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

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

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

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

SEC. 6.0. SCOPE OF CHAPTER.

Chapter 6 shall govern public work or improvement contracting policies and procedures, including the procurement of professional design, consulting and construction management services for public work or improvement projects.

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 eContract; the forms to be submitted with a bid, as required by the contracting department and the CMD Human Rights Commission; the construction eContract general and special conditions; and the plans and specifications for the public work or improvement.

(B) Award. The action taken by the City in conformance with the Administrative Code and the Charter to enter into a Contract pursuant to this Chapter 6. For eContracts in excess of the Threshold Amount as defined below, a eContract 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 eContract for an Award and (b) the Department Head has then issued an order of an Award;

(2) For departments empowered to contract for Public Works or Improvements with boards or commissions, (a) the Department Head has recommended to the board or commission concerned a eContract for an Award and (b) such board or commission has then adopted a resolution awarding the eContract.

For eContracts less than or equal to the Threshold Amount as defined below, a eContract is awarded when the Department Head either signs the eContract or issues an order of an Award, whichever occurs first. Pursuant to Charter Section 3.105, all eContracts 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 eContract is awarded in accordance with this Chapter 6.

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

City. The City and County of San Francisco.

(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 eContract 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 eContract shall be deemed awarded effective or binding on the City and County of San Francisco until such time as the requirements for an Award are met, as provided in this Chapter 6.
Contract Monitoring Division (CMD). A division of the Office of the City Administrator to which the City Administrator has delegated responsibility to implement Administrative Code Chapter 14B.

(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."

Core Trade Subcontractor. A subcontractor identified by the City or the Contractor that may provide key pre-construction services for a procurement under Section 6.61 or Section 6.68.

(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 or Improvements under this Chapter Section 6.2. For purposes of this Chapter only, an authorized Department Head may designate an individual to execute on his or her behalf any document referenced in this Chapter 6, including but not limited to Contracts, Change Orders, Modifications, Service Orders, Task Orders, approvals, progress payments, and certificates of acceptance completion. Such designation shall be in writing and shall identify the individual by name and title and the scope and term of the designation.

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

(I) 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.

(J) 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. A Public Work or Improvement may
include Integrated Furniture, Fixtures, and Equipment.

Quote or Quotation. A statement or proposal setting out the estimated cost for work or
services submitted in response to a request for a quote from a department for work or services on a
Public Work or Improvement.

(K) 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.
Responsive. A responsive bid or proposal is one that complies with the requirements of the subject Advertisement For Bids or request for proposals and/or qualification without condition or qualification.

Threshold Amount. The Threshold Amount, for the purposes of this Chapter, is $400,000. On January 1, 2020, 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, 2015, rounded to the nearest $1,000.

SEC. 6.2. DEPARTMENTS OR COMMISSIONS EMPOWERED TO CONTRACT FOR PUBLIC WORKS OR RELATED PROFESSIONAL SERVICES.

Except as otherwise provided, the departments or commissions empowered on behalf of the City and County of San Francisco to contract for Public Works or improvements or professional services related to a Public Work or Improvement are the Department of San Francisco Public Works, the Municipal Transportation Agency, and the Airport, Port, Public Utilities, and Recreation and Park Commissions. All other departments or commissions must procure construction or related professional services through the Department of San Francisco Public Works.

SEC. 6.3. CONTRACTING POWERS AND PROCEDURE.

(Aa) Public Work or Professional Service Contracts Less Than or Equal to the Threshold Amount. The Department Head may award any construction contract or professional services contract of less than or equal to the Threshold Amount. For such contracts, approval of the Mayor, commission or board concerned is not required.

(Bb) Public Work or Professional Service Contracts in Excess of the Threshold Amount.
1 (1) **Departments under the Mayor.** For departments under the Mayor, the Mayor or the Mayor's designee shall approve for award all public work and professional service contracts in excess of the Threshold Amount and the Department Head may then issue an order of award.

2 (2) **Departments under Boards or Commissions.** For departments empowered to contract for Public Works or Improvements, the Department Head shall recommend to the board or commission concerned the award of all public work and professional service contracts in excess of the Threshold Amount and such board or commission may then adopt a resolution awarding the contract.

3 **(Cc) Certification Required.** In accordance with Section 3.105 of the San Francisco Charter, all contract awards are subject to certification by the Controller as to the availability of funds.

4 **(Dd) Execution of Contracts.** Following all necessary approvals, orders or resolutions and execution by the Contractor, the Department Head shall execute in duplicate all contracts, modifications and change orders. All paper transactions under this Chapter shall be executed in duplicate. All electronic transactions shall be executed in accordance with Section 21.06 of the Administrative Code.

SEC. 6.4. PREFERENCE FOR LOCAL MANUFACTURERS AND INDUSTRY; RECYCLED CONTENT MATERIALS.

5 (a) **Local preference.** Whenever any preference in favor of local manufacturers or industry is provided by State law or ordinance or resolution of the Board of Supervisors, the same shall apply to contracts under this Chapter.
(b) Recycled Content Materials.

(1) Requirement. The department head or officer calling for bids shall specify recycled content materials, rather than virgin materials, to the maximum extent feasible in the Advertisement for Bids and plans for all contracts for public works or improvements.

(2) Definitions. For the limited purpose of this subsection, the following terms shall have the following meanings: (A) "feasible" means that recycled content materials meet the requirements of the California Building Code or other adopted standards or regulations for each of the materials and its intended use, are permitted to be used in the manner specified in the bid specifications under Federal, State, and local law, are available within the project's time line, and are comparable in price to virgin materials, and (B) "recycled content materials" means a building component utilized in place of raw or virgin material that is either reclaimed for reuse from a prior structure or assembly, or a building material or component manufactured in part from waste materials and/or by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(3) Department of the Environment, Reports. Departments Contract Awarding Authorities shall (a) consult with the Department of the Environment regarding available recycled content products that meet the needs of the department; and (b) include information on recycled content material used on public works contracts in the annual reporting to the Department of the Environment specified in the Environment Code.

SEC. 6.5. COMPLIANCE WITH LOCAL BUSINESS ENTERPRISE UTILIZATION AND NONDISCRIMINATION PROVISIONS.

(Aa) Application of Administrative Code Chapters 12B, 12C, and 14B and 12D.A.

Notwithstanding any other provision of this Administrative Code, all contracts awarded under
this Chapter 6 shall be awarded in accordance with the applicable requirements and
procedures established in this Chapter and Chapters 12B, 12C, and 14B and 12D.A.

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

(Bb) Review by the Contract Monitoring Division Human Rights Commission. The
Human Rights Commission Contract Monitoring Division (the "CMDHRC") shall review all
contracts under this Chapter to determine compliance with Chapters 12B, 12C, and
14BChapter 12D.A of the San Francisco Administrative Code. Such review shall occur as soon
as practicable, but prior to a Award of any such eContract. None compliance shall be resolved in
accordance with Administrative Code section 12D.A.16.

The HRC-Director-CMD may waive the review of any eContract subject to this Chapter.
The HRC-Director-CMD shall transmit a memorandum to the Human Rights Commission City
Administrator as soon as possible reporting such waiver. The DirectorCMD's memorandum
regarding the review waiver shall be a public document. The City Administrator Commission
may disapprove the DirectorCMD's decision to waive review. The HRC's City Administrator's
decision to disapprove must be made within 30 days of receipt of the CMD's memorandum but
in no event subsequent to the a Award of any eContract. Failure to complete the review of any
eContract within 60 days of the date bBids are received by the City shall constitute a waiver
under this subsection 6.5(b).

Any duties required of the City AdministratorHRC under this subsection 6.5(b) may be
delegated by the City AdministratorHuman Rights Commission to the CMD DirectorHRC-Director.
SEC. 6.6. FEDERALLY-FUNDED OR STATE-FUNDED CONTRACTS.

(A) Time for Award. For all contracts that are fully or partially funded by Federal or State grants, loans or other governmental source, the department concerned shall not be required to award such contracts until 120 days from the date bids are received. 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; (b) approval by the Mayor or the Mayor’s Designee or by resolution of the board or commission concerned; and (c) any necessary approvals of the Federal, State or other governmental funding agency.

(B) Contract Terms. In all contracts for the construction of any public work or improvement which involves the use of any funds furnished, given or loaned by the government of the United States or the State of California, all laws, rules and regulations of the government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Chapter when such laws, rules or regulations are in conflict.

SEC. 6.7. VOID CONTRACT.

Any public works or related professional services contract or subcontract that is not awarded in accordance with the requirements or which does not comply with the provisions of this Chapter shall be null and void; and no recovery shall be had thereon. Any officer, board or commission who shall sign, execute or approve such a contract shall be deemed guilty of misfeasance in office.

SEC. 6.8. SEVERABILITY.

If any provision of this Chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of
this Chapter 6, which can be given effect without the invalid provision or application, and to 
this end the provisions of this Chapter 6 are declared to be severable.

SEC. 6.9. SUBCONTRACTOR AND SUBCONSULTANT LIMITATION OF RIGHTS.

Except as otherwise expressly provided by law or eContract, no subcontractor, 
subconsultant, supplier, or other person or business entity shall be a third-party beneficiary to 
any eContract awarded in accordance with this Chapter 6, or to any modification or any 
resolution of any claim arising out of any such eContract.

ARTICLE II: CONSTRUCTION CONTRACTING

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 eContracts 
awarded to the Responsible bidder submitting the lowest Responsive Bid. To split or 
divide any Public Work or Improvement into two or more eContracts for the purpose of 
evading this Section 6.20 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 eContract or (b) by City and County employees. If the work is to be 
performed under eContract, the department shall obtain not fewer than three Quotes and 
shall award the eContract to the Responsible bidder offering the lowest Quote. If the 
department is unable to obtain three Quotes, the Award may be based on the Quote or 
Quotes received. For Contracts for Public Works or Improvements less than or equal to $10,000, no 
competitive solicitation is required, however departments are encouraged to solicit Quotes.
especially from LBE Contractors, and award the Contract to the Responsible Bidder offering the lowest Quotation. The total contract value for Contracts for Public Works or Improvements less than or equal to $10,000 cannot exceed $200,000 per department per fiscal year.

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, Department Heads authorized to enter into construction contracts and their staff members shall collaborate with the HRC Director and HRC staff members CMD periodically to create a list of Responsible Contractors qualified to perform various types of Public Work or Improvements for projects estimated to be less than the Threshold Amount, making every effort to include qualified, Responsible, and certified LBE Contractors on that list. The CMDHRC shall be responsible for outreach efforts to make sure that certified 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 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 LBE contractor. Such reports shall be referred to a Board committee for public hearing.

\((E_c)\) Estimating Required. For Public Works or Improvements in excess of the Threshold Amount, no Department Head shall recommend a construction Contract for or
1 issue an order of award without preparing detailed program requirements and detailed
2 estimates for the work to be performed. There shall be a separate accounting for each work or
3 improvement, which accounting shall include all direct, indirect, and supervisory elements of
4 costs chargeable to such work or improvement. All such accounts shall be reported to the
5 Controller and to either the Mayor or the Mayor's designee or to the board or commission
6 concerned, as appropriate.

(Dd) **Comparison of Bids on Basis of Time of Completion or Cost of Compensable Delay.** The department head, department heads may concerned, are authorized to compare bids on the basis of time of completion and/or the cost of any compensable delay, and any contract awarded in consideration, in whole or in part, of the relative time estimate of bidders for completion of the work and/or the cost of any compensable delay in completing the work, shall be subject to the provisions of this Chapter 6.

(Ed) **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 department head.

(Ef) **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 California 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 Pre-Qualification Questionnaire.
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 *Pre-Qualification
Questionnaire* 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 *b*ids, 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 *b*idder 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 *b*idder with the basis for its finding and any
supporting evidence used in the determination. The department shall give the prospective
*b*idder the opportunity to rebut the evidence provided and to present evidence as to why the
prospective *b*idder should be found qualified. If a *b*idder 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 *b*idder from participating in other or
future prequalifications.

SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.
(Ag) **Bids.** All Advertisements For Bids for construction eContracts in excess of the
Threshold Amount shall conform to and at a minimum require the following:

1. **Published Advertisement.** The department 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, or on a publicly available website of the City's Office of Contract Administration and the department concerned. 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]:

   In accordance with 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 Security Requirement-Bond.** All bids in excess of $25,000 shall be accompanied by a corporate surety bond, or an irrevocable standby 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, 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 standby 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% 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 standby letter of credit or certified check. Any irrevocable standby 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, the form of security required shall be that of a corporate surety bond or irrevocable standby letter of credit. The requirement for a corporate surety bond, irrevocable standby 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 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. *Except as provided in California Business and Professions Code Section 7000 et seq., *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 (1A) information concerning the *Contractor's experience, financial qualifications and ability to perform the terms and conditions of the *Contract, and (2B) information as to whether the *Contractor possesses, or can obtain in time to perform the *Contract, the necessary equipment. *A *Department Head may satisfy this requirement through a Bidder prequalification process that meets the requirement of Section 6.20(f). 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 Advertisement For Bids shall require that bidders submit proof of a current Business Tax Registration Certificate. Failure of a bidder to provide such proof prior to Award 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 California Public Contract Code §Section 4100 et seq., as amended from time-to-time. In addition to the penalties provided by Public Contract Code §Section 4100 et seq., violation of this subsection 6.21(a)(9) 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, or 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 scope or percentage of the total bid price (excluding alternate Bid items).

(Bb) **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.

(Cc) **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
Advertisement For Bids shall reserve this right, but failure to make such reservation shall not abrogate the right to reject.

(Dd) 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.

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

All construction contracts awarded under this Chapter 6 by the City and County of San Francisco shall contain the following minimum terms and conditions:

(Aa) Bonds. Before the execution of any contract for public work or improvement 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. Each bond shall be for a sum not less than 100% percent of the awarded contract amount.

The City and County of San Francisco, acting through the City Administrator 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 Chapter 14B.
(Bb) **Insurance.** All construction eContracts awarded under this Chapter 6 must conform to the insurance requirements established by the Risk Manager. The Risk Manager shall develop uniform insurance requirements for City eContracts subject to this Chapter 6 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 eContractor and subcontractor shall comply with the provisions of California Labor Code Section 3700. Prior to commencing the performance of work under any Public Work eContract, the eContractor 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.

(Cc) **Indemnification.** All construction eContracts awarded under this Chapter 6 shall require that the eContractor fully indemnify the City and County to the maximum extent provided by law, such that each eContractor 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 eContract without the recommendation of the City's Risk Manager and the express permission and approval of the Board of Supervisors.

(Dd) **Assignment.** No eContract 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.

(Ee) **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 as defined in the foregoing Section 6.1, of this Chapter and shall also include (aA) any trade work performed at any stage of construction (including preconstruction work) and (bB) any public work paid for by the City and County of San Francisco with "the equivalent of money" under the meaning of *California* Labor Code Section 1720(b).

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

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

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

(ii) 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

(iii) 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.

(bB) **Public Works Under California Labor Code.** For the limited purposes of this subsection 6.22(Ee) and Section 6.24, a "public work or improvement" also means and
includes all projects for "public works" as defined in California Labor Code section 1720, and projects for which prevailing wages are required to be paid on "public works" pursuant to California Labor Code § Section 1782. This subsection 6.22(B)(2)(b) is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing grant agreement, lease, development agreement or other contract entered into by the City. Notwithstanding the prior sentence, this subsection shall apply to newly included work in pre-existing grant agreements, leases, development agreements, or other contracts amended on or after the operative date. The subsection shall apply to grant agreements, leases, development agreements and other contracts entered into by the City on or after the operative date. All grant agreements, leases, development agreements and other contracts which allow for such construction on property owned by the City that the City enters after the operative date of the subsection must contain a provision that such construction shall comply with this subsection.

(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 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 for any public work or improvement
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 penalties of $25.00 consistent with analogous provisions of the California Labor Code, including Section 1776, as amended from time to time, 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 (A) 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; (B) 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; (C) the contractor shall maintain a sign-in and sign-out sheet showing which
employees are present on the job site; (4D) 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 (5E) 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 analogous provisions of the California Labor Code, including Section
1776(g), as amended from time to time.


(aA) 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 penalties in amounts
consistent with analogous provisions of the California Labor Code as amended from time to time,
including Sections 1775 and 1813, but not less than 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 6, including debarment.

(bB) 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 6.22(E)(8). Certification of forfeitures under this subsection shall be made only upon an investigation and audit by the responsible Department Head or the Labor Standards Enforcement Officer and upon service of written notice to the contractor that includes identification of the grounds for the forfeiture or forfeitures ("Certification of Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of Forfeiture, but failure to append such documentation shall not invalidate the Certification.

Service of the Certification of Forfeiture shall be made by United States mail and the date of service shall be the date of mailing. 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.

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

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

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

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

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

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

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

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

(viii) Appellant may appeal a final determination under this subsection 6.22(e)(8) 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.

(dD) 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 appeal, 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 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. In the event back wages are unclaimed for a period of three years, the Controller shall undertake administrative
procedures for unclaimed funds in conformance with *California* Government Code Section 50050 et seq., as may be amended from time to time.

**(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 eContract or subcontract for any pPublic wWork or iImprovement 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 and Forfeiture.** Any eContractor or subcontractor who shall violate any of the provisions of this subsection 6.22(f) shall be liable for the same penalties and forfeits as those specified in Subsection 6.22(Ee) 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 6.22(f) shall be made a part of all eContracts and subcontracts for the construction of any pPublic wWork or iImprovement.

(3) **Contracts Outside City and County.** In the event that any pPublic wWork or iImprovement 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 the pPublic wWork or iImprovement must under ordinary conditions remain at or near the site of said the pPublic wWork or iImprovement when not actually engaged in the performance of labor thereon, then the officer, board or commission responsible for the construction of said the pPublic wWork or
Improvement may, in making specifications or letting eContracts therefor, make provision therein for days and hours of labor beyond the limitations provided for in subsection 6.22(F) of this Chapter 6; 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 eContract, 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 eContract. Failure of the eContractor to perform such eContract within the time provided shall not constitute an emergency.

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

(1) Findings and Purpose.

(a) The Board of Supervisors passed Ordinance 286-94 on August 4, 1994, to establish local hiring requirements for City public work or improvement projects performed within the boundaries of the City.

(b) In 2010, the San Francisco Redevelopment Agency and the City's Office of Economic and Workforce Development commissioned a study of the labor market in the construction industry in San Francisco (the "Labor Market Analysis"), including review of comparative demographic data regarding workers on public and private projects, scope of past and future public and private construction work in San Francisco, comparative compensation on public and private projects, demographic data regarding apprenticeship programs operating in San Francisco, and income and residency data regarding construction workers in San Francisco.

(c) In 2010, the Walter and Elise Haas Fund and the San Francisco Foundation, with assistance of the City's Office of Economic and Workforce Development,
convened a local hiring stakeholder process to discuss possible revision of subsection 6.22(gG), at which community, labor, contractor, and City stakeholders participated. (dD) In August 2010, a report from Chinese for Affirmative Action and Brightline Defense Project entitled, "The Failure of Good Faith," found that the City has historically failed to meet its local hiring goals. (eE) The Budget & Finance and Land Use & Economic Development Committees of the Board of Supervisors held public hearings regarding local hiring and proposed revisions to subsection 6.22(Gg). (fF) The San Francisco Public Utilities Commission, Redevelopment Agency, Human Rights Commission, and other City departments and agencies held public hearings regarding local hiring. (gG) The construction industry is one of the few industries providing a path to middle-class careers for individuals without advanced degrees or facing barriers to quality employment, and is therefore a crucial component of the effort to build economic opportunities for targeted residents of San Francisco, with a particular emphasis on low-income and underrepresented workers in various building and construction trades, in order to elevate historically disadvantaged populations and create more sustainable communities throughout San Francisco. (hH) The City has awarded more than $8 billion in public work and improvement contracts during the last 10 years. (iI) The City anticipates that it will award approximately $27 billion in public work and improvement contracts in the next 10 years. (jJ) City spending on public work and improvement projects over the next 10 years will generate tens of thousands of construction work hours.
The Board desires to ensure that employment and training opportunities created by such public work and improvement projects provide consistent and high-quality opportunities to the San Francisco labor pool, especially low-income residents of San Francisco and other disadvantaged residents.

Although approximately 40% of construction workers employed in San Francisco are San Francisco residents, from 2002 to 2010 San Francisco residents worked only approximately 24% of the work-hours on publicly-funded construction projects in the City, and only 20% of work-hours since July 2009.

The City faces unemployment levels that have risen dramatically over the past four years, climbing from a low of 3.7% in December 2006 to an average of 9.8% for each month of 2010 through July, leaving at least 44,500 San Franciscans out of work according to the California Employment Development Department, with disproportionate concentrations of high unemployment in neighborhoods such as Bayview-Hunters Point, Chinatown, the Mission, Western Addition, Visitacion Valley, the Excelsior, South of Market, Ocean View, Merced Heights and Ingleside.

The 2010-2014 Consolidated Plan for the City and County of San Francisco indicates that several San Francisco neighborhoods face concentrated poverty and San Francisco's slow job growth rate and changing job base has had major impacts on patterns of income inequality and disparity in the City, with distinctive, adverse, neighborhood-specific effects.

The loss of middle-income jobs has been associated with a diminishing middle class in San Francisco, as indicated by rising income inequality. San Francisco's unequal income distribution threatens the City's future competitiveness and overall economic stability, and the City's anti-poverty strategy aims to ensure that the City and its partners are
marshaling its limited resources in an effective and coordinated way to create economic opportunities in San Francisco's low-income communities.

The City has made substantial public investments in its workforce development system, including CityBuild and the City's community-based partners, to create job opportunities in industries such as construction, which are vital to the economic health of the local economy, have a capacity to generate a significant number of jobs, are accessible to low- and middle-skilled individuals, have career ladder opportunities where workers can move up with additional training and skill development, and provide access to living wage and family-sustaining jobs.

City-funded construction projects provide a crucial opportunity to connect participants in these City-funded or City-operated workforce development programs with employment and training opportunities, and to direct employment and training opportunities created by the City's public expenditures.

The City and the San Francisco Redevelopment Agency have made substantial public investments toward creating and facilitating growth in economic opportunities for low-income individuals and neighborhoods in San Francisco.

CityBuild, San Francisco's construction training workforce program, was initiated in 2005 to serve as a training vehicle for ushering disadvantaged workers into the construction skilled trades. The program is a multi-craft pre-apprenticeship training program, and has assisted over 450 graduates, into union-sponsored apprentice programs. CityBuild, in 2009-2010, contributed approximately 44 percent of all new San Francisco resident apprentice intakes based on data provided by the California Department of Industrial Relations, Division of Apprenticeship Standards. San Francisco's workforce construction training infrastructure has the capacity to meet future demand for high quality and well trained workers in the construction trades.
Employment of workers that reside close to job sites has environmental benefits, including reducing the distance of commutes and resulting vehicle emissions. These environmental benefits are consistent with the mandates, policies and goals of the California Global Warming Solutions Act (AB 32), the Sustainable Communities and Climate Protection Act (SB 375), and the Climate Action Plan for San Francisco.

The Board seeks terms and conditions that advance the City's workforce and community development goals, removing obstacles that may have historically limited the full employment of local residents on the wide array of opportunities created by public works projects, curbing spiraling unemployment, population decline, and reduction in the number of local businesses located in the City, eroding property values and depleting San Francisco's tax base.

A local hiring policy is necessary to counteract these grave economic and social ills.

The San Francisco Local Hiring Policy for Construction 2012-2013 Annual Report shows that the Policy has proven to be a highly effective tool in guaranteeing good-paying jobs for Local Residents on Covered Projects, which includes public work construction projects completed under City contracts.

The 2012-2013 Annual Report is evidence that a true partnership between the City, CityBuild and its community-based partners, contractors, labor organizations, and state-certified apprenticeship programs has increased local hiring on projects covered by the Policy by an average of 35% as of 2013. This compares to an average of 20% under the "good faith efforts" policy it replaced.

The City has a proprietary interest in the construction contracts it issues, and also has a proprietary interest in the leases and development agreements that it enters that all allow for construction on city-owned property.
Expanding the Policy to include construction projects on City-owned property promotes an equitable share of job opportunities for San Francisco residents to pursue a career in construction; and provides the opportunity for the use of state-certified apprenticeships that expands the local construction workforce pipeline to support the continued success of local hiring on public works projects.

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

(a) "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

(b) "Area Median Income" or "AMI" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

(c) "Awarding department" means a department or commission empowered on behalf of the City to contract for a covered project.

(d) "City" means the City and County of San Francisco, California.

(e) "Contractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts directly with the City to perform construction work on a covered project. A contractor may also be referred to as a "prime contractor" or "general contractor."

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

(g) "Disadvantaged worker" means a local resident, as defined below, who (i) resides in a census tract within the City with a rate of unemployment in excess of 150% of the
City unemployment rate, as reported by the State of California Employment Development Department; or (ii) at the time of commencing work on a covered project has a household income of less than 80% of the AMI, or (iii) faces or has overcome at least one of the following barriers to employment: being homeless; being a custodial single parent; receiving public assistance; lacking a GED or high school diploma; participating in a vocational English as a second language program; or having a criminal record or other involvement with the criminal justice system.

("Local hiring incentives" means the incentives set forth in subsection 6.22(gG)(5) of this Policy.

("Local hiring requirements" means the requirements set forth in subsection 6.22(gG)(4) of this Policy.

("Local resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

("OEWD" means the City's Office of Economic and Workforce Development.

("Policy" means this subsection 6.22(gG).

("Project work" means construction work performed as part of a covered project.

("Project work hours" means the total hours worked on a construction contract by all apprentices and journey level workers, whether those workers are employed by the contractor or any subcontractor.

("Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a prime contractor or another subcontractor to provide services to a
prime contractor or another subcontractor in fulfillment of the prime contractor's or that other subcontractor's obligations arising from a contract for construction work on a covered project.

(p) "Targeted worker" means any local resident or disadvantaged worker.

(q) "New hire" means any employee of a contractor who is not listed on the contractor's quarterly tax statements for the tax period and has been hired prior to the commencement of work.

(r) "Core employee or worker" means an apprentice or journey level employee, who possesses any license required by state or federal law for the project work to be performed, of a contractor or subcontractor who appears on that contractor or subcontractor's certified payroll sixty (60) of the previous one hundred calendar (100) days prior to date of award of a city contract.

(3) Coverage.

(aA) Threshold for Public Work and Improvement Projects. This Policy applies to eContracts issued by the City with pPrime eContracts for pPublic wWorks or iImprovements estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of this Chapter, as that amount may be amended.

(bB) Threshold for Projects Constructed on Property Owned by the City. For purposes of subsection 6.22(Gg) only, this Policy applies to all construction projects on property owned by the City that are estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of this Chapter, as that amount may be amended, including construction contracts that are issued by an entity or individual other than the City. The following construction projects are exempt from this subsection 6.22(Gg)(3)(b): (i) tenant improvement projects estimated to cost less than $750,000 per building permit, where the project is undertaken and contracted for by the tenant; (ii) projects for special events where the special event is three (3) or fewer consecutive or non-consecutive days within a two (2) week period;
(iii) construction projects for which the construction work is fully funded and performed by a
donor or donor's agent as a gift-in-place donation, where the gift agreement does not require
City funds to be used for the construction and where the gift agreement includes a
requirement that workers be paid the same prevailing rate of wages as would be required
a public work project; and (iv) projects that as of the effective date of this subsection
6.22(G)(3)(h) have a term sheet that has been endorsed by the Board of Supervisors and
have findings of fiscal feasibility, to the extent that such projects agree to be bound by a
legally enforceable document, enforceable by OEWD, committing the project to Local Hire
mandatory participation level of 30% per trade. All grant agreements, leases, development
agreements and other contracts that the City enters that allow for such non-exempt
construction projects on property owned by the City must contain a provision that such
construction shall comply with this Policy.

(eC) Projects Constructed Outside the City. Covered Projects constructed
within 70 miles from the jurisdictional boundary of the City and County of San Francisco shall
be governed by the terms of this Policy, except that percentage requirements shall apply in
proportion to the City's actual cost after reimbursement from non-City sources compared to
the total cost of the project, and, unless a reciprocity agreement exists, the "local" requirement
shall include San Francisco residents, workers local to the area where the work is located,
and workers residing within the San Francisco Public Utilities Commission service area. If a
reciprocity agreement with another local agency exists, the terms of that reciprocity
agreement shall govern. Covered City projects constructed 70 miles or more beyond the
jurisdictional boundary of the City and County of San Francisco shall be subject to this Policy,
except the "local" requirement shall include San Francisco residents, workers local to the area
where the work is located, and workers residing within the region where the work is located.
Awarding departments shall work with OEWD and regional local hiring programs to comply.
Projects Utilizing Federal or State Funds.

(i) Segregation of Funds and Contract Awards. Where the application of this Policy would violate federal or state law, or would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California, the City department or agency receiving the grant or contract shall, where administratively feasible, segregate federal or state funds from City funds, and/or segregate project administration and contracts, so as to maximize application of this Policy to City-funded construction work.

(ii) Alternative Terms in Case of Conflict. Where the provisions of this Policy would be prohibited by Federal or State law, or where the application of this Policy would violate or be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California, and where segregation of funds pursuant to subsection 6.22 (Gg)(3)(dD)(i) is not administratively feasible with regard to some or all of the project in question, then OEWD, in consultation with the awarding department, shall adapt requirements of this Policy into a set of contract provisions that advance the purposes of this Policy to the maximum extent feasible without conflicting with federal or state law or with terms or conditions of the State or Federal grant or contract in question. The awarding department shall include this set of contract provisions in the public works or improvement contract for the covered project with regard to the project or portions of the project for which this Policy would conflict with Federal or State requirements.

(eE) Out-of-State Workers. Project work hours performed by residents of states other than California shall not be considered in calculation of the number of project work hours to which the local hiring requirements apply. Contractors and subcontractors shall report to awarding departments and OEWD the number of project work hours performed by residents of states other than California.
4) Local Hiring Requirements.

(a) For each covered project, the following requirements shall apply to each prime contractor and subcontractor that performs project work in excess of the Threshold Amount set forth in Section 6.1 of this Chapter, as that amount may be amended, with regard to project work actually performed by the prime contractor and work included under any subcontract, including all work performed by a subcontractor and all lower-tier subcontractors under the subcontract:

(i) The initial mandatory participation level is 20% of all project work hours within each trade performed by local residents, with no less than 10% of all project work hours within each trade performed by disadvantaged workers. Subject to the periodic review process set forth in subsection 6.22(g)(4)(b), below, the mandatory participation level for project work hours shall increase annually up to a mandatory participation level of 50% of project work hours within each trade performed by local residents, with no less than 25% of all project work hours within each trade performed by disadvantaged workers. For each mandatory participation percentage specified below, one-half of the specified percentage of project work hours within each trade shall be performed by disadvantaged workers.

<table>
<thead>
<tr>
<th>Year After Effective Date That Contract Is Advertised for Bids</th>
<th>Mandatory Participation Level for Project Work Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>20%</td>
</tr>
<tr>
<td>1</td>
<td>25%</td>
</tr>
<tr>
<td>2</td>
<td>30%</td>
</tr>
<tr>
<td>Periodic Review</td>
<td>Periodic Review</td>
</tr>
<tr>
<td>3</td>
<td>30%</td>
</tr>
</tbody>
</table>
(ii) At least 50% of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25% of project work hours performed by apprentices within each trade to be performed by disadvantaged workers.

(bB) Periodic Review By OEWD and Controller. OEWD, in coordination with the Controller’s Office, shall every three years from the end of the prior Periodic Review, evaluate the impact of existing mandatory participation levels and the continued need for financial incentives as set forth in subsection 6.22(Gg)(5). The OEWD/Controller review shall (i) determine whether there is a sufficient supply of qualified unemployed resident workers to meet the escalation rate set forth in subsection 6.22(Gg)(4)(4A)(i), above; (ii) assess the length of time required for each trade to develop a pool of qualified resident workers sufficient to support a 50% mandatory participation target; and (iii) make relevant findings in support of those determinations, and, if necessary, propose amendments to the mandatory participation level by trade. OEWD and the Controller’s Office shall further report on the financial incentive program and make relevant findings and, if necessary, propose reducing or eliminating financial incentives. During the periodic review process, OEWD and the Controller’s Office shall consult with a broad spectrum of relevant stakeholders (including the community, the California Department of Industrial Relations Division of Apprenticeship Standards, contractors, building trades, and City departments and agencies). Promptly upon completion
of a periodic review, OEWD and the Controller's Office shall furnish to the Board of
Supervisors a report setting forth their findings, determinations and proposed amendments to
the mandatory participation level by trade and/or the financial incentive program, if any. The
Board shall, by resolution, fix and determine the mandatory participation levels by trade and
available financial incentives, if any. The mandatory participation levels by trade and financial
incentives as so fixed and determined by the Board shall supplant the mandatory participation
levels and financial incentives that this Policy sets and shall remain in force until the same are
changed by the Board. In determining the mandatory participation levels by trade and
available financial incentives, as so provided for in this subsection, the Board shall not be
limited to consideration of the periodic review report furnished by OEWD and the Controller's
Office, but may consider other such evidence upon the subject as the Board shall deem
proper and base its determination upon any or all of the evidence considered.

(eC) Pipeline and Retention Compliance. Contractors and subcontractors
may use one or more of the following pipeline and retention compliance mechanisms to
receive a conditional waiver from the local hiring requirements on a project-specific basis:

(i) Specialized Trades. Every two calendar years, OEWD shall publish a list
of trades designated as "Specialized Trades," for which the local hiring requirements of this
Policy shall not be applicable. Prior to designating a trade as a Specialized Trade, OEWD
shall have made findings that: (a) considering all referral sources and best estimates of
workers residing in the City, there will be insufficient numbers of qualified and available local
residents and disadvantaged workers to enable contractors and subcontractors to satisfy the
local hiring requirements for such trade; and (b) best estimates indicate that on all covered
projects during those calendar years, in the aggregate, demand for work hours in such trade
will not exceed a maximum number of hours as determined by OEWD through the regulatory
process set forth in subsection 6.22(Gg)(8)(aA). All contractors and subcontractors shall report to OEWD the project work hours utilized in each designated Specialized Trade.

(ii) **Credit for Hiring on Non-covered Projects.** Contractors and subcontractors may accumulate credit hours for hiring San Francisco disadvantaged workers on non-covered projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for covered projects to meet the applicable minimum mandatory hiring requirements set forth above or to work off penalties assessed under subsection 6.22(Gg)(7)(bE). OEWD shall establish criteria for credit hours and their application to meet the minimum participation requirements. OEWD shall consider credit hours to be accumulated for work on non-covered projects performed by San Francisco disadvantaged workers only if (a) the San Francisco disadvantaged worker performing work on the non-covered project is paid prevailing wages for such work; and, in the case of non-covered projects in the City and County of San Francisco, (b) the number of hours to be credited for the non-covered project in question exceed one-half of the number of disadvantaged worker hours that would be required if the project were a covered project.

(iii) **Sponsoring Apprentices.** A contractor or subcontractor may avoid the assessment of penalties under subsection 6.22(Gg)(7)(bE) for failing to meet applicable hiring requirements by demonstrating the high impracticality of complying with the mandatory participation level for a particular contract or classes of employees before project commencement by agreeing to sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and retaining those apprentices for the entire period of a contractor’s or subcontractor’s work on the project. OEWD will verify with the California Department of Industrial Relations Division of Apprenticeship Standards that the OEWD-specified number of new apprentices are registered and active apprentices prior to issuing a release from penalties.
(iv) **Direct Entry Agreements.** OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with California Department of Industrial Relations' Division of Apprenticeship Standards, and, if OEWD is successful in such negotiations, to develop standards and procedures through which contractors and subcontractors may avoid assessments of penalties by hiring and retaining apprentices who enrolled through such direct entry agreements. Such standards and procedures shall allow avoidance of penalty assessments only where OEWD has made a project-specific determination that compliance with local hiring requirements would be impractical for that contractor or subcontractor. Direct entry agreements negotiated pursuant to this section shall: (a) be enforceable contracts; (b) require apprenticeship programs to enroll a class of apprentices no less frequently than every 365 days; (c) specify all admissions standards related to applicants' training and skills; (d) specify a minimum number of local residents and disadvantaged workers meeting those standards who shall be admitted in each class of apprentices; and (e) be on file with and deemed permissible by the Division of Apprenticeship Standards. OEWD's annual report to the Board as required by subsection 6.22(Gg)(8)(1E) shall include the number of releases from penalties granted based on this subsection, the number of local residents enrolled as apprentices based on direct entry agreements, and the number of direct entry agreements in effect, and shall identify the trades in question.

(5) **Local Hiring Incentives.**

(a) **Incentive Criteria.** Contractors and subcontractors may receive financial and non-financial incentives for exceeding the local hiring requirements on a covered project. Project work hours credited under subsection 6.22(Gg)(4)(eC) shall not be the basis for any financial or non-financial incentive payment or entitlement.
(b) Administration. Awarding departments will work in consultation with
OEWD to establish the operation and amounts of the incentives, if any.

(i) Any financial incentives provided on a covered project shall comply with
applicable law and shall not exceed one percent of the estimated cost of the project. If
financial incentives are made available for a covered project, awarding departments shall pay
such incentives, if earned by a contractor or subcontractor, only after a contractor or
subcontractor has completed work on the project and OEWD has approved the contractor’s or
subcontractor’s request for incentive payment. Subcontractors requesting incentive payments
shall submit requests to the awarding department and OEWD through the prime contractor,
not directly to the awarding department or OEWD. Payment of subcontractor incentives shall
be paid to the prime contractor for the benefit of the appropriate subcontractor(s). Prime
contractor must pay subcontractor(s) within 10 days of receipt of financial incentives from the
City.

(ii) OEWD shall, by regulation, develop non-financial incentives such as
expedited permitting and reduced administrative burden.

(6) Additional Contractor Rights and Responsibilities.

(a) Local Hiring Plan for Large Projects. For covered projects estimated to
cost more than $1,000,000, the prime contractor shall prepare and submit to the awarding
department and OEWD for approval a local hiring plan for the project. The local hiring plan
shall be a written plan for implementation of the requirements of this Policy, including an
approximate timeframe for hiring decisions of subcontractors, a description of the hiring
processes to be utilized by subcontractors, an estimate of numbers of targeted workers
needed from various referral sources, qualifications needed for such targeted workers, and a
recruitment plan detailing an outreach strategy for candidates representative of local
demographics. An awarding department shall not issue a Notice to Proceed (NTP) without
receiving the Local Hiring Plan. The awarding department may issue an NTP upon submittal of the Plan, but in no case may any payment be made until such time as it has verified in writing that OEWD has approved the prime contractor's local hiring plan.

(bB) **Referral Sources.** Where a contractor's or subcontractor's preferred hiring or staffing procedures for a covered project do not enable that contractor or subcontractor to satisfy the local hiring requirements of this Policy, the contractor or subcontractor shall use other procedures to identify and retain targeted workers. These procedures shall include requesting workers from CityBuild, San Francisco's centralized referral program, and considering targeted workers who are referred by CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration shall include in-person interviews. Qualifications described in the request shall be limited to skills directly related to performance of job duties. When a contractor or subcontractor has taken these steps and a local resident or disadvantaged worker is not available, contractor or subcontractor may request a conditional waiver as described in subsection 6.22(Gg)(4)(eC).

(eC) **Hiring Discretion.** This Policy does not limit contractors' or subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Policy shall be interpreted so as to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

(dD) **Subcontractor Compliance.** Each contractor and subcontractor shall ensure that all subcontractors agree to comply with applicable requirements of this Policy. All subcontractors agree as a term of participation on a covered project that the City shall have third party beneficiary rights under all contracts under which subcontractors are performing project work. Such third party beneficiary rights shall be limited to the right to enforce the
requirements of this Policy directly against the subcontractors. All subcontractors on a
covered project shall be responsible for complying with the recordkeeping and reporting
requirements set forth in this Policy. Subcontractors with work in excess of the Threshold
Amount shall be responsible for ensuring compliance with the local hiring requirements set
forth in subsection 6.22(G)(4) based on project work hours performed under their
subcontracts, including project work hours performed by lower tier subcontractors with work
less than the Threshold Amount.

(7) Enforcement.

(aA) Role of OEWD. OEWD is authorized to enforce all terms of this Policy.
Awarding departments shall work cooperatively with OEWD to implement requirements of this
Policy, to include the provisions of the Policy in every contract for which inclusion is required,
to assist contractors and subcontractors in complying with the Policy, and to assist OEWD in
furthering the purposes of the Policy through monitoring and enforcement activities. OEWD
shall determine the records required to be verified and/or provided by contractors and
subcontractors to establish workers’ qualifications and statuses relevant to this Policy.

(bB) Role of Community-Based Partners. OEWD shall be authorized to
engage its community-based partners in the City's workforce development system to assist
with the recruitment and retention of targeted workers. OEWD shall, through the existing
Workforce Investment Board, provide a forum for community members, community-based
organizations, and representatives of all stakeholders affected by or interested in this Policy to
exchange information and ideas and to advise OEWD staff concerning the operation and
results of the Policy.

(eC) Recordkeeping. Each contractor and subcontractor shall keep, or cause
to be kept, for a period of four years from the date of substantial completion of project work on
a covered project, certified payroll and basic records, including time cards, tax forms, and
superintendent and foreman daily logs, for all workers within each trade performing work on
the covered project. Such records shall include the name, address and social security number
of each worker who worked on the covered project, his or her classification, a general
description of the work each worker performed each day, the apprentice or journey-level
status of each worker, daily and weekly number of hours worked, the self-identified race,
gender, and ethnicity of each worker, whether or not the worker was a local resident or
disadvantaged worker, and the referral source or method through which the contractor or
subcontractor hired or retained that worker for work on the covered project (e.g., core
workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring
method). Contractors and subcontractors may verify that a worker is a local resident through
the worker's possession of a valid SF City ID Card or other government-issued identification.
OEWD and awarding departments may require additional records to be kept with regard to
contractor or subcontractor compliance with this Policy. All records described in this section
shall at all times be open to inspection and examination by the duly authorized officers and
agents of the City, including representatives of the awarding department and the OEWD.

(dD) Reporting. The OEWD shall establish reporting procedures for
contractors and subcontractors to submit to OEWD and the awarding department the records
described above, for purposes of monitoring compliance with and effectiveness of this Policy
and monitoring operation of the City’s public construction sector for other valid purposes. All
records submitted by contractor or subcontractor shall be accompanied by a statement of
compliance signed by an authorized representative of contractor or subcontractor indicating
that the records are correct and complete.

(eE) Monitoring. From time to time and in its sole discretion, OEWD and/or
the awarding department may monitor and investigate compliance of contractor and
subcontractors working on covered projects with requirements of this Policy. OEWD and
awarding departments shall have the right to engage in random inspections of job sites, subject to construction schedule and safety concerns. Each contractor and subcontractor shall allow representatives of OEWD and the awarding department, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the contractor and subcontractor and the records required to be kept by this Policy. The OEWD shall establish an administrative procedure for OEWD monitoring of compliance with this Policy and to address allegations of noncompliance. The OEWD shall have sole authority over the administration of this procedure. Except as prohibited by law, OEWD will make data collected under subsections 7(eC) and (dD) of this Policy available online to the public in real-time and create a process for members of the public to submit complaints regarding alleged violations of this Policy. The OEWD shall investigate all complaints filed by members of the public; the scope, methods, and conclusions of all such complaint-driven investigations shall be within the discretion of OEWD, with no right of the complaining party to determine the scope or methods of the investigation. All contractors, subcontractors and awarding departments shall cooperate fully with the OEWD in monitoring and compliance activities. The OEWD may interview, either at the worksite or elsewhere, any witness who may have information related to a complaint.

(f) Compliance Procedures.

(i) Consequences of Noncompliance. Awarding departments and OEWD have the authority to seek for violations of this Policy all of the consequences imposed by or described in this Policy, in the contract for a covered project, or by statute, including the authority to assess penalties as described herein, assess damages for other violations of terms of this Policy, and/or seek penalties set forth in Article V of this Chapter, including debarment.
(ii) **Penalties Amount.** Any contractor or subcontractor who fails to satisfy local hiring requirements of this Policy applicable to project work hours performed by local residents shall forfeit; and, in the case of any subcontractor so failing, the contractor and subcontractor shall jointly and severally forfeit to the City an amount equal to the journeyman or apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(E_g)(3), for the primary trade used by the contractor or subcontractor on the covered project for each hour by which the contractor or subcontractor fell short of the local hiring requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

(iii) **Assessment of Penalties.** It shall be the duty of the awarding department, when certifying to the Controller any payment which may become due under a contract, to deduct from said payment or payments the total amount of penalties due under this subsection. In doing so, the department head must also notify the OEWD of his or her action. OEWD may also upon written notice to the awarding department, certify to the Controller any forfeiture 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 awarding department or OEWD and upon written notice to the contractor or subcontractor identifying the grounds for the forfeiture or forfeitures, and providing the contractor or subcontractor with the opportunity to respond. 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. Any retainage to cover contract performance that may become due to contractor under subsection 6.22(ff) may be withheld by the City pending a determination by the awarding department or OEWD as to whether a contractor or subcontractor must pay a penalty or penalties.
(iv) **Recourse Procedure.** If the contractor or subcontractor disagrees with
the assessment of penalties as so provided in this subsection, then the following procedure
applies:

(a) The contractor or subcontractor may request a hearing in writing within
15 days of the date of the final notification of assessment. 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. The contractor or subcontractor must
exhaust this administrative remedy prior to commencing further legal action.

(b) 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,
and shall so advise the enforcing official and the contractor or subcontractor, and/or their
respective counsel or authorized representative.

(c) 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.

(d) 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.

(e) 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, § 1084, et seq., as applicable and as may be
amended from time to time.
(v) **Distribution of Penalties.** The Controller shall withhold any penalties assessed as provided in the foregoing subparagraphs until such time as either the contractor or subcontractor has conceded to the penalties or, in the event of an objection, there is a determination no longer subject to judicial review. The Controller shall then deposit the amounts withheld into a special account which shall be created for the sole purpose or receiving said funds. The funds deposited into this account shall be used to support the enforcement of this Policy and the further development of workforce development initiatives to train and prepare local residents for careers in construction.

(vi) **Other Violations; Repeated Violations.** Violations of this Policy for which penalties or other remedies are not specified above constitute violations of contract terms, for which the full range of remedies under the contract may be invoked, including but not limited to withholding of progress payments in amounts deemed proportional to the violation. Awarding departments shall comply with and implement damages claims and other noncompliance consequences assessed or required by OEWD.

(8) **Miscellaneous.**

(a) **Regulations and Administrative Guidance.** OEWD shall be the primary department authorized to implement and enforce this Policy. OEWD shall issue regulations and/or administrative guidance regarding implementation of the Policy, including (i) documentation and recordkeeping requirements, (ii) incentive payments, (iii) monitoring and compliance activities, (iv) project and/or contract coverage determinations, (v) designated referral sources, (vi) bid and contract documents implementing the Policy, (vii) procedures for application of the Policy to alternative competitive bidding processes set forth in Article IV of this Chapter, (viii) procedures for monitoring and enforcement of the Policy where the construction contract is issued by an entity or individual other than the City, and (ix) other matters related to implementation of this Policy. Awarding departments shall cooperate with
and assist in implementation of OEWD actions and determinations regarding this Policy. For projects where the construction contract is issued by an entity or individual other than the City, OEWD may grant conditional waivers on a project specific basis if it finds that the contractor has participated to the extent feasible in available pipeline and retention mechanisms, the contractor has undertaken all corrective actions issued by OEWD, and considering all referral sources and estimates of workers residing in the City, there will be insufficient numbers of qualified and available local residents and/or disadvantaged workers to enable the contractor or subcontractor to satisfy the local hiring requirements.

(bB) Assistance in Monitoring, Investigations, and Implementation. In accordance with applicable law, the City may enter into one or more contracts for investigative and monitoring services to further the purposes of this Policy, or to assist OEWD or awarding departments in developing and implementing systems needed to advance the purposes of this Policy.

eC) Departmental Assistance with Monitoring and Enforcement Costs. Subject to the fiscal and budgetary provisions of the City Charter and applicable federal and state laws and regulations, OEWD is authorized to receive from awarding departments the amount reasonably calculated to pay for the costs, including litigation costs, of monitoring and enforcing requirements of this Policy. OEWD shall supervise the expenditure of all funds appropriated for these purposes.

dD) Effective Date, Operative Date, and Prospective Application. This Policy shall become effective upon the date of its enactment and shall apply to covered projects first advertised for bids by awarding departments more than sixty (60) days after such date. The amendment to the Policy in subsection 6.22(Gg)(3)(bB) shall become operative sixty (60) days after the effective date of the ordinance enacting the amendment. The amendment in subsection 6.22(Gg)(3)(bB) is intended to have prospective effect only, and shall not be
interpreted to impair the obligations of any pre-existing grant agreement, lease, development
greement or other contract entered into by the City. Notwithstanding the prior sentence, the
amendment in subsection 6.22(Gg)(3) may apply to newly included work in pre-existing
grant agreements, leases, development agreements, or other contracts amended on or after
the operative date. The amendment in subsection 6.22(Gg)(3) shall apply to grant
agreements, leases, development agreements and other contracts entered into by the City on
or after the operative date.

(eE) Existing Project Labor Agreements. This Policy shall not apply to
project labor agreements entered into by awarding departments prior to the effective date of
this Policy ("Existing PLAs") or to Public Work or Improvement contracts advertised for
bids after the effective date of this Policy that are covered by Existing PLAs, where the terms
of the Existing PLAs and this Policy are in conflict. Notwithstanding the foregoing, this Policy
shall apply to (i) any material amendment to an Existing PLA executed by an awarding
department after the effective date of this Policy; (ii) any new Public Work or Improvement
contract over the threshold amount set forth in subsection 6.22(Gg)(3) that is added to
the scope of an Existing PLA based on a discretionary decision by the awarding department
after the effective date of this Policy.

(fF) Annual Report To Board. Commencing on March 1, 2012, and annually
thereafter, the Director of OEWD shall submit a written report to the Board of Supervisors.
That report shall document each awarding department's performance under the terms of this
Policy, including, among other things, the compliance of each department's contractors and
subcontractors with the requirements of this Policy, any significant challenges experienced by
OEWD or awarding departments in implementing or enforcing this Policy, and proposed
remedies to address any such challenges. That report shall include documentation, organized
by awarding department, of the overall percentage of project work hours on covered projects
performed by local residents, disadvantaged workers, local resident apprentices, and
residents of states other than California. The report shall also compare the demographics of
workers performing work on covered projects, using data collected under the Policy, to the
demographics of the qualified labor pool. Awarding departments shall cooperate with requests
by OEWD for information needed by the Director to make such reports to the Board.

(gG) **Material Term; Contractors' Agreements.** All contracts and
subcontracts for performance of project work shall include compliance with this Policy as a
material term, directly enforceable by the City as described herein. As a condition of
performance of project work, each contractor and subcontractor agrees: to comply with all
provisions of this Policy; that provisions of this Policy are reasonable and are achievable by
the contractor or subcontractor, including the reporting requirements and consequences for
noncompliance described herein; and that the contractor or subcontractor had a full and fair
opportunity to review and understand terms of this Policy, in consultation with counsel if so
desired.

(hH) **Severability.** If any provision of this Policy or any application thereof to
any person or circumstances is held invalid by final judgment of any court of competent
jurisdiction, such invalidity shall not affect other provisions or application of this Policy which
can be given effect without the invalid provision or application, and to this end the provisions
of this Policy are declared to be severable.

(iI) **Conflicting Agreements.** In case of conflict between terms of this Policy
and a contractual agreement entered into by a contractor, subcontractor or awarding
department, terms of this Policy shall govern. Each party to a contract incorporating terms of
this Policy agrees through that contract that either it is not a party to such a conflicting
agreements, or that it will comply with terms of this Policy as incorporated into the contract,
rather than with any conflicting agreements. After the effective date of this Policy, no awarding
department may enter into a project labor agreement or other contract relating to or applying
to the performance of project work on a covered project that conflicts with or precludes
contractor and subcontractor compliance with terms of this Policy.

(iJ) Reciprocity. An awarding department or OEWD may negotiate reciprocity
agreements with other local jurisdictions that maintain local hiring programs, provided that
such agreements advance the Policy goals of this subsection. Any such reciprocity agreement
shall allow targeted workers in each jurisdiction to utilize and benefit from local hiring
requirements and referral systems in the other jurisdiction on the same terms as do the
workers residing in that jurisdiction. When such a reciprocity agreement is in effect, residents
of another jurisdiction may be counted toward satisfaction of the local hiring requirements of
this Policy. Any reciprocity agreement negotiated by an awarding department or OEWD shall
be subject to the approval of the Board of Supervisors by resolution.

(Hl) Modifications - Requirements. If it becomes necessary in the prosecution of
any Public Work or Improvement under a 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 eContract, which will increase or decrease the eContract cost or scope, may be made or allowed only on the written recommendation of the Department Head responsible for the supervision of the eContract 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 eContract 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 eContract cannot be completed within the specified time because of an unavoidable delay as defined in the eContract, the Department Head may extend the time for completion of the work. If the cumulative extensions of time exceeds ten percent of the original eContract 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. The Department Head may seek such approval after completion of the work if the Department Head makes a written finding in the time extension that no basis exists to assess liquidated damages for delay against the Contractor. 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 acceptance.

(aA) **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 as specified in the contract due to acts of God.

(e) Avoidable and Unavoidable Delay; Limitation of Damages for Delay. The dDepartment head administering the pPublic wWork or Improvement 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 (i) delays caused to the Contractor by the City and County and (ii) such unavoidable delays as may be specifically stated in the contract. Such latter delays will be compensated for only under the conditions specified in the contract.

(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.
(II) Liquidated Damages. Any eContract may provide a time within which the eContract 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.

(II) Retention of Progressive Payments Authorized; Retentions. Any eContract for construction services may provide for progressive or milestone payments, if the Advertisement For Bids shall so specify. Each progress or milestone 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) For all eContracts entered into on or after the effective date of this Ordinance subsection 6.22(j), from every progress payment, the City shall hold 5\%\% in retention.

(2) Notwithstanding the subsection 6.22(j)(1) subparagraph above, the City may hold greater than 5\%\% but not more than 10\%\% in retention if the Department Head responsible for the Public Work determines that the Public Work or Improvement is substantially complex and therefore warrants a higher retention amount, and the retention amount is specified in the Advertisement For Bids. For eContracts with retention amounts greater than 5\%\%, if the Department Head responsible for the Public Work determines that the eContract is 50\%\% or more complete, that the eContractor is making satisfactory progress, and that there is no specific cause for greater withholding, the Department Head, upon the written request of eContractor, may authorize one of the following two options: (aA) the City shall release part of the retention to the eContractor so that the amount held in retention by the City, after release to the eContractor, is reduced to an amount not less than 5\%\% of the total value of the labor and materials furnished, and the City shall proceed to retain 5\%\% of any subsequent progress payment under the
(3) The Department *hHead* shall authorize the release of retention, in whole or in part, for work completed by subcontractors certified by *CMD the HRC* as LBEs. The Department *Head* shall do so only upon a written request by the *eContractor* certifying (iA) the work by the certified LBE subcontractor is completed and satisfactory in accordance with the plans and specifications for the project; (iiB) the total amount paid to the certified LBE subcontractor by the *eContractor* as of the date of the written request and the total amount of the subcontract; and (iiiC) 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 or milestone 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 section 6.22(j)(3) shall not reduce the responsibilities or liabilities of the *eContractor* or its surety under the *eContract* 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 *hHead* shall authorize the release of retention, in whole or in part, for work completed by subcontractors under any *pPublic wWork eContract* awarded under this Chapter with a *construction* duration of more than two years. The Department *hHead* shall do so only upon a written request by the *eContractor* certifying (iA) the work by the subcontractor is completed and satisfactory in accordance with the plans and specifications for the project; (iiB) the total amount paid to the subcontractor by the *eContractor* as of the date of the written request and the total amount of the subcontract; and (iiiC) the amount of
retention associated with the work performed by the subcontractor. The City may issue or authorize the release of 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 or milestone payments, the City will reduce the total retention required under the foregoing paragraphs subsections (1) and (2) by the amount paid to the subcontractor(s) for whom the City released retention. The release of retention under this subsection shall not reduce the responsibilities or liabilities of the Contractor or its surety under the eContract 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) When the Department head responsible for the Public Work determines that the eContract is 98% or more complete, the Department head may reduce retention funds to an amount equal to 200% of the estimated value of work yet to be completed, plus any amount necessary to cover offsets by the City for liquidated damages, defective work, stop notices, forfeitures, and other charges. The City shall release retention to the Contractor upon the following conditions: (aA) the Contractor has reached final completion under the eContract terms and conditions and (bB) the eContract 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.

(7) For all eContracts awarded under this Chapter 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, milestone, or other 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% 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.

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

(Kk) Inspection and Acceptance of Completed Work; Final Payment. The Department authorized to execute any contract for public works or improvements shall be responsible for the inspection and acceptance of Public Works or Improvements such work on completion. Such acceptance shall be in writing and shall include the certificate of the Department 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.

(LL) Termination for Convenience. In all Contracts for the construction of any Public Work or Improvement, the Department 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 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 6.22(l).

(Mm) Articles Not to be Prison Made. No article furnished under any Contract awarded under the provisions of this Chapter 6 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.

(Nn) Employment of Apprentices. All construction Contracts awarded under this Chapter 6 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.

(ΩΩ) Safety. All construction Contracts awarded under this Chapter 6 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 6 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.
(PP) **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 requested 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 subsection 6.22(p)(1).

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

Any Contractor who violates this subsection shall pay to the subcontractor a penalty of 2% of the amount due per month for every month or portion thereof that payment is not made. This subsection is enforceable in a court of competent jurisdiction, and is not intended to create a private right of action against the City and County of San Francisco.
SEC. 6.23. PUBLIC WORKS TO BE PERFORMED BY THE CITY; BIDS BY CITY DEPARTMENTS; PROCEDURE UPON REJECTION OR FAILURE OF BIDS.

(Aa) 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 by the employment of the necessary labor and purchase of the necessary materials and supplies directly by the City and County.

(Bb) Bids or Quotes by City Departments. Appropriate City and County departments may file sealed bids or submit quotes for the execution of any work to be performed under an eContract and shall not be required to furnish security or submit information relative to financial qualifications as provided in this Chapter 6. Any bid submitted by a department of the City and County, if it is the lowest bid, must be approved by the Controller before the award of the eContract. If the bid of a City and County department, as investigated and approved by the Controller, is the lowest, the eContract shall be awarded to the department which shall record accurate unit costs of all direct and indirect charges incurred under any such eContract. Such unit costs shall be reported to and audited by the Controller monthly and on completion of the work.

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

(Cc) Procedure Upon Rejection or Failure of Bids. When bids have been advertised pursuant to the required procedures and a department receives no bids are received, or only one responsive bid is received from a responsible bidder, the department head shall take the following actions, as appropriate:
(1) **No Bids Received.** If no bids are received, the Department Head shall determine whether further outreach efforts would result in contractors submitting bids and/or whether removal or modification of certain requirements in the contract would result in contractors submitting bids, provided that such requirements are not required by statute or law and their removal or modification would not compromise the interests of the City and County. If the Department Head determines that steps (a) and/or (b), above, would likely result in contractors submitting bids, then the Department Head shall re-bid the work. If the Department Head determines that neither step (a) nor (b), above, would likely result in contractors submitting bids, then the Department Head, with the approval of the Mayor, the Mayor's designee, or the board or commission concerned, as appropriate, may negotiate with any qualified contractor or may order the work to be executed by the City and County.

(2) **One Responsive Bid Received; No Other Bids Received.** If only one responsive bid is received from a responsive bidder, and no other bids are submitted for the same work, the Department Head may recommend the award of a contract to the sole bidder at the bid price received, provided that the bid price does not exceed the engineer's estimate for the work. If the bid price received exceeds the engineer's estimate, the Department Head shall determine whether further outreach efforts would result in more than one bid and/or whether removal or modification of certain requirements in the contract would result in more than one bid, provided that such requirements are not required by statute or law and their removal or modification would not compromise the interests of the City and County. If the Department Head determines that steps (a) and/or (b), above, would likely result in more than one bid at bid prices substantially lower than the bid price received, then the Department Head shall re-bid the work. If the Department Head determines that neither step (a) nor (b), above, would likely result in more than one bid at bid prices substantially lower than the bid price received, then the Department Head...
Head, with the approval of the Mayor, the Mayor's designee, or the board or commission for the department concerned, as appropriate, may negotiate with the sole bidder or any qualified contractor, or may order the work to be executed by the City and County. The cost of negotiated work or the cost of work executed by the City and County shall not exceed any bid price received for the same work.

(3) One Responsive Bid Received; Other Nonresponsive Bids Received. If only one responsive bid is received from a responsible bidder and other, nonresponsive bids and/or bids by nonresponsible bidders are submitted for the same work, the Department Head may recommend the award of a contract to the sole responsive, responsible bidder at the bid price received, provided that the bid price does not exceed the engineer's estimate for the work. If the responsive bid price received exceeds the engineer's estimate, the Department Head shall determine whether the qualifications for bidders were too onerous and not necessary for the work and/or whether one or more of the nonresponsive bids could be easily cured and whether the bidders that submitted such bids are still interested in bidding on the work. If the Department Head determines that the steps above, would likely result in more than one responsive bid by responsible bidders, at bid prices substantially lower than the bid price received, then the Department Head shall re-bid the work. If the Department Head determines that neither step nor above, would result in more than one responsive bid by responsible bidders at bid prices substantially lower than the bid price received, then the Department Head, with the approval of the Mayor, the Mayor's designee, or the board or commission concerned, as appropriate, may negotiate with the sole responsible bidder or any qualified contractor, or may order the work to be executed by the City and County. The cost of negotiated work or the cost of work executed by the City and County shall not exceed any bid price received for the same work.
(4) All eContracts awarded under this subsection 6.23(Gf), including negotiated eContracts, shall require that the substitution of subcontractors be in accordance with California Public Contract Code §Section 4107.

SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT; PREVAILING WAGE REQUIREMENTS.

(Ag) Subject to the approval of the Mayor and Director of the Department of Administrative Services, the Labor Standards Enforcement Officer shall develop and administer a plan for the enforcement of the pPrevailing wWage requirements and other labor standards imposed by the Charter and this Chapter on public work or improvements as defined in subsection 6.22(e) contractors. The Labor Standards Enforcement Officer shall coordinate his or her activities with federal and state labor standards agencies. The Labor Standards Enforcement Officer shall direct the City's enforcement of the pPrevailing wWage requirements and other labor standards imposed by the Charter and this Chapter on public contractors as directed by the Mayor, and to this end all City departments shall cooperate with the Labor Standards Enforcement Officer. The Labor Standards Enforcement Officer has the authority to seek for violations of pPrevailing wWage, working conditions and apprenticeship requirements all of the penalties imposed by this Chapter, including the authority to file charges, in the same manner and to the same extent as a dDepartment hHead, which may lead to the debarment of the contractor under Article V of this Chapter. The Labor Standards Enforcement Officer shall oversee the training of City personnel in the area of labor standards enforcement. In accordance with applicable law, the Mayor may enter into a contract for investigative and monitoring services to further the purposes of this §Section 6.24. In evaluating the qualifications of persons seeking that contract, the Mayor shall consider,
among other relevant factors, the experience of those persons in monitoring and investigating labor standards compliance.

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

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

This complaint procedure is applicable to allegations of labor standards violations in connection with any public work contract under this Chapter, but is not applicable to those
matters under the administrative jurisdiction of the San Francisco Human Rights Commission.

This procedure shall not preclude the Labor Standards Enforcement Officer from initiating or proceeding with an investigation on his or her own authority. All public work contractors and departments engaged in public work shall cooperate fully with the Office of Labor Standards Enforcement in connection with any investigation of any complaint filed in accordance with this complaint procedure. The Labor Standards Enforcement Officer may interview, either at the worksite or elsewhere, any witness who may have information relative to a complaint.

**SEC. 6.25. CONTRACT REQUIREMENTS FOR CLEAN CONSTRUCTION.**

(a) All work performed on a Major Construction Project, as defined in Environment Code Section 25.3, shall be carried out in compliance with the Clean Construction requirements of Environment Code Chapter 25. The department head or officer calling for bids for contracts for work to be performed on a Major Construction Project shall specify in the Advertisement for Bids that Clean Construction is required for the performance of all work unless a waiver of all or part of the requirements of that Chapter has been granted under Sections 25.5 or 25.7.

(b) Every contract for work to be performed on a Major Construction Project shall contain provisions, in a form to be approved by the City Attorney: (A) requiring that the contractor comply with Chapter 25 of the Environment Code, (B) authorizing waivers as set forth in Environment Code Sections 25.5 and 25.7, and (C) specifying liquidated damages in the amount of $100.00 per day per each piece of off-road equipment and each off-road engine utilized to complete work on the project in violation of Environment Code Chapter 25.
ARTICLE III: PROFESSIONAL SERVICES CONTRACTING

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 eConstruction mManagement services for a pPublic wWork or Improvement project, where the fee for such services shall exceed the mMinimum eCompetitive aAmount, as defined below, the department shall procure such services through a competitive process based primarily on qualifications.

(Aa) Minimum eCompetitive aAmount. The mMinimum eCompetitive aAmount for temporary outside professional service eContracts shall be $100,000110,000. On January 1, 201520, and every five$ years thereafter, the Controller shall recalculate the mMinimum eCompetitive aAmount to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 20105, rounded to the nearest $1,000.

(Bb) Selection Process. For professional services eContracts in excess of the mMinimum eCompetitive aAmount, the dDepartment hHead 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 eContract. A panel shall consist of not fewer than two persons. The dDepartment hHead 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 dDepartment hHead 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 pPublic
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.

(Cc) **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 contract to the extent provided for in the request for proposals. 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 highest-ranked respondent to negotiate a contract. In such event, the Department Head shall as soon as practicable make a report to the Mayor, Mayor's designee board or commission as appropriate to the department.

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

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

SEC. 6.41. REQUESTS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.

All requests for competitive proposals or qualifications for temporary design, consultant, or eConstruction mManagement services shall conform to and at a minimum require the following:

(Aa) Evaluation Criteria. The Department head authorized to execute the contract shall determine the criteria by which the design, consultant, or eConstruction mManagement service professionals shall be evaluated, on a project-by-project basis. Such criteria shall be included as a part of any request for proposals or qualifications. The criteria shall be based primarily on qualifications and experience relevant to the services needed for the project. Except as prohibited by law, the Department head, in his or her sole discretion, may determine that, in the best interests of the City and County of San Francisco, a consultant who participated in the master plan, conceptual phase or other preliminary work for a project, may compete to provide professional services in future phases of such project. In such event, the consultant may not use, nor may the selection panel consider, the consultant's prior work on the project to establish its experience or qualifications in the competitive process.
(Bb) Reservation of Rights to Reject or Cancel the Request for Proposals in Whole or Part. The Department Head authorized to execute the contract, upon approval of the Mayor, the Mayor’s designee or the board or commission, as appropriate, may reject any or all proposals, in whole or in part, received in response to a request for proposals or qualifications. The right to reject shall be reserved in any request for proposals or qualifications, but the failure to include such reservation shall not abrogate the rights of the Department Head under this section or give rise to any right by any respondent.

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

In accordance with San Francisco Administrative Code Chapter 6, no proposal 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 and 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 request for proposals or qualifications does not give rise to a contract right by a respondent or Contractor outside of the requirements of the Charter or Administrative Code of the City and County of San Francisco.
SEC. 6.42. PROFESSIONAL SERVICES CONTRACT TERMS.

All contracts for temporary design, consultant, and construction management services are professional services contracts, which shall contain the following minimum terms and conditions:

(A) Guaranteed Maximum Costs. Professional service contracts shall provide for a Guaranteed Maximum Cost, including fees, travel and related expenses as necessitated by the project. Any modification to the Guaranteed Maximum Cost must be approved by the Department Head in writing and approved by the Mayor, the Mayor's designee or the board or commission concerned, as appropriate, and the Controller.

(B) Insurance. Notwithstanding any other provisions of this Chapter, all professional service contracts 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.

(C) Indemnification. All professional services 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 Risk Manager and the express permission and approval of the Board of Supervisors.
Assignment. No eContract 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.

Modifications. Professional service eContracts may be modified only by written instrument, granted and approved by the City and County in the same manner the underlying eContract was awarded.

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

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

SEC. 6.43. AS-NEEDED PROFESSIONAL SERVICES CONTRACTS.

Department Heads are authorized to procure as-needed professional services for temporary professional services to supplement the expertise or experience of the department for one or more Public Work or Improvement projects in conformance with Sections 6.40 through 6.42, with the following limitations:
(a) The Department Head shall designate an as-needed professional service Contract as a single-project or multiple-project Contract in the request for proposals or qualifications.

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

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

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

ARTICLE IV: EXEMPTIONS FROM ARTICLES II AND III AND ALTERNATIVES TO COMPETITIVE BIDDING

SEC. 6.60. EMERGENCY REPAIRS, WORK AND CONTRACTS.

(Aa) 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.
Other Determinations of Emergency. In an actual emergency as defined or described below, the Department Head responsible for addressing the emergency may declare an emergency with immediate notice to the President of the Board of Supervisors, the Mayor, the Controller, and the board or commission having jurisdiction over the area affected by the emergency, if any. The Department Head responsible for addressing the emergency may execute the repair, reconditioning or other work or eContract 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.

Emergency Defined. For purposes of this Chapter 6, 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 Municipal Transportation Agency; or
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 Technology or the Municipal Transportation Agency; or

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

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.

Approvals Required for Determination of Emergency. If the estimated cost of the emergency work is less than or equal to $250,000, the Threshold Amount $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 Threshold Amount $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 Threshold Amount $250,000, the Department Head shall also obtain the approval of the Board of Supervisors.

If the emergency does not permit the required approvals of the emergency determination to be obtained before work is commenced or the (s) 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 (s) entered into and the estimated cost thereof and shall notify the Board of
Supervisors not more than seven days after work has been commenced. The proposed
resolution approving the emergency determination shall be submitted to the Board of
Supervisors within 60 days of the Department Head's emergency declaration.

(E2) Exemptions. Contracts awarded in accordance with this section under
emergency circumstances as described and defined above are exempt from the requirements
of this Chapter 6 and Chapters 12A, 12B, 12C and Chapter 14B of the Administrative Code.
However, the department head must comply with the certification requirement of Administrative Code
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 Administrative Code 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 CMD 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 LBE contractors on that list. The CMDHRC shall be responsible for
outreach efforts to make sure that certified 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 of departments
authorized to execute construction contracts shall report quarterly to the Board of Supervisors
regarding LBE 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 LBE contractor. Such reports shall be referred to a Board committee for
public hearing.
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.

SEC. 6.61. DESIGN-BUILD.

Design-build is an approach to the procurement of design and construction services, whereby a single entity, known as the "Design-Builder," is retained to provide both professional design services and general contractor services. The Department Heads authorized to execute contracts for public work projects are authorized to seek bids or proposals from qualified private entities ("Design-Builders") for design-build construction and/or financing of public work projects under the following conditions:

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

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

1. Pre-Qualification. When selecting a Design-Builder based on competitive bid or
proposals for a fixed budget limit project, the Department Heads shall require that prospective
design-builders be pre-qualified Design-Builders, or a combination of the Design-Builders and one or
more of their subcontractors prior to issuing an invitation to submit bids or proposals to submit
proposals on a specific project. The procedure for pre-qualification is as follows:

2. The Department Head shall issue a request for qualifications inviting
interested parties to submit their qualifications to perform the project. The request for
qualifications shall include criteria by which the prospective Design-builders will be
evaluated during the qualification process. The evaluation criteria shall be based on
qualifications and experience relevant to the services needed for the project, including:
The list of criteria may include, but is not limited to the following: (i) qualifications to design-build the
proposed project; (ii) evidence of financial capacity; (iii) experience on similar projects; (iv)
commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14;
(v) ability to collaboratively and cooperatively deliver projects on time and on budget; (vi)
history of liquidated damages for delay and other damages paid on prior projects, and prior
litigation history; (vii) reputation with owners of prior projects; (viii) claims history with
insurance carriers and sureties; and (ix) compliance with all of the requirements established in
the request for qualifications and other criteria that the Department Head may deem
appropriate. The Department Head shall set objective scoring criteria and incorporate the
criteria into any scoring procedure.

3. The Department Head shall designate a panel to review pre-qualification
responses and interview and rate respondents with respect to the request for qualifications.
The panel, at the Department Head’s discretion, may interview respondents and evaluate designs.
concepts and/or approaches to the project as part of the pre-qualification process. Only those respondents found to be qualified will be eligible to submit bids or proposals. The list of pre-qualified respondents shall be valid for not more than two years following the date of initial pre-qualification. The Department Head may restrict bidding or proposing to a shortlist of no fewer than three pre-qualified Design-Builders.

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

(D2) Request for Proposals/Bids. The Department Head shall issue a request for proposals/bids inviting pre-qualified Design-Builders to submit proposals/bids for the project in conformance with the requirements set forth in Section 6.21(a), except that the Department Head is not required to advertise for bids. The request for proposals/bids shall include a criteria package describing preliminary design criteria and performance criteria for the project, as well as any other information deemed necessary to describe adequately the City's needs for the project.

(E) Final Selection Process. The Department Head may recommend the award of a contract to the responsible bidder submitting the lowest responsive bid. If the award to that bidder is not made for any reason, the Department Head may recommend the award of a contract to the responsible bidder submitting the next lowest responsive bid, and so forth. The department head may, at his or her sole discretion, conduct any negotiations that are necessary to effectuate the award of a contract.

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

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

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

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

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

(D) All subcontractors, whether listed at the time of bid or proposal or added or
substituted under this subsection 6.61(b)(4), shall be afforded all of the protections of the California
Subletting and Subcontracting Fair Practices Act, at California Public Contract Code Section 4100 et
seq., as amended from time to time.
(Fc) **Alternative Final-Selection Process** *Best Value Procurement*. If the project seeks private financing proposals and/or the *Department Head* determines that it is in the public's best interest to consider qualifications and/or other subjective criteria (e.g., quality of design proposal) as part of the final selection process, the *Department Head* shall **require that prospective proposers be pre-qualified pursuant to the process in Section 6.61(a)(1) or shall issue a combined request for qualifications and proposals inviting pre-qualified Design-builders, or a combination of Design-Builders and their Core Trade Subcontractors meeting specified minimum qualification criteria**, to submit design-build proposals, which will be evaluated based upon qualifications, **stated subjective criteria**, and project and/or financing costs. *The license and business tax requirements of subsections 6.21(a)(6) and (8) shall apply to requests for proposals under this subsection 6.61(c).*

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

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

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

(4) *The *Department Head* shall designate a *qualified* panel to evaluate design-build proposals and rank the proposals to determine which provides the overall best value to
the City and County in regard to the following criteria. The non-cost evaluation criteria may include, but is not limited to the following: (iA) plan for expediency in completing the proposed project; (iiB) lifecycle cost to the City and County; (iiiC) qualifications to finance the proposed project; (ivD) quality of design proposal; (vE) compliance with the goals set by the Human Rights Commission and requirements of the Administrative Code Chapters 12 and 14; (vi) commitment to meet the City hiring goals (e.g., CityBuild or First Source Hiring); (viiF) if private financing is sought, commitment of funds, cost of funds and terms to the City; and (viiiG) compliance with all the requirements and other criteria established by the Department Head in the request for proposals. The cost criterion shall constitute not less than sixty-five percent (65.4%) of the overall evaluation.

(2) Design proposals

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

(B) The Department Head may require short-listed Design-Builders who are creating partial designs to participate in one or more confidential review meetings with City representatives and/or selection panel members during the proposal preparation period. The purpose of the review meetings will be to ensure that each Design-Builder's partial design is proceeding in a manner that is consistent with the requirements of the City as set forth in the criteria package. Discussions during review meetings shall be limited to objective elements of the criteria package.
Design-Builders submitting private financing proposals shall provide evidence of the commitment of funds necessary to privately finance the proposed projects to completion.

The Department Head may, at his or her sole discretion, conduct any negotiations that are necessary to effectuate the award of a Contract and that are fair and reasonable to the competitive process. Subject to paragraph (K) below, the Department Head may recommend the award of a Contract to the highest-ranked design-builder proposer. If the award to the highest-ranked design-builder proposer is not made for any reason, the Department Head may recommend the award of a Contract to the next highest-ranked design-builder proposer, and so forth. The Department Head may, at his or her sole discretion, conduct any negotiations that are necessary to effectuate the award of a Contract.

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

The competitive bid requirements of this Chapter shall not apply to the selection of design-builders under this Section 6.61.

Design-builders shall comply with all applicable requirements set forth in San Francisco Administrative Code Chapters 12 and 14.

All final contracts for a public work project that involve a design-build and/or finance program shall be subject to the award provisions of Article I of this Chapter. If the proposed contract involves a financing program, the Capital Planning Committee must review and report on the proposed project before the board, commission, Mayor or his/her designee takes any action with respect to award of the contract.
(L5) Procurement of Trade Subcontractors. With the approval of the Department Head, may require the selected Design-Builder to may procure trade work contracts through a pre-qualification and competitive bid process, as in conformance with the following procedures:

(1A) Pre-qualification Competitive Bid Procurement. The Department Head shall require the Design-Builder to pre-qualify all-trade subcontractors, subject to the process, which may be a minimum qualification application, pre-approved by the Department Head. The Design-Builder shall attempt to establish a pool of no fewer than three pre-qualified subcontractors for each trade package, subject to the approval of the department head.

(2) Competitive Bid. The department head shall require the Design-Builder to shall receive sealed bids from the pre-qualified trade subcontractors. The bid security provisions of Section 6.21 will not apply. The design builder shall award a trade package subcontract All trade packages procured pursuant to this subsection 6.61(c)(5)(A) shall be awarded to the Responsible Bidder submitting the lowest Responsive Bid, except that the design builder may negotiate and award a portion of the trade package subcontract as provided in paragraph (3), below. Only those Administrative Code provisions that normally apply to subcontractors will apply to the trade package subcontract.

(B) Core Trade Subcontractors. Upon approval of the Department Head, the Design-Builder may procure design, preconstruction, or design-assist services from Core Trade Subcontractors based on qualifications only. As soon as practical, or as otherwise approved by the department, each Core Trade Subcontractor shall provide a written cost proposal for construction of the related trade package. Before authorizing the Design-Builder to subcontract with a Core Trade Subcontractor for the trade package, the department must validate the cost proposal by an independent cost estimate. The Department Head, in his or her sole discretion, may require the Design-Builder to competitively procure the trade package by competitive bid in conformance with subsection 6.61(b)(5)(A).
(C) Self-Performed Work. The Department Head may specify in the design-build request for proposals one or more scopes of work that may be self-performed by the Design-Builder. Before authorizing the Design-Builder to self-perform work, the Department Head must determine the cost of the work to be fair and reasonable, either by an independent cost estimate or by a competitive bidding process.

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

(d) The City shall retain the absolute discretion to determine, at any time during the process, not to proceed with any proposed project, which right may be exercised without liability to Design- Builders for costs incurred at any point during the pre-qualification, proposal and negotiation process, and such rights shall be reserved in all requests for qualifications and proposals.

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

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

(g) All Contracts procured under this Section 6.61 are subject to the award provisions of Section 6.3. If the proposed Contract involves a financing program, the City Capital Planning Committee must review and report on the proposed project before the board, commission, Mayor or his/her designee takes any action with respect to award of the Contract.
(MH) All actions heretofore taken by a department head consistent with the
provisions of this section are hereby approved.

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

SEC. 6.62. JOB ORDER CONTRACTS.

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

(Aa) Each JOC eContract is to be advertised for competitive bBids in accordance
with the procedures set forth in this Chapter 6 and awarded to the rResponsive bBidder who
submits the lowest rResponsive bBid.

(Bb) The Advertisement For Bids shall include unit prices and detailed technical
specifications for each construction task contemplated to be performed under the JOC
eContract. Each task item shall include direct costs for material, equipment and labor.

Construction tasks shall be grouped by trade.

(Cc) The Advertisement For Bids for a JOC eContract shall contain the City's estimate
regarding the percentage of work under the JOC eContract that will be performed by each
trade. The Advertisement For Bids shall also require the Contractor to commit to an LBE
Subcontractor Participation Requirement Goal, as set by CMD the Human Rights Commission, in the
performance of service task orders under the JOC Contract. Upon completion of the JOC
Contract term, the Human Rights Commission shall verify compliance with the LBE
Subcontractor Participation Requirement 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 of the Administrative Code.

(Pd) The Contractor's bid shall include a subcontractor list in conformance with Section 6.21A(a) of this Chapter and Chapter 14B of the Administrative Code at the time of bid or at the time of a task order as appropriate. All requests for substitutions of subcontractors shall be made and considered under California 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 task orders, the Contractor may request to add without penalty a subcontractor to perform under the work task 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 California 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 task order work, the awarding department shall confirm the license, insurance coverage, and other qualifying criteria as required by law.

(Ec) 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 $5,000,000 five million dollars. In no case shall the cumulative modifications to a JOC contract result in a contract sum not to exceeding one hundred fifty percent of the original contract amount.

(G) JOC contracts shall provide for an expiration term of not more than five years, including all modifications. However, the Department Head shall not issue any new worktask orders under the JOC contract after threefour years from the date the Contract is awarded certified by the Controller.

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

(H) Projects will be assigned under the JOC contract on a worktask order basis at the sole discretion of the Department Head concerned. Each worktask order shall include a time certain for completion of the work and an appropriate sum for liquidated damages for delay. Each worktask 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 CMD. The worktask order price shall be no more than the calculated unit prices and the bid adjustment factor. No worktask order shall exceed $400,000 the Threshold Amount, including all modifications. A department may issue or modify
any work task order(s) to exceed the foregoing limit Threshold Amount only upon the Department
Head's written determination establishing the critical nature or significant need for the work
and the determination establishing the urgency of the work and the justification for proceeding
under this Section 6.62 rather than by formal competitive process.

(ii) 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, except in the following circumstances:
however, a contractor may submit a bid on a subsequent JOC contract advertised by the same
contracting department if (1) the Contractor's existing JOC Contract will expire in 120 days or
fewer; (2) if the contractor's existing JOC Contract has performed work issued task orders valued
by the City in an amount equal to or exceeding 90% of the maximum dollar amount of the
existing JOC Contract; or (3) the subsequent JOC Contract is funded by a different source of
government funds (e.g., Federal, State, Local) than the funding source used for the existing JOC
Contract. Nothing in this section shall preclude a Contractor from simultaneously bidding on multiple
JOC Contracts advertised by one City department prior to Award of a JOC Contract by that
department.

SEC. 6.63. HAZARDOUS MATERIALS ABATEMENT WORK.

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

When the Director of Public Works (the "Director") determines: (1) that hazardous materials
on public property must be expeditiously abated (the "work"); and (2) that there is inadequate time to
advertise and competitively bid the work in accordance with this Chapter, then the work may be
performed in accordance with the following procedures:
(Ag) The Department of Public Works shall advertise for and receive proposals from hazardous materials abatement eContractors, which proposals shall address the qualifications of the eContractors to perform the Abatement Work. The proposals shall be evaluated according to the requirements of this Chapter 6 and Chapters 12B, 12C and 14B of the Administrative Code, relevant to professional services eContracts.

(Bb) The Department of Public Works shall select a sufficient number of qualified eContractors to perform the amount of hazardous materials Abatement Work anticipated to be required in the upcoming one or more years and enter into master agreements for Abatement Work on an "if-and-as-needed" basis with those eContractors. Each master agreement for Abatement Work shall state the maximum total dollar value of work each eContractor is authorized to perform during the eContract period.

(Cc) When the Department Head determines that: (1) hazardous materials on public property must be expeditiously abated; (2) there is inadequate time to issue an Advertisement for Bids in accordance with this Chapter 6; and (3) the department personnel who will manage the work have the appropriate training, then task orders for Abatement Work may be issued as follows:

The Department shall seek price quotations for performance of the Abatement Work from at least three of the eContractors with master agreements. The contract task order for the Abatement Work will be awarded to the eContractor submitting the lowest quotation, except as otherwise provided herein. The Department shall keep a record of such quotations and a register of all awards made thereunder task orders issued under master agreements for Abatement Work. In the event that the Department is unable to obtain three quotations, the Director shall base the award issuance of a task order on the quotation or quotations received. If the Director believes that the public interest would best be served by accepting other than the lowest quotation, he or she is hereby authorized to accept the quotation that in his or her discretion will best serve the
public interest. The Department Head may reject any and all quotations and request new quotations.

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

SEC. 6.64. AS-NEEDED CONSTRUCTION CONTRACTS.

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

(a) General As-Needed Contracts. A Department Head authorized to execute public work and professional service contracts may issue an Advertisement For Bids for construction services or a request for proposals or qualifications for professional services on an as-needed basis, with definite or indefinite quantities of work. Work shall be assigned on a-by-contract service order basis based on costs contained in the Bid. None of the requirements of this Chapter or Administrative Code Chapters 12B, 12C or 12D.A are waived for as-needed contracts. All as-needed Contracts shall provide for a not-to-exceed price amount and an expiration term of not more than five years, including all modifications. However, the Department Head shall not issue any new contract service order after three years from the date of award the Contract is certified by the Controller. Additionally, the cumulative modifications to the as-needed Contract shall result in a contract sum not to exceed 150% of the original Contract amount. Before any item of work is commenced under an as-needed contract, the cost of such work must be certified by the Controller as to the availability of funds. No contract service order or multiple contract service orders for any single public work, whether in one
phase or multiple phases, shall cumulatively exceed $200,000, including all modifications. For
departments with capital programs over $1 Billion, no contract service order or multiple contract
service orders, as described above, shall cumulatively exceed $400,000, including all modifications.
The Threshold Amount. A department may issue or modify any contract service order(s) to exceed
the foregoing limits Threshold Amount only upon the Department Head's written determination
establishing the need for the work and the urgency of the work and the justification for
proceeding under this Section 6.64 rather than by formal competitive process.

(b) Master As-Needed Agreements. The Department Head may execute master as-needed
agreements, on an "if-and-as-needed" basis with Contractors who can establish experience, expertise,
and quality of work. Master as-needed agreements shall provide for an expiration term of not more
than five years from the date of certification by the Controller, including all modifications. A
Contractor may apply for a master as-needed agreement under this subsection 6.64(b) by providing the
department with a statement of its experience and qualifications and other information as requested by
the department. Within 60 days of receiving such information, the department shall advise the applicant
of its eligibility for an award of a master as-needed agreement.

For performance of specific tasks, the department shall seek Quotations from at least three
of the Contractors with master as-needed agreements. The department shall issue a contract service
order for the work to the Contractor submitting the lowest Quotation, except as provided below. In the
event that the department is unable to obtain three Quotations, the Department Head shall base the
issuance of the contract service order on the Quote or Quotes received. The Department Head may
reject any and all Quotations and request new Quotations. No contract service order or multiple
contract service orders for any single Public Work, whether in one phase or multiple phases, shall
cumulatively exceed the Threshold Amount, including all modifications. Additionally, the cumulative
modifications to an as-needed agreement shall not exceed 150% of the original Contract amount.
(c) Except as provided below, all of the requirements of this Chapter 6 and Administrative Code Chapters 12B, 12C and 14B apply to as-needed Contracts. Departments may designate specific as-needed contracts as limited set asides for Micro-LBEs as provided under Chapter 14B of the Administrative Code.

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

(2) The Department Head may require the Contractor to include a subcontractor list in conformance with subsection 6.22(a) and Chapter 14B of the Administrative Code at time of Bid or at the time of contract service order, as appropriate to the Contract.

(d) The Department Heads authorized to execute public work and professional service contracts shall report quarterly to the Board of Supervisors regarding the department's use of as-needed Contracts and the actual amount of participation of MBE and WBE subcontractors or subconsultants that were listed on prime contractors' bid(s) or proposal(s) to determine whether MBE/WBE Subcontractor Participation Requirements subcontracting participation goals are being met on as-needed Contracts. Such reports shall be referred to a Board committee for public hearing.

SEC. 6.65. CONTRACTING FOR ELEVATOR, ESCALATOR, SECURITY, FIRE PROTECTION OR FIRE ALARM EQUIPMENT AND ELEVATOR, ESCALATOR, SECURITY, FIRE PROTECTION OR FIRE ALARM SYSTEMS, INSPECTION, MAINTENANCE AND REPAIR WORK.
Department heads who are authorized to execute public work contracts under this Chapter are hereby authorized to award contracts for the inspection, maintenance and repair services of existing equipment or systems, including but not limited to: elevator, escalator, security, fire protection, or fire alarm, power distribution, chillers, pumping, heating, ventilation and air conditioning ("HVAC"), supervisory control and data acquisition ("SCADA"), public address, airfield drainage, and sewage and freshwater systems ("special services") in accordance with the following procedures:

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

(Bb) For performance of specific tasks, the department shall seek price quotations from at least three of the special service providers with master agreements. The department shall issue a contract service order for the work to the provider submitting the lowest quotation, except as provided below. In the event that the department is unable to obtain three quotations, the department head shall base the issuance of the contract service order on the quote or quotes received. If the department head believes that the public interest would best be served by accepting other than the lowest quotation, he or she...
is hereby authorized to accept the quotation that in his or her discretion will best serve the public interest. The DEPARTMENT HEAD may reject any and all quotations and request new quotations.

SEC. 6.66. CONVENTION FACILITY PUBLIC WORKS.

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

(A) Bids will be requested from not fewer than three bidders for a construction contract. The contract will be awarded to the responsible bidder with the lowest responsive bid. A record of all bids received and a register of all awards made under this subsection 6.66 shall be maintained. In the event three bids cannot be obtained, the award shall be based on the bid or bids received. Any or all bids may be rejected and new bids may be requested.

(B) Authority to undertake the contracting process and enter into contract directly with the contractor may be delegated to the operator/manager of the convention facilities. In such event, the City Administrator or his or her designee shall first review the propriety of the process and shall approve the award of any contract.

(C) In no event shall the award of contracts by the procedures set forth in this subsection 6.66 exceed the cumulative sum of three million dollars ($3,000,000) in any fiscal year.

Except as provided herein, any contract awarded under this subsection must comply with this Chapter 6 and with Administrative Code Chapters 12B, 12C and 12D. All of the contracts awarded and work performed under this subsection 6.66 shall be reported to the Board of Supervisors on a quarterly basis.
SEC. 6.67. CLEAN CONSTRUCTION IN BIDDING.

The Clean Construction requirements of Section 6.25 and Environment Code Chapter 25 are mandatory for public Works or Improvements to be performed within the City and estimated to require twenty (20) or more days of work to complete. For other public Works or Improvements, Department Heads are encouraged to require the use of off-road equipment and off-road engines that meet or exceed the standards in Chapter 25, or to use bid criteria that favor the use of such equipment and/or engines. Department Heads are particularly encouraged to do so wherever the project is located within 500 feet of a Sensitive Site, as defined in Health Code Section 3804.

SEC. 6.68. CONSTRUCTION MANAGER/GENERAL CONTRACTOR INTEGRATED PROJECT DELIVERY

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

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

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

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

(1) Cost Only Procurement.

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

(A) Pre-qualification.

(i) The Department Head shall issue a request for qualifications inviting interested parties to submit their qualifications to perform the project. The request for qualifications shall include criteria by which the prospective proposers shall be evaluated. The evaluation criteria shall be based on qualifications and experience relevant to the services needed for the particular project. The list of criteria may include, but is not limited to the following: (i) ability to perform required pre-construction and construction phase services; (ii) evidence of financial capacity; (iii) experience on projects of similar size and complexity; (iv) commitment to comply with the goals and requirements of Administrative Code Chapters 12 and 14; (v) ability to collaboratively and cooperatively deliver projects on time and on budget; (vi) history of liquidated damages for delay and other damages paid on prior projects, and prior litigation history; (vii) reputation with owners of prior projects; (viii) claims history with insurance carriers and sureties; and (ix) compliance with all of the requirements established in the request for qualifications and other criteria that the Department Head in consultation with the Human Rights Commission may deem appropriate. The Department Head shall set objective scoring criteria and incorporate the criteria into any scoring procedure.
The Department Head shall designate a qualified panel to review pre-qualification responses and interview and rate respondents with respect to the request for qualifications. The panel, at the department's discretion, may interview respondents as part of the pre-qualification process. Only those respondents found to be qualified will be eligible to submit proposals. The list of pre-qualified respondents shall be valid for not more than two years following the date of initial pre-qualification. The Department Head may establish a shortlist of no fewer than three pre-qualified respondents.

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

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

(A) The Department Head shall designate a qualified panel to evaluate integrated project delivery proposals and rank the proposals to determine which provides the overall best value to the City with respect to non-cost and cost criteria. In cases where proposers were pre-qualified in advance, this panel may be the same panel that reviewed the pre-qualification responses, or may include different qualified panelists. The list of non-cost criteria may include but is not limited to the following: (i) plan for expediency in completing the proposed project; (ii) quality of proposal; and (iii) commitment to comply with the goals set by the Human Rights Commission and requirements of Administrative Code Chapters 12 and 14; (iv) commitment to meet City hiring goals (e.g. City Build or First Source Hiring); and (v) compliance with all the requirements and other criteria established by the Department Head in the request for proposals. The Department Head shall set objective scoring criteria and incorporate the criteria into any scoring procedure. The cost criterion shall constitute not less than 40% sixty-five percent (65%) of the overall evaluation.

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

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

The request for proposals shall include information describing the scope of pre-construction and construction phase services for the project. The request for proposals shall request the following minimum information from each team: (i) fees for pre-construction services; (ii) fees for construction phase services, such as profit or general conditions; and (iii) the qualitative criteria as described in subsection 6.68(b)(2)(A).

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

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

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

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

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

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

(cH) Procurement of Trade Subcontractors. Department Heads shall require the
selected CM/GC to procure trade work contracts through one or more of the following methodsa
pre-qualification and competitive bid process, as follows:

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

(2) Competitive Bid. The Department Head shall require the CM/GC to receive
sealed bids from the pre-qualified trade subcontractors. Unless otherwise provided for in the
advertisement or notice for bids, the The bid security provisions of section 6.21 will not apply. The
CM/GC shall award a trade package subcontract to the Responsible Bidder submitting the
lowest responsive bid, except that the CM/GC may negotiate and award a portion of the trade package subcontracts as provided in paragraph (3), below. Only those Administrative Code provisions that normally apply to subcontracts will apply to the trade package subcontracts.

(2) Core Trade Subcontractors. The Department Head may authorize the CM/GC to enter into subcontracts with Core Trade Subcontractors to provide pre-construction, design-assist, or design-build services as appropriate for the project. Before the CM/GC may award trade package subcontracts for construction services to the Core Trade Subcontractors selected as part of the CM/GC team in subsection 6.68(b)(3), the Core Trade Subcontractors’ bids must be validated against an independent cost estimate, as overseen by the Department Head.

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

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

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

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

(f) All actions heretofore taken by a Department Head consistent with the provisions of this Section 6.68 are hereby approved.

SEC. 6.69. DEPARTMENT OF PUBLIC HEALTH PUBLIC WORK.

For Public Works or Improvements necessary to maintain or repair health facilities under the jurisdiction of the Health Commission, the Department of Public Health (DPH) may award master agreement contracts, for work to be performed on an "if-and-as-needed" basis, to qualified contractors in conformance with the following procedures:

(A) Contract Award. The Director of DPH may award master agreement contracts, on an "if-and-as-needed" basis to construction contractors who can establish all of the licensing, qualifications, experience, and certifications, as required by the Director of DPH. A contractor may apply for a master agreement under this Section 6.69 by providing DPH with a statement of its experience and qualifications and other information as requested by DPH. Within 60 days of receiving such information, DPH shall advise the applicant of its eligibility for an award of a master agreement.

(B) Contract Terms. Master agreements awarded under this Section 6.69 shall conform to the requirements of Section 6.22 of this Chapter and shall conform to Administrative Code Chapter 14B, as applicable. Master agreements shall provide for an expiration term of not more than five years from the date of award, including all modifications. All master
agreements shall provide for a maximum total dollar value of work each eContractor is authorized to perform during the eContract period. No master agreement may be modified to exceed 150% of the original eContract amount. Master agreements shall contain no minimum dollar amount. Master agreements shall provide that DPH may assign work on a task order basis, "if-and-as-needed," through competition among master agreement eContractors.

(Gc) Task Order Competitive Solicitation. To assign work under master agreement eContracts, DPH shall solicit eQuotations from no fewer than three qualified master agreement eContractors. Solicitations shall conform to Section 6.21 of this Chapter, except that neither a published advertisement nor a bid security bond shall be required. Solicitations shall include a description of the proposed task order scope of work, including plans or specifications, if any, and may include provisions for liquidated damages for delay if and as appropriate to the particular project. Responsive eQuotations must include subcontractor listing, if any, in conformance with §subsection 6.21(Aa)(9).

(Dd) Task Order Award. The Director of DPH shall award a task order for the performance of work under a master agreement to the eContractor submitting the lowest responsive eQuotation. In the event that DPH is unable to obtain three eQuotations, the Director of DPH shall base the award on the eQuotation or eQuotations received. If the Director of DPH believes that the public interest would best be served, by accepting other than the lowest eQuotation, he or she is hereby authorized to accept the eQuotation that in his or her discretion will best serve the public interest.

(Ec) Task Order Terms. No task order or multiple task orders for any single public work, whether in one phase or multiple phases, shall cumulatively exceed $400,000.00, the Threshold Amount, including all modifications. The Director of DPH may issue or modify a task order to exceed the foregoing imitation only upon the Director's written determination establishing the urgency of the work and the justification for proceeding under this Section.
6.69, rather than through the Department of San Francisco Public Works, in conformance with Section 6.2 of this Chapter.

SEC. 6.70. REAL ESTATE DIVISION PUBLIC WORK.

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

(A) Contract Award. The Director of RED may award master agreement contracts, on an "if-and-as-needed" basis to construction contractors who can establish all of the licensing, qualifications, experience, and certifications, as required by the RED Director. A contractor may apply for a master agreement under this Section 6.70 by providing RED with a statement of its experience and qualifications and other information as requested by RED. Within 60 days of receiving such information, RED shall advise the applicant of its eligibility for an award of a master agreement.

(B) Contract Terms. Master agreements awarded under this Section 6.70 shall conform to the requirements of Section 6.22 of this Chapter and shall conform to Administrative Code Chapter 14B, as applicable. Master agreements shall provide for an expiration term of not more than three and one-half years from the date of award, including all modifications. All master agreements shall provide for a maximum total dollar value of work each contractor is authorized to perform during the contract period. No master agreement may be modified to exceed 150% of the original contract amount. Master agreements shall contain no minimum dollar amount. Master agreements shall provide that RED may assign work on a task order basis, "if-and-as-needed," through competition among master agreement contractors.
Task Order Competitive Solicitation. To assign work under master agreement eContracts, RED shall solicit qQuotations from no fewer than three Qqualified master agreement eContractors. Solicitations shall conform to Section 6.21 of this Chapter, except that neither a published advertisement nor a-bid security bond shall be required. Solicitations shall include a description of the proposed task order scope of work including plans or specifications, if any, and may include provisions for liquidated damages for delay if and as appropriate to the particular project. Responsive qQuotations must include subcontractor listing, if any, in conformance with Subsection 6.21(A)(9).

Task Order Award. The Director of RED shall award issue a task order for the performance of work under a master agreement to the eContractor submitting the lowest responsive qQuotation. In the event that RED is unable to obtain three qQuotations, the Director of RED shall base the A Award on the qQuotation or qQuotations received. If the Director of RED believes that the public interest would best be served by accepting other than the lowest qQuotation, he or she is hereby authorized to accept the qQuotation that in his or her discretion will best serve the public interest.

Task Order Terms. No task order or multiple task orders for any single pPublic work, whether in one phase or multiple phases, and whether under this Section 6.70 or for Special Services under Section 6.65. shall cumulatively exceed $400,000 the Threshold Amount, including all modifications. The Director of RED may issue or modify a task order to exceed the foregoing limitation only upon the Director's written determination establishing the urgency of the work and the justification for proceeding under this Section 6.70, rather than through the Department of San Francisco Public Works, in conformance with Section 6.2 of this Chapter.

SEC. 6.71. PIER REPAIR WORK.
(Aa) The Port is authorized to use the Port’s Maintenance Division employees and equipment to perform demolition, repair and replacement work on piers under the jurisdiction of the Port Commission, including pile-supported pier structures, substructures, aprons, wharves, decks, fenders and associated utilities. The competitive bid requirements of Sections 6.20(Aa) and 6.23(Bb) shall not apply to the Port’s self-performance of such pier demolition, repair and replacement work.

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

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

SEC. 6.72. RAIL GRINDING

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

SEC. 6.73. OTHER PROCUREMENTS

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

(a) Approval. For departments under the jurisdiction of a commission or a board, the Department Head shall recommend to the commission or board concerned the approval and award of a Sole Source Contract and such commission or board may then adopt a resolution approving the justification of the Sole Source and awarding the Contract. For departments with no commission or board, the Department Head, with the approval of the Mayor or Mayor's Designee, may award a Sole Source Contract. The Department Head's recommendation must provide specific and comprehensive information, as provided under Section 6.73(d) below, justifying the necessity of a Sole Source Contract.

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

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

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

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

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

(4) Work or services required by statute or government regulation to be from a specific public entity or accrediting agency. For purposes of this Section 6.73, an accrediting agency is defined as a government-controlled or privately supported agency authorized to certify compliance with statutes or government regulations required for Public Works or Improvements; or

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

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

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

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

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

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

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

(e) Exceptions.

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

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

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

SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY PENALTIES.

Any eContractor, subcontractor, supplier, consultant or subconsultant* who fails to comply with the terms of its contract with the City-and-County; or who violates any provision of Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations adopted pursuant to Administrative Code Chapter 6; or who submits false claims; or who has violated against any government entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of a contract with the City-and-County, may be declared an irresponsible bidder or an unqualified consultant and debarred according to the procedures set forth in Chapter 28 of this Administrative Code. Additionally,
any {e}Contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim to the City and County may also be subject to monetary penalties, investigation and prosecution as described below.

In the event that such a violation of this Chapter 6, including the submission of one or more false claims, comes to the attention of a board or commission or responsible Department head or board or commission concerned responsible for public work, the Department head must investigate the matter. The Department head must report the findings of any such investigation by letter to the Board of Supervisors within 30 days of the completion of the investigation. The investigation letter to the Board of Supervisors must state the name of the {e}Contractor, subcontractor, supplier, consultant or subconsultant; the nature of the violation; the results of the investigation; and the Department head's plan for addressing the violation, if any. A hearing shall also be called in the Audit Committee of the Board of Supervisors to report on this investigation.

SEC. 6.81. COLLUSION IN CONTRACTING.

If, at the determination of the Mayor, the Department head who executed the construction or professional services {e}Contract or the board or commission who awarded such {e}Contract, and pursuant to the debarment procedures set forth below, any party or parties to whom a {e}Contract has been awarded has been guilty of having engaged in collusion with any officer or representative of the City and County, or any other party or parties, in the submission of any bid or in preventing of any other being made, or in knowingly receiving preferential treatment by any officer or an employee of the City and County, then any {e}Contract so awarded, if not completed, may be declared null and void by the Board of Supervisors on the recommendation of the Mayor, Department head or the board or commission concerned, and no recovery shall be had thereon. The Department head concerned may
then readvertise for bids for the uncompleted portion of the work. The matter may also be
referred to the City Attorney for such action as may be necessary. Any party or parties found to have engaged in such collusion shall not be permitted to participate in or to bid on any future public work, improvement, or purchase to be made by the City and County.

SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.

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

SEC. 6.83. ASSESSMENT OF MONETARY PENALTIES FOR FALSE CLAIMS:

INVESTIGATION AND PROSECUTION.

(a) Notwithstanding and not exclusive or preclusive of any other administrative or legal action taken by the City and County, a contractor may be assessed monetary penalties for submitting false claims. The Department Head responsible for the public work or improvement may withhold such penalties from amounts due or retained under the contract. Notwithstanding and not exclusive or preclusive of any administrative or other legal action, the City Attorney may investigate and prosecute in a civil action any submission of a false claim.

(b) The submission of a false claim occurs when a contractor, subcontractor, supplier, consultant or subconsultant commits any of the following acts enumerated below: In such event, the contractor, subcontractor, supplier, consultant or subconsultant shall be liable to the City and County for (1) three times the amount of damages which the City and County sustains.
because of the act(s) of that contractor, subcontractor, supplier, consultant or subconsultant; and (2) the costs, including attorney's fees of a civil action brought to recover any of those penalties or damages. Such contractor, subcontractor, supplier, consultant or subconsultant may also be liable to the City and County for a civil penalty of up to $10,000 for each false claim.

(1) Knowingly presents or causes to be presented to an officer or employee of the City and County a false claim or request for payment or approval;
(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County;
(3) Conspires to defraud the City and County by getting a false claim allowed or paid by the City and County;
(4) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County;
(5) Is a beneficiary of an inadvertent submission of a false claim to the City and County, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County within a reasonable time after discovery of the false claim.

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

(d) For purposes of this section, "claim" includes any request or demand for money, property or services made to any employee, officer, or agent of the City and County, or to any
eContractor, subcontractor, grantee or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the City and County.

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

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

**SEC. 21.02. DEFINITIONS.**

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(j) "Minimum Competitive Amount" shall mean (i) for the procurement of Commodities and Professional Services, the "Minimum Competitive Amount" as defined in Section 6.40(aA) of the Administrative Code, which shall be $100,000 and (ii) for the procurement of General Services, an amount equivalent to the "Threshold Amount" as defined in Chapter 6.1(M) of the Administrative Code which shall be $400,000, provided that on January 1, 2015 and every five years thereafter, the Controller shall recalculate the Minimum Competitive Amount (and the Threshold Amount from which the Minimum Competitive Amount for General Services is calculated) to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 2014, rounded to the nearest $1,000.
Section 3. The Administrative Code is hereby amended by revising Section 14B.2, to read as follows:

SEC. 14B.2. DEFINITIONS.

"Minimum Competitive Amount" means (1) for the procurement of commodities, professional services, and architect/engineering services, the "Minimum Competitive Amount" as defined in Section 6.40(aA) of the Administrative Code, which shall be $100,000 and (2) for the procurement of general services, an amount equivalent to the "Threshold Amount" as defined in Chapter Section 6.1(fM) of the Administrative Code which shall be $400,000, provided that on January 1, 2015, and every five years thereafter, the Controller shall recalculate the applicable Minimum Competitive Amount (and the Threshold Amount from which the Minimum Competitive Amount for general services is calculated) to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 2010, rounded to the nearest $1,000.

"Threshold Amount" means, for public works/construction projects, the "Threshold Amount" as defined in Administrative Code Chapter Section 6.1(M) of the Administrative Code which shall be $400,000 provided that on January 1, 2015, 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, 2010, rounded to the nearest $1,000.
Section 4. Effective and Operative Dates. This ordinance shall become effective 30
days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance shall
become operative on July August 1, 2015, and shall apply to all contracts first advertised or
initiated on or after this date.

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

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

By:  
Yadira Taylor  
Deputy City Attorney

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Ordinance amending the Administrative Code to comprehensively revise Chapter 6 Public Works Contracting Policies and Procedures to: 1) increase the Threshold Amount from $400,000 to $600,000; 2) authorize sole source contracts under certain conditions; 3) allow procurement of public works construction contracts under $10,000 with no competitive solicitation; 4) increase the amount of time allowed to issue a task order from three to four years, increase the limit of the amount of a task order from $400,000 to $600,000 by linking it to the Threshold Amount, allow subcontractors to be listed at time of bid or at time of issuance of a task order, and allow for performance and payment bonds to incrementally increase throughout the term of the contracts for Job Order Contracts and as-needed contracts; 5) authorize execution of master as-needed construction contracts; 6) increase the limit of the amount of a task order from $400,000 to $600,000 by linking it to the Threshold Amount in master as-needed contracts on an if-and-as-needed basis for services that the Department of Public Health and the Division of Real Estate are authorized to procure; 7) provide greater flexibility and clarify requirements for the design-build and construction manager/general contractor project delivery methods; 8) authorize the Director of Transportation to procure rail grinding and related services through a negotiated project delivery method; 9) allow departments to advertise bids on a public website and/or in a local newspaper or periodical; 10) add procedure upon rejection or failure of professional services proposals and upon professional services contractor’s failure to deliver; and 11) make various other changes and clarifications in Chapter 6.
June 16, 2015 Board of Supervisors - PASSED ON FIRST READING AS AMENDED
Ayes: 8 - Breed, Christensen, Cohen, Farrell, Kim, Tang, Wiener and Yee
Noes: 3 - Avalos, Campos and Mar

June 23, 2015 Board of Supervisors - FINALLY PASSED
Ayes: 8 - Breed, Christensen, Cohen, Farrell, Kim, Tang, Wiener and Yee
Noes: 3 - Avalos, Campos and Mar

File No. 150175
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/23/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved
7/2/2015