of labor beyond the limitations provided for in Section 6.22(F) of this Chapter; but not to
11 exceed eight hours in any one calendar day, or six days in any calendar week. In the event
12 that emergency conditions shall arise, making a change advisable during the performance of
13 any such contract, or any portion thereof, the hours and days of labor may be extended
14 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the
15 written authority of the officer, board or commission awarding such contract. Failure of the
16 contractor to perform such contract within the time provided shall not constitute an
17 emergency.

18 (G) Local Hiring Workforce Development.

19 (1) Contract Requirements. All public work contracts awarded under this Chapter for
20 work construction contracts for public works or improvements to be performed within the
21 boundaries of the City and County of San Francisco shall incorporate the appropriate
22 requirements of Administrative Code Chapter 83 and the CityBuild Program, as may be
23 amended from time to time. contain the following provisions:

24 Contractor agrees to make a good-faith effort, with the assistance of community
25 organizations designated by the City or local labor union hiring halls, to hire qualified

1 individuals who are residents of the City and County of San Francisco to comprise not less
2 than 50% of each contractor's total construction work force, measured in labor work hours,
3 and contractor promises to give special preference to minorities, women and economically
4 disadvantaged individuals.

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

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

11 (2) A failure to abide by these contract provisions may result in the imposition of
12 sanctions and penalties, including those provided for in San Francisco Administrative Code
13 Section 6.80.

14 (2) Definitions.

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

18 "Resident of the City and County of San Francisco" shall mean an individual who is
19 domiciled, as defined by Section 200(b) of the California Election Code, within the boundaries
20 of the City and County during the entire time of the performance of the contract and who can
21 verify his or her domicile, upon request of the contractor or City, by producing documentation
22 such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid
23 California driver's license or identification card, and/or any other similar, reliable evidence that
24 verifies that the individual is domiciled within the City and County of San Francisco.
25

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

6 (3) Enforcement. The Human Rights Commission Office of Economic and Workforce
7 Development shall be the City agency charged with the monitoring and enforcement of the
8 provisions of this subsection.

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

21 (1) Increasing or Decreasing Price. Alterations, modifications or extras in any contract,
22 which will increase or decrease the contract cost or scope, may be made or allowed only on
23 the written recommendation of the department head responsible for the supervision of the
24 contract stating the amount and basis for such increase or decrease. For any cumulative
25 increase or decrease in price in excess of ten percent of the original contract price or scope,

1 the department head shall obtain the approval of the Mayor or Mayor's designee or the board
2 or commission as appropriate and also the approval of the Controller notwithstanding any
3 delegation provided for above.

4 (2) Extensions of Time. Upon finding that work under a construction contract cannot
5 be completed within the specified time because of an unavoidable delay as defined in the
6 contract, the department head may extend the time for completion of the work. If the
7 cumulative extensions of time exceeds ten percent of the original contract duration, the
8 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
9 commission, as appropriate to the department notwithstanding any delegation provided for
10 above. All time extensions shall be in writing, but in no event shall any extension be granted
11 subsequent to the issuance of a certificate of final completion.

12 (a) Time Extension Not Waiver of City's Rights. The granting of an extension of time
13 because of unavoidable delays shall in no way operate as a waiver on the part of the City and
14 County or the department head, Mayor, board or commission of the right to collect liquidated
15 damages for other delays or of the right to collect other damages or of any other rights to
16 which the City and County is entitled.

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

23 (c) Avoidable and Unavoidable Delay; Limitation of Damages for Delay. The
24 department head administering the public work shall have the authority to specify in the
25 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall

1 not pay damages or compensation of any kind to a contractor because of delays in the
2 progress of the work, whether such delays be avoidable or unavoidable; provided, however,
3 the City and County may pay for (1) delays caused to the contractor by the City and County;
4 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter
5 delays will be compensated for only under the conditions specified in the contract.

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

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

18 (J) Retention of Progressive Payments. Any contract may provide for progressive
19 payments, if the Advertisement For Bids shall so specify. Each progress payment shall
20 constitute full compensation for the value of work performed and materials furnished for a
21 specified period, less amounts withheld as a result of dispute or as required by law.

22 (1) From every progress payment, the City shall hold 10 percent in retention.

23 (2) If the department head responsible for the public work *or his/her designee*
24 determines that the contract is 50 percent or more complete, that the contractor is making
25 satisfactory progress, and that there is no specific cause for greater withholding, the

1 department head ~~or his/her designee~~, upon the written request of contractor, may authorize one
2 of the following two options: (a) the City shall release part of the retention to the contractor so
3 that the amount held in retention by the City, after release to the contractor, is reduced to an
4 amount not less than 5 percent of the total value of the labor and materials furnished, and the
5 City shall proceed to retain 5 percent of any subsequent progress payment under the contract;
6 or (b) the City shall continue to hold the already withheld retention amount, up to 5 percent of
7 the total contract price, and shall not deduct further retention from progress payments.

8 (3) The department head shall authorize the release of retention, in whole or in part, for work
9 completed by subcontractors certified by the HRC as LBEs. The department head shall do so only
10 upon a written request by the contractor certifying (i) the work by the certified LBE subcontractor is
11 completed and satisfactory (ii) the total final amount paid to the certified LBE subcontractor and (iii)
12 the amount of retention associated with the work performed by the certified LBE subcontractor.
13 Following a release of such retention, and in order to calculate retention and retention withholding
14 from further progress payments, the City will reduce the total retention required under the foregoing
15 paragraphs (1) and (2) by the amount paid to the certified LBE subcontractor(s) for whom the City
16 released the retention. The release of retention under this subparagraph shall not reduce the
17 responsibilities or liabilities of the contractor or its surety under the contract or applicable law. For
18 any contract awarded under this Chapter prior to the enactment of this subparagraph, a department
19 head may in his or her sole discretion incorporate this subparagraph by change.

20 (4) The department head shall authorize the release of retention, in whole or in part, for work
21 completed by subcontractors under any public work contract awarded under this Chapter with a
22 construction duration of more than two years. The department head shall do so only upon a written
23 request by the contractor certifying (i) the work by the certified LBE subcontractor is completed and
24 satisfactory (ii) the total final amount paid to the subcontractor and (iii) the amount of retention
25 associated with the work performed by the subcontractor. The City may issue the retention within six

1 months of the date of the request. Following a release of such retention, and in order to calculate
2 retention and retention withholding from further progress payments, the City will reduce the total
3 retention required under the foregoing paragraphs (1) and (2) by the amount paid to the
4 subcontractor(s) for whom the City released retention. The release of retention under this
5 subparagraph shall not reduce the responsibilities or liabilities of the contractor or its surety under the
6 contract or applicable law. For any contract awarded under this Chapter prior to the enactment of this
7 subparagraph with a construction duration of more than two years, a department head may in his or
8 her sole discretion incorporate this subparagraph by change order.

9 (35) Retention shall be withheld solely for the benefit and protection of the City,

10 (46) The City shall release retention to the contractor upon the following conditions:

- 11 (a) the contractor has reached final completion under the contract terms and conditions and
12 (b) the contract is free of offsets by the City for liquidated damages, defective work and the
13 like, and is free of stop notices, forfeitures, and other charges. When the department head
14 responsible for the public work or his/her designee determines that the contract is 98 percent
15 or more complete, the department head or his/her designee may reduce retention funds to an
16 amount equal to 200 percent of the estimated value of work yet to be completed, provided that
17 the contract is free of offsets by the City and is free of stop notices, forfeitures, and other
18 charges.

19 (57) In no event shall the City be liable for interest or charges arising out of or relating
20 to the date the City issues any progress payment or the date the City releases all or part of
21 the retention, except that the City will pay interest at the legal rate, as set forth in section
22 685.010(a) of the California Code of Civil Procedure as that section may be amended from
23 time to time, on any improperly withheld amounts commencing no earlier than 90 days after
24 the date the City should have made any progress payment or released all or part of the
25 retention. Under no circumstances shall the legal rate of interest paid by the City under this

1 provision exceed 10 percent per annum. The payment of interest under this provision is the
2 limit of the City's liability with respect to any claim for interest on improperly withheld amounts.

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

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

23 (M) Violations of Chapter 6; False Claims. Every public work contract performed at the
24 expense of the City and County of San Francisco, or the cost of which is paid for out of
25 monies deposited in the treasury of the City and County, whether directly awarded or

1 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
2 other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at
3 Section 6.80) of this Chapter, relating to administrative debarments and false claims. The
4 failure to include such reference or incorporation shall not in any way abrogate the rights of
5 the City and County under Article V of this Chapter.

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

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

17 (P) Safety. All construction contracts awarded under this Chapter shall require the
18 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and
19 Health statutes and regulations.

20 Additionally, all construction contracts awarded under this Chapter shall require the
21 Contractor and all of its subcontractors to abide by the requirements of Administrative Code
22 Section 64.1, prohibiting masonry-dry cutting and masonry dry-grinding, with exceptions.

23 (Q) Claims. The City shall consider only those claims for additional payment under a
24 public work contract that are certified and that conform to the contract requirements for claims,
25 pricing, and schedule.

1 (1) Claims by Contractors. The contractor shall certify under penalty of perjury that (a)
2 the claim is made in good faith; (b) the supporting data are accurate and complete to the best
3 of Contractor's knowledge and belief; and (c) the amount request accurately reflects the
4 Contract adjustment for which the Contractor believes the City is liable. An individual or officer
5 authorized to act on behalf of the Contractor shall execute the certification.

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

11 Section 5. The San Francisco Administrative Code is hereby amended by amending
12 Section 6.40, at subsection (A), to read as follows:

13 **SEC. 6.40. COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FOR**
14 **PUBLIC WORK PROJECTS.**

15 Notwithstanding any other provision of this Administrative Code, when a department is
16 seeking outside temporary professional design, consultant or construction management
17 services for a public work project, where the fee for such services shall exceed the minimum
18 competitive amount, as defined below, the department shall procure such services through a
19 competitive process based on qualifications.

20 (A) Minimum competitive amount. The minimum competitive amount for temporary
21 outside professional service contracts shall be ~~\$25,000~~100,000. On January 1, ~~2005~~15, and
22 every five years thereafter, the Controller shall recalculate the minimum competitive amount to
23 reflect any proportional increase in the Urban Regional Consumer Price Index from January 1,
24 ~~2000~~10, rounded to the nearest \$1,000.

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

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

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

17 (C) Negotiation. Following the selection process outlined above, and should the
18 department concerned desire to enter into a contract, the department head shall invite the
19 highest-ranked qualified respondent to negotiate a professional services agreement. In the
20 event that the department head determines, in the department head's sole discretion, that
21 negotiations are unfruitful, the department head shall terminate negotiations in writing and
22 may then invite the next-ranked respondent to negotiate a contract. In such event, the
23 department head shall as soon as practicable make a report to the Mayor, board or
24 commission as appropriate to the department.
25

1 Section 6. The San Francisco Administrative Code is hereby amended by amending
2 Section 6.60, to read as follows:

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

4 (A) Declaration of Emergency. The Board of Supervisors may declare an emergency
5 and may direct any department head to perform any repair or other emergency work in any
6 manner the Board determines to be in the best interests of the City and County of San
7 Francisco.

8 (B) Other Determinations of Emergency. In an actual emergency as defined or
9 described below, the repair, reconditioning or other work or contract necessitated by the
10 emergency may be executed by the department head responsible for such work in the most
11 expeditious manner, in accordance with the procedures set forth below.

12 (C) Emergency Defined. For purposes of this Chapter, an "actual emergency" means
13 a sudden, unforeseeable and unexpected occurrence involving a clear and imminent danger,
14 demanding immediate action to prevent or mitigate loss of or damage to, life, health property
15 or essential public services. An "actual emergency" shall also mean the discovery of any
16 condition involving a clear and imminent danger to public health or safety, demanding
17 immediate action. Examples of an actual emergency may include, but are not limited to, the
18 following:

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

21 (2) The breakdown or imminent breakdown of any plant, equipment, structure, street
22 or public work necessitating immediate emergency repair or reconditioning to safeguard the
23 lives or property of the citizens; or the property of the City and County; or to maintain the
24 public health or welfare; and

1 (a) Including the installation, repair, construction and alteration of crossings and
2 switch work and special work in connection therewith at street and other railway crossings and
3 at street intersections when the same is to be done by or for the *Public Transportation*
4 *Commission* Municipal Transportation Agency; or

5 (b) Including the installation, repair, construction and alteration of the fire alarm, police
6 communication and traffic signal systems, when the same is to be performed by or for the
7 Department of Telecommunications and Information Services or the *Department of Parking and*
8 *Traffic* Municipal Transportation Agency; or

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

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

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

1 If the emergency does not permit the required approvals to be obtained before work is
2 commenced or the contract entered into, such approvals shall be obtained as soon thereafter
3 as it is possible to do so. In such event, the department head concerned shall notify the
4 Controller immediately of the work involved or the contract entered into and the estimated cost
5 thereof and shall notify the Board of Supervisors not more than seven days after work has
6 been commenced.

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

1 emergency procedures, and whether the emergency contract was awarded to an ~~MBE or WBE~~
2 LBE contractor. Such reports shall be referred to a Board committee for public hearing.

3 (F) Indemnification For Emergency Contracts. Department heads responsible for any
4 emergency work are hereby authorized to (a) waive any requirement that a contractor
5 performing such emergency work indemnify the City and County and/or (b) enter into a
6 contract which provides that the City and County indemnify such contractor, except that the
7 City and County shall in no event indemnify a contractor for the contractor's gross negligence
8 or willful misconduct

9 Section 7. The San Francisco Administrative Code is hereby amended by amending
10 Section 6.62, to read as follows:

11 **SEC. 6.62. JOB ORDER CONTRACTS.**

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

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

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

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

1 trade. ~~The Human Rights Commission shall set goals for MBE/WBE subcontractor participation in~~
2 ~~accordance with Administrative Code Chapter 12D.A. Calculation of whether a contractor's bid has~~
3 ~~met the goals will be based on the City's estimate of the amount of work that will be performed by each~~
4 The Advertisement For Bids shall also require the Contractor to commit to an LBE Participation Goal,
5 as set by the Human Rights Commission, in the performance of service orders under the JOC Contract.
6 Upon completion of the JOC Contract term, the Human Rights Commission shall verify compliance
7 with the LBE Participation Goal under the provisions of Administrative Code Chapter 14B.
8 Departments may designate specific JOC Contracts as limited set asides for Micro-LBEs as provided
9 under Chapter 14B.

10 (D) Contractor's bid shall include a subcontractor list in conformance with Section 6.21A of
11 this Chapter and Chapter 14B as appropriate. All requests for substitutions of subcontractors shall be
12 made and considered under Public Contract Code Section 4107, as may be amended from time to time.
13 Notwithstanding this requirement, if a listed subcontractor confirms in writing that it is not available to
14 perform one or more work orders, the contractor may request to add without penalty a subcontractor to
15 perform under the work order(s) at no additional cost to the City. The aggregate value of the work
16 performed by subcontractors added to substitute for listed but unavailable subcontractors shall not
17 exceed 20% of the original contract amount. Specialty trade work unanticipated at the time of bid,
18 requiring the addition of one or more subcontractors, shall be considered the performance of a change
19 order under Public Contract Code Section 4107(c). The addition of any subcontractor under any
20 circumstances or for any purpose shall be effected by change order or contract modification. Prior to
21 any added subcontractor performing any service order work, the awarding department shall confirm
22 the license, insurance coverage, and other qualifying criteria as required by law. identify by trade
23 group which tasks will be performed by contractor and which tasks will be performed under
24 subcontract. Contractor shall identify in its bid all subcontractors to be utilized, including the
25 subcontractors' name, business tax registration certificate number, license number and the location of

1 ~~the place of business of each subcontractor. Contractor agrees that it is qualified for and will perform~~
2 ~~with its own forces work of all trades for which a subcontractor is not listed in the bid. This paragraph~~
3 ~~supersedes the listing requirements of and Section 6.21(J Substitutions of JOC subcontractors shall be~~
4 ~~in accordance with California Public Contract Code Section 4107. Penalties set forth in Administrative~~
5 ~~Code Sections 6.22 and 6.80 shall apply to JOC contracts for violation of this section.~~

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

12 (F) The Advertisement For Bids and the contract specifications shall contain a
13 maximum dollar amount of the JOC contract, which maximum amount shall not exceed
14 three five million dollars. The cumulative modifications to a JOC contract shall result in a
15 contract sum not to exceed one hundred-fifty percent of the original contract amount.

16 (G) JOC contracts shall provide for an expiration term of not more than three five
17 years, including all modifications. However, the department head shall not issue any new work
18 orders under the JOC contract after three years from the date of award.

19 (H) Projects will be assigned under the JOC contract on a work order basis at the sole
20 discretion of the department head concerned. Each work order shall include a time certain for
21 completion of the work and an appropriate sum for liquidated damages for delay. Each work order
22 shall also include a list of the subcontractors performing work under such order, with each
23 subcontractor's name, business address, San Francisco business tax registration number, contractor
24 license number, scope of work, and data as may be required by the Human Rights Commission. The
25 work order price shall be no more than the calculated unit prices and the bid adjustment factor. Except

1 ~~for departments with capital programs over \$1 Billion, no work order shall exceed \$200,000, including~~
2 ~~all modifications. For departments with capital programs over \$1 Billion, n~~NO work order shall
3 exceed \$400,000, including all modifications. A department may issue or modify any work
4 order(s) to exceed the foregoing limits only upon the department head's written determination
5 establishing the urgency of the work and the justification for proceeding under this Section
6 6.62 rather than by formal competitive process.

7 (I) A contractor who enters into a JOC contract with a particular City department is not
8 eligible during the term of such JOC contract to submit a bid on a subsequent JOC contract
9 advertised by the same contracting department; however, a contractor may submit a bid on a
10 subsequent JOC contract advertised by the same contracting department if the contractor's
11 existing JOC contract will expire in 120 days or fewer of if the contractor has performed work
12 valued by the City in an amount equal to or exceeding 90% of the maximum dollar amount of
13 the existing JOC contract.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: Sheryl Bregman by 2/1/12
18 Sheryl Bregman
19 Deputy City Attorney
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LEGISLATIVE DIGEST

[Economic stimulus measures for capital project acceleration]

Ordinance amending Administrative Code Chapter 6, Public Works Contracting Policies and Procedures, Section 6.1, to add a definition for a department head and designee and to increase the Threshold Amount for sealed competitively bid construction contracts from \$100,000 to \$400,000, with a future increase by the Controller in 2015; amending Section 6.20, to update and conform references to Administrative Code Chapter 14B; amending Section 6.21, to update and conform references to Administrative Code Chapter 14B; amending Section 6.22(A), to clarify and conform to state law the minimum contract amount requiring performance and payment bonds to \$25,000; amending Section 6.22(J), to allow for early release of retention to subcontractors certified by the Human Rights Commission as Local Business Enterprises or subcontractors on multi-year construction projects; amending Section 6.40, to increase the minimum competitive amount for the procurement of professional services for public work projects from \$25,000 to \$100,000, with a future increase in 2015 by the Controller; amending Section 6.60 to update and conform references to the Municipal Transportation Agency; amending Section 6.62, Job Order Contracts, to amend the Local Business Enterprise goal enforcement procedure and allow for micro-LBE set-asides, to increase the maximum contract amount from \$3 Million to \$5 Million and the maximum contract time to five years, to increase the maximum service order amount from \$200,000 or \$400,000 (depending on the program) to \$400,000 for all purposes, and adding new subcontractor listing and subcontractor substitution requirements.

Existing Law

Administrative Code Chapter 6 governs public work or improvement contracting policies and procedures. This legislation affects the following Sections in Chapter 6:

Section 6.1. Definitions.

Section 6.21. Requirements for Bids and Quotes.

Section 6.20. Public Work Contracts Generally.

Section 6.22. Construction Contract Terms and Working Conditions.

Section 6.40. Competitive Procurement of Professional Services for Public Work Projects.

Section 6.60. Emergency Repairs, Work and Contracts.

Section 6.62. Job Order Contracts.

Amendments to Current Law

The amendments to Chapter 6 are as follows:

Section 6.1. Definitions.

- (H) [new subparagraph (H)] Department Head. New definition for a department head, which definition allows department heads authorized to contract for public work to designate a Deputy General Manager or Deputy Director to execute contracts and related documents under Chapter 6.
- (M) [former subparagraph (L)] Threshold Amount. Amends the definition of the Threshold Amount for competitively bid construction contracts from the adjusted amount of \$114,000 to \$400,000, to be adjusted by the Controller in 2015.

Section 6.20. Public Work Contracts Generally.

- (B) Public Works Less Than or Equal to the Threshold Amount. Updates references for the Human Rights Commission disadvantaged contractor program to conform to current law.

Section 6.21. Requirements for Bids and Quotes.

- (B) Bid Bond. Updates references for the Human Rights Commission disadvantaged contractor program to conform to current law.

Section 6.22. Construction Contract Terms and Working Conditions.

- (A) Bonds. Amends the minimum contract amount necessitating Performance and Payment Bonds from all contracts to all contracts in excess of \$25,000, to conform to state law. Updates references for the Human Rights Commission disadvantaged contractor program to conform to current law.
- (J) Retention of Progressive Payments. Provides for release of retention for LBE subcontractors on any public work or all subcontractors on any public work with a construction duration of more than two years upon certification by the general contractor that the subcontractor's work is complete and satisfactory.

Section 6.40. Competitive Procurement of Professional Services for Public Work Projects.

- (A) Minimum competitive amount. Amends the minimum competitive amount for professional design service agreements from \$25,000 to \$100,000, to be adjusted by the Controller in 2015.

Section 6.60. Emergency Repairs, Work and Contracts.

- (C) Emergency Defined. Updates references to the Public Transportation Commission and the Department of Parking and Traffic to the Municipal Transportation Agency.

Section 6.62. Job Order Contracts ("JOC").

- (C) Amends the enforcement of JOC Contract LBE participation goals to require verification at the end of the contract term and allows departments to designate specific JOC Contracts as limited set asides for Micro-LBEs as provided under Chapter 14B.
- (D) Amends the requirement for Advertisements For Bids by allowing for circumstances under which a contractor may add a subcontractor for the performance of limited work orders.
- (F) Amends the maximum JOC contract amount from \$3 Million to \$5 Million, including all modifications.
- (G) Amends the maximum JOC contract term from three years to five years, with no new service orders issued after three years from the date of award.
- (H) Amends the requirements for service orders by adding time and liquidated damage requirements and by adding subcontractor listing requirements. Amends the maximum service order amount from \$200,000 to \$400,000 (the previous maximum was \$200,000 or \$400,000 for all departments with capital programs in excess of \$1 Billion).

Background Information

The Director of Public Works, in consultation with other public work departments, has requested this ordinance to expedite contract award and processing, to increase opportunities for small businesses, and to improve the efficiency of the JOC contract system, as more particularly described as follows:

Expedited award and processing:

- Section 6.1H: Allowing the department head to designate a deputy to execute contracts and contract documents such as contract service orders and change orders will expedite the approval process for such documents.

- Sections 6.1M and 6.40: Increasing the Threshold Amount for formal sealed bidding for construction contracts (from \$100,000 to \$400,000) and the minimum competitive amount for professional service contracts (from \$25,000 to \$100,000) will allow for expedited procurement for smaller contracts.

Increased opportunities for small businesses:

- Sections 6.1M and 6.40: Increasing the Threshold Amount for formal sealed bidding for construction contracts (from \$100,000 to \$400,000) and the minimum competitive amount for professional service contracts (from \$25,000 to \$100,000) will allow for greater LBE participation. The informal procurement procedure for construction contracts is less rigorous and requires the submission of a quote rather than a sealed bid, and departments may target LBEs when seeking quotes as opposed to formal sealed bidding which requires a published advertisement to all potential bidders, LBEs and non-LBEs. With the amendment, departments may also direct to LBEs professional service agreements up to \$100,000.
- Section 6.22A: Increasing the minimum contract amount for Performance and Payment Bonds (from \$0 to \$25,000) benefits small businesses who otherwise cannot obtain a surety bond.
- Section 6.22J: Allowing the early release of retention will benefit construction subcontractors, particularly those who complete work in the early stages of a construction project. The City retains either 10% or 5% of each progress payment through completion of a project to cover defective and incomplete work. A general contractor likewise typically holds retention from payments to its subcontractors. Under current law, the City does not release retention until 98% completion and then retains 200% of the value of the work remaining until final completion. The release of retention to a subcontractor may therefore be delayed for reasons having nothing to do with the performance by that subcontractor. For example, a subcontractor who performed building foundation work early in a project could be waiting for its retention while another subcontractor installs a defective roof, delaying completion of the whole project. By this ordinance, the contracting department is authorized to release incremental retainage for work satisfactorily completed by any LBE subcontractor. The contracting department may release such incremental retainage for any subcontractor who has satisfactorily completed its work on a multi-year construction project.
- Section 6.62C: For Job Order Contracts (as-needed (indefinite quantity) construction contracts), HRC will verify LBE participation at the end of the contract term and departments may designate specific JOC Contracts as limited set asides for Micro-LBEs as provided under Chapter 14B.

Improved efficiency for JOC Contracts:

- Section 6.62D: Allowing for the addition of subcontractors on indefinite quantity contracts will provide greater flexibility for the departments and will reduce levels of approvals and review for proceeding with necessary work.
- Section 6.62F, Section 6.62G, and Section 6.62H: Increasing the maximum contract amount (from \$3 Million to \$5 Million), the maximum term (from three years to five years

with no new service orders after three years), and the maximum service order amount (from \$200,000 to \$400,000), provides greater flexibility for departments to perform more projects under each JOC contract.