[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.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman.
Board amendment additions are double-underlined.
Board amendment deletions are strikethrough 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.
(C) Bid. A sealed document submitted in response to an Advertisement For Bids. No bid shall be deemed accepted by the City and County of San Francisco until such time as the contract is awarded in accordance with this Chapter.

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

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

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

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

(H) Department Head. The duly appointed General Manager, Director, or Executive Director of a City and County of San Francisco department authorized to perform public work under this Chapter. For purposes of this Chapter only, an authorized department head may designate a Deputy General Manager or Deputy Director to execute on his or her behalf any document referenced in this Chapter, including but not limited to Contracts, Change Orders, Modifications, Service Orders, Task Orders, approvals, progress payments, and certificates of completion. Such designation shall be in
writing and shall identify the individual deputy by name and title and the scope and term of the designation.

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

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

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

(KL) Responsive. A responsive bid is one that complies with the requirements of the subject Advertisement For Bids without condition or qualification.
Threshold Amount. The Threshold Amount, for the purposes of this Chapter, is $100,000. On January 1, 2005, and every five years thereafter, the Controller shall recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 2001, rounded to the nearest $1,000.

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

SEC. 6.20. PUBLIC WORK CONTRACTS GENERALLY.

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

(B) Public Works Less Than or Equal to the Threshold Amount. Any public work or improvement estimated to cost less than or equal to the Threshold Amount may be performed (a) under contract or (b) by City and County employees. If the work is to be performed under contract, the department shall obtain not fewer than three quotes and shall award the contract to the responsible bidder offering the lowest quotation. If the department is unable to obtain three quotes, the award may be based on the quote or quotes received. The department administering the contract shall maintain records as to whom the request for quotations was directed and the quotations received. It is the policy of the Board of Supervisors for contracting departments to make every effort to eradicate prejudice and favoritism in the award of City contracts. In order to effectuate this policy, the department heads authorized to enter into construction contracts and their staff members shall collaborate with the HRC Director and HRC staff members periodically to create a list of responsible contractors.
qualified to perform various types of public work for projects estimated to be less than the
Threshold Amount, making every effort to include qualified, responsible, and certified MBE and
WBE-LBE contractors on that list. The HRC shall be responsible for outreach efforts to make
sure that certified MBE and WBE-LBE contractors are aware of the opportunity to be considered
for the list. The contract awarding departments or commissions shall be responsible for
evaluating and determining whether contractors are responsible and qualified to perform the
various scopes of work. The department heads authorized to execute construction contracts
shall report quarterly to the Board of Supervisors regarding MBE/WBE LBE inclusion on the list
of responsible and qualified contractors for public work contracts estimated to be less than or
equal to the Threshold Amount, a description of the scope of work and price for each contract
awarded under this section, the name of the contractor awarded the contract and whether the
contract was awarded to an MBE or WBE LBE contractor. Such reports shall be referred to a
Board committee for public hearing.

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

(D) Comparison of Bids on Basis of Time of Completion. The department head
concerned is authorized to compare bids on the basis of time of completion and any contract
awarded in consideration, in whole or in part, of the relative time estimate of bidders for
completion of the work, shall be subject to the provisions of this Chapter.
(E) Time for Award. Except when a contract is funded by Federal or State grants or funds, all public work contracts shall be awarded within ninety (90) days of the date the City and County receives the bids. Such time may only be extended prior to award of the contract and only upon written agreement of the apparent responsible bidder with the lowest responsive bid and approval by the department head.

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

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

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

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

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

SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.

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

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

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

BOARD OF SUPERVISORS
12/08/2009
In accordance with San Francisco Administrative Code Chapter 6, no bid is accepted and no contract in excess of [the Threshold Amount] is awarded by the City and County of San Francisco until such time as [(1) for departments with boards or commissions, (a) the department head recommends the contract for award and (b) the board or commission then adopts a resolution awarding the contract]; or [(2) for departments under the Mayor, (a) the Mayor or the Mayor’s designee approves the contract for award and (b) the department head then issues an order of award.] Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

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

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

(4) Bid Bond. All bids in excess of $25,000.00 shall be accompanied by a corporate surety bond, or an irrevocable letter of credit on a bank or trust company doing business and having an office in the State of California, having a combined capital and surplus of at least $50,000,000.00, and subject to supervision or examination by Federal or State authority, or a certified check on a bank or trust company doing business and having an office in the State of California, having a combined capital and surplus of at least $50,000,000, and subject to supervision or examination by Federal or State authority, payable on sight to the City and County of San Francisco, the amount of which corporate surety bond, irrevocable letter of credit or certified check shall be fixed by the department head or officer as stated in the Advertisement For Bids, which amount shall not be less than 10 percent of the amount bid for
the cost of the proposed work of improvement, and no bid shall be considered unless accompanied by a corporate surety bond or irrevocable letter of credit or certified check. Any irrevocable letter submitted pursuant to this Chapter shall be on a form provided by the City and County. If the amount of security required is fixed by the department head or officer in an amount in excess of $15,000.00, the form of security required shall be that of a corporate surety bond or irrevocable letter of credit. The requirement for a corporate surety bond, irrevocable letter of credit or certified check described in this subsection shall be referred to collectively as the "bid security requirements."

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

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

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

(7) Qualifications. The department head responsible for the public work shall require from all bidders information concerning their experience and financial qualifications and shall take such information into consideration in the award of any contract. At a minimum the
department head shall require (1) information concerning the contractor's experience, financial qualifications and ability to perform the terms and conditions of the contract and (2) information as to whether the contractor possesses, or can obtain in time to perform the contract, the necessary equipment. In the event that a bidder fails to provide such information within fourteen calendar days of bid opening, or as otherwise required in the Advertisement For Bids, the department head could find that the bidder is refusing to enter into the contract, resulting in a forfeiture of the bidder's bid bond.

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

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

(10) Work to Be Performed by General Contractor. The Advertisement For Bids may specify the portion of work which must be performed by the General Contractor using his/her own forces. The specification may require the General Contractor to perform with his/her own forces up to 25% of the base contract work. Bidders must certify with their bids that, if awarded the contract, they will perform with their own forces the specified percentage of the total bid price (excluding alternates).
(B) Quotes. All requests for quotes for construction contracts less than or equal to the Threshold Amount shall be posted with three-days' notice. Such requests shall at a minimum require a contractor's license, qualifications, a Business Tax Registration Certificate, participation in an apprenticeship program and compliance with subcontractor listing laws, all in accordance with the listed provisions of Sections 6.21 and 6.22.

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

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

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

SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING CONDITIONS.

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

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

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

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

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

(C) Indemnification. All construction contracts awarded under this Chapter shall
require that the contractor fully indemnify the City and County to the maximum extent provided
by law, such that each contractor must save, keep, bear harmless and fully indemnify the City
and County and any of its officers or agents from any and all liability, damages, claims,
judgments or demands for damages, costs or expenses in law or equity that may at any time
arise.
This indemnification requirement may not be waived or abrogated in any way for any contract without the recommendation of the City's Risk Manager and the express permission and approval of the Board of Supervisors.

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

(E) Prevailing Wages.

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

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

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

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

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

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

On or before the first Monday in November of each year, the Civil Service Commission shall furnish to the Board of Supervisors data as to the highest general prevailing rate of wages of the various crafts and kinds of labor as paid in private employment in the City and County of San Francisco, plus "per diem wages" and wages for overtime and holiday work. The Civil Service Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the highest general prevailing rate of wages paid in private employment for similar work, until the same is changed by the Board of Supervisors. In determining the highest general prevailing rate of wages per diem wages and wages for overtime and holiday work, as provided for in this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.
In the event that the Board of Supervisors does not fix or determine the highest general prevailing rate of wages in any calendar year, the rates established by the California Department of Industrial Relations for such year shall be deemed adopted.

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

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

(6) Records to be Kept by Contractors and Subcontractors. Every public works contract or subcontract awarded under this Chapter shall contain a provision that the contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of a public work, payrolls and basic records including time cards, trust...
fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
and foreman daily logs for all trades workers performing work at or for a City and County of
San Francisco public work or improvement. Such records shall include the name, address and
social security number of each worker who worked on the project, including apprentices, his
or her classification, a general description of the work each worker performed each day, the
rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits),
daily and weekly number of hours worked, deductions made and actual wages paid. Every
subcontractor who shall undertake the performance of any part of a public work or
improvement shall keep a like record of each person engaged in the execution of the
subcontract.

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

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

Should the department head responsible for the public work or the Labor Standards
Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
requirements of this subsection, the department head or the Labor Standards Enforcement
Officer shall issue written notification to the contractor or subcontractor mandating compliance
within not fewer than ten calendar days from the date of the notification. Should the contractor
or subcontractor fail to comply as required in the notification, the department head who
executed the contract or the Labor Standards Enforcement Officer may impose a penalty of
$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon the
request of the responsible department head or the Labor Standards Enforcement Officer, the
Controller shall withhold these penalties from progress payments then due or to become due.

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

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

(b) Enforcement. It shall be the duty of the officer, board or commission under whose jurisdiction said public work or improvement is being carried on, made or constructed, when certifying to the Controller any payment which may become due under said contract, to deduct from said payment or payments the total amount of said forfeiture provided for in this subsection. In doing so, the department head must also notify in writing the Labor Standards Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also, upon written notice to the department head who is responsible for the project, certify to the Controller any forfeiture(s) to deduct from any payment as provided for in this subsection. Certification of forfeitures under this subsection shall be made only upon an investigation by the responsible department head or the Labor Standards Enforcement Officer and upon written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The Controller, in issuing any warrant for any such payment, shall deduct from the amount which would otherwise be due on said payment or payments the amount of said forfeiture or forfeitures as so certified.
(c) Recourse Procedure. If the contractor or subcontractor disagrees with the
forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
applies:

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

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

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

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

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

(vi) The contractor or subcontractor may appeal a final determination under this
section only by filing in the San Francisco Superior Court a petition for a writ of mandate
under California Code of Civil Procedure, section 1084, et seq., as applicable and as may be
amended from time to time.
(d) Distribution of Forfeiture. The Controller shall withhold any forfeiture as provided in
the foregoing paragraphs until such time as either the contractor or subcontractor has
conceded to the forfeiture or, in the event of an objection, there is a determination no longer
subject to judicial review. The Controller shall then distribute the amounts withheld in the
following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to
distribute back wages withheld to the individual workers identified as not having been paid the
proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the
general fund of the City and County of San Francisco; (3) the Controller shall hold the balance
of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
despite his/her best efforts, cannot locate; funds so held for two years or more shall be
dedicated to the enforcement of the prevailing wage requirements.

(F) Hours and Days of Labor.

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

(2) Noncompliance--Penalties and Forfeiture. Any contractor or subcontractor who
shall violate any of the provisions of this subsection shall be liable for the same penalties and
forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits shall be
applicable for each laborer, mechanic or artisan employed for each calendar day or portion
thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more
than the days and hours specified herein. The provisions of this subsection shall be made a
part of all contracts and subcontracts for the construction of any public work or improvement.

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

(G) Local Hiring.

(1) Contract Requirements. All construction contracts for public works or
improvements to be performed within the boundaries of the City and County of San Francisco
shall contain the following provisions:

Contractor agrees to make a good-faith effort, with the assistance of community
organizations designated by the City or local labor union hiring halls, to hire qualified
individuals who are residents of the City and County of San Francisco to comprise not less
than 50% of each contractor’s total construction work force, measured in labor work hours,
and contractor promises to give special preference to minorities, women and economically disadvantaged individuals.

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

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

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

(2) Definitions.

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

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

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

(3) Enforcement. The Human Rights Commission shall be the City agency charged with the monitoring and enforcement of the provisions of this subsection.

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

(1) Increasing or Decreasing Price. Alterations, modifications or extras in any contract, which will increase or decrease the contract cost or scope, may be made or allowed only on the written recommendation of the department head responsible for the supervision of the contract stating the amount and basis for such increase or decrease. For any cumulative increase or decrease in price in excess of ten percent of the original contract price or scope, the department head shall obtain the approval of the Mayor or Mayor's designee or the board or commission as appropriate and also the approval of the Controller notwithstanding any delegation provided for above.
(2) Extensions of Time. Upon finding that work under a construction contract cannot be completed within the specified time because of an unavoidable delay as defined in the contract, the department head may extend the time for completion of the work. If the cumulative extensions of time exceeds ten percent of the original contract duration, the department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or commission, as appropriate to the department notwithstanding any delegation provided for above. All time extensions shall be in writing, but in no event shall any extension be granted subsequent to the issuance of a certificate of final completion.

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

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

(c) Avoidable and Unavoidable Delay; Limitation of Damages for Delay. The department head administering the public work shall have the authority to specify in the contract the delays that shall be deemed avoidable or unavoidable. The City and County shall not pay damages or compensation of any kind to a contractor because of delays in the progress of the work, whether such delays be avoidable or unavoidable; provided, however, the City and County may pay for (1) delays caused to the contractor by the City and County;
(d) Notice of Delay Required. The contractor shall promptly notify the department head in writing, of all anticipated delays in the prosecution of the work and, in any event, promptly upon the occurrence of a delay, the notice shall constitute an application for an extension of time only if the notice requests such extension and sets forth the contractor’s estimate of the additional time required together with a full recital of the causes of unavoidable delays relied upon. The department head may take steps to prevent the occurrence or continuance of the delay, may classify the delay as avoidable or unavoidable and may determine to what extent the completion of the work is delayed thereby.

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

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

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

(2) If the department head responsible for the public work or his/her designee determines that the contract is 50 percent or more complete, that the contractor is making satisfactory progress, and that there is no specific cause for greater withholding, the department head or his/her designee, upon the written request of contractor, may authorize one of the following two options: (a) the City shall release part of the retention to the contractor so that the amount held in retention by the City, after release to the contractor, is reduced to an
amount not less than 5 percent of the total value of the labor and materials furnished, and the City shall proceed to retain 5 percent of any subsequent progress payment under the contract; or (b) the City shall continue to hold the already withheld retention amount, up to 5 percent of the total contract price, and shall not deduct further retention from progress payments.

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

(4) The department head shall authorize the release of retention, in whole or in part, for work completed by subcontractors under any public work contract awarded under this Chapter with a construction duration of more than two years. The department head shall do so only upon a written request by the contractor certifying (i) the work by the subcontractor is completed and satisfactory (ii) the total final amount paid to the subcontractor and (iii) the amount of retention associated with the work performed by the subcontractor. The City may issue the retention within six months of the date of the request. Following a release of such retention, and in order to calculate retention and retention withholding from further progress payments, the City will reduce the total retention required under the foregoing paragraphs (1) and (2) by the amount paid to the subcontractor(s) for whom the City
released retention. The release of retention under this subparagraph shall not reduce the
responsibilities or liabilities of the contractor or its surety under the contract or applicable law. For
any contract awarded under this Chapter prior to the enactment of this subparagraph with a
construction duration of more than two years, a department head may in his or her sole discretion
incorporate this subparagraph by change order.

§5 Retention shall be withheld solely for the benefit and protection of the City,
§6 The City shall release retention to the contractor upon the following conditions:
§7 (a) the contractor has reached final completion under the contract terms and conditions and
(b) the contract is free of offsets by the City for liquidated damages, defective work and the
like, and is free of stop notices, forfeitures, and other charges. When the department head
responsible for the public work or his/her designee determines that the contract is 98 percent
or more complete, the department head or his/her designee may reduce retention funds to an
amount equal to 200 percent of the estimated value of work yet to be completed, provided that
the contract is free of offsets by the City and is free of stop notices, forfeitures, and other
charges.

§7 In no event shall the City be liable for interest or charges arising out of or relating
to the date the City issues any progress payment or the date the City releases all or part of
the retention, except that the City will pay interest at the legal rate, as set forth in section
685.010(a) of the California Code of Civil Procedure as that section may be amended from
time to time, on any improperly withheld amounts commencing no earlier than 90 days after
the date the City should have made any progress payment or released all or part of the
retention. Under no circumstances shall the legal rate of interest paid by the City under this
provision exceed 10 percent per annum. The payment of interest under this provision is the
limit of the City's liability with respect to any claim for interest on improperly withheld amounts.
(K) Inspection and Acceptance of Completed Work; Final Payment. The department head authorized to execute any contract for public works or improvements shall be responsible for the inspection and acceptance of such work on completion. Such acceptance shall be in writing and shall include the certificate of the department head concerned that the work covered by the contract has been fully and satisfactorily completed in accordance with the plans and specifications therefor. Receipt of copy of such acceptance in writing shall constitute the Controller's authority to complete any payments due the contractor under the contract; provided that the Controller may make such additional investigation or inspection as is provided by Administrative Code Section 10.07.

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

(M) Violations of Chapter 6; False Claims. Every public work contract performed at the expense of the City and County of San Francisco, or the cost of which is paid for out of monies deposited in the treasury of the City and County, whether directly awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at
Section 6.80) of this Chapter, relating to administrative debarments and false claims. The
failure to include such reference or incorporation shall not in any way abrogate the rights of
the City and County under Article V of this Chapter.

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

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

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

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

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

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

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

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

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

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

(A) Minimum competitive amount. The minimum competitive amount for temporary
outside professional service contracts shall be $25,000100,000. On January 1, 200515, and
every five years thereafter, the Controller shall recalculate the minimum competitive amount to
reflect any proportional increase in the Urban Regional Consumer Price Index from January 1,
2010, rounded to the nearest $1,000.

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

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

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

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

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

SEC. 6.60. EMERGENCY REPAIRS, WORK AND CONTRACTS.
(A) Declaration of Emergency. The Board of Supervisors may declare an emergency and may direct any department head to perform any repair or other emergency work in any manner the Board determines to be in the best interests of the City and County of San Francisco.

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

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

1. Weather conditions, fire, flood, earthquake or other unforeseen occurrences of unusual character; or
2. The breakdown or imminent breakdown of any plant, equipment, structure, street or public work necessitating immediate emergency repair or reconditioning to safeguard the lives or property of the citizens; or the property of the City and County; or to maintain the public health or welfare; and
   a. Including the installation, repair, construction and alteration of crossings and switch work and special work in connection therewith at street and other railway crossings and at street intersections when the same is to be done by or for the Public Transportation Commission Municipal Transportation Agency; or
(b) Including the installation, repair, construction and alteration of the fire alarm, police
communication and traffic signal systems, when the same is to be performed by or for the
Department of Telecommunications and Information Services Technology or the Department of
Parking and Traffic Municipal Transportation Agency: or

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

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

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

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

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

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

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

SEC. 6.62. JOB ORDER CONTRACTS.

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

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

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

(C) The Advertisement For Bids for a JOC contract shall contain the City's estimate regarding the percentage of work under the JOC contract that will be performed by each trade. The Human Rights Commission shall set goals for MBE/WBE subcontractor participation in accordance with Administrative Code Chapter 12DA. Calculation of whether a contractor’s bid has met the goals will be based on the City’s estimate of the amount of work that will be performed by each contractor. The Advertisement For Bids shall also require the Contractor to commit to an LBE Participation Goal.
as set by the Human Rights Commission, in the performance of service orders under the JOC Contract.

Upon completion of the JOC Contract term, the Human Rights Commission shall verify compliance with the LBE Participation Goal under the provisions of Administrative Code Chapter 14B.

Departments may designate specific JOC Contracts as limited set asides for Micro-LBEs as provided under Chapter 14B.

(D) Contractor's bid shall include a subcontractor list in conformance with Section 6.21A of this Chapter and Chapter 14B as appropriate. All requests for substitutions of subcontractors shall be made and considered under Public Contract Code Section 4107, as may be amended from time to time. Notwithstanding this requirement, if a listed subcontractor confirms in writing that it is not available to perform one or more work orders, the contractor may request to add without penalty a subcontractor to perform under the work order(s) at no additional cost to the City. The aggregate value of the work performed by subcontractors added to substitute for listed but unavailable subcontractors shall not exceed 20% of the original contract amount. Specialty trade work unanticipated at the time of bid, requiring the addition of one or more subcontractors, shall be considered the performance of a change order under Public Contract Code Section 4107(c). The addition of any subcontractor under any circumstances or for any purpose shall be effected by change order or contract modification. Prior to any added subcontractor performing any service order work, the awarding department shall confirm the license, insurance coverage, and other qualifying criteria as required by law. Identify by trade group which tasks will be performed by contractor and which tasks will be performed under subcontract. Contractor shall identify in its bid all subcontractors to be utilized, including the subcontractors' name, business tax registration certificate number, license number and the location of the place of business of each subcontractor. Contractor agrees that it is qualified for and will perform with its own forces work of all trades for which a subcontractor is not listed in the bid. This paragraph supersedes the listing requirements of and Section 6.21(J) Substitutions of JOC subcontractors shall be
in accordance with California Public Contract Code Section 4107. Penalties set forth in Administrative Code Sections 6.22 and 6.80 shall apply to JOC contracts for violation of this section.

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

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

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

(H) Projects will be assigned under the JOC contract on a work order basis at the sole discretion of the department head concerned. Each work order shall include a time certain for completion of the work and an appropriate sum for liquidated damages for delay. Each work order shall also include a list of the subcontractors performing work under such order, with each subcontractor's name, business address, San Francisco business tax registration number, contractor license number, scope of work, and data as may be required by the Human Rights Commission. The work order price shall be no more than the calculated unit prices and the bid adjustment factor. Except for departments with capital programs over $1 Billion, no work order shall exceed $200,000, including all modifications. For departments with capital programs over $1 Billion, no work order shall exceed $400,000, including all modifications. A department may issue or modify any work
order(s) to exceed the foregoing limits only upon the department head's written determination establishing the urgency of the work and the justification for proceeding under this Section 6.62 rather than by formal competitive process.

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

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

By: Sheryl Bregman
Deputy City Attorney
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 $3,000,000 to $5,000,000 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.

January 26, 2010 Board of Supervisors - PASSED, ON FIRST READING
Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier

February 02, 2010 Board of Supervisors - FINALLY PASSED
Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/2/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved
2-10-2010