

**Performance Audit of the Authority Delegated to the  
San Francisco Public Utilities Commission for  
Public Works Contracts Under Chapter 6 of the  
Administrative Code**

**Prepared for the**

**Board of Supervisors  
of the City and County of San Francisco**

**by the**

**San Francisco Budget and Legislative Analyst**

**December 20, 2024**

**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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December 20, 2024

Supervisor Dean Preston, Chair, Government Audit and Oversight Committee  
and Members of the San Francisco Board of Supervisors  
Room 244, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Dear Supervisor Preston and Members of the Board of Supervisors:

The Budget and Legislative Analyst is pleased to submit this *Performance Audit of the Authority Delegated to the San Francisco Public Utilities Commission for Public Works Contracts Under Chapter 6 of the Administrative Code*. In response to a motion adopted by the Board of Supervisors in November 2022 (Motion M22-185), the Budget and Legislative Analyst conducted this performance audit, pursuant to the Board of Supervisors powers of inquiry as defined in Charter Section 16.114 and in accordance with U.S. Government Accountability Office (GAO) standards, as detailed in the Introduction to the report. This audit report, which focuses on the San Francisco Public Utilities Commission, is the first report to be issued as part of a multi-part performance audit of various City departments' delegated authority for procurement of public works contracts pursuant to Chapter 6 of the Administrative Code, as directed by the audit motion.

The performance audit contains seven findings and 16 recommendations. Of these recommendations, 12 are directed to the San Francisco Public Utilities Commission, one is directed to the Board of Supervisors and the Mayor's Office, two are directed to all Chapter 6 departments (San Francisco Public Works, the Municipal Transportation Agency, and the Airport, Port, Public Utilities, and Recreation and Park Commissions), and one is directed to the Department of Technology. The Executive Summary, which follows this transmittal letter, summarizes the Budget and Legislative Analyst's findings and recommendations. The recommendations are designed to improve the procurement of public works and related professional services contracts by the San Francisco Public Utilities Commission.

The San Francisco Public Utilities Commission has provided a written response to our performance audit, attached to this report on page A-1, which states that it agrees with all 16 of our recommendations. We provided all the Chapter 6 departments and the Department of Technology with an opportunity to review the recommendations directed to them, but did not receive written responses from any of those departments.

Supervisor Preston and Members of the Board of Supervisors

December 20, 2024

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We would like to thank the staff at the San Francisco Public Utilities Commission for the assistance they provided during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Goncher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dan Goncher  
Principal

cc: President Peskin

Supervisor Chan

Supervisor Dorsey

Supervisor Engardio

Supervisor Mandelman

Supervisor Melgar

Supervisor Ronen

Supervisor Safai

Supervisor Sherrill

Supervisor Walton

Mayor Breed

General Manager, San Francisco Public Utilities Commission

Clerk of the Board

City Attorney's Office

Mayor's Budget Director

Controller

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## Executive Summary

The Board of Supervisors directed the Budget and Legislative Analyst’s Office to conduct a multi-part performance audit of various City departments’ delegated authority for procurement of public works contracts pursuant to Chapter 6 of the City’s Administrative Code. This audit report is the first report to be issued as part of this multi-part performance audit. The scope of this performance audit includes the procurement of public works contracts pursuant to Chapter 6 of the City’s Administrative Code by the San Francisco Public Utilities Commission (SFPUC) during Fiscal Year (FY) 2019-20, FY 2020-21, and FY 2021-22.

Chapter 6 of San Francisco’s Administrative Code governs public work or improvement contracting policies and procedure for (a) public works contracts, and (b) contracts for related professional design, consulting, and construction management services. The contracting requirements of the Administrative Code for these public work or improvement contracts, which are also informally referred to as “Chapter 6” contracts, are distinct from the City’s contracting policies and procedures for commodities and services, which are outlined in Chapter 21 of the Administrative Code and informally referred to as “Chapter 21” contracts.

Chapter 6 authorizes six primary City departments to enter public work and related professional service contracts on behalf of the City. SFPUC is one such department, and SFPUC procures public works construction and professional services contracts in response to identified infrastructure needs. During the scope of our audit, SFPUC awarded a total of 124 Chapter 6 contracts with a total maximum amount of \$1.4 billion.

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## Section 1: SFPUC Procurement Policies, Procedures, and Training

SFPUC’s Contract Administration Bureau (CAB) policies, procedures, and training program for procurement personnel are not consistent with industry best practices. CAB does not adequately maintain its internal policies and procedures for contract procurement activities and there are opportunities to improve and formalize CAB’s training program for new contract analysts and existing staff. Inadequate policies and procedures and a lack of proper training could expose SFPUC to compliance risks and could also contribute to inefficiencies and ineffectiveness in procurement activities, potentially leading to missed opportunities for cost savings. Inadequate policies and procedures also impact transparency and may make it difficult to track procurement decisions and ensure accountability in the procurement process.

## **Recommendations**

The SFPUC Contract Administration Bureau Manager should:

- 1.1 Create a comprehensive procedure manual that assembles active guidelines that clearly define authority and responsibility for procurement personnel. The Contract Administration Bureau Manager should collaborate with the City Attorney's Office to ensure the procedure manual reflects the requirements of federal, state, and local laws and regulations, including City Administrative Code Chapter 6.
- 1.2 Establish a systematic and standardized process for regularly reviewing, updating, and tracking changes to the procedure manual. This process should ensure alignment with laws, regulations, and industry best practices, and should include document consistency, standardization, comprehensive coverage, and tracking of revision dates along with identification of the individuals responsible for approving the policy and procedural changes.
- 1.3 Enhance and document the training program to (a) onboard new staff and (b) provide ongoing training to existing staff in order to ensure accurate, comprehensive understanding of SFPUC Chapter 6 procurement policies, procedures, and practices. This should include regular in-house trainings (monthly or quarterly) and a mix of classroom instruction, online learning, and hands-on workshops.
- 1.4 Develop a framework that identifies the necessary skills required for procurement personnel at all levels and develop ways to regularly assess staff skills.

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## **Section 2: Policies Governing the Rejection or Failure of Bids**

SFPUC's Contract Administration Bureau lacks detailed policies to guide SFPUC's internal decision-making process following the rejection or failure of bids for Chapter 6 construction and professional services contracts. While City Administrative Code sections 6.23(c) and 6.40(d) include general protocols for situations with limited competition, namely circumstances when SFPUC (a) receives no bids or proposals in response to a Chapter 6 solicitation, or (b) receives only one responsive bid in response to a Chapter 6 solicitation, the Administrative Code gives Department Heads, including the SFPUC General Manager, significant discretion to determine the best course of action in these circumstances. The absence of clear policies to guide SFPUC's internal determination could lead to inconsistencies in decision-making, reduced competitiveness, higher costs, and potentially lower service quality. Additionally, CAB does not comprehensively track and monitor the number of responsive and non-responsive bids and/or

proposals received for both construction and professional services contract solicitations, which limits SFPUC's ability to identify market trends, bidder responsiveness, and potentially collusive bidder patterns.

### **Recommendations**

The SFPUC Contract Administration Bureau Manager should:

- 2.1 Develop and implement a comprehensive policy or procedure consistent with best practices and Administrative Code Sections 6.23(c) and 6.40(d) for handling rejected or failed bids and proposals. The policy or procedure should identify the criteria and process for when and how to undertake further outreach efforts, modify contract requirements, and cure non-responsive bids.
- 2.2 Develop and implement a policy or procedure to monitor the quantity of bids and proposals received for both construction and professional services contracts. This policy should include tracking both responsive and non-responsive bid data. This data should be analyzed and monitored for patterns indicating changes in competition levels and collusive behavior. The policy and procedure should also identify remedies that should be taken if anti-competitive patterns are suspected. Based on these insights, SFPUC should adjust their approach to crafting solicitation documents as needed to foster greater competition, at its discretion.

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## **Section 3: Contract Procurement Timelines and Goals**

SFPUC has not established a metric or performance goal to monitor procurement time and processing for Chapter 6 contracts, despite collecting data on the length of time it takes to complete procurement for both construction and professional services contracts. There is wide variation in the length of time it can take to procure a single construction contract: according to data from the Contract Administration Bureau, it can take anywhere from 3.5 to 15 months to complete the approximately 16 milestones required to go from contract initiation to a Notice to Proceed, which marks the end of procurement and the beginning of construction. Delays in contract processing increase the risk that contractors may try to abuse the formal procurement process to expedite it, although our audit fieldwork did not reveal evidence of this occurring. The delays also cost the City money in staff time, and lead to delays in starting construction projects.

### **Recommendations**

The SFPUC Contract Administration Bureau Manager should:

- 3.1 Establish a performance metric and/or goal for both Chapter 6 construction procurement timelines and Chapter 6 professional services procurement timelines. The Contract Administration Bureau Manager should regularly report to the Infrastructure Assistant General Manager and Chief Engineer about progress towards these goals, improvements to procurement timelines, and any common procurement delays.

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## **Section 4: Change Order Management**

The management of change orders for construction contracts under Chapter 6 of the San Francisco Administrative Code is decentralized and spread across multiple divisions and databases at SFPUC. The responsibility for tracking change order amounts and ensuring the project does not exceed its 10 percent contingency threshold is split between SFPUC's project management team in the Construction Management Bureau and the Infrastructure Budget & Finance team. In violation of SFPUC policy, there is no central database or other record-keeping system for construction change order documentation for projects with budgets less than \$10 million. Additionally, project managers do not receive formal training on how to evaluate or process proposed change orders that originate from contractors and do not receive training on how to conduct a negotiation on a change order. This lack of training and centralized record-keeping increases the risk that contractors might take advantage of project managers through excessive and/or unnecessary change orders, because there is no centralized method for tracking them and project managers are not regularly trained on addressing change order abuse. Additionally, we reviewed 122 change orders from a sample of 11 construction contracts and found that some of the change orders were missing required signatures.

Change order management is important because change orders can increase project budgets and schedules beyond what is originally agreed upon in the contract, sometimes unnecessarily. They can also be a source of tension between contractors and project owners in the construction industry. Streamlined, knowledgeable, frugal management of change orders is essential to ensure that the City does not approve change orders that are unnecessary, or unnecessarily expensive, to the benefit of the contractor and at the expense of the City.

### **Recommendations**

The SFPUC Assistant General Manager for Infrastructure should:

- 4.1 Create and implement a training module on change orders for all project managers and construction managers. This training should be reviewed annually and updated when necessitated by changes in procedure. The training should be required for all new project managers and construction managers, and refresher training should be provided to



current project managers and construction managers biannually or when changes are made to the training materials.

- 4.2 Evaluate the benefits of adjusting the Unifier project threshold to \$5 million and consider lowering the threshold following the evaluation, if justified.
  - a. The Construction Management Bureau Manager is currently planning to reduce the Unifier project threshold to \$5 million. The Construction Manager Bureau should evaluate the benefits of this change and either implement a formal policy to retain the \$5 million threshold, or reduce the threshold further.

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## Section 5: Alternative Project Delivery Methods

SFPUC does not have a policy that establishes which Chapter 6 construction projects should be considered for alternative project delivery methods. Alternative project delivery is defined as a method of delivering a capital project that deviates from the industry-standard Design-Bid-Build method, including but not limited to Design-Build, Construction Manager/General Contractor, Job-Order Contracting, and Emergency Contracts. Alternative project delivery methods can be beneficial for certain types of projects: they can bring important construction expertise into the design process and facilitate relationship-building among the designers, engineers, and project owners. However, alternative project delivery methods can also be riskier because they are used less frequently at SFPUC, and therefore the agency has less institutional knowledge or expertise in how to manage them successfully, and because they put the responsibility of successfully delivering the project on a single entity rather than spreading the responsibility between designer and contractor.

There are policies, guided by the Administrative Code, dictating the procurement processes for each of these alternative deliveries, and there are policies internal to SFPUC on how to justify the choice to use an alternative delivery method. However, the SFPUC has no formal policy that provides guidance for when projects should be considered for alternative delivery and, when deemed necessary, which delivery method is most appropriate.

### **Recommendations**

The SFPUC Assistant General Manager for Infrastructure should:

- 5.1 Adopt a policy that establishes guidelines or criteria for which types of projects get evaluated for alternative project deliveries.

- 5.2 Create a guide for project managers to use when determining which projects to evaluate for alternative delivery methods. The guide could include the types of projects that could make good candidates for alternative delivery projects, including certain project budgets, sizes, and scopes. The guide could also include guidance on determining which types of alternatives deliveries are appropriate based on details of the proposed projects.

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## **Section 6: Bid and Proposal Protests**

Our review of bid/proposal protests submitted for SFPUC Chapter 6 contracts identified one instance where, in the absence of the bid protest and the subsequent additional review conducted by SFPUC, the City Attorney's Office, and/or the Contract Monitoring Division (CMD), the contract would have been awarded to a non-responsive bidder. Of the 124 SFPUC Chapter 6 contracts in our scope period, 14, or 11 percent, had bid protests submitted. Of these protests, four were sustained, meaning that SFPUC agreed with the protest. SFPUC and CMD staff are responsible for evaluating bid submissions to ensure they meet minimum qualifications and are responsive to the bid requirements as part of an initial review. In the case of one professional services contract, SFPUC and/or CMD staff failed to identify the protested proposer as non-responsive during this initial bid review. Overall, while it appears that SFPUC's bid protest procedure is properly administered, SFPUC should take steps to minimize bid protests that are sustained for failure to meet minimum qualifications.

### **Recommendations**

The SFPUC Contract Administration Bureau Manager should:

- 6.1 Provide annual mandatory instruction and training on minimum qualifications and proposal evaluation to all SFPUC individuals who are responsible for evaluating bids for Chapter 6 construction and professional services contracts, drawing on specific examples from recent sustained bid protests.

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## **Section 7: Chapter 6 Contractor Performance and Evaluation Database**

The City's Chapter 6 departments (SFPUC, Public Works, Municipal Transportation Agency, Recreation and Parks, the Port, and the Airport) are not using the City's contractor performance and evaluation database, as required by section 6.26 of the City's Administrative Code, to document, evaluate, and report on construction contractor performance. Although a database was developed and piloted in FY 2018-19, rollout of the database to all Chapter 6 departments

was stalled during the COVID-19 pandemic and has not resumed. There are software problems and bugs in the database that need to be addressed, and Public Works management has stated that sufficient resources have not been allocated to support this work. The lack of consistent use of the Chapter 6 contractor performance and evaluation database increases the risk that the City is hiring construction contractors with past records of poor performance, and could lead to the City wasting money on ineffective, inefficient contractors.

### **Recommendations**

The Board of Supervisors and the Mayor's Office should:

- 7.1 Consider providing Public Works with sufficient staffing resources, from enterprise and General Fund monies as appropriate, in FY 2025-26 for management of the contractor performance and evaluation database.

The Director of Public Works, the Director of Transportation, the General Manager of the Public Utilities Commission, the Director of the Airport, the General Manager of Recreation and Parks, and the Director of the Port Authority should:

- 7.2 Direct their project managers, contract managers, and any other staff responsible for contract management to use the contractor performance and evaluation database to complete evaluations for all construction contractors who completed projects with contracts executed on or after the functional start date of the database.
- 7.3 Report to the Board of Supervisors on progress implementing these recommendations no later than January 1, 2026.

The Director of Technology should:

- 7.4 Ensure that the contractor performance and evaluation database is fully operational no later than January 1, 2026.

## Introduction

The Board of Supervisors directed the Budget and Legislative Analyst's Office to conduct a multi-part performance audit of various City departments' delegated authority for procurement of public works contracts pursuant to Chapter 6 of the City's Administrative Code, including but not limited to: (i) Airport, (ii) Municipal Transportation Agency, (iii) Port, (iv) Public Utilities Commission, and (v) Recreation and Parks, through a Motion (M22-185) passed on November 29, 2022. This audit report is the first report to be issued as part of this multi-part performance audit.

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## Scope

The scope of this performance audit includes the procurement of public works contracts pursuant to Chapter 6 of the City's Administrative Code by the San Francisco Public Utilities Commission (SFPUC) during Fiscal Year (FY) 2019-20, FY 2020-21, and FY 2021-22.

## Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), 2018 Revision, issued by the Comptroller General of the United States, U.S. Government Accountability Office. In accordance with these requirements and standard performance audit practices, we performed the following performance audit procedures:

- Held an Entrance Conference with SFPUC contract administration and audit staff and a representative of the City Attorney's Office on January 5, 2023;
- Conducted survey interviews with management and relevant staff responsible for and/or involved in procurement and public works contract management at SFPUC, and staff from the City Attorney's Office involved in SFPUC Chapter 6 procurement;
- Reviewed relevant published reports on Chapter 6 procurement and SFPUC procurement, including bond oversight reports and Public Integrity Reviews related to public works contracting and ethical standards for contract award processes issued by the Controller's Office;
- Reviewed best practices, published surveys, and federal, state, and local guidance and recommendations related to public works construction procurement;
- Reviewed the relevant laws, provisions, and other statutes that guide SFPUC's procurement of public works contracts;

- Requested and reviewed SFPUC policies, procedures, and documentation of internal controls related to procurement, as well as procurement-related guidance, standards, checklists, and matrices used by SFPUC employees related to procurement and contract evaluation;
- Created a process map of the procurement process of Chapter 6 construction and professional services contracts, based on information provided by SFPUC staff during survey interviews and information contained in SFPUC's policies and procedures;
- Requested and reviewed databases of all SFPUC Chapter 6 construction and professional services contracts awarded during FY 2019-20, FY 2020-21, and FY 2021-22, including the following fields:
  - Date of contract award;
  - Date of SFPUC Commission approval;
  - Project name and/or identification number;
  - Contract amount;
  - Procurement type;
  - Date(s) and amount(s) of contract amendment(s) and/or change orders;
  - Contract expenditures; and
  - Applicable bid protest information.
- Using the databases provided by SFPUC, developed a sample of 40 SFPUC Chapter 6 construction and professional services contracts, and requested and reviewed underlying documentation from SFPUC to assess these contracts' compliance with requirements outlined in Chapter 6 of the City's Administrative Code, and other relevant SFPUC and/or City policies;
- Using the databases provided by SFPUC, developed a sample of 122 change orders from a sample of 11 Chapter 6 construction contracts, and requested and reviewed underlying documentation from SFPUC to assess compliance with requirements outlined in Chapter 6 of the City's Administrative Code, and other relevant SFPUC and/or City policy;
- Analyzed SFPUC's pre-bid activities for Chapter 6 contracts, including the development of specifications and requests for proposals and qualifications, and the pre-qualification process;
- Requested and reviewed SFPUC's training standards and training materials for contract administration staff;
- Evaluated the role of the Public Utilities Commission in the approval of Chapter 6 contracts and reviewed analysis and guidance provided to the Commission by SFPUC staff related to Chapter 6 contracts;

- Developed an initial list of topics and jurisdictions to include in a comprehensive peer survey of similar jurisdictions, which will be used to obtain an understanding of how other jurisdictions procure public works and related professional services, and will be presented in the second phase of this multi-part performance audit;
- Submitted a draft report with findings and recommendations to SFPUC on August 19, 2024 and conducted an exit conference with SFPUC on October 2, 2024;
- Held an additional meeting with SFPUC on October 30, 2024 to discuss feedback on the draft report; and
- Submitted the final report, incorporating comments and information provided at the exit conference, to SFPUC on November 22, 2024.

## Public Works Procurement in San Francisco

Chapter 6 of San Francisco’s Administrative Code governs public work or improvement contracting policies and procedure for (a) public works contracts, and (b) contracts for related professional design, consulting, and construction management services. A “public work or improvement” is defined in Administrative Code section 6.1 as:

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, the cost of which is to be paid wholly or partially out of moneys deposited in the Treasury of the City.

The contracting requirements of the Administrative Code for these public work or improvement contracts, which are also informally referred to as “Chapter 6” contracts, are distinct from the City’s contracting policies and procedures for commodities and services, which are outlined in Chapter 21 of the Administrative Code and informally referred to as “Chapter 21” contracts. The scope of this audit covers only public work contracts and contracts for related professional design, consulting, and construction management services, as defined in Chapter 6.

Chapter 6 of the Administrative Code contains the following Articles:

- **Article I: General Provisions**, which outlines relevant definitions, lists the departments or commissions empowered on behalf of the City to contract for public works contracts, and establishes general provisions of Chapter 6 including compliance with local business enterprise utilization and nondiscrimination provisions;
- **Article II: Construction Contracting**, which outlines provisions related to the procurement of construction contracts, requirements for construction contract bids and

quotes, terms and working conditions, contract requirements for clean construction, and other requirements for construction contracts;

- **Article III: Professional Services Contracting**, which outlines provisions related to the procurement of professional services for public work projects, including the competitive qualification-based selection process, requests for competitive proposals or qualifications, contract terms, and as-needed professional services contracts;
- **Article IV: Exemptions from Articles II and III**, which outlines exemptions to the construction and professional services provisions established in Articles II and III including emergencies, alternative project delivery methods (such as job order contracts, design-build contracts, and construction manager/general contractor contracts), as-needed construction contracts, and other specific circumstances; and,
- **Article V: Violations of Administrative Code Chapter 6; False Claims; Procedures for Debarment; Monetary Penalties**, which outlines provisions related to violations and false claims, procedures for debarment and monetary penalties, and consequences of collusion in contracting.

In addition, the following provisions of the City's Administrative Code and Labor and Employment Code also apply<sup>1</sup> to Chapter 6 contracts and/or SFPUC contracting:

- **Division II, Article 131 of the Labor and Employment Code**, which establishes the nondiscrimination provisions in City contracts;<sup>2</sup>
- **Chapter 12F: Implementing the MacBride Principles – Northern Ireland**, which requires contractors to acknowledge that they have read and understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles;
- **Chapter 12J: City Business with Burma Prohibited**, which prohibits the City from entering into agreements for public works or improvements with any person or entity with investments or employees in Burma, or any person or entity that licenses any

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<sup>1</sup> In addition, Chapter 12X: Prohibiting City Travel and Contracting in States that Allow Discrimination, which applied to contracts in our scope period of FY 2019-20, FY 2020-21, and FY 2021-22, was repealed by the Board of Supervisors in Ord. 75-23, approved May 9, 2023 and effective June 9, 2023.

<sup>2</sup> Former Administrative Code Chapter 12B ("Nondiscrimination in Contracts") was redesignated as Labor and Employment Code Article 131 by Ord. 221-23, approved November 3, 2023, effective December 4, 2023, and operative January 4, 2024.

person or entity organized under the laws of Burma to produce and market its products;

- **Chapter 14B: Local Business Enterprise and Non-Discrimination in Contracting Ordinance**, which contains provisions intended to improve the ability of certified Local Business Enterprises (LBE), particularly micro LBEs, to compete effectively for the award of City contracts; and,
- **Chapter 21F: SFPUC Social Impact Partnership Program**, which establishes the rules and regulations for SFPUC's Social Impact Partnership Program, with the goal of encouraging private contractors working under certain contractors with SFPUC to engage in corporate social responsibility.

City Charter section 9.118(b), which requires Board of Supervisors approval of any contract entered into by a department, board, or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 for contracts that exceed \$10 million, explicitly excludes construction contracts from the Board of Supervisors approval requirement. Chapter 6 construction contracts do not require Board of Supervisors approval except in specific circumstances, as outlined in Chapter 6.

## San Francisco Public Utilities Commission

Chapter 6 authorizes six primary City departments to enter public work and related professional service contracts on behalf of the City. The San Francisco Public Utilities Commission (SFPUC) is one such department. Under Charter section 4.112 and Article 8B, the Public Utilities Commission has exclusive jurisdiction over the City's utility systems, facilities, and assets – water, power, and sewer. The Commission is the oversight body for the SFPUC. The General Manager is the department head and chief executive and manages the day-to-day affairs of the department. The SFPUC's systems are:

- **Water Services:** SFPUC manages the Hetch Hetchy Regional Water System, which brings water from the Sierra Nevada mountains to the Bay Area. SFPUC is responsible for water collection, water treatment services, and water transmission through a system of facilities, plants, pipelines, and tunnels. SFPUC provides water directly to customers in San Francisco and wholesale service areas in Alameda, Santa Clara, and San Mateo counties. San Francisco's water supply is sourced from more than 1,250 miles of distribution pipelines, 12 in-City reservoirs, and eight water tanks.
- **Wastewater Services:** SFPUC provides wastewater management for San Francisco, including the collection, treatment, and disposal of sewage and stormwater.



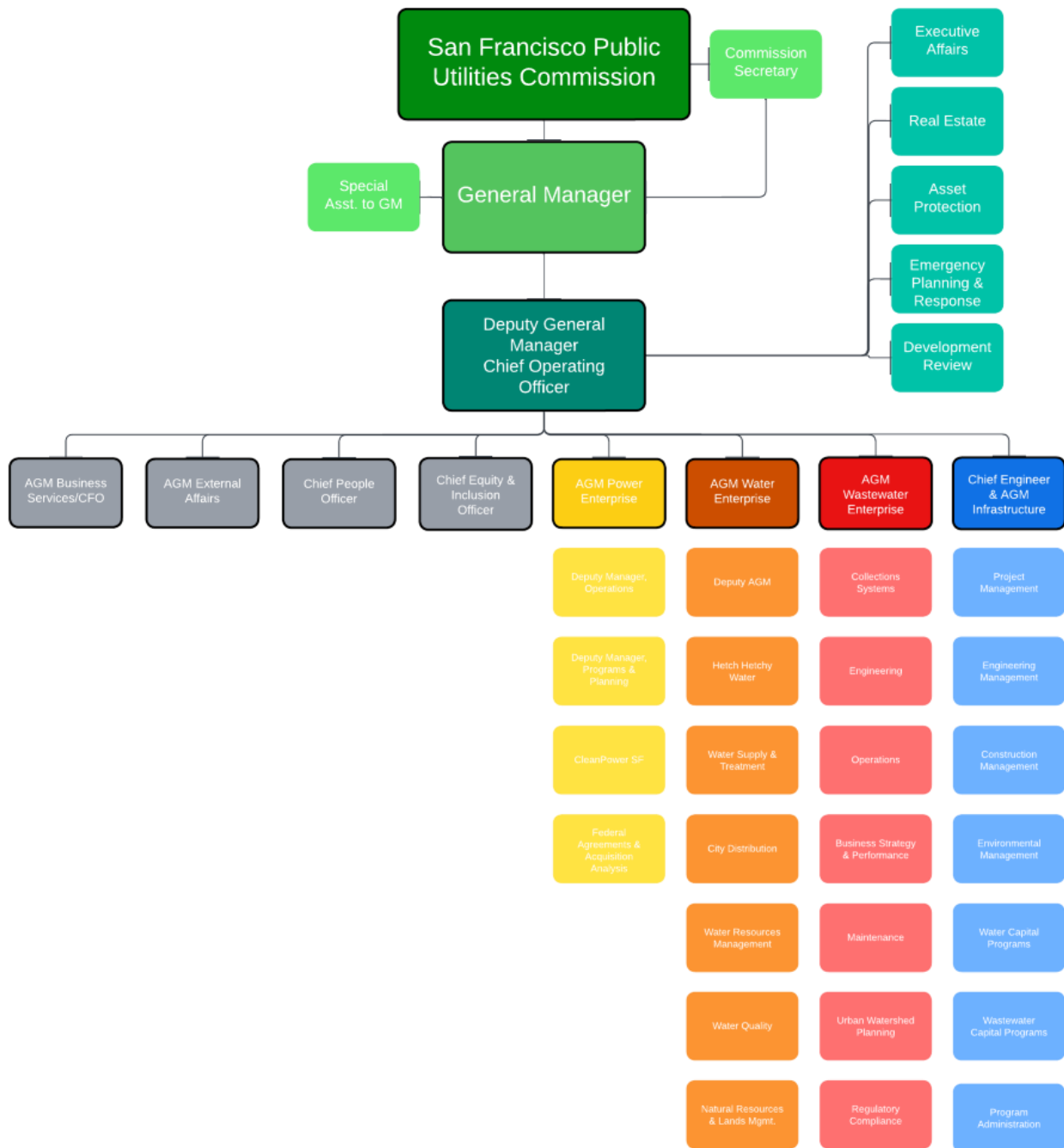
- **Municipal Power Services:** SFPUC owns and operates all aspects of the Hetch Hetchy Power System, which provides municipal power to San Francisco through hydroelectric and solar power. The Hetch Hetchy Power System includes three hydroelectric powerhouses, two of which receive water from the Hetch Hetchy Reservoir and one which receives water from Lake Eleanor and Cherry Lake. Additionally, SFPUC operates solar installations located on City-owned property, including Moscone Center, City Hall, Sunset Reservoir, and Davies Symphony Hall. The installations assist in powering the City-owned buildings and other Hetch Hetchy Power customers.

These utility services are operated and managed by SFPUC as separate enterprises: the Water Enterprise, the Wastewater Enterprise, and the Power Enterprise. Each enterprise is led by an Assistant General Manager. SFPUC's Infrastructure Division, led by an Assistant General Manager for Infrastructure/Chief Engineer, is responsible for SFPUC capital programs and project implementation, and provides, among other services, project management, construction management, and engineering management for SFPUC capital programs and projects for each enterprise. SFPUC also has an Assistant General Manager for Business Services/Chief Financial Officer, an Assistant General Manager for External Affairs, a Chief People Officer, and a Chief Diversity, Equity, and Inclusion Officer. The SFPUC Deputy General Manager and Chief Operating Officer report directly to the SFPUC General Manager.

As outlined in City Charter section 4.112 and Article 8B, the five Commissioners of the San Francisco Public Utilities Commission, who are nominated by the Mayor and approved by a majority of the Board of Supervisors, are responsible for providing oversight of SFPUC operations, including the approval of Chapter 6 construction and professional services contracts. Each Commission member serves a term of four years. The City Charter requires that the Commission be made up of one member with experience in environmental policy and an understanding of environmental justice issues; one member with experience in ratepayer or consumer advocacy; one member with experience in project finance; one member with expertise in water systems, power systems, or public utility management; and one at-large member.

Exhibit I.1 below displays a high-level organization chart for SFPUC.

Exhibit I.1: SFPUC Organizational Chart



Source: SFPUC

## SFPUC Chapter 6 Contract Procurement

SFPUC procures public works construction and professional services contracts in response to identified infrastructure needs. As summarized above, Chapter 6 of the Administrative Code governs the public works contracting policies and procedures for SFPUC, including policies and procedures for the procurement of professional design, consulting, and construction management services. Chapter 6 outlines which methods of procurement may be utilized for public works contracts, depending on the project complexity, budget, and needs. Chapter 6 also requires contracts to be awarded in compliance with the local business enterprise and non-discrimination procedures established in Chapters 12B and 14B of the City's Administrative Code.

During the scope of our audit (FY 2019-20, FY 2020-21, and FY 2021-22), SFPUC awarded a total of 124 Chapter 6 contracts with a total maximum amount of \$1.4 billion, as shown in Exhibit I.2 below. Of these 124 contracts, 50 were construction contracts, 22 were as-needed construction contracts,<sup>3</sup> 21 were professional services contracts, and 12 were as-needed professional services contracts.<sup>4</sup> The remaining 19 were other procurement types, including alternative project delivery methods such as job order contracts or design-build contracts, and emergency contracts.

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<sup>3</sup> As-needed construction contracts, defined in Administrative Code section 6.64, are contracts for construction work on an as-needed basis, with work to be assigned by contract service orders based on costs contained in the bid.

<sup>4</sup> As-needed professional services contracts, as authorized in Administrative Code section 6.43, are contracts for professional services work on an as-needed basis, with work to be assigned by contract service orders.

## Exhibit I.2: Chapter 6 Contracts Awarded by SFPUC, FY 2019-20 to FY 2021-22

	FY 2019-20	FY 2020-21	FY 2021-22	Total
<b>Construction (Ch. 6) contracts</b>	18	18	14	<b>50</b>
<i>Sum of maximum amount</i>	<i>\$100,192,370</i>	<i>\$377,182,737</i>	<i>\$95,601,579</i>	<i>\$572,976,685</i>
<b>As-Needed Construction (Ch. 6.64) contracts</b>	2	7	13	<b>22</b>
<i>Sum of maximum amount</i>	<i>11,046,778</i>	<i>46,498,384</i>	<i>128,539,699</i>	<i>186,084,861</i>
<b>Professional Services (Ch. 6) contracts</b>	12	3	6	<b>21</b>
<i>Sum of maximum amount</i>	<i>57,850,000</i>	<i>18,052,050</i>	<i>38,300,000</i>	<i>114,202,050</i>
<b>As-Needed Professional Services (Ch. 6.43) contracts</b>	4	4	4	<b>12</b>
<i>Sum of maximum amount</i>	<i>24,000,000</i>	<i>18,000,000</i>	<i>20,000,000</i>	<i>62,000,000</i>
<b>Job Order Contract (Ch. 6.62) contracts</b>	2	0	7	<b>9</b>
<i>Sum of maximum amount</i>	<i>10,500,000</i>	<i>0</i>	<i>35,000,000</i>	<i>45,500,000</i>
<b>Emergency Repairs/Work (Ch. 6.60) contracts</b>	0	2	2	<b>4</b>
<i>Sum of maximum amount</i>	<i>0</i>	<i>6,497,000</i>	<i>20,463,994</i>	<i>26,960,994</i>
<b>Design-Build (Ch. 6.61) contracts</b>	3	1	0	<b>4</b>
<i>Sum of maximum amount</i>	<i>124,606,932</i>	<i>28,898,986</i>	<i>0</i>	<i>153,505,917</i>
<b>Construction Manager/General Contractor (Ch. 6.68) contracts</b>	0	0	1	<b>1</b>
<i>Sum of maximum amount</i>	<i>0</i>	<i>0</i>	<i>260,450,682</i>	<i>260,450,682</i>
<b>Contracting for Elevator, Fire Alarm Systems, etc. (Ch. 6.65) contracts</b>	0	0	1	<b>1</b>
<i>Sum of maximum amount</i>	<i>0</i>	<i>0</i>	<i>2,350,345</i>	<i>2,350,345</i>
<b>Total no. of contracts</b>	<b>41</b>	<b>35</b>	<b>48</b>	<b>124</b>
<b>Total maximum amount</b>	<b>\$328,196,080</b>	<b>\$495,129,156</b>	<b>\$600,706,299</b>	<b>\$1,424,031,534</b>

Source: SFPUC

Exhibit I.3 below summarizes the maximum amounts of the 124 contracts during the audit scope period, which ranged from \$52,050 to \$260,450,682. The median maximum amount was \$5,000,000, and the mean maximum amount was \$11,484,125. Two contracts were for more than \$100,000,000, skewing the mean higher than the median.

**Exhibit I.3: Chapter 6 Contracts Awarded by SFPUC,  
FY 2019-20 to FY 2021-22, by Maximum Amount**

<b>Contract Maximum Amount</b>	<b>Number of Contracts</b>
Less than \$1,000,000	11
\$1,000,000 to \$4,999,999	43
\$5,000,000 to \$9,999,999	36
\$10,000,000 to \$19,999,999	21
\$20,000,000 to \$99,999,999	11
More than \$100,000,000	2
<i>Maximum Amount Median</i>	<i>\$5,000,000</i>
<i>Maximum Amount Mean</i>	<i>\$11,484,125</i>

Source: SFPUC

The procurement process for all SFPUC Chapter 6 contracts is a collaborative effort among several SFPUC bureaus, the City Attorney's Office, the requesting enterprise or division, the Contract Monitoring Division (CMD) and Risk Management Division under the City Administrator's Office, the Civil Service Commission, the Department of Human Resources, and the Controller's Office. The contract type (professional services or construction) determines the responsibilities and level of involvement of each entity in the procurement of the contract. Within the SFPUC Infrastructure Division, the Contract Administration Bureau (CAB) is the primary point of contact for procurement of both professional services and construction contracts. For professional services contracts, CAB is responsible for managing and issuing a Request for Proposals/Qualifications (RFP/Q), monitoring and tracking forms for RFP/Q approval, facilitating the proposal review and selection processes, communicating with the selected respondent, facilitating contract execution, administering amendments to the executed contracts, and ensuring compliance with applicable policies, laws, and contract terms at time of selection and award. For construction contracts, once the solicitation documents have been developed, CAB advertises the bid, oversees the selection, award and contract execution cycles, and processes certain subsequent contract modifications.

## Construction Contract Procurement Process

Per Administrative Code section 6.20, a department seeking outside construction services for a public work or improvement project exceeding the threshold amount of \$1,000,000 shall award the contract to the lowest responsive bid. Prior to recommending an above-threshold construction contract, the department must prepare detailed program requirements and estimates for the work to be performed. For construction contracts less than or equal to the threshold amount of \$1,000,000, the department is required to obtain not fewer than three

quotes and shall award the contract to the lowest responsive bidder. For construction contracts less than or equal to \$10,000, no competitive solicitation is required.

The procurement of construction contracts requires involvement from various SFPUC bureaus and enterprises. The responsibilities of SFPUC bureaus are as follows:

- **Project Management Bureau (PMB)** is responsible for execution of the project work scope, schedule, budget, and administration of all construction contracts through closeout. PMB is also responsible for overall project communication and coordination, both internal and external to SFPUC.
- **Engineering Management Bureau (EMB)** is responsible for the design phases of construction work including staff guidance, engineering standards, design criteria, technical quality assurance, and design quality control. EMB also ensures the completion of technical information for engineering reports, drawings, calculations, specifications, and cost estimates.
- **Construction Management Bureau (CMB)** is responsible for construction quality assurance and provides overall construction management oversight and construction contract administration during construction.
- The enterprise or division (Hetch Hetchy, Water, City Distribution, Power, or Wastewater) assigns an Operations Representative to represent the interests of the enterprise or division involved in the construction.
- **Bureau of Environmental Management (BEM)** provides specialized environmental expertise to assist PMB in obtaining the project's compliance with applicable environmental regulations, including the California Environmental Quality Act (CEQA). BEM informs PMB of the CEQA strategy, budget, and schedule. BEM also provides environmental compliance oversight during construction.
- **Contract Administration Bureau (CAB)** is responsible for facilitating the procurement of construction contracts following the development of the solicitation documents. CAB advertises the bid, oversees the selection, award and contract execution cycles, and processes certain subsequent contract modifications.
- The **Capital Improvements Projects (CIP) Steering Committee** is responsible for recommending that a particular project move to the next phase of development as well as the contract selection and delivery method. The CIP Steering Committee consists of SFPUC senior managers and is led by the Assistant General Manager for Infrastructure.

According to SFPUC's internal policies, the development of a construction project is divided into nine major phases, listed below, some of which overlap. A more in-depth narrative with

additional details about each step is provided in *Appendix A: SFPUC Chapter 6 Procurement Process* to this report.

- **Project Management**

- The Project Management phase encompasses the entirety of the construction project's lifecycle, from planning through project close-out. Included within the Project Management phase are all tasks related to project management functions and oversight, project controls, records management, and legal support.

- **Planning**

- During the Planning phase, the Project Management Plan (PMP) is initiated by the project manager (PM) within PMB. The PMP is the management plan for each project that includes project objectives, scope, and quality control. During the Planning Phase, site investigations are conducted and a consultant and/or an in-house design team is selected to facilitate the design of the project. The Planning Phase includes three subphases: needs assessment, alternatives analysis, and conceptual engineering report.

- **Environmental**

- Near the end of the Planning phase, the Environmental Phase begins. This phase includes all environmental review and permitting activities to meet applicable local, state, and federal requirements.

- **Design**

- The major deliverables of the Design phase are finalizing drawings and specifications, the technical aspects of bid documents, and the Project Management Plan. At the end of the Design phase, the technical section of the bid package is submitted by EMB's contract standards division to CAB to initiate bid advertisement.

- **Right-of-Way**

- The Right-of-Way phase includes planning, property investigations, obtaining permission for geologic studies, groundwater monitoring programs, and other site investigations. At 65 percent of design completion, work pertaining to Right-of-Way requirements begins, including fee acquisitions, easements, and any other necessary appraisals for property rights.

- **Bid and Award**

- *Pre-Advertisement and Advertisement:* Upon receipt of the project information, a CAB contract analyst is assigned to the contract, and PMB and CAB prepare a Commission Advertisement Report. The SFPUC Commission is presented with

the report pursuant to their Communications Policy. CAB advertises the bid documents to the SFPUC website, the Library, and sometimes the local newspaper, depending on funding requirements.

- *Bid Opening and Proposal Submittal:* Following the advertisement of the bid, PMB, EMB, and CAB conduct pre-bid meetings with potential bidders. CAB compiles questions from potential bidders and facilitates with PMB and EMB to provide answers. CAB distributes any addenda prepared by CAB or EMB. At the conclusion of the bid period, as determined by the PM, CAB facilitates a bid opening meeting. The bid opening meeting starts the five-day protest period for low-bid selections.
- *Proposal Evaluation and Vendor Selection:* Following bidder submissions, CAB, PMB, EMB, and CMD all work to evaluate the submissions. If there is a protest submitted as part a low-bid selection, CAB works with the City Attorney, as well as PMB, EMB, and CMD, to resolve issues prior to the selection. CAB prepares the bid tabulation summary, completes bid responsiveness evaluations, and performs license and debarment checks. PMB, CMB, and EMB evaluate minimum technical qualifications. EMB completes a comparison to the original cost estimate included in the bid documents. CMD assesses each bidder's local business enterprise goals. For traditional construction contracts, the responsive and responsible bidder who submitted the lowest bid is identified for award. In selection methods using Best Value, the responsive and responsible proposer who submitted the proposal with the highest score or lowest quotient is identified for award and the determination is posted to the website. CAB facilitates the subjective scoring process for Best Value selections. The five-day protest period for Best Value selection starts once the selection is announced. If there are protests from other bidders within the five-day protest period, the CAB contract analyst, working with the City Attorney and PM, facilitates the protest resolution process. If there are no protests after the five-day protest period, the selection is completed.
- *Contract Approval and Award:* Following identification of the selected contractor, CMD prepares their award memorandum. The PM prepares the award resolution and presents the recommendation to the Commission. The Commission awards contracts at their public meetings. The Commission has delegated to the General Manager the ability to award contracts below \$1 million.
- *Contract Execution:* Upon the required award approval, CAB prepares the Notice of Award and requests the contractor to submit required documents, including



insurance certificates, escrow bid documents, and the performance and payment bonds for review and approval. The City Attorney reviews and approves the insurance certificates and reviews and signs the performance and payment bonds. CAB receives the escrow bid documents. Once these documents are received, approved, and signed, CAB begins contract execution in DocuSign to obtain Contractor, City Attorney, General Manager, and Commission Secretary signatures.

- *Award Certification:* Upon signature receipt, CAB submits a certification packet to SFPUC's Infrastructure Budget & Finance (IB&F) Division. The IB&F Division reviews the documents, uploads documents to appropriate databases, and builds the contract in PeopleSoft. The PM submits a Purchase Order Request in SOLIS. IB&F then works in PeopleSoft to obtain the Controller's fund certification. Once the Purchase Order is dispatched, CAB, PMB, and CMB prepare a Notice to Proceed letter. Upon the issuance of the Notice to Proceed letter, the awarded contractor can begin work.
- **Construction Management**
  - The Construction Management phase includes all soft-cost tasks needed for contract administration and oversight during the Construction phase, including field inspections, quality assurance audits, environmental permitting, responding to requests for information, and managing schedule and budget changes through change orders.
- **Construction**
  - The Construction phase includes all construction activities.
- **Project Closeout**
  - In the Project Closeout phase, which takes place after the construction project has been completed, SFPUC finalizes all contracts, including change orders. PMB prepares a project summary, lessons learned, proof of completion, and all contract deliverables. CAB returns or destroys the escrow bid documents. PMB briefs upper management on the project completion and any recommended follow-up. PMB, EMB, and the Operations Representative all sign-off on a completed project close-out list.

## Professional Services Contract Procurement Process

Per Administrative Code section 6.40, a department seeking outside professional services for a public work or improvement project, such as professional design, consultant, or construction management services, that exceeds the minimum competitive amount of \$200,000 must procure services through a competitive process. Also, per Administrative Code section 6.40, for

contracts in excess of this minimum competitive amount, a department is required to issue a formal Request for Proposals (RFP) or Request for Qualifications (RFQ) and to designate one or more panels to review proposals and rate respondents. Based on the results of the panel evaluation, the department recommends the highest-ranked qualified respondent(s) to be awarded the contract(s). According to SFPUC staff, contracts valued under \$20,000<sup>5</sup> do not require a competitive solicitation, and contracts greater than \$20,000 and less than the minimum competitive amount of \$200,000 may follow an informal solicitation process.

The SFPUC bureaus primarily involved in professional services contract procurement are the Contract Administration Bureau (CAB) and either the Engineering Management Bureau (EMB), the Project Management Bureau (PMB), and/or the Construction Management Bureau (CMB) within the SFPUC Infrastructure Division, or other enterprise groups such as the Power or Wastewater enterprise

- **CAB** is responsible for managing and issuing a Request for Proposals/Qualifications (RFP/Q), monitoring and tracking forms for RFP/Q approval, facilitating the proposal review and selection processes, negotiating the contract with the selected respondent, administering the executed contracts, and ensuring compliance with applicable policies, laws, and contract terms.
- The **Contract Owner** (either the PMB, EMB, and/or CMB within the SFPUC Infrastructure Division, or other enterprise groups such as the Power or Wastewater enterprise) is responsible for securing project funding, authorizing the issuance of an RFP/Q, submitting all agenda items to CAB, approving invoices, and tracking contract capacity, insurance renewals, and contract duration. The Contract Owner is also responsible for the execution of the project scope, schedule, and budget.

According to SFPUC internal policy, the procurement of a professional services contract involves six phases, which are summarized below. A more in-depth narrative with additional details about each step is provided in *Appendix A: SFPUC Chapter 6 Procurement Process* to this report.

- **Contract Request/RFP/Q Initiation**
  - A Contract Owner obtains approval to initiate a new contract and submits a contract request form to CAB. This form includes basic information, including but not limited to funding source, value of contract, desired contract start date, and a summary of the scope of work.

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<sup>5</sup> Following the receipt of the draft report, SFPUC staff reported this threshold, which was formerly \$10,000, was increased to \$20,000 in early 2024.

- **RFP/Q Development**

- The assigned CAB contract analyst, who is the primary point of contact for the PM, other internal stakeholders, and the public regarding the solicitation, generates an RFP document template and a suggested contract schedule. The PM develops the RFP with high-level tasks and the type of work that will be performed. The CAB contract analyst reviews the RFP and scope of work and sends the RFP to the Contract Monitoring Division (CMD) for determination of compliance with local business enterprise (LBE) requirements. Upon CMD approval, a supervisor of the Contract Owner reviews and approves the RFP/Q. Upon Contract Owner supervisor approval, the contract analyst drafts a template Professional Services agreement to be posted with the RFP.
- The RFP and agreement are sent to the City Attorney's Office for review and approval of the RFP and draft agreement. Upon City Attorney approval, the contract analyst submits the draft of the RFP and agreement to the CAB Contracts Manager for final approval. Upon final approval by the CAB Contracts Manager, the contract analyst posts a publicly available advertisement for the RFP/Q.
- Parallel to the initial steps of RFP document development, the Contract Owner prepares the Personal Services Contract (PSC) Summary Form to obtain approval from the Civil Service Commission or the Department of Human Resources. Notice of the PSC form is sent to the applicable unions with an opportunity to respond before approval.
- Parallel to the RFP document development, the Contract Owner begins planning the solicitation evaluation process and advertisement. The contract analyst sends a Panelist Selection Form (PSF) to the Contract Owner for completion. The contract analyst then submits the PSF to CMD for approval.

- **Advertisement and Proposal Submittal**

- Generally, around 10 days following the posting of the advertisement, a pre-submittal meeting is held with internal and external stakeholders. During the pre-submittal meeting, potential proposers are informed about the solicitation process and discuss the proposal requirements of the solicitation and any applicable addenda. Following the meeting, at least three weeks are given to vendors to prepare responses to the solicitation.

- **Proposal Evaluation and Selection**

- Once the proposal deadline has passed, the contract analyst downloads and reviews the proposals for completeness, then sends the proposals to the contract owner to confirm compliance with the minimum qualifications criteria.

The technical portion of each responsive proposal (complete proposal that meets the minimum qualifications) is then evaluated by a technical evaluation panel. The contract analyst publicly posts the highest-scoring proposer recommended for the contract award. If there are no protests from other proposers after the five-day protest period, the contract analyst notifies the selected proposer of insurance requirements, CMD compliance provisions, and other City requirements. If there are protests within the five-day protest period, the contract analyst works with the Contract Owner and the City Attorney's Office to facilitate the protest process.

- **Contract Approval and Award**

- Following the recommendation for award and the resolution of any protests, CAB and the Contract Owner obtain the CMD Award Memo confirming that the recommended awardee complies with Administrative Code Chapter 14B Local Business Enterprise requirements. Professional services contracts over \$1,000,000 must be approved by the SFPUC Commission. Currently, contract award approval has been delegated by the Commission to the General Manager for contracts below the threshold amount (as defined in Administrative Code Chapter 6). The Contract Owner, with assistance from CAB, drafts and submits the agenda item for the contract to be included on the SFPUC Commission agenda for approval. If the contract is equal to or more than \$10,000,000 or the term is more than 10 years, the contract must also be approved by the Board of Supervisors.

- **Contract Certification**

- Following SFPUC Commission approval, CAB contacts the awarded contractor to request proof of insurance and compliance with City requirements. The CAB analyst also drafts with the final scope of work, from the RFP and any addenda, to be included in the agreement and sends it to the City Attorney's Office. The City Attorney's Office reviews, finalizes, and approves the agreement and appendices, and CAB sends the final version to the proposer for review. Afterward, CAB routes the agreement for signature via DocuSign, requiring signatures from the contractor, City Attorney, and General Manager. Upon signature receipt, CAB submits a certification packet to SFPUC's Infrastructure Budget & Finance (IB&F) Division. IB&F works to receive the Controller fund certification, uploads all necessary documents to the applicable internal databases, and sends a Notice of Contract Award (NCA) letter to the proposer. After NCA, the SFPUC contract manager may begin issuing task orders for the

work. IB&F issues a Notice to Proceed letter for the contractor to begin work for each task order issued.

## Related Concurrent Audits

During the time of our audit fieldwork, two additional related audits were underway:

- A performance audit of how conflicts of interest are managed citywide, conducted by the Budget and Legislative Analyst's Office. The scope of this performance audit includes an assessment of the City's approach to minimizing conflicts of interest among public officials, staff, and contractors, with a review of citywide training and communications, department controls around contracting, practices for filing and reviewing statements of economic interests (Form 700), a review of departments' statements of incompatible activities including oversight of secondary employment, and surveys of both city departments and other jurisdictions.
- A field follow-up of the Controller's Office 2021 report, *Public Integrity Audit: Significant Changes Are Needed to the Design, Monitoring, and Control of the San Francisco Public Utilities Commission's Social Impact Partnership Program*, conducted by the Controller's Office City Services Auditor, which was released December 2023. The scope of the field follow-up was to determine the correction actions that SFPUC has taken in response to the recommendations in the 2021 Public Integrity Audit related to the governance and oversight of SFPUC's Social Impact Partnership Program.

In order to not duplicate effort, this audit report considers, but does not focus on, these topics, which are covered in more detail in those reports.

## Acknowledgements

We would like to thank the management and staff of the SFPUC and the City Attorney's Office for their cooperation and assistance during this audit.

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## 1. SFPUC Procurement Policies, Procedures, and Training

The San Francisco Public Utilities Commission (SFPUC) Contract Administration Bureau (CAB) policies, procedures, and training program for procurement personnel are not consistent with industry best practices. CAB does not adequately maintain its internal policies and procedures for contract procurement activities and there are opportunities to improve and formalize CAB's training program for new contract analysts and existing staff. Inadequate policies and procedures and a lack of proper training could expose SFPUC to compliance risks and could also contribute to inefficiencies and ineffectiveness in procurement activities, potentially leading to missed opportunities for cost savings. Inadequate policies and procedures also impact transparency and may make it difficult to track procurement decisions and ensure accountability in the procurement process.

CAB should create a comprehensive procedure manual that assembles active guidelines to clearly define authority and responsibility for procurement personnel. CAB should regularly review and update this procedure manual with a standardized system to track and document revisions, including revision dates and the approving individuals. Finally, CAB should enhance and document its training program to onboard new staff and provide ongoing training to existing staff and assess staff competency regularly.

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### Deficiencies in Documentation of Procurement Policies and Procedures

A substantial number of the San Francisco Public Utilities Commission (SFPUC)'s Contract Administration Bureau (CAB)'s policies and procedures are not consistent with best practices for procurement policies and procedures documentation. CAB manages SFPUC's procurement of construction and professional services contracts, including soliciting and evaluating bids or proposals from vendors, awarding contracts, and ensuring compliance with procurement regulations and policies. CAB may also handle vendor relations and address issues or disputes that arise during the procurement process.

Our audit review found that CAB's procurement policies and procedures are not consistently written in clear and understandable language or documented in a standardized format. CAB does not maintain an official revision history for policies and procedures that records revision dates and the names of individuals responsible for revisions and approval. Many of CAB's policies and procedures are not finalized and remain in a draft form, and in general the procedures do not follow a standardized template.

In addition, our audit review found that many of the policies and procedures are framed broadly and do not provide detailed instructions, leaving room for interpretation by CAB contract analysts. Some staff report they create their own policy and procedure guides to supplement CAB's formal and official documents. Overall, these deficiencies raise concerns about the clarity and conformity with internal procurement policies, which are intended to guide SFPUC's Chapter 6 procurement operations. However, CAB staff indicated that the personal guides created by the team have since been incorporated into the team's guidelines and templates for use by all staff. Documenting, retaining, and consistently updating procurement policies and procedures is critical to SFPUC's overall effectiveness, efficiency, compliance with regulatory requirements, and risk management. According to the State & Local Procurement guide published by the National Association of State Procurement Officials (NASPO), a procurement office "should publish and maintain appropriate manuals for procurement personnel that set forth public entity-wide procurement goals and objectives and establish day-to-day procurement procedures in simple, concise language." The Institute for Public Procurement (NIGP) identified transparency, achieved through easily accessible and understandable policies and procedures, as one of the six guiding principles of public procurement. In addition, NIGP states that a standard for public procurement is to "develop a comprehensive policy manual that clearly defines authority, responsibility, and establishes guidelines for the organization and the procurement professional to follow when carrying out their responsibilities." According to NIGP, the purpose of this manual is to: establish the legal authority of the procurement function; simplify, clarify, and reflect the laws governing procurement; and enable uniform procurement policies throughout the organization.

### Procurement Policies and Procedures Review

As part of our audit fieldwork, we requested copies of SFPUC's policies, procedures, standards, and guidance related to procurement, including:

- Copies of all current SFPUC policies and procedures and documentation of internal controls related to procurement, as well as past policies and procedures applicable during the period from July 1, 2019 through January 5, 2023. We also requested SFPUC Commission policies and procedures.
- Any procurement-related guidance, standards, checklists, or matrices used by SFPUC employees responsible for procurement.
- Any guidance, standards, checklists, or matrices used by the SFPUC Commission related to procurement and contract evaluation.
- A comprehensive procurement process map detailing SFPUC's procurement workflow, including pre-bid activities, contractor selection, the award of contracts above and below

relevant threshold amounts, and required approvals by SFPUC, the SFPUC Commission, and/or other City entities.

In response to this request for information, SFPUC provided 69 files. Of those 69 files, our review found that:

- 66 of the 69 files, or approximately 96 percent, did not have evidence the procedure was approved by SFPUC management or the SFPUC Commission.
- 62 of the 69 files, or approximately 90 percent, were not formatted using a standardized template, meaning the documents did not use a consistent header, title, or other relevant elements used to easily identify the policy.
- 59 files, or approximately 86 percent, did not list a creation date nor a revision date on the document, and it was not clear whether CAB is adequately reviewing and revising its policies and procedures.
- 41 files, or approximately 60 percent, were in draft form. For the purposes of this audit, draft form refers to any policy or procedure document that contains a combination of unresolved edits, significant grammatical errors, and/or unclear, incomplete thoughts. We found evidence of one policy that has remained in draft form since 2018.

Exhibit 1.1 below provides a summary of the percentage of policy and procedure documents that we found to be insufficient.

**Exhibit 1.1: Summary Review of SFPUC Procurement-Related Policies and Procedures**

<b>Observed Document Insufficiency</b>	<b>Documents Received with Insufficiency</b>
Did not have evidence of approval	66 (96%)
Did not use standardized template	62 (90%)
Did not include creation/revision date	59 (86%)
In draft form	41 (60%)

Source: BLA review.

The deficiencies identified in CAB's Chapter 6 procurement policies and procedures documentation raise concerns about conformance to, and overall effectiveness of, the policies. The absence of consistent documentation practices, such as clear language, standardized formats, and documented revision histories, may increase the risk of errors and inconsistencies in the procurement process, potential legal and regulatory non-compliance, diminished stakeholder confidence, and hindered operational efficiency. Without clear and easily accessible policies and procedures, procurement staff may struggle to perform their duties effectively, which could lead to delays, disputes, and increased costs for SFPUC.



CAB should improve the clarity and consistency of its internal policies and procedures by creating a comprehensive procedure manual that assembles and documents active guidelines that clearly define authority and responsibility for procurement personnel. CAB should collaborate with the City Attorney's Office to ensure the procedure manual aligns with relevant federal, state, and local laws and regulations, including City Administrative Code Chapter 6. Additionally, CAB should establish a systematic review process that guarantees regular updates to the procedure manual for relevance and alignment with evolving legal requirements and industry best practices, and to ensure accountability and transparency in the revision process. These measures will collectively contribute to strengthening the SFPUC's Chapter 6 procurement practices.

### Ongoing Efforts to Improve CAB's Policies and Procedures

CAB is currently working with the Government Operations and Recovery Initiative (GovOps) group within the City Administrator's Office to improve SFPUC's procurement policies and procedures as part of the citywide Government Operations Recovery Initiative to improve key areas of City operations. In collaboration with GovOps, CAB has reviewed the current state of its policies and procedures for professional services contracts and identified areas for improvement, and GovOps and CAB have been working to revise CAB's policies and procedures for contract procurement.

Based on information provided by CAB staff, it was anticipated that the revised procurement policies and procedures would be finalized during the winter of FY 2023-24. When we requested the finalized materials as a result of this initiative in December 2023, CAB provided six process map documents encompassing pre-solicitation, advertisement, contract execution, amendments, waivers, and sole source waivers. However, these documents carried revision dates ranging from January 2023 through March 2023, and CAB staff have conveyed that these documents do not accurately represent their current operational practice. However, according to SFPUC staff, there have been minor updates and SFPUC has used the maps to create guidelines.

### Training Program for Contract Analysts Needs Improvement

There are opportunities to improve and formalize CAB's training program for new contract analysts and existing staff. Our review found that CAB's onboarding for new employees lacks formality and consistency and relies on ad hoc methods like shadowing without structured training programs or formal competency assessments. While there are general milestones for analysts to meet, consistency and competency assessments prior to assignment are lacking. Ongoing training for existing staff is informal and takes place in meetings and day-to-day experience and is not documented. As stated in NASPO's Guide for State and Local Procurement,

public procurement personnel need specialized training and education. NASPO recommends that a structured training program should include frequent, regular in-house trainings, such as monthly or quarterly sessions, to reinforce procurement policies and procedures. Training should be delivered through a combination of methods, including formal classroom instruction, self-paced online learning platforms, and hands-on workshops. NASPO emphasizes that professional certification programs should be incorporated as a method to ensure staff competency. Furthermore, NASPO identifies the assurance of consistency of procedures and decision-making as a fundamental guiding principle of good public procurement. NIGP also emphasizes the importance of staying up-to-date with best practices in public procurement as the profession evolves, and that ongoing, refresher training programs are important for public procurement staff to keep pace with current definitions, concepts, and best practices.

### Absence of Formalized Onboarding Training for New Contract Analysts

CAB's onboarding training for new contract analysts is not formalized or uniform, and instead CAB relies on informal, ad-hoc training to onboard new staff. According to NASPO, a formal training policy for procurement personnel is essential for organizational efficiency and compliance. NASPO states that while the knowledge and expertise gained during the day-to-day operations is valuable, it is at best an "unstructured form of education," and emphasizes that procurement personnel require formal training and instruction programs.

According to CAB staff, initial onboarding training of new contract analysts is conducted through "shadowing," when new contract analysts observe the day-to-day responsibilities of a more senior analyst. The specifics of onboarding training are determined as the training takes place and are not formalized programs as recommended by NASPO. According to CAB staff, while there are general milestones that should be met during onboard training, there is no assurance or assessment that each milestone is complete. The knowledge of new analysts is evaluated through review of completed work products and is not assessed prior to autonomous contract procurement assignments. According to CAB staff, following the receipt of the initial draft of this report, the Department has a draft checklist for onboarding new staff, which was initially created in October 2023. As of October 2024, the checklist is still in draft form and lacks detailed content.

This informal training method, while valuable for gaining practical experience, may overlook certain critical skills and training needs of new CAB contract analysts. For example, NASPO specifically recommends that procurement personnel receive training that focuses on identifying and responding to atypical or collusive market behaviors. This training should include guidance on how to effectively report such behavior and seek support when there are suspicions of these activities. The current training strategy for new analysts at CAB, which primarily relies on shadowing experienced colleagues, may not sufficiently prepare them to identify and address

potential collusive behavior. CAB should enhance and document the training program to onboard new staff to ensure new employees are trained on all necessary topics and have sufficient understanding of SFPUC Chapter 6 procurement policies, procedures, and practices.

### Deficiencies in Ongoing Training and Communication of Regulatory or Process Changes

In addition to a lack of formal onboarding for new staff, CAB does not have a formalized or uniform *ongoing* training program to ensure that existing CAB staff: (1) understand established policies and procedures, and (2) are aware of applicable regulatory or process changes when they occur. CAB staff should receive regular training to ensure comprehension of established procurement policies and procedures and to provide refresher updates, and staff expressed a desire to our audit team for more thorough discussions on regulatory or process changes, as staff report these changes are often only briefly discussed or communicated via email. In addition, staff report that they are not regularly assessed for their competency in procurement activities.

We recommend that CAB management enhance and document the training program to both onboard new staff and provide ongoing training to existing staff. The goal of the training should be to ensure uniformity in staff decision-making and understanding of established policies and procedures, and to communicate any applicable regulatory or process changes. This training program should incorporate both formal training sessions and on-the-job informal training or shadowing and include a mechanism to assess specific procurement skills.

### Topics and Skills for Procurement Personnel

Although professional certification is not a requirement for CAB procurement staff, when developing its internal training standards, CAB could consider the topics and skills of professional certifications to ensure its internal trainings are comprehensive. Exhibit 1.2 below lists three common procurement personnel certifications and associated skills for consideration by CAB management.

**Exhibit 1.2: Recommended Procurement Personnel Certifications and Associated Skills**

Certification	Associated Skills
<b>The Universal Public Purchasing Certification Council (UPPCC) Exam</b>	<ul style="list-style-type: none"> <li>• Business practices related to purchasing</li> <li>• Contract documents, solicitation methods, and contract administration</li> <li>• Laws, policies, and procedures governing public procurement</li> <li>• Contract law</li> <li>• Mathematics for cost and price analysis</li> <li>• Infrastructure project delivery methods</li> <li>• Cost accounting as it relates to price and cost analysis</li> </ul>
<b>NIGP's Certified Procurement Professional Certification (NIGP-CPP)</b>	<ul style="list-style-type: none"> <li>• Strategic Procurement Management</li> <li>• Procurement Policy and Procedure Development</li> <li>• Procurement Planning and Analysis</li> <li>• Sourcing and Contracting</li> <li>• Contract Administration and Performance Management</li> <li>• Procurement Professionalism and Ethics</li> </ul>
<b>Institute for Supply Management (ISM), CPSM® (Certified Professional in Supply Management)</b>	<ul style="list-style-type: none"> <li>• Strategic Sourcing and Supply Management</li> <li>• Supplier Relationship Management</li> <li>• Maximizing Value of Commodities and Services</li> <li>• Risk and Compliance Management</li> <li>• Social Responsibility</li> <li>• Financial Analysis</li> <li>• Strategic Leadership in Supply Management</li> </ul>

Source: BLA research.

## Conclusion

We identified shortcomings in CAB's procurement policies, procedures, and training practices. Many of CAB's procurement policies and procedures are poorly documented and do not conform to the standards set by the National Association of State Procurement Officials (NASPO) and the Institute for Public Procurement (NIGP). CAB does not have a comprehensive and well-maintained procurement procedure manual, and many of the procedure documents reviewed by our audit team are in draft form and lack clarity, consistency, and necessary approvals, which reduces conformance to, and effectiveness of, these policies. In addition, CAB's training approach for contract analysts is informal and may not ensure comprehensive understanding and adaptation to regulatory changes and established procedures. These deficiencies could affect CAB's operational effectiveness and compliance with best practices, which could expose SFPUC to compliance risks, inefficiencies, and transparency issues in procurement, and could potentially lead to missed cost-saving opportunities and accountability challenges in decision-making processes.

## Recommendations

The SFPUC Contract Administration Bureau Manager should:

- 1.1 Create a comprehensive procedure manual that assembles active guidelines that clearly define authority and responsibility for procurement personnel. The Contract Administration Bureau Manager should collaborate with the City Attorney's Office to ensure the procedure manual reflects the requirements of federal, state, and local laws and regulations, including City Administrative Code Chapter 6.
- 1.2 Establish a systematic and standardized process for regularly reviewing, updating, and tracking changes to the procedure manual. This process should ensure alignment with laws, regulations, and industry best practices, and should include document consistency, standardization, comprehensive coverage, and tracking of revision dates along with identification of the individuals responsible for approving the policy and procedural changes.
- 1.3 Enhance and document the training program to (a) onboard new staff and (b) provide ongoing training to existing staff in order to ensure accurate, comprehensive understanding of SFPUC Chapter 6 procurement policies, procedures, and practices. This should include regular in-house trainings (monthly or quarterly) and a mix of classroom instruction, online learning, and hands-on workshops.
- 1.4 Develop a framework that identifies the necessary skills required for procurement personnel at all levels and develop ways to regularly assess staff skills.

## Benefits and Costs

Implementation of the proposed recommendations would improve SFPUC's Chapter 6 procurement processes. By aligning procurement policies and procedures with industry best practices, SFPUC could enhance efficiency and effectiveness in contract procurement, which could potentially lead to cost savings and reduced risks of non-compliance. Streamlined and transparent procedures would likely improve accountability and consistency in decision-making. Additionally, a well-structured training program for staff would ensure up-to-date knowledge and skills and contribute to better performance and adaptability to regulatory changes. Developing and maintaining a comprehensive procedure manual, establishing a formalized training program, and regularly updating procedures to reflect regulatory changes can be accomplished with existing staffing resources, but would require both one-time and ongoing investments of staff time.

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## 2. Policies Governing the Rejection or Failure of Bids

The San Francisco Public Utilities Commission (SFPUC)'s Contract Administration Bureau (CAB) lacks detailed policies to guide SFPUC's internal decision-making process following the rejection or failure of bids for Chapter 6 construction and professional services contracts. While City Administrative Code sections 6.23(c) and 6.40(d) include general protocols for situations with limited competition, namely circumstances when SFPUC (a) receives no bids or proposals in response to a Chapter 6 solicitation, or (b) receives only one responsive bid in response to a Chapter 6 solicitation, the Administrative Code gives Department Heads, including the SFPUC General Manager, significant discretion to determine the best course of action in these circumstances. The absence of clear policies to guide SFPUC's internal determination could lead to inconsistencies in decision-making, reduced competitiveness, higher costs, and potentially lower service quality. Additionally, CAB does not comprehensively track and monitor the number of responsive and non-responsive bids and/or proposals received for both construction and professional services contract solicitations, which limits SFPUC's ability to identify market trends, bidder responsiveness, and potentially collusive bidder patterns. CAB should develop and implement a comprehensive policy consistent with best practices and Administrative Code Sections 6.23(c) and 6.40(d) for handling rejected or failed bids and proposals. CAB should also develop and implement a policy to monitor the quantity of bids and proposals received for both construction and professional services contracts.

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### Circumstances of Rejection or Failure of Bids or Proposals

Occurrences of bid or proposal **rejection** and **failure** are both indicators of procurement process health.

- Bid or proposal **rejection**<sup>1</sup> refers to the disqualification of bids that fail to meet predefined criteria. A rejected bid or proposal is referred to as a “non-responsive” bid or proposal. (A bid or proposal that meets the predefined criteria is referred to as a “responsive” bid or proposal). Non-responsive bids and proposals may be the result of unclear requirements or overly stringent conditions established in the bid solicitation materials<sup>2</sup> and may

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<sup>1</sup> Per the City's Administrative Code, City departments may also choose to reject bids or proposals regardless of qualification status. Section 6.41 of the City's Administrative Code (Professional Services) states that the Department Head can reject any or all proposals, with approval from the Mayor, Board, or Commission (as appropriate), even if the right to reject is not explicitly stated in the Request for Proposals. Per Section 6.21(c) of the Administrative Code (Construction), the Department Head has absolute authority to reject any or all bids without needing approval, regardless of whether this right is mentioned in the bid advertisement.

<sup>2</sup> The number of bidders or proposers may be impacted not only by unclear requirements or overly stringent conditions but also by other external factors such as market competition, availability of qualified vendors, and timing of the solicitation.

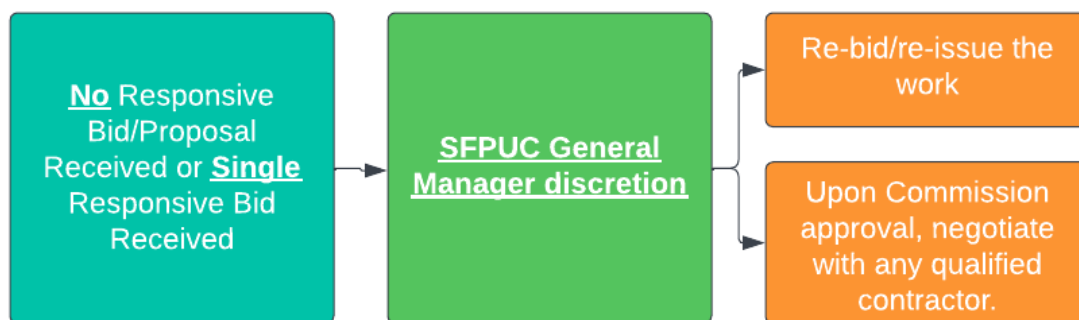
highlight potential opportunities for improvement in an entity's solicitation documents or criteria.

- Bid or proposal **failure**, evidenced by the receipt of no bids or only one bid in response to a solicitation, may indicate problems with market engagement, possibly due to non-competitive terms, limited outreach, or unattractive contract conditions. Bid or proposal failures may indicate a need to reassess market strategies, outreach, and procurement practices to ensure competitive and fair bidding processes.

### Permitted Departmental Discretion Following the Rejection or Failure of Bids/Proposals in the Administrative Code

City Administrative Code sections 6.23(c) and 6.40(d) grant significant discretion to the department head following the rejection or failure of bids/proposals for both construction and professional services contracts. These Code sections generally allow the department head, in this case the SFPUC General Manager, to rebid or reissue proposals if they determine further outreach efforts or contract modifications could attract more bids or proposals. If the SFPUC General Manager determines these actions would not result in subsequent submittals, then the SFPUC, upon approval by the SFPUC Commission, may negotiate with any qualified contractor or order the work be executed by the City. Exhibit 2.1 below provides a general overview of the discretion allotted to the SFPUC General Manager, per Administrative Code Sections 6.23(c) and 6.40(d). The specific actions permitted by these Code sections are further discussed below.

**Exhibit 2.1: General Overview of General Manager Discretion in Circumstances of Rejections or Failure of Bids**



Source: BLA analysis, Administrative Code sections 6.23(c) and 6.40(d).

### Construction Contracts, Administrative Code section 6.23(c)

Administrative Code section 6.23(c) allows the SFPUC General Manager to determine the appropriate action for construction contracts if (1) no bids are received, (2) one responsive bid is

received and no other bids are received, and (3) one responsive bid is received, and other non-responsive bids are received. Exhibit 2.2 below summarizes the actions permitted by Administrative Code section 6.23(c) for construction contracts in circumstances of rejections or failure of bids.



**Exhibit 2.2: Department Head Actions Permitted by Administrative Code Section 6.23(c) for Construction Contracts in Circumstances of Rejections or Failure of Bids**

Circumstances of Rejections or Failure of Bids		Department Head Actions Permitted by Administrative Code Section 6.23(c)		
			Yes, (a) and/or (b)	Neither (a) nor (b)
1) No Bids Received		<b>Determine whether (a) further outreach efforts and/or (b) removal or modification of certain requirements in the contract would result in bid submittals.**</b>	Shall re-bid the work.	With the approval of the Mayor, board, or commission concerned, may negotiate with any qualified contractor or may order the work be executed by the City.
2) One Responsive Bid Received and No Other Bids are Received	Does Not Exceed Engineer's Estimate	May recommend the award of the contract to the sole responsive bidder.	-	-
	Exceeds Engineer's Estimate	<b>Determine whether (a) further outreach efforts and/or (b) removal or modification of certain requirements in the contract would result in more than one responsive bid at prices substantially lower than the bid price received.**</b>	Shall re-bid the work.	With the approval of the Mayor, board, or commission concerned, may negotiate with the sole responsible bidder or any qualified contractor or may order the work be executed by the City.
3) One Responsive Bid Received and Other Non-responsive Bids are Received	Does Not Exceed Engineer's Estimate	May recommend the award of the contract to the sole responsive bidder.	-	-
	Exceeds Engineer's Estimate	<b>Determine whether the following steps would likely result in more than one responsive bid at prices substantially lower than the bid price received: (a) the qualifications for bidders were too onerous and not necessary for the work, and/or (b) one or more of the non-responsive bids could easily be cured and whether the bidders are still estimated in the work.**</b>	Shall re-bid the work.	With the approval of the Mayor, board, or commission concerned, may negotiate with the sole responsible bidder or any qualified contractor or may order the work be executed by the City.

Source: San Francisco Administrative Code 6.23(c).

**\*\*Scenarios in which SFPUC has substantial discretion, and which we recommend an internal policy to guide decision-making.**

As shown in Exhibit 2.2 above, Administrative Code section 6.23(c) provides the SFPUC General Manager with discretion to determine the appropriate action for construction contracts in scenarios of bid rejection or failure in certain contexts. Specifically, if no bids are received or only a single responsive bid is received and that bid exceeds the engineer's estimate, the SFPUC General Manager must determine whether increased outreach or modifications to contract requirements would result in additional responsive bid submittals, in which case the project is rebid. Otherwise, the SFPUC General Manager, with Commission approval, may negotiate with any qualified contractor or proceed with City execution.

### Professional Services Contracts, Administrative Code 6.40(d)

Administrative Code section 6.40(d) allows the SFPUC General Manager to determine the appropriate action for professional services contracts if no responsive proposals are received from qualified proposers, as shown in Exhibit 2.3 below.

**Exhibit 2.3: Department Head Actions Permitted by Administrative Code Section 6.40(d) for Professional Services Contracts in Circumstances of Rejections or Failure of Proposals**

<b>Department Head Actions Permitted by Administrative Code Section 6.40(d)</b>			
<b>Circumstances of Rejections or Failure of Proposals</b>		<b>Yes, (a) and/or (b)</b>	<b>Neither (a) nor (b)</b>
No Responsive Proposals are Received from Qualified Proposers	<b>Determine whether (a) further outreach efforts and/or (b) removal or modification of certain requirements in the contract would result in responsive proposals.**</b>	Shall re-issue the request for proposals or qualifications.	With the approval of the Mayor, board, or commission concerned, may negotiate with any qualified contractor.

Source: San Francisco Administrative Code 6.40(d).

**\*\*Scenarios in which SFPUC has substantial discretion, and which we recommend an internal policy to guide decision-making.**

As shown above in Exhibit 2.3, the SFPUC General Manager is permitted to re-issue a request for proposals if it is determined that further outreach efforts and modifying contract requirements would result in responsive proposals. If the SFPUC General Manager determines neither further outreach efforts nor modifying contract requirements would result in responsive proposals, the SFPUC may negotiate with any qualified contractor for the professional services sought by the request for proposals or qualifications.

### SFPUC Lacks Internal Policy to Guide Decisions Made Under Administrative Code Sections 6.23(c) and 6.40(d)

While Administrative Code sections 6.23(c) and 6.40(d) provide the SFPUC General Manager with significant latitude in deciding the best course of action following bid/proposal rejection or

failure, SFPUC does not have a standardized policy or procedure to govern and guide the exercise of this discretion. In response to our request to the SFPUC Contract Administration Bureau (CAB) for written policies and procedures used to comply with Administrative Code sections 6.23(c) and 6.40(d), we received the following information:

- *Construction Contracts:* According to CAB staff, SFPUC relies on the Administrative Code language and the City Attorney's Office to guide their actions in situations where no bids or only a single responsive bid was received for construction contracts. However, the Administrative Code does not detail any considerations, circumstances, benchmarks, or metrics that would inform SFPUC's determination whether (a) further outreach efforts and/or (b) removal or modification of certain requirements in the contract would result in more bids. As a result, it is up to SFPUC to make the determination on a case-by-case basis whether to re-bid the work or award the contract to the only responsive bidder and/or any qualified contractor.
- *Professional Services Contracts:* Similarly, for professional services contracts, SFPUC relies on the Administrative Code language and the City Attorney's Office to guide their actions in situations where no proposals are received for professional services contracts. According to CAB staff, SFPUC performs an informal review to determine whether (a) further outreach efforts and/or (b) removal or modification of certain requirements in the contract would result in proposals. As with construction contracts, it is up to SFPUC to make this determination on a case-by-case basis when no proposals are received for a professional services contract.
  - Unlike Administrative Code section 6.23(c) for construction contracts, section 6.40(d), which pertains to professional services contracts, does not prescribe a review of the receipt of a single proposal. However, CAB's professional services contract staff follows an internal policy that formalizes a scoring process for award eligibility following the circumstance of a single proposer. The policy requires single proposers for contracts exceeding \$500,000 to reach a minimum score to be eligible for award, and single proposers for contracts under \$500,000 are not required to be scored. However, the policy does not state how the scoring process is conducted or how the Department determines the minimum scored required.

### Further Outreach Efforts

A comprehensive policy to determine the need for further outreach efforts should include a clear set of criteria for assessing the adequacy of the initial bid/proposal response. These criteria may include the number of bids/proposals received relative to past solicitations for similar contracts, the diversity of bidders/proposers in relation to size and specialty, and the health of

competitiveness regarding pricing and quality of bids and proposals. These benchmarks would assist the SFPUC General Manager in determining if initial outreach efforts were sufficient or if further efforts are necessary.

Additionally, the policy should outline an approach to conducting market research and gathering feedback from potential bidders/proposers. This approach could include analyzing industry trends, identifying potential deterrents to bidders, or directly engaging with suppliers to learn potential avenues for improvement.

Lastly, the policy should include the development of an outreach plan specifying additional methods to be used in further outreach efforts, tailored based on the market research phase. This outreach plan may include leveraging digital platforms, industry forums, and direct engagement strategies.

### Contract Modifications

A comprehensive policy to determine the need for contract modifications following no bids/proposals received or a single responsive bid/proposal should include a clear set of criteria for reviewing contract terms and conditions to identify barriers for entry for potential bidders/proposers. These criteria should be informed by market research, including feedback from previous bidders and industry experts. Topic areas and potential barriers could include overly stringent qualifications, unrealistic project timelines, and burdensome contractual obligations.

The policy should also include a clear framework for implementing the identified contract modifications, including steps for internal review and approval. It should also specify how these modifications will be communicated to potential bidders/proposers.

### Curing Non-Responsive Bids

A policy for curing non-responsive bids following the receipt of one responsive bid and other non-responsive bids should detail a procedural framework for engaging with bidders who have submitted non-responsive bids due to minor or correctable issues. This policy could include specifying the types of deficiencies that are considered curable and establishing a timeline for bidders to rectify the issues. The policy should also mandate transparent communication with all bidders regarding the curing process, including clear instructions on how and when corrections can be made.

## Significance of SFPUC Policy Gap in Administrative Code Implementation

### *Transparency and Fairness*

SFPUC should establish clear and well-defined policies and procedures to guide decision-making following the receipt of no bids/proposals or a single responsive bid/proposal to promote transparency of the procurement process and to ensure that the decision-making process, as allowed by Administrative Code sections 6.23(c) and 6.40(d), is consistently and fairly applied. Without clear policies, it may be difficult for stakeholders, including contractors and the public, to understand how decisions are made. Additionally, when discretion is not governed or bound by clear policies, there is a heightened risk that the decisions may be influenced, or perceived to be influenced, by factors other than the best interest of the City, the public, or fair treatment of all vendors. These risks include favoritism, nepotism, or even corruption. For example, if SFPUC decides to award a contract to the sole responsive bidder, that decision could be based on an established relationship with the bidder rather than an assessment that the initial outreach efforts were adequate and that further outreach efforts or contract modifications would not result in additional bids. Similarly, if SFPUC decides to correct a non-responsive bid, that decision could be influenced by subjective preferences or existing relationships, rather than an objective evaluation of the bid's responsiveness.

Internal policies to guide SFPUC actions in these scenarios would provide the necessary framework to ensure uniform and accountable decision-making. Discretionary powers should be exercised within clear and comprehensive guidelines, as recommended by the National Association of State Procurement Officials (NASPO). NASPO advises that "the central procurement office should publish and maintain manuals for procurement personnel to establish public entity-wide procurement goals, objectives, and day-to-day procurement procedures." These manuals serve as practical guides for procurement officers and address various procurement-related topics, including determining responsiveness in bids and proposals, conditions for bid rejection, and resolution of identical bids.

### *Reduced Competition and Impact on Market Value*

In addition to affecting transparency and fairness, the absence of guidelines following the receipt of no bids/proposals or a single responsive bid/proposal could negatively impact competition and market value for SFPUC. Without clear policies and procedures for comprehensively assessing the adequacy of market outreach and the need for contract modifications, SFPUC may not identify barriers that deter potential bidders or proposers, which would impair SFPUC's ability to address and rectify these barriers to broaden the pool of bidders and increase overall competition. A lack of competition typically leads to higher costs and lower quality for the procuring entity.

NASPO states that making post-bid specification changes without re-bidding the work undermines competition. According to the NASPO Procurement Guide, modifications to specifications after issuing a solicitation usually indicate inadequate market research beforehand. NASPO states that any substantial, post-bid specification change should be treated as a new competitive opportunity in which all qualified suppliers should be allowed to participate. However, without clear policies in place, SFPUC could decide to award a contract to a single bidder without adequately assessing the need for contract modifications beforehand, which could undermine the overall competitiveness of the solicitation process.

NASPO identifies various best practices for public procurement officials related to the importance of competition, including the need to “understand market conditions for every procurement” and to “avoid specifications, scopes of work, or contractual relations that reduce competition.” NASPO also asserts that performing market research and supplier outreach encourages competition.

### Insufficient Bid Response Tracking Practices

CAB does not sufficiently or consistently track the number of responsive and non-responsive bids received per solicitation, which can provide valuable insight into market interest and competition and potentially suspicious bidding patterns. CAB’s Construction Division tracks the number of responsive bids received per solicitation, but their records do not include the number of non-responsive bids received. CAB’s Professional Services Division does not maintain any record of this information.

For construction contracts, although CAB’s tracking does not include non-responsive bids, the data still provides substantial insight into historical patterns of bid competitiveness. The available database contains information about each bid solicitation from FY 1997-98 to the present, including bid date, number of responsive bids received, local business enterprise subcontracting requirement, the engineer’s estimate, the lowest bid, the highest bid, the number of bidder questions received, and the number of addenda. The database also provides summary information by fiscal year, including the total number of bids received and the average number of bids received by solicitation, and compares the cost of the bids received versus the engineer’s estimate across fiscal years.

Exhibit 2.4 below summarizes the total number of bids received and the average number of bids received per solicitation by fiscal year for construction contracts from FY 2018-19 to FY 2022-23. While the total number of bids received each fiscal year declined from 34 in FY 2018-19 to 24 in FY 2022-23, or by 29 percent, the average number of bids per solicitation fluctuates slightly, ranging from a low of 2.84 in FY 2021-22 to a high of 3.50 in FY 2022-23.

**Exhibit 2.4: SFPUC Construction Bid Data per Fiscal Year, FY 2018-19-FY 2022-23**

<b>Fiscal Year</b>	<b>Total Number of Bids Received in Fiscal Year</b>	<b>Average Number of Bids Received per Solicitation in Fiscal Year</b>
<b>FY 2018-19</b>	34	3.23
<b>FY 2019-20</b>	33	2.94
<b>FY 2020-21</b>	28	3.27
<b>FY 2021-22</b>	28	2.84
<b>FY 2022-23</b>	24	3.50

Source: SFPUC database.

Overall, SFPUC's bid tracking data for construction contracts is thorough. However, we recommend that CAB also track the number of non-responsive bids and the reason for which the bid was deemed non-responsive. We also recommend that CAB begin tracking this bid-related information for Chapter 6 professional services solicitations, and that CAB use information on non-awarded bidders to assess market interest and potential suspicious bidding patterns, as discussed in the following section.

## **Monitoring Bid Patterns to Assess Market Interest and Anticompetitive Practices**

### *Monitoring Competition and Market Value*

Tracking the total number of bids received, including both responsive and non-responsive bids, and the bid price in response to solicitations can provide important insights into market interest and competition. In addition, monitoring this data would offer insights into the effectiveness of past decisions concerning outreach efforts and the necessity for contract modifications, and would provide the SFPUC with historical data to inform future evaluations. This information would enhance the decision-making process related to Administrative Code section 6.23(c) and 6.40(d) discussed earlier in this section.

Data on responsive and non-responsive bids can also highlight trends, such as consistently low numbers of bids for specific types of solicitations, which might indicate overly restrictive specifications or a lack of adequate market outreach. In contrast, a higher number of bids generally suggests a healthy competitive environment, likely leading to more favorable terms for the Department. For example, receiving no bids might suggest that the procurement was not adequately advertised or that the terms were not appealing to potential vendors. Similarly, receiving only one bid could raise concerns about the competitiveness of the process or suggest a monopoly in the market.

As mentioned earlier, NASPO advocates for the need to understand market conditions for every procurement and that performing market research encourages competition. The U.S.



Government Accountability Office<sup>3</sup> (GAO) highlights the importance of outcome-oriented performance metrics in managing procurement organizations, which includes aspects like bid tracking. In their report, the GAO found that leaders at federal agencies rely primarily on process-oriented metrics and are working to implement metrics for better outcome-oriented assessments. This approach can include tracking bid numbers and competition to evaluate procurement. The GAO's focus on such metrics highlights the importance of tracking and analyzing procurement processes, including bids, to enhance efficiency and decision-making in government procurement.

### *Monitoring Suspicious Patterns*

NASPO recommends that public procurement officials conduct market research that enables them to determine if the market response to a solicitation is appropriate and non-collusive. Procurement officials should be able to identify aberrant and collusive market responses. According to NASPO, auditing bid histories to identify suspicious bidding patterns is a best practice to address anticompetitive practices. NASPO lists various bidding patterns as suspicious, including several described below. If SFPUC enhanced bid tracking and monitoring practices to include relevant information on all bids received, it would be better equipped to identify and address cases of collusive bidding behavior similar to:

- Alternating bid patterns: A recurring pattern where the same group of suppliers alternately emerges as the low bidder over time can indicate collusion, especially if procurement awards follow a suspicious rotation despite appearing competitive individually. This inconsistency with real market conditions, where different contracts should yield varied outcomes, indicates a manipulation of the bidding process rather than genuine competition.
- Rotating territorial or product bidding patterns: An analysis of bids and awards that reveals that suppliers bid exclusively within certain zones or on specific products suggests a market allocation scheme, where each supplier restricts their bids to a particular area or product type.
- No-bid responses from expected bidders: A no-bid response from an expected supplier might simply reflect that company's choice not to bid on a particular contract; however, no-bid responses from two or more expected bidders could indicate a bid rotation scheme, in which where suppliers consensually limit price competition by agreeing to take turns winning contracts.

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<sup>3</sup> GAO-21-491, Report to the Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, "Federal Contracting: Senior Leaders Should Use Lead Companies' Key Practices to Improve Performance", July 2021.



- Simultaneous price increases: Supplier prices increasing in a uniform way is sometimes an indicator of price collusion. Prices may increase due to market conditions, however, the bid price increases should not be identical.

To summarize, tracking the number and price of both responsive and non-responsive bids is important for evaluating market interest and the effectiveness of procurement strategies, and would provide insights that could guide the SFPUC in addressing situations of limited competition. This practice, supported by NASPO's emphasis on understanding market conditions and the GAO's recommendation for benchmarking performance metrics, is also important for identifying trends that affect competition and ensuring favorable procurement outcomes through informed decision-making. Additionally, tracking more detailed information on each bidder would allow the SFPUC to monitor for suspicious patterns and identify collusive behaviors like bid rotation and market allocation schemes that undermine competition.

## Conclusion

SFPUC has inadequate policies and procedures for handling bid or proposal rejections or failures for Chapter 6 construction and professional services contracts. The lack of specific guidance for post-bid actions, such as assessing the need for further outreach or contract modification, generates a risk of inconsistent decision-making, reduced competitiveness, higher costs, and lower service quality. In addition, CAB lacks comprehensive bid tracking practices, which limits its ability to assess market trends, bidder responsiveness, and collusive behavior. Addressing these gaps by developing clear policies and improving bid tracking aligns with best practices to ensure a competitive and fair bidding environment.

## Recommendations

The SFPUC Contract Administration Bureau Manager should:

- 2.1 Develop and implement a comprehensive policy or procedure consistent with best practices and Administrative Code Sections 6.23(c) and 6.40(d) for handling rejected or failed bids and proposals. The policy or procedure should identify the criteria and process for when and how to undertake further outreach efforts, modify contract requirements, and cure non-responsive bids.
- 2.2 Develop and implement a policy or procedure to monitor the quantity of bids and proposals received for both construction and professional services contracts. This policy should include tracking both responsive and non-responsive bid data. This data should be analyzed and monitored for patterns indicating changes in competition levels and collusive behavior. The policy and procedure should also identify remedies that should be

taken if anti-competitive patterns are suspected. Based on these insights, SFPUC should adjust their approach to crafting solicitation documents as needed to foster greater competition, at its discretion.

### **Benefits and Costs**

Developing dedicated policies to guide decision-making in scenarios with no bids or a single bid in construction and professional services contracts would ensure consistency and transparency in CAB's decision-making process. This increased transparency would support the integrity of the procurement process, could foster greater trust among stakeholders, and could mitigate some of the risk of collusion or corrupt practices, especially in cases of limited competition. SFPUC could also realize gains in efficiency because well-defined policies would enable SFPUC to make informed decisions promptly and avoid delays that could cost staff time and resources.

Additionally, maintaining historical bid data, for both responsive and non-responsive bids, would allow for a more comprehensive analysis of procurement processes. With this information, SFPUC could identify patterns and issues affecting supplier participation, enabling proactive measures such as refining solicitation documents and conditions which could attract more competitive bids, enhance supplier participation, and foster increased competition, potentially resulting in lower costs and higher quality in procured services.

Implementing these recommendations would require SFPUC and City Attorney staff time. However, the recommendations can be completed with existing resources.

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### 3. Contract Procurement Timelines and Goals

The San Francisco Public Utilities Commission (SFPUC) has not established a metric or performance goal to monitor procurement time and processing for Chapter 6 contracts, despite collecting data on the length of time it takes to complete procurement for both construction and professional services contracts. There is wide variation in the length of time it can take to procure a single construction contract: according to data from the Contract Administration Bureau, it can take anywhere from 3.5 to 15 months to complete the approximately 16 milestones required to go from contract initiation to a Notice to Proceed, which marks the end of procurement and the beginning of construction. Delays in contract processing increase the risk that contractors may try to abuse the formal procurement process to expedite it, although our audit fieldwork did not reveal evidence of this occurring. The delays also cost the City money in staff time, and lead to delays in starting construction projects. The SFPUC Contract Administration Bureau Manager should establish a metric and/or goal related to procurement timelines and report to the Infrastructure Assistant General Manager and Chief Engineer on its progress towards that goal.

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#### Absence of Timeline Metrics or Goals

The Contract Administration Bureau (CAB) at the San Francisco Public Utilities Commission (SFPUC) is responsible for developing and executing contracts for services at the SFPUC that fall under either Chapter 21 or Chapter 6 of the San Francisco Administrative Code. Internally, CAB divides its workload and staff into two groups. The first group handles contracts for professional services that fall under Chapter 6 or 21 of the Administrative Code, and the second group handles contracts for construction or public works projects that fall under Chapter 6 of the Administrative Code. The two groups are referred to in this audit as “the professional services group” and “the construction group,” respectively. Each group has a manager and several contract analysts assigned to work on contracts that fall under their respective purviews.

CAB staff do not formally track any metrics or performance goals to monitor the length of time it takes to procure and process contracts. The construction group at CAB has been tracking procurement timelines independently for internal purposes, and the professional services group recently implemented procurement tracking capabilities in SharePoint. However, neither group is tracking its performance against any goal or metric of the length of time to procure these services. A procurement timeline goal would make the data that both groups are collecting more useful and relevant to team managers.

CAB's construction procurement team has data that shows that the construction procurement timeline could be shortened, especially with a specific timeline goal established. The construction procurement timeline includes approximately 16 specific procurement milestones, including:

1. **Commission Advertisement Report Date:** CAB assigns a contract analyst, meets with the project team, and receives information about the contract.
2. **Newspaper Advertisement Date:** The Administrative Code requires that opportunities for construction contracts be advertised in a newspaper. This milestone involves obtaining several pieces of documentation, coordinating with the newspaper, and coordinating with the project team on the details of the contract (due dates, etc.).
3. **Bid Due Date:** Once the contract is advertised, CAB coordinates the pre-bid meeting, receives and responds to questions from bidders, distributes contract documents, issues addenda as necessary, and conducts the bid opening on the bid due date.
4. **Selection of Contractor:** After the bids are opened, CAB checks they are responsive, prepares the tabulation, and receives the award memo from the Contract Monitoring Division (CMD) certifying that the contractor meets CMD requirements.
5. **Formal Award at SFPUC Commission:** All contracts with budgets of more than \$1 million must be formally awarded by the SFPUC Commission, which meets monthly.
6. **Award Letter to Contractor:** CAB sends the formal award letter, including the boilerplate City contract agreement and any additional required documents, to the contractor.
7. **Contractor Provides Insurance and Bond:** The contractor is required to provide the City with required insurance documents and performance and payment bonds.
8. **Contractor Compliance Date:** All contractor requirements have been verified and deemed in compliance by CAB, including requirements under Administrative Code Chapter 12B<sup>1</sup> and the insurance and bonds described above. The insurance and bond documents have been sent to the City Attorney for review.
9. **City Attorney approves** the insurance documents.
10. **City Attorney approves** the performance and payment bond.
11. **Date to General Manager:** The contract package, including the DocuSign transmittal memo and General Manager memo, is sent to the SFPUC General Manager to initiate the DocuSign electronic signature process.
12. **Date Agreement Returned:** The date that all of the required signatories (General Manager, Contractor, City Attorney, Commission Secretary) sign the contract and it is returned to CAB.

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<sup>1</sup> Chapter 12B of the SF Administrative Code establishes that all contracts with the City must include nondiscrimination clauses.

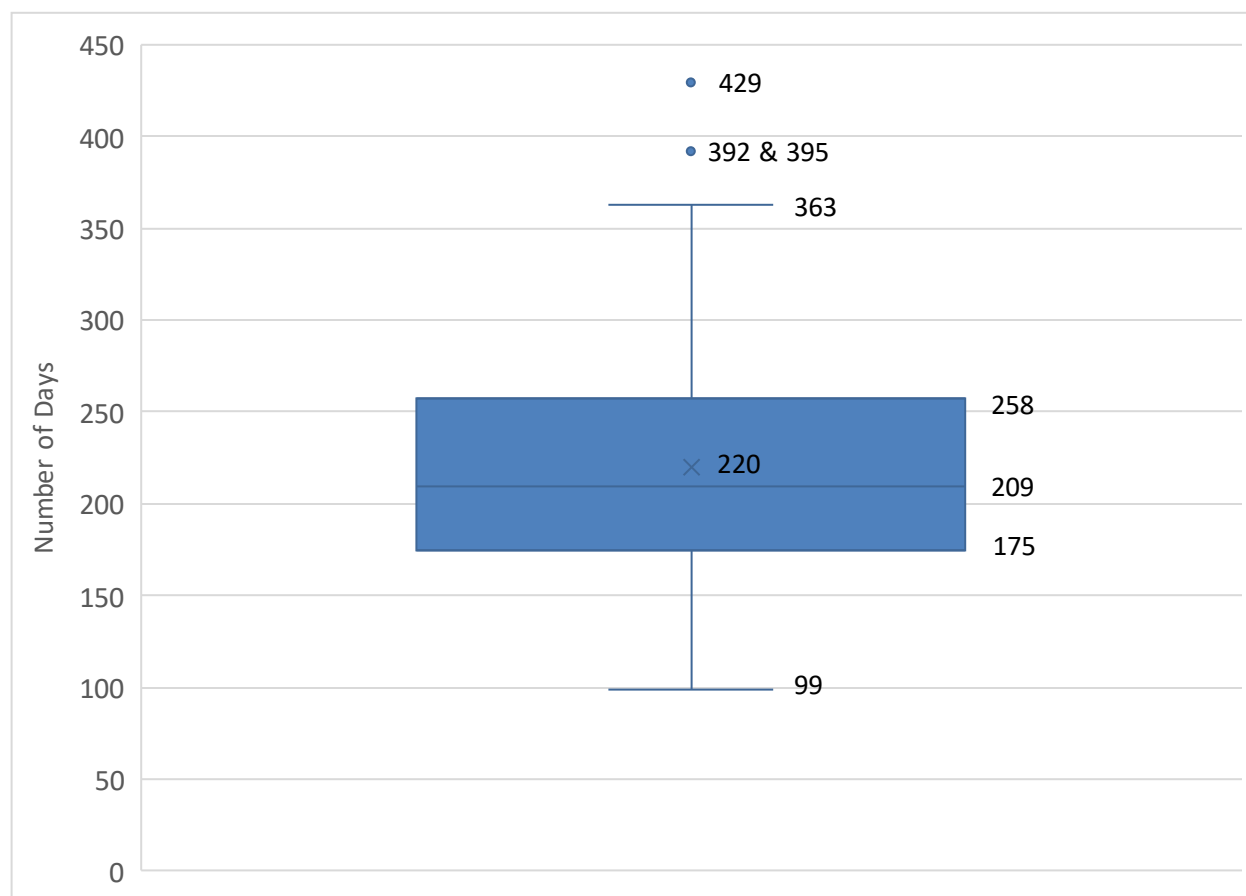
13. **Contract to Infrastructure Budget and Finance (IBF):** The contract and all of its accompanying documents go to IBF's Contract Processing Group for entry into PeopleSoft.
14. **Contract Executed in PeopleSoft:** IBF creates the contract in PeopleSoft.
15. **Purchase Order Dispatch Date:** The project manager submits a Purchase Order (PO) request in Solis and IBF initiates the PO in PeopleSoft.
16. **Notice to Proceed (NTP) Date:** CAB prepares the NTP letter and sends it to the contractor.

According to data tracked internally by CAB, the median time it took to complete all 16 milestones in a set of construction contracts from FY 2016-17 to FY 2022-23 is 209 days, or nearly 7 months,<sup>2</sup> but for some cases it took anywhere from 3.3 to 14.3 months to complete the milestones. The variance in the number of days it takes to complete the construction procurement process is displayed in Exhibit 3.1 below.

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<sup>2</sup> Source: PUC dataset titled "Construction\_Contract\_Tracking\_BLA," dated April 11, 2023.

**Exhibit 3.1: Box-and-Whisker Plot showing Number of Days in Construction Procurement Timeline, FY 2016-17 to FY 2022-23**



Source: BLA analysis of SFPUC data.

Exhibit 3.1 is a box-and-whisker plot that shows the distribution of the duration of procurement processes for a self-reported set of all construction contracts from FY 2016-17 to FY 2022-23. The median number of days it took to procure a single contract during this time period was 209 (7 months), and the average was 220 days (7.3 months). Half of all contracts in this set took between 175 and 258 days (or nearly 6 and 8.5 months, and the 25<sup>th</sup> and 75<sup>th</sup> percentiles, respectively) to procure. The shortest amount of time needed to procure a contract was 99 days (3.3 months), and the longest was 429 days (14.3 months), which is also a statistical outlier. This box-and-whisker plot shows three statistical outliers: 392, 395, and 429 days (or 13, 13.2, and 14.3 months, respectively). The plot also shows that there is wider variation, including outliers, on the higher end of the distribution than the lower end.

Overall, the data shows that it can take anywhere from about 3.3 to 14.3 months to complete all 16 milestones and procure a single construction contract. Longer procurement timelines cost the SFPUC money in increased staff time as well as inflated construction costs and generally should

be avoided when possible. Additionally, drawn-out procurement processes can increase contractor frustration and decrease trust in the procurement process, which can impact the SFPUC's relationship with the contractor and lead to challenges during the actual construction project. Further, delays in procurement lead to delays in actual construction work performed and can have a chain effect on subsequent projects since there are limited procurement staff members who themselves have limits on the number of contracts they can manage at any given time. Completing procurement on a contract in a timely and efficient manner means that starting procurement for the next construction project will not be held up.

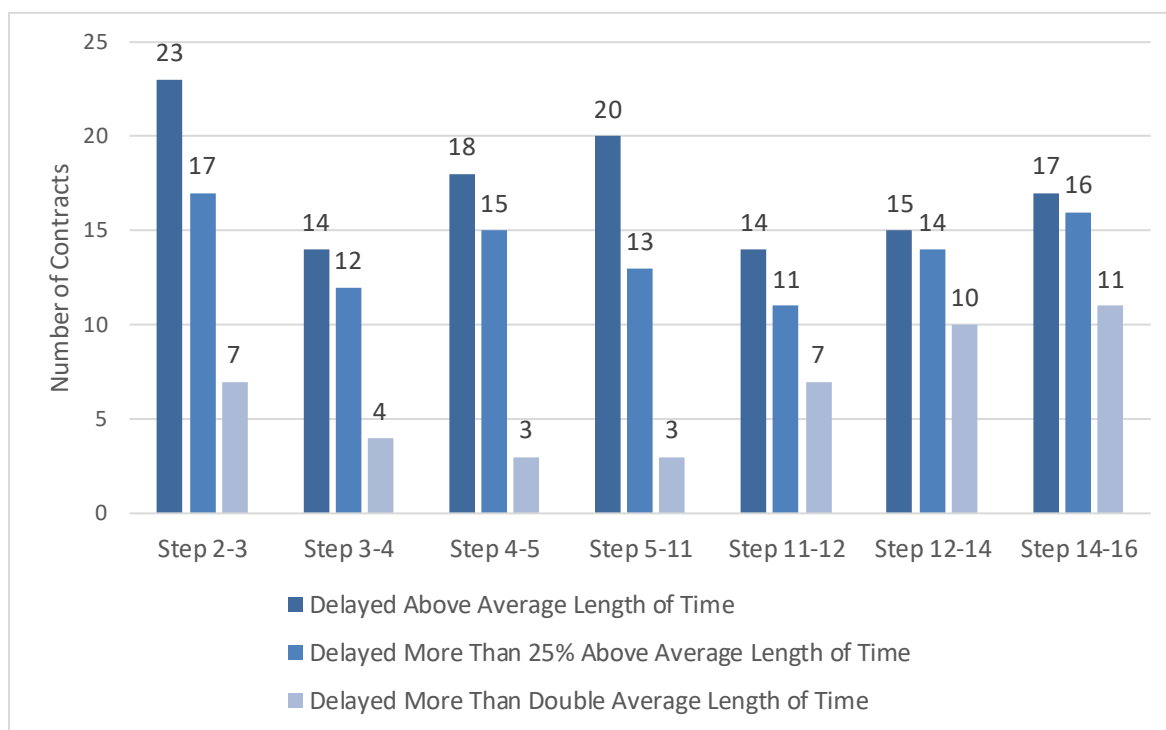
CAB should use this data on procurement timelines to set goal(s) to reduce the length of time it takes to procure construction contracts. The following section briefly discusses some areas of common delays that CAB could prioritize with their timeline goal(s).

## Trends in Procurement Delays

### *Project Milestones*

We analyzed 36 contracts that were in the 75<sup>th</sup> percentile or higher for overall procurement timeline to identify specific milestones prone to delays. To do this, we analyzed the length of time it took for each contract to progress through each milestone and compared that to the average length of time for each milestone across all contracts in the set of contracts provided by CAB. We found that delays occurred throughout many of the milestones for this set of contracts. Exhibit 3.2 shows the number of contracts that were delayed at each milestone point broken down by the amount of the delay.

**Exhibit 3.2: Number of Contract Delays by Milestone for Contracts with Procurement Timelines above the 75<sup>th</sup> Percentile**



Source: BLA analysis of SFPUC data. Note: Job Order Contracts and As-Needed Contracts are excluded from this analysis because their procurement processes do not include Steps 14-16.

Exhibit 3.2 above shows that the 36 most-delayed contracts were delayed at each milestone somewhat evenly. However, there were relatively more delays at both the front end and the back end of the 16-step procurement process. Specifically, there were more delays in Steps 2-3, which encompass the time between officially advertising the contract and opening the formal bids on their due date, than delays in other steps: 23 projects took longer than average to complete Steps 2-3, 17 projects took 25 percent longer than average, and seven projects took more than twice than average. Steps 2-3 comprise the bulk of the competitive bidding process for construction contracts. In Steps 2-3, CAB staff place the bid advertisement in a newspaper as required by the City's Administrative Code, coordinate and hold a pre-bid meeting for potential bidders, distribute contract documents, field and answer formal questions from bidders about the contract documents and issue any addenda to the contract documents if required, review any prequalification materials that are submitted, and conduct the formal bid opening process. CAB staff must also coordinate with the project team regarding questions from bidders and other project issues. The SFPUC may also choose to provide potential bidders with a longer window of time in which to prepare a qualified bid for a contract.



When evaluating the number of delays that took twice the average length of time to complete or more, we found that there were considerably more contracts delayed in Steps 12-14 (the time between completing all the required signatures and formally adding the contract to PeopleSoft) and Steps 14-16 (between adding the contract to PeopleSoft and sending the formal Notice to Proceed). Steps 12-14 encompass obtaining the required signatures on the contract (including from the SFPUC General Manager, the contractor, and the City Attorney's office), finalizing all contractor information with the contractor (ensuring they have the correct business tax registration, supplier IDs, and other documents as required to do business with the City), and sending the certified contract to the Infrastructure Budget & Finance (IB&F) bureau to upload in PeopleSoft. Steps 14-16 encompass creating the purchase order: the project manager submits the purchase order request and then IB&F staff initiate and finalize the purchase order in PeopleSoft. The final step, once the purchase order is created, is for CAB staff to prepare the Notice to Proceed letter for the contract, obtain the required signatures on it, and send the letter with a copy of the contract to the contractor. The average duration for Steps 14-16 was 31 days.

Increased project complexity could account for some of these delays; a more complicated project requires a more complicated contract that logically could take longer to assemble all the required documents and review for signature. However, some of these delays result from well-defined action items that take too long, such as required signatures pending for a long period of time and IB&F staff taking too long to add a project in PeopleSoft. These action items should not be routinely causing project delays and, although some of these steps are outside the direct control and jurisdiction of CAB, CAB staff could establish a goal to encourage owners of these action items to reduce these delays.

Overall, while this information about project milestone timelines and delays is useful and valuable to collect, its usefulness could be improved with a performance goal associated with it. A performance goal related to reducing the length of time for procurement of Chapter 6 contracts would allow CAB staff to use this data to track actual performance against their goal, improve efficiency, and measure progress on addressing key issues and sources of delays. Several procurement and construction best practice guides recommend that timelines be tracked and measured against a stated goal. The National Association of State Procurement Officials (NASPO) recommends that any public sector procurement office implement performance metrics related to procurement timelines in their report titled *Critical Success Areas and Key Performance Indicators for State Central Procurement Offices* (2016). Such metrics could include the cycle time on new contracts and the percentage of contracts completed within a targeted timeframe.

Further, the 2022 California Multi-Agency CIP Benchmarking Survey<sup>3</sup> recommends that agencies “lessen time between design completion and a Notice to Proceed.” The SFPUC does not have such a goal formalized, and we recommend that one be established.

CAB’s professional services group began tracking timeline data too recently to draw conclusions in this audit. However, the group is currently collecting data that tracks the date of each professional services milestone for professional services contracts. We recommend that the professional services group continue to collect this data and analyze it once they have at least one fiscal year’s worth of information, and establish similar performance metrics or goals.

#### *Procurement Type*

Two of the three statistical outliers that took longer than the 75<sup>th</sup> percentile in duration were projects that used alternative delivery procurement methods, meaning that the contracts are not traditional design-bid-build contracts and go through a different procurement process. The procurement process for alternative delivery methods often takes longer because the procurement processes have different requirements, and because alternative delivery is often used for more complex construction projects that take longer to negotiate and finalize. While it is important to take the time to be careful and thorough when negotiating contracts for multi-million dollar construction projects, CAB could consider setting specific timeline-related goals for alternative project delivery contracts in order to reduce the length of time it takes to procure these specific contracts.

## Conclusion

Lengthy procurement timelines increase the risk that contractors may try to abuse or circumvent the City’s official procurement process to expedite it, although our audit fieldwork did not reveal evidence of this occurring. Longer procurement timelines cost the SFPUC money in increased staff time as well as inflated construction costs and can increase contractor frustration and decrease trust in the procurement process. Delays in procurement also lead to delays in the performance of construction work and can have a chain effect on subsequent projects since there are limited procurement staff members who themselves have limits on the number of contracts they can manage at any given time. CAB management should set a goal to reduce the length of their procurement process for their Chapter 6 construction and professional services contracts and continue to track their progress towards their goal.

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<sup>3</sup> The California Multi-Agency CIP Benchmarking Study is done by a coalition of public agencies throughout California with the goal of sharing best practices and encouraging collaboration. It is completed annually, and as of December 2023, the most recent study available for reference was published in 2022.

## Recommendations

The SFPUC Contract Administration Bureau Manager should:

- 3.1 Establish a performance metric and/or goal for both Chapter 6 construction procurement timelines and Chapter 6 professional services procurement timelines. The Contract Administration Bureau Manager should regularly report to the Infrastructure Assistant General Manager and Chief Engineer about progress towards these goals, improvements to procurement timelines, and any common procurement delays.

## Benefits and Costs

Implementation of the proposed recommendations would improve procurement efficiency and reduce costs in terms of both staff time and construction delays. Implementation of the proposed recommendations can be done by existing SFPUC staff and would not require additional resources.

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## 4. Change Order Management

The management of change orders for construction contracts under Chapter 6 of the San Francisco Administrative Code is decentralized and spread across multiple divisions and databases at the San Francisco Public Utilities Commission (SFPUC). The responsibility for tracking change order amounts and ensuring the project does not exceed its 10 percent contingency threshold is split between SFPUC's project management team in the Construction Management Bureau and the Infrastructure Budget & Finance team. In violation of SFPUC policy, there is no central database or other record-keeping system for construction change order documentation for projects with budgets less than \$10 million. Additionally, project managers do not receive formal training on how to evaluate or process proposed change orders that originate from contractors and do not receive training on how to conduct a negotiation on a change order. This lack of training and centralized record-keeping increases the risk that contractors might take advantage of project managers through excessive and/or unnecessary change orders, because there is no centralized method for tracking them and project managers are not regularly trained on addressing change order abuse. Additionally, we reviewed 122 change orders from a sample of 11 construction contracts and found that some of the change orders were missing required signatures. Specifically, we found that nine out of 122 (seven percent) of the change orders in our sample were missing project manager signatures, 18 out of 34 (53 percent) of the change orders that required a signature from the Construction Management Bureau (CMB) Manager were missing a signature from the CMB Manager, and 25 out of 28 (89 percent) of the change orders that required a signature from the Assistant General Manager (AGM) of Infrastructure were missing a required signature from the AGM of Infrastructure.

Change order management is important because change orders can increase project budgets and schedules beyond what is originally agreed upon in the contract, sometimes unnecessarily. They can also be a source of tension between contractors and project owners in the construction industry. Streamlined, knowledgeable, frugal management of change orders is essential to ensure that the City does not approve change orders that are unnecessary, or unnecessarily expensive, to the benefit of the contractor and at the expense of the City.

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### Construction Change Orders at SFPUC

Change orders are a common tool used in construction management. A change order is a written document issued after the effective date of a contract agreement, executed by both the project manager and the contractor, stating agreement upon modifications to the existing contract. Modifications that can be executed through change orders include changes in the scope of work,

changes in price or schedule, or changes to any other contract term or condition. Additional work that increases the project budget is executed through change orders as well.

SFPUC designates three main types of change orders that each have their own processing procedure behind them. The processing procedures are dictated in SFPUC's internal *Construction Change Management* policy document. The first and most common type of change order is called a **Change Order Request (COR)** and it is initiated by the contractor, although the change itself may be initiated by either SFPUC or the contractor. A COR could arise when the contractor discovers an unexpected problem in the field that requires a change to the project budget, timeline, or both, or when SFPUC needs to make a change to the project and the project manager asks the contractor to prepare a COR to address the change. The Change Order Request must include documentation of the necessity of the proposed change and the contractor's best good faith estimate of the budget and schedule impacts of the change. To initiate Change Order Requests with SFPUC, the contractor submits the Change Order Request to the Resident Engineer (RE), who is SFPUC's single point of contact with the contractor on the project. The Resident Engineer sends the Change Order Request to the Field Contract Administrator (FCA) (on some smaller projects, the RE and FCA may be the same person). The Field Contract Administrator reviews the Change Order Request for completeness and recommends approval, rejection, or modification for the Resident Engineer. For CORs over \$200,000, the RE is required to prepare a detailed engineer's estimate of the work to be performed under the COR before negotiating with the contractor. The RE may work with the Construction Scheduler and the Estimator to prepare the engineer's estimate and must also get the Program Construction Manager to review it. The City must provide a written response to the contractor's Change Order Request within 10 business days. The response can either accept, reject, or accept with cost modifications the change and the City must keep a record of any negotiations with the contractor regarding the price of the change.

The second type of change order is called a **Proposed Change Order (PCO)**. Proposed Change Orders are less common and are initiated by the City, although, similar to CORs, PCOs may arise from either SFPUC or the contractor. According to SFPUC's *Construction Change Management* policy, the SFPUC Project Engineer (PE) initiates a Proposed Change Order by sending a change order form to the RE and the RE works with the Field Contract Administrator, the Construction Scheduler, and the Estimator to create the time impact analysis and finalize the cost estimate. Then, the RE sends the Proposed Change Order to the Project Manager (PM) who either approves or rejects it. If approved, it goes to the contractor who prepares an itemized cost breakdown for the City team to review. The FCA reviews it for compliance, and the RE reviews it for acceptability. All negotiations are recorded in the Record of Negotiations. Proposed Change Orders must also

go through the SFPUC's internal Change Control Board because they represent a deviation from the established SFPUC Capital Improvement Program.

The third type of change order is called a **Unilateral Change Order**. If a change order negotiations process fails, or an urgent construction need arises that cannot wait for the formal change order process to be executed, the City has the right under all construction contracts to issue a Unilateral Change Order that the contractor must comply with.

SFPUC's *Construction Change Management* policy also describes the approvals that are required for change orders. All change orders must go through various approvals depending on the dollar value and/or time impact of the change. Exhibit 4.1 below shows the different approvals that are required, per SFPUC policy, for change orders based on project budgets and the budget or schedule impact of the change order.

**Exhibit 4.1: Change Order Approvals by Project Budget and Change Order Amount**

Approval Level	Approving Authority <sup>1</sup>	Authority Limit Percentage <sup>2</sup> (% Scope Value)	Maximum Authority Limit for Changes to Project Construction Costs				Extension of Approved Project Schedule <sup>7</sup>
			< \$10M	\$10M - < \$25M	\$25M - < \$100M	≥ \$100M	
1	Project Manager (PM) <sup>3</sup>	2% (per CO)	\$200K (per CO)	\$350K (per CO)	\$1M (per CO)	\$1M (per CO)	N/A
2	CMB Manager	4% (per CO)	\$400K (per CO)	\$700K (per CO)	\$2M (per CO)	\$3M (per CO)	< 5% (cumulative)
3	Program Director <sup>4</sup>	6% (per CO)	\$600K (per CO)	\$1M (per CO)	\$4M (per CO)	\$4M (per CO)	5% - 10% (cumulative)
4	AGM - Infrastructure	> 6% (per CO)	> \$600K (cumulative)	> \$1M (cumulative)	> \$4M (cumulative)	> \$4M (cumulative)	> 10% (cumulative)
5	SFPUC Commission <sup>5</sup>	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> \$10% (cumulative)
6	General Manager <sup>6</sup>	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	>10% (cumulative)

Source: SFPUC *Construction Change Management* Policy.

Importantly, once the cumulative cost increases of a project's change orders surpass 10 percent of the original project budget (e.g., surpass the project's contingency amount), all subsequent change orders must be approved by the SFPUC Commission and the SFPUC General Manager, no matter the size of the project budget or individual change order.

## SFPUC Change Orders FY 2019-20 to FY 2021-22

As part our audit fieldwork, we requested a database of all contracts awarded under Chapter 6 of the San Francisco Administrative Code between July 1, 2019 to June 30, 2022 from SFPUC, as

well as change orders associated with those contracts. SFPUC reported 91 construction contracts (including traditional design-bid-build construction contracts as well as alternative deliveries, emergency contracts, job order contracts, elevator contracts, and as-needed contracts) that were awarded in the designated timeframe. Exhibit 4.2 below summarizes change orders at SFPUC in this timeframe, and shows that out of these 91 construction contracts, 54 of them, or **59 percent**, had at least one change order associated with the contract. The average number of change orders per contract was nine and the median was five. The largest number of change orders on a single contract in our sample was 89. Fourteen out of the 54 projects with at least one change order, or **26 percent**, had their project budgets increased by more than 10 percent by their cumulative change orders.

**Exhibit 4.2: SFPUC Change Orders, July 1, 2019 to June 30, 2022**

Total Contracts with Change Orders	Average No. of Change Orders per Contract	Median No. of Change Orders per Contract	Maximum No. of Change Orders on Single Project
54 (59% of 91 total construction contracts)	9	5	89

Source: BLA analysis of SFPUC data.

Change orders clearly make an impact on SFPUC construction projects, with a little over half of all projects in our three-year audit period having at least one change order and a little over 25 percent of contracts with change orders increasing beyond initial project budgets by more than 10 percent. The following sections outline several issues we identified with change order management at SFPUC.

### Change Order Management Should Be Improved

The following sections outline several gaps in the SFPUC's management of change orders that should be addressed, given the major impacts that change orders can have on construction projects' budgets and schedules.

#### Lack of Central Record-Keeping System for Change Order Documentation

There is no central database or other record-keeping system for construction change order documentation for SFPUC projects with budgets of less than \$10 million, despite internal SFPUC policy that requires key change order documentation to be uploaded into the SFPUC's construction management information system. SFPUC uses software called Unifier as its construction management information system, which is where information about construction projects, including technical specifications, project updates, and change orders, is stored. SFPUC

staff procedure is to only include projects with budgets of \$10 million or more in Unifier; all other projects with smaller budgets do not get recorded or managed in Unifier and are managed without the aid of construction management software. These projects' associated project files, including change order documentation, are saved in the individual project folders across the SFPUC servers, or on Sharefile. SFPUC's financial management system, Solis, stores change order summary files for all projects. Exhibit 4.3 below summarizes where documents are saved for each threshold.

**Exhibit 4.3: Locations of Project Files**

Project Budget	Individual project servers/folders	Unifier	Solis
<b>Less than \$10 million</b>	All project files	None	Change order summaries
<b>More than \$10 million</b>	N/A	All project files	Change order summaries

Source: SFPUC

According to SFPUC staff, projects with budgets of less than \$10 million do not get recorded in Unifier because projects with smaller budgets do not always have enough staff to upload and maintain records in the construction management system.

SFPUC's *Construction Change Management* policy requires several forms of documentation for each change order. Required documentation can vary by type and magnitude of change, but generally includes (1) a record of negotiations, (2) a cost estimate from both the SFPUC Resident Engineer and the Contractor, and (3) project manager and contractor signatures. SFPUC policy requires that this documentation be logged in the SFPUC's Construction Management Information System (CMIS) which, as of December 2023, is Unifier. The policy states at the outset: "Throughout the processing of a Change, the [Construction Management] team members shall forward the transmitted electronic or hardcopy documents to the [Administrative/Document Control Specialist] for logging in the CMIS Correspondence modules" (*Construction Change Management* policy, 3<sup>rd</sup> revision). Additionally, when describing the specific procedure for processing Proposed Change Orders, the policy states that the final step of the procedure shall be: "The [Field Contracts Administrator] shall monitor the negotiations and log all negotiation rounds in the CMIS module and notify the [Administrative/Document Control Specialist] of the receipt and transmittal of the Record of Negotiations documents for logging and filing in the CMIS as attachments" (*Construction Change Management* policy, 3<sup>rd</sup> revision).

The policy specifies two instances when change order documentation is supposed to be uploaded into the SFPUC's construction management information system (e.g., Unifier). However, because projects with budgets less than \$10 million are not recorded in Unifier, the associated change order documents for those projects are also not recorded in Unifier, in violation of SFPUC policy



that requires change order documentation to be uploaded into the SFPUC's construction management information system. The policy does not state that this procedure only applies to projects with budgets of \$10 million or more. As a result, only projects over \$10 million comply with SFPUC's own internal *Construction Change Management* policy.

As of December 2023, the Construction Management Bureau manager is piloting a change to reduce the Unifier threshold to include projects with budgets of more than \$5 million to address the fact that lower-budget projects do not use a central electronic management tool. However, in the database of 91 construction contracts from July 1, 2019 to June 30, 2022 that we reviewed, 48 contracts (53 percent) had total budgets of \$5 million or less. In other words, this potential policy change to reduce the Unifier threshold to \$5 million and more would leave more than half of SFPUC construction projects without an electronic management system.

It is important that all documents produced throughout the execution of a change order are maintained in an organized manner because change orders impact project schedules and budgets. Project managers, division directors, and other relevant parties need to be able to easily access change order documentation in order to ensure that any fiscal impacts to projects are being executed correctly and thoughtfully.

### Oversight of Change Orders is Split Between SFPUC Divisions

The responsibility for tracking change order amounts, monitoring project budgets, and ensuring that projects do not exceed their 10 percent contingency threshold is split between (a) the **project management team**, which is responsible for drafting, negotiating, and approving change orders and interacting with the contractor regarding them, and (b) the **Infrastructure Budget & Finance (IB&F) team**, which is responsible for inputting the change order information into Solis, SFPUC's financial management system, so that the contractor can invoice for the project work represented in the change order.

**The project management team** is comprised of several members with roles in change order management. According to SFPUC's change order management policy, the Resident Engineer is responsible for conducting negotiations with the contractor and the Project Manager is responsible for tracking the overall project budget and contingency:

- The **Resident Engineer (RE)** is the point of contact with the contractor in the field and is responsible for managing all contract changes, including initiating and/or processing change orders and negotiating with the contractor. The RE is also responsible for preparing the engineer's estimate for the work to be performed under the change order, so that it may be compared to the contractor's estimate. (On some smaller projects, the

role of the RE is fulfilled by the **Field Contracts Administrator**.) The RE signs off on change orders. On most projects, the RE reports to the Construction Manager.

- The **Project Manager (PM)** works with the RE to review and approve/revise/reject all potential change orders. The PM signs off on change orders and submits them for subsequent approvals. The PM also monitors the project contingency to ensure the project does not exceed the 10 percent contingency threshold. On most projects, the PM works with the Construction Manager to oversee the project.
- The **Construction Manager (CM)** also oversees the change order process and reviews change orders with recommendations for the PM to ultimately approve or reject them. The CM oversees the Resident Engineer and the Field Contracts Administrator, and works alongside the Project Manager, on the project.

Once the change order is fully approved, it is sent to the **Infrastructure Budget & Finance (IB&F)** team to be entered into Solis, SFPUC's financial management system, to enable the contractor to invoice against the change. All change orders for all projects get entered into Solis. The IB&F team only requires a summary page with the required signatures and a summary of the changes to the contract under the change order to process it in Solis. However, according to the Construction Management Bureau manager, the IB&F team is an important check and control for the project team's change order process, since they are another set of eyes on the change order and they ultimately are the group that executes the change order in the financial system, allowing it to be implemented.

Although IB&F is responsible for processing change orders in the financial system and is the final check in the process to ensure the change order was executed and implemented correctly, IB&F does not have access to all change order negotiation records or estimates/quotes from contractors. The only change order supporting documentation that is uploaded into Solis is the Change Order Summary, which includes a brief description of the change, the total cost and/or time impact of the change, and the required signatures. It does not include a record of negotiations, the Resident Engineer's cost estimate, or proof of SFPUC Commission or General Manager approval, if required. Without all the relevant documentation, IB&F is unable to act as a thorough check and second set of eyes on the change order, leaving responsibility for change order quality control to the project management team only, which, as discussed above, may not have an electronic record keeping system for its change orders depending on the size of the project.

#### Lack of Formal Training on Change Orders for Project Managers

Project managers and resident engineers do not receive any formal training on how to evaluate or process proposed change orders that originate from contractors and do not receive any

training on how to conduct a negotiation on a change order. Project teams utilize professional estimators with specific job training on how to estimate construction projects' schedules and cost on some projects. However, the resident engineer and project manager have the ultimate responsibility for the change order and are not regularly or formally trained on how to manage them. They are expected to use their experience managing past construction projects to guide them, and newer project managers with little or no experience must rely on the informal guidance of their managers or other team members who may have more experience.

Change order management requires discretion from project managers because not all change orders proposed by the contractor are strictly necessary for the successful completion of the project. Similarly, contractors can propose prices for proposed changes that are subject to negotiation from the project manager. In both instances, the project manager needs to be able to recognize when a change order is valid and understand how to get the best outcome and price for the City. Some change orders are straightforward and easy to agree upon, but others involve several rounds of negotiations. Without training on how to recognize unnecessary change orders, and how to best manage a change order negotiation, project managers and resident engineers are left to make decisions on change orders on a project-by-project basis depending on the individual project manager's experience level. SFPUC should implement regular trainings on change order negotiation and management for new project managers, at minimum.

Furthermore, industry best practices encourage agencies to provide regular training to project managers covering their responsibilities. The California Multi-Agency CIP Benchmarking Study,<sup>1</sup> which includes San Francisco Public Works as a member, includes two recommended best practices regarding training for public works project managers:

- Provide formal training for project managers on a regular basis, but at least annually.
- Implement verification procedures to ensure that project manager training includes agency policies, procedures, forms, and standards of practice (scheduling, budgeting, claims avoidance, risk analysis, etc.).

A lack of training on change orders for project managers is inconsistent with these best practices that have been identified by California jurisdictions, including San Francisco Public Works. It leaves too much of the change order processes up to the discretion and experience of individual

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<sup>1</sup> The California Multi-Agency CIP Benchmarking Study is conducted by a coalition of public agencies throughout California with the goal of sharing best practices and encouraging collaboration. It is completed annually, and as of December 2023, the most recent study available for reference was published in 2022.

project managers and resident engineers, despite the importance of tight controls on change orders because they can increase project budgets and schedules.

## Change Order Documentation Missing Required Approvals

As part of our audit fieldwork, we reviewed change orders from a sample of 11 construction contracts executed in FY 2019-20, FY 2020-21, and FY 2021-22. We reviewed 122 change orders across these 11 projects. Some change order documentation submitted to us for review by SFPUC was missing required signatures.

As mentioned previously, levels of approval authority vary based on the size of the project and the size of the change. Exhibit 4.4 below shows the different approvals that are required for change orders.

**Exhibit 4.4: Change Order Approvals by Project Budget and Change Order Amount**

Approval Level	Approving Authority <sup>1</sup>	Authority Limit Percentage <sup>2</sup> (% Scope Value)	Maximum Authority Limit for Changes to Project Construction Costs				Extension of Approved Project Schedule <sup>7</sup>
			< \$10M	\$10M - < \$25M	\$25M - < \$100M	≥ \$100M	
1	Project Manager (PM) <sup>3</sup>	2% (per CO)	\$200K (per CO)	\$350K (per CO)	\$1M (per CO)	\$1M (per CO)	N/A
2	CMB Manager	4% (per CO)	\$400K (per CO)	\$700K (per CO)	\$2M (per CO)	\$3M (per CO)	< 5% (cumulative)
3	Program Director <sup>4</sup>	6% (per CO)	\$600K (per CO)	\$1M (per CO)	\$4M (per CO)	\$4M (per CO)	5% - 10% (cumulative)
4	AGM - Infrastructure	> 6% (per CO)	> \$600K (cumulative)	> \$1M (cumulative)	> \$4M (cumulative)	> \$4M (cumulative)	> 10% (cumulative)
5	SFPUC Commission <sup>5</sup>	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> \$10% (cumulative)
6	General Manager <sup>6</sup>	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	> 10% (cumulative)	>10% (cumulative)

Source: SFPUC's *Construction Change Management Policy*.

Exhibit 4.4 shows that increasing levels of authority are required to approve change orders before they are executed, starting with the project manager and escalating to the SFPUC Commission and General Manager. The column labelled "Authority Limit Percentage (% Scope Value)" shows the percentage of the overall budget that the change order is permitted to be before requiring additional approvals, regardless of project size. The subsequent columns break out the approval requirements for different dollar values of change orders depending on the overall budget of the project (larger projects are permitted to have higher dollar value change orders before triggering higher approval authorities). For schedule changes, it does not matter what the project budget

is; the threshold for approvals for any schedule change is the same and is enumerated in the last column.

According to this chart, out of the 122 change orders we reviewed, the following were missing signatures as required.

- **Nine out of 122 (7.4 percent)** of the change orders in our sample were missing project manager signatures, which are required for every single change order.
- **18 out of 34 (53 percent)** of the change orders in our sample that required a signature from the Construction Management Bureau (CMB) Manager were missing a signature from the CMB Manager. A signature from the CMB Manager is required for (a) a single change order that increases a project budget by more than four percent, (b) change orders that are larger in magnitude than those only requiring a project manager signature (see Exhibit 4.4), or (c) for schedule changes greater than five percent.
- **25 out of 28 (89 percent)** of the change orders in our sample that required a signature from the Assistant General Manager (AGM) of Infrastructure were missing a required signature from the AGM of Infrastructure. A signature from the AGM of Infrastructure is required for (a) single change orders that change project budgets by more than six percent, (b) change orders that are larger in magnitude than those requiring the Construction Management Bureau Manager's signature (see Exhibit 4.3), (c) or for schedule changes greater than 10 percent.

In addition to being a violation of the SFPUC's own internal change order policies, the missing signatures indicate that some change orders are not being thoroughly reviewed or vetted before being executed. This lack of review creates the risk that some change orders are implemented when they should not be, such as in instances where a change is not strictly necessary for the project, and increases the risk that change order costs and prices are not being negotiated to have the best outcome for the City in terms of price or other conditions. More approvals on a change order means more opportunities for an approver to notice a mistake and correct it, or notice an opportunity for improvement, and so it is important that all change orders go through all required approvals.

## Conclusion

SFPUC's change order management for construction contracts is decentralized and spread across multiple SFPUC divisions and databases, and project managers and engineers do not receive training on how to manage change orders for their individual construction projects. Our audit fieldwork identified multiple instances of change order documentation that was missing the signatures and approvals required by SFPUC internal policy, and in another violation of SFPUC

policy, SFPUC does not use a central database or other record-keeping system to store construction change order documentation for projects with budgets of less than \$10 million. Organized, effective change order management is important because change orders can increase project budgets and schedules beyond what is originally agreed upon in the contract, and streamlined, knowledgeable, frugal management of change orders is essential to ensure that the SFPUC does not approve change orders that are unnecessary, or unnecessarily expensive, to the benefit of the contractor and at the expense of the City. Although we did not evaluate each change order in our sample for necessity to the project, internal controls are key for minimizing risk.

## Recommendations

The SFPUC Assistant General Manager for Infrastructure should:

- 4.1 Create and implement a training module on change orders for all project managers and construction managers. This training should be reviewed annually and updated when necessitated by changes in procedure. The training should be required for all new project managers and construction managers, and refresher training should be provided to current project managers and construction managers biannually or when changes are made to the training materials.
- 4.2 Evaluate the benefits of adjusting the Unifier project threshold to \$5 million and consider lowering the threshold following the evaluation, if justified.
  - a. The Construction Management Bureau Manager is currently planning to reduce the Unifier project threshold to \$5 million. The Construction Manager Bureau should evaluate the benefits of this change and either implement a formal policy to retain the \$5 million threshold, or reduce the threshold further.

## Benefits and Costs

Implementation of the proposed recommendations would streamline change order management at SFPUC and decrease the risk that mismanaged change orders lead to unnecessary costs on construction projects. The proposed recommendations would make change order records more organized and improve project manager knowledge of how to best conduct change order negotiations. Implementation of the proposed recommendations can be done with existing SFPUC staff and would not require additional resources. The recommendation to reduce the Unifier project threshold could increase the administrative burden on project managers, who would have to learn and utilize the software for more projects.

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## 5. Alternative Project Delivery Methods

The San Francisco Public Utilities Commission (SFPUC) does not have a policy that establishes which Chapter 6 construction projects should be considered for alternative project delivery methods. Alternative project delivery is defined as a method of delivering a capital project that deviates from the industry-standard Design-Bid-Build method, including but not limited to Design-Build, Construction Manager/General Contractor, Job-Order Contracting, and Emergency Contracts. There are policies, guided by the Administrative Code, dictating the procurement processes for each of these alternative deliveries, and there are policies internal to SFPUC on how to justify the choice to use an alternative delivery method. However, the SFPUC has no formal policy that provides guidance for *when* projects should be considered for alternative delivery and, when deemed necessary, *which* delivery method is most appropriate.

Alternative project delivery methods can be beneficial for certain types of projects: they can bring important construction expertise into the design process and facilitate relationship-building among the designers, engineers, and project owners. However, alternative project delivery methods can also be riskier because they are used less frequently at SFPUC, and therefore the agency has less institutional knowledge or expertise in how to manage them successfully, and because they put the responsibility of successfully delivering the project on a single entity rather than spreading the responsibility between designer and contractor. The SFPUC Assistant General Manager for Infrastructure should adopt a policy that establishes guidelines or criteria for which types of projects get evaluated for alternative project deliveries and create a guide for project managers to use when determining which projects to evaluate for alternative delivery methods.

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### Alternative Project Delivery Methods

Alternative project delivery is defined as a method of delivering a capital project that deviates from the industry-standard Design-Bid-Build method. For Design-Bid-Build projects, the local jurisdiction uses their internal staff and/or design consultants to create a complete design of a public works project before soliciting bids for the construction portion of the project. Then, the jurisdiction selects the lowest qualified bidder to complete the construction portion of the project. Until the mid-2000s, local jurisdictions were required by state law to contract their public works projects using the Design-Bid-Build project delivery method. San Francisco Administrative Code sections 6.20–6.27 establish the requirements for Design-Bid-Build contracts in San Francisco. These requirements include that any contract with a value of \$1 million or greater must be competitively bid and awarded to the lowest qualified bidder. (Administrative Code section 6.1 establishes the \$1 million threshold amount.)



However, California state law changed in the mid-2000s to allow local jurisdictions to use alternative project delivery methods to deliver public works projects. These alternative project delivery methods have been available to the private sector for several decades and include Design-Build, Progressive Design-Build, Construction Manager-at-Risk, Construction Manager/General Contractor, Job-Order Contracting, and others. The San Francisco Public Utilities Commission (SFPUC) utilizes several types of alternative delivery methods that are identified as alternatives to traditional Design-Bid-Build, including:

- **Emergency Contracts (Administrative Code section 6.60):** Under Chapter 6, emergency contracts may be executed when the Board of Supervisors makes a declaration of emergency and directs the 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” (Administrative Code section 6.60). Emergency contracts are exempt from most procurement rules under Administrative Code Chapters 6, 12B,<sup>1</sup> and 14B<sup>2</sup> because the nature of a state of emergency requires the contracts to be procured expediently. The SFPUC General Manager may also declare an emergency with notice to the Board of Supervisors, Mayor, Controller, and SFPUC Commission. All emergency contracts over \$250,000 require a declaration of emergency from the Board of Supervisors. However, if the nature of the emergency does not allow for approval to be obtained in advance, it may be obtained retroactively.
- **Job Order Contracts (Administrative Code section 6.62):** A Job Order Contract (JOC) is a contract where there is a predetermined set of activities to be performed, and those activities are issued to the contractor through task orders for each individual activity. JOCs have maximum costs and terms like other contracts, but the contractor does not perform any work until specifically issued a task order for that work. JOCs are procured similarly to Design-Bid-Build contracts with a few exceptions relating to the level of detail that must be included in the advertisement for bids and in the bids themselves. Additionally, JOCs cannot exceed \$5 million or five-year terms, and contractors may not hold more than one JOC with a department at any given time.
- **Construction Manager/General Contractor (Administrative Code section 6.68):** A Construction Manager/General Contractor (CMGC) contract is considered an alternative delivery method because it brings the project contractor into the project at a much earlier stage than in traditional methods, ideally no later than at 30 percent of design

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<sup>1</sup> Chapter 12B of the San Francisco Administrative Code establishes that all contracts with the City must include nondiscrimination clauses.

<sup>2</sup> Chapter 14B of the San Francisco Administrative Code establishes and governs the City’s Local Business Enterprise (LBE) program. The LBE program was established to encourage City contracts to go to small and local businesses.



completion. The contractor is then available to provide input on the design of the project and collaborate with the designer and project sponsor. The Administrative Code dictates a very specific procurement process for CMGC contracts that differs from the traditional design-bid-build procurement. To use CMGC, the department must formally determine that the CMGC method is the project delivery method that will deliver cost and/or time savings for the project and be in the public's best interest.

- **Design-Build (Administrative Code section 6.61):** In a Design-Build contract, a single contractor, known as the "Design-Builder," is engaged to provide both design and construction services for a single project. The Design-Builder is brought on very early on in the project's development and oversees the design and subsequent construction of the project. Similar to CMGC, the Administrative Code dictates a very specific procurement process for Design-Build contracts that differs from the traditional design-bid-build procurement. To use a Design-Builder, the department must formally determine that the Design-Build method is the project delivery method that will deliver cost and/or time savings for the project and be in the public's best interest.

Our audit scope included contracts that were executed in FY 2019-20, FY 2020-21, and FY 2021-22. According to data provided by SFPUC's Contract Administration Bureau (CAB), during this period SFPUC executed one CMGC, four Design-Build, nine JOC, and three emergency construction contracts<sup>3</sup> for a total of 17 alternative project deliveries out of a total of 91 construction contracts, or 19 percent. The 17 alternative delivery contracts are summarized in Exhibit 5.1 below.

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<sup>3</sup> SFPUC also executed one emergency professional services contract during this time frame.

**Exhibit 5.1: SFPUC Alternative Delivery Construction Contracts, FY 2019-20 to FY 2021-22**

<b>Delivery Method</b>	<b>Project Title</b>	<b>Contractor</b>	<b>Not-to-Exceed Amount</b>
CMGC	CDD Campus at 2000 Marin	Clark Construction Group	\$260,450,682
Design-Build	Moccasin Powerhouse Generator Rehab	GE Renewables LLC	\$28,898,985
Design-Build	BCTD Phase II – North	Mitchell Engineering	\$26,464,250
Design-Build	BCTD Phase II – South	Anvil Builders Inc	\$32,208,957
Design-Build	Bay Corridor Trans & Distr	Beta Engineering California LP	\$65,933,725
JOC	General Engineering (A-License)	Sierra Mountain Construction Inc	\$7,500,000
JOC	Micro (A-License)	Peterson Excavation, Inc	\$3,000,000
JOC	General Engineering (A-License)	Yerba Buena Engineering & Construction	\$5,000,000
JOC	General Building (B-License)	Rubecon General Contracting Inc	\$5,000,000
JOC	General Engineering (A-License)	Anvil Builders Inc	\$5,000,000
JOC	General Engineering (A-License)	Ground Control Inc	\$5,000,000
JOC	General Engineering (A-License)	Sinclair General Engineering	\$5,000,000
JOC	General Engineering (A-License)	A Teichert & Sons Inc	\$5,000,000
JOC	General Engineering (A-License)	Trinet Construction Inc	\$5,000,000
Emergency	SCU Complex Fire Fence Repairs (A)	Ranch Fence Inc	\$1,897,000
Emergency	SCU Complex Fire Fence Repairs (B)	All Commercial Fence Inc	\$4,600,000
Emergency	Stern Grove Emergency Site Restoration	Anvil Builders Inc	\$18,510,994
<b>Total</b>			<b>\$484,464,593</b>

Source: SFPUC data.

As shown in Exhibit 5.1 above, the 17 alternative delivery contracts' not-to-exceed amounts total \$484.46 million, which is 39 percent of all SFPUC construction contract dollar values from FY 2019-20 to FY 2021-22 and 34 percent of *all* SFPUC Chapter 6 contracts' dollar values, including professional services, during the three-year period. Of the \$484.46 million, \$260.45 million, or 54 percent, is accounted for in one CMGC contract.

The benefits and risks associated with alternative delivery methods are discussed in the section below.

## Benefits and Risks of Alternative Project Delivery

Project owners (defined as the entity that owns the project, in this case SFPUC) choose to use alternative project delivery methods for reasons that vary based on project needs and the type

of delivery method chosen. Job Order Contracts specifically are good for a high volume of routine operational work, such as repair and maintenance of existing infrastructure. Project owners can save time and money by drawing on an existing Job Order Contract to execute necessary work rather than having to go out to bid for a new contract each time a need arises. Under the Administrative Code, Job Order Contracts can have a maximum not-to-exceed amount of \$5 million and a maximum term of five years, so they are not suitable for complicated longer-term projects such as new construction.

Construction Manager/General Contractor (CMGC) and Design-Build are the types of alternative delivery methods that are often well-suited to large, complicated projects. Of the SFPUC Chapter 6 construction contracts executed during our audit scope period, the five CMGC or Design-Build projects' dollar values represent 33 percent of SFPUC's total construction contracts. These delivery methods are considered better for complicated projects as they allow the contractor to be involved early in the design process. CMGC and Design-Build delivery methods ensure that the construction team and the design team are communicating throughout the design process because, unlike in Design-Bid-Build, the construction team is brought into the project ideally when the design is no more than 30 percent complete. This early involvement means that the construction team can use their expertise to inform the design of the project that they will eventually be building. These methods are also considered ideal if the project owner would like to have a subject matter expert oversee a unique project that is different from the types of projects that the project owner is familiar with.

The benefit of having an efficient, single point of contact for the Design-Build delivery method is also its primary drawback. With one entity, the Design-Builder is responsible for overseeing nearly the entire project, all the potential risks associated with the project fall on that single entity. The project owner needs to ensure that they choose the best Design-Build firm because the financial and engineering success of the project rests squarely with them. Additionally, these alternative delivery methods may require different project management skills from project owners, and because they are used less frequently at the SFPUC, there is a risk that SFPUC management and staff may not know how to maximize their benefits and minimize their risks most successfully.

## SFPUC Needs a Policy to Consider Projects for Alternative Project Delivery Methods

SFPUC does not have a policy that dictates which construction projects should be considered for alternative project delivery methods, and there is no citywide guidance on selecting appropriate projects for alternative delivery. Capital projects at the SFPUC are informed by the SFPUC Capital

Plan, which is revisited and revised every two years. Project needs are identified and prioritized in the Capital Plan, and then funded according to priority. Once initiated, projects are managed internally according to policies set forth in SFPUC's Capital Improvement Plan (CIP) Procedures Manual. This manual describes in detail the process for capital project management, including the procedures for determining different options for the project specifications. Additionally, SFPUC has Procedure CA 2.1 "Alternative Project Delivery Method Justification," which describes the procedure for drafting the justification memo that is signed by the SFPUC General Manager once a project delivery method has been identified. This memo includes a description of the criteria used to evaluate the project delivery methods.

Neither SFPUC's CIP Procedures Manual nor Procedure CA 2.1 includes any threshold or policy regarding which projects should be considered for alternative delivery methods or which delivery method is most appropriate if an alternative is desired. It also does not specifically state that all projects should be considered for alternative delivery methods, and SFPUC staff reported to us that they do not conduct an analysis to consider alternative delivery methods for all projects, and that not all projects require one. This evaluation is also not conducted during the 10-year capital planning process, according to SFPUC's capital planning documents, and the current 10-year Capital Plan does not explicitly identify projects that might be appropriate alternative delivery method candidates. SFPUC staff have asserted to us that the decision to consider alternative project delivery is made after the Capital Plan has been adopted. All Capital Plan projects go through a deliverability review as part of the 10-year capital planning process that includes analyzing resources required (including contractors) to deliver the project, but this review does not necessarily involve analysis of alternative delivery options.

The decision to pursue an alternative project delivery method should be made carefully and methodically because of the potential benefits and additional risks involved in selecting an alternative delivery method for a project, as well as the inherent risks involved in large projects that cost tens or even hundreds of millions of dollars that tend to be good candidates for alternative delivery. However, at SFPUC there are no policies dictating when project managers should consider Design-Build, CMGC, or JOC alternative delivery methods. (Emergency contracts, another form of alternative delivery, are by definition used when a defined emergency is declared.) There are policies dictating the procurement processes for each of these alternative deliveries that are guided by Administrative Code requirements, and there are also policies regarding how to justify the choice to use an alternative delivery method. However, the decision-making process for choosing when to pursue an evaluation for an alternative delivery method is not enumerated in any formal SFPUC policy. It is also not centralized in any single SFPUC division, and therefore the decision to consider or pursue alternative delivery rests on individual project managers and/or project teams to weigh the pros and cons and complete the required analysis.

To address this policy gap, SFPUC should establish a policy that specifies guidelines or criteria for which types of projects can be considered for alternative delivery. SFPUC should also create a guide for project managers to use when determining which projects to evaluate for alternative delivery methods. This guide could include the types of projects that could make good candidates for alternative delivery projects, including certain project budgets, sizes, and scopes. The guide could also include guidance on determining which types of alternatives deliveries are appropriate based on details of the proposed projects.

Without a clear, thoughtful policy in place, projects that should be considered for alternative delivery methods may not be considered for them, or projects that should not be considered may be inappropriately considered. The potential consequences of this include mismanaged projects, cost and/or schedule overruns, and poorly delivered projects. Additionally, because alternative delivery methods may be riskier than traditional Design-Bid-Build, depending on the circumstances of the project, SFPUC should have more policies guiding their use in place, not fewer. The National Association of State Procurement Officials (NASPO) recommends in the *NASPO State and Local Government Procurement: A Practical Guide, 3<sup>rd</sup> Edition* that procurement offices publish and maintain appropriate manuals and establish day-to-day procurement procedures in simple, concise language. An agency-wide policy on selecting projects appropriate for consideration for alternative delivery methods that is clear and easy for all project managers to use would be consistent with this NASPO recommendation.

## Conclusion

SFPUC does not have a policy that dictates which projects should be considered for alternative project delivery methods, despite using alternative delivery methods to deliver 17 projects between FY 2019-20 and FY 2021-22 that comprise 34 percent of all SFPUC Chapter 6 contract dollar values in this time period. Alternative delivery methods can have many benefits for project owners but also carry unique risks, and therefore should have more policies guiding their use in place, not fewer.

## Recommendations

The SFPUC Assistant General Manager for Infrastructure should:

- 5.1 Adopt a policy that establishes guidelines or criteria for which types of projects get evaluated for alternative project deliveries.
- 5.2 Create a guide for project managers to use when determining which projects to evaluate for alternative delivery methods. The guide could include the types of projects that could

make good candidates for alternative delivery projects, including certain project budgets, sizes, and scopes. The guide could also include guidance on determining which types of alternatives deliveries are appropriate based on details of the proposed projects.

## Benefits and Costs

Implementation of the proposed recommendations would decrease the risk that the wrong projects are being selected for alternative project delivery or that better projects are being overlooked for alternative project delivery, and both scenarios could lead to poorly managed projects and cost and/or schedule overruns. Additionally, implementation of the proposed recommendations would bring the SFPUC in line with recommendations from the National Association of State Procurement Officials (NASPO) that state that procurement offices should have clear, concise policies and manuals on day-to-day procurement processes. Implementation of the proposed recommendations can be done by existing SFPUC staff and would not require additional resources.

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## 6. Bid and Proposal Protests

Our review of bid/proposal protests submitted for San Francisco Public Utilities Commission (SFPUC) Chapter 6 contracts identified one instance where, in the absence of the bid protest and the subsequent additional review conducted by SFPUC, the City Attorney's Office, and/or the Contract Monitoring Division (CMD), the contract would have been awarded to a non-responsive bidder. Of the 124 SFPUC Chapter 6 contracts in our scope period, 14, or 11 percent, had bid protests submitted. Of these protests, four were sustained, meaning that SFPUC agreed with the protest. SFPUC and CMD staff are responsible for evaluating bid submissions to ensure they meet minimum qualifications and are responsive to the bid requirements as part of an initial review. In the case of one professional services contract, SFPUC and/or CMD staff failed to identify the protested proposer as non-responsive during this initial bid review.

Overall, while it appears that SFPUC's bid protest procedure is properly administered, SFPUC should take steps to minimize bid protests that are sustained for failure to meet minimum qualifications. Failure to properly assess bidders' responsiveness as part of the initial bid review increases SFPUC's risk of failed or poorly-executed projects carried out by unqualified contractors. To ensure that all individuals responsible for evaluating bidder responsiveness and qualifications receive regular training and instruction on minimum qualifications and bid evaluation, we recommend that the Contract Administration Bureau Provide annual mandatory instruction and training to all SFPUC individuals who are responsible for reviewing minimum qualifications and evaluating bids for Chapter 6 construction and professional services contracts, drawing on specific examples from recent sustained bid protests.

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### Chapter 6 Bid Protest Procedures

Section 6.21(d) of Chapter 6 of the City's Administrative Code gives authority to the department head to prescribe procedures for submitting bid protests for construction contracts.<sup>1</sup> The San Francisco Public Utilities Commission (SFPUC), in consultation with the City Attorney's Office, establishes bid/proposal protest procedures for Chapter 6 construction and professional services contracts in the bid specifications or request for proposals. In general, as outlined in these documents, bidders/proposers may submit three different types of objections or protests related to SFPUC Chapter 6 contracts:

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<sup>1</sup> Section 6.21(d) relates only to construction contracts; there is no corresponding provision for professional services contracts.

1. **Written objections by a prospective bidder/proposer to any provision or legal requirement set forth in or imposed by the solicitation or contract documents**
  - a. Potential objections may include allegations that the bid or contract documents are unlawful; that one or more of the requirements in the bid or contract documents is onerous, unfair, or unclear, or that the documents contain ambiguities, conflicts, discrepancies, or errors; or that the structure of the bid documents does not allow for a correct or optimal solicitation process, or unnecessarily precludes alternative solutions to the work.
2. **Bid/proposal protests submitted by a bidder/proposer against another bidder(s) or proposer(s)**
  - a. A responsive bidder or proposer who believes the City has unfairly selected another bidder or proposer for award may protest the City's selection.
3. **Protests submitted by a bidder whose bid was rejected based upon a determination that the bid was non-responsive**
  - a. If SFPUC staff determine that a bid or proposal should be rejected because it is non-responsive to the solicitation materials or the bidder/proposer fails to meet minimum qualifications, the bidder or proposer may protest this determination.

Protestors must submit their protests or objections to the City in writing within the timeframe specified in the bid specifications or request for proposals. The protest must describe in detail the basis for the protest and provide supporting evidence. After receiving a protest, the City reviews the protest and conducts an investigation, which may include a review of additional information or supplemental correspondence. Upon completion of its investigation, the City provides a written determination to the protesting bidder/proposer and a copy to the protested bidder/proposer.

Responding to a protest and conducting an investigation in order to make a determination requires staff time from SFPUC's Contract Administration Bureau (CAB), the City Attorney's Office, the Contract Monitoring Division (CMD), and potentially other SFPUC and/or City agencies. Bid protests can also delay the award of a contract, and by extension delay the project itself, while the protest is evaluated and the parties prepare correspondence and rebuttals and review additional documentation. However, as noted by the National Association of State and Local Procurement Officials (NASPO) in *State and Local Government Procurement: A Practical Guide, 3<sup>rd</sup> Edition*, an effective bid protest procedure can promote fairness and transparency in an agency's procurement process, and the opportunity to protest can function as a check on flawed or anticompetitive awards. Bid protests also provide the opportunity for an agency to identify defects in the procurement process.



## Recommendations for Bid Protest Procedures

Our review of SFPUC's established bid protest procedures found that the procedure overall appears properly administered. As summarized above, bid protests have both benefits (increased transparency and a public check on the procurement and evaluation process) and costs (contract award delays and demands on staff time, particularly for denied protests that do not ultimately affect the contract award). It is in SFPUC's and the City's best interest to minimize the demands on staff time and project delays associated with bid protests that are ultimately denied, while still allowing for a fair and transparent protest process.

In *State and Local Government Procurement: A Practical Guide, 3<sup>rd</sup> Edition*, NASPO offers suggestions to minimize or avoid bid protests that still allow for transparency and accountability, and to address bid protests when they occur, including:

- Hold a pre-bid/proposal conference to address supplier questions and concerns, and share notes with all suppliers.
- Create a simple and straightforward way for potential bidders to submit questions, and make the information available to all potential bidders.
- Avoid deviating from the written requirements of the solicitation during the evaluation of bids or proposals.
- Have a process for determining when a solicitation amendment is needed. This should include publishing the amendment, notifying potential suppliers, and allowing sufficient time for responses.
- Discuss any protest with the user agency or department and legal counsel when received. Ensure that each protest point is vetted and analyzed against the solicitation requirement and the way the proposal or bid was evaluated.

Overall, we found that SFPUC's bid protest practices conform to the recommendations and tips provided by NASPO. SFPUC regularly holds pre-bid meetings for potential bidders, and publicly posts documentation about bids, including Q&A documents and responses, advertisement addenda and amendments, the pre-bid conference agenda, and the final bid tabulation, on its online bid portal. Our review of bid protest materials provided by SFPUC found that overall communications with potential bidders and protestors was clear and direct.

## Chapter 6 Bid Protests Received by SFPUC

As mentioned above, bid protests are also an opportunity to identify defects in an agency's procurement process. Our review of bid protests submitted for SFPUC Chapter 6 contracts identified one instance where, in the absence of the bid protest and the subsequent additional

review conducted SFPUC, the City Attorney's Office, and/or CMD, the professional services contract would have been awarded to a non-responsive bidder.

Of the 124 contracts in our scope period, 14, or 11 percent, had bid protests submitted. Of these 14 contracts, eight protests were denied, three protests were sustained, two had the protested bidder withdraw making the protest moot, and one contract had multiple protests that resulted in one protest denied and one protest sustained. Details of the four sustained bid protests are summarized in Exhibit 6.1 below.

For the professional services contract, PUC.PRO.0164 Engineering Services for Lower Alemany Area Stormwater Improvement Project, the bid protest process prevented SFPUC from awarding a contract to a non-responsive proposer or a proposer who did not meet minimum qualifications to perform the work. For the remaining three bid protests for low-bid construction contracts, the bid protest period occurs before the SFPUC completes bid responsiveness and responsibility review and determinations are announced via the SFPUC Commission meeting agenda.

Exhibit 6.1: Details of Sustained Bid Protests

Contract No.	Date of Award	Details of Sustained Protest
WW-645R	2/23/2021	SFPUC received three bids for Contract No. WW-645R, Westside Pump Station Reliability Improvements. SFPUC received bid protests from (a) the second-lowest bidder against the lowest bidder, and (b) the third-lowest bidder against the lowest and second-lowest bidder. SFPUC denied the protest from the third-lowest bidder against the second-lowest bidder, and sustained the protest against the lowest bidder. According to approved SFPUC Commission meeting minutes, the Contract Monitoring Division (CMD) was unable to make a clear determination on local business enterprise (LBE) subcontracting participation requirements, and CMD determined that the lowest bidder was non-responsive for <b>failing to meet the good-faith outreach requirements.</b>
PUC.PRO.016 4	7/27/2021	SFPUC received three proposals for Agreement No. PRO.0164, Engineering Services. The proposals were evaluated in a process that included (1) a technical written proposal evaluation, (2) a community benefits submittal evaluation, (3) oral interviews, and (4) overhead and profit schedule evaluation. The second-highest scoring proposer protested the proposal submitted by the highest-scoring proposer. After additional research, CAB, in consultation with the City Attorney's Office and CMD, issued a final protest determination sustaining the protest and rejecting the highest-scoring proposal, because <b>it failed to meet the minimum qualifications in the RFP.</b>
WD-2871	11/9/2021	SFPUC received four bids for Contract No. WD-2871, Sunol Valley Water Treatment Plant and Chloramination Facility Aqua Ammonia Structural Repairs and Tank Replacement. The second-place lowest bidder submitted a bid protest protesting the bid submitted by the lowest bidder. The Contract Administration Bureau (CAB), in consultation with the City Attorney's Office and the Contract Monitoring Division (CMD), sustained the protest and rejected the protested bid because <b>it did not establish that the listed subcontractor for metal fabrication met the required qualifications.</b>
WD-2882	2/8/2022	SFPUC received four bids for Agreement No. WD-2882, Trousdale Oaks Tree Removal Project. The second-place lowest bidder submitted a bid protest protesting the bid submitted by the lowest bidder, arguing that <b>neither the lowest bidder nor its subcontractors had the contractors' license required for the work.</b> CAB, in consultation with the City Attorney's Office and CMD, sustained the protest and rejected the bid submitted by the lowest bidder.

Source: BLA review of SFPUC staff reports to the SFPUC Commission, SFPUC Commission meeting minutes, and bid protest supporting documentation provided by SFPUC.

## Bid and Proposal Evaluation Responsibility

As summarized below, it is the responsibility of SFPUC and Contract Monitoring Division staff to evaluate bids and proposals to ensure they meet the minimum qualifications and are responsive to the bid requirements.

### *Construction Contracts*

As established in Administrative Code section 6.20, a department seeking outside construction services for a public work or improvement project exceeding the threshold amount of \$1,000,000 shall award the contract to the contractor submitting the lowest responsive and responsible bid.<sup>2</sup> The procurement process for Chapter 6 contracts is described in detail in *Appendix A: SFPUC Chapter 6 Procurement Process* to this report. To summarize, for construction contracts, it is the responsibility of the SFPUC Contract Administration Bureau (CAB), SFPUC Project Management Bureau, SFPUC Engineering Management Bureau, and City Administrator's Contract Monitoring Division (CMD) to collectively determine the responsiveness and responsibility of each bid submission. After the project has been advertised, the bid has been opened, and SFPUC has received bidder submissions, CAB, Project Management Bureau, Engineering Management Bureau, and CMD evaluate the bid submissions. Each agency's responsibilities include:

- CAB prepares the bid tabulation summary and completes responsiveness review, including license and debarment checks.
- The Project Management Bureau and Engineering Management Bureau technically evaluate the bids and bidder qualifications, which includes a comparison to the original cost estimate included in the bid documents.
- The Contract Monitoring Division assesses each bidder's local business enterprise (LBE) goals for responsiveness and compliance.

### *Professional Services Contracts*

As established in Administrative Code section 6.40, a department seeking outside professional services for a public work or improvement project that exceeds the minimum competitive amount of \$200,000 must procure services through a competitive process based primarily on proposer qualifications. The procurement process for Chapter 6 contracts is described in detail in *Appendix A: SFPUC Chapter 6 Procurement Process* to this report. To summarize, for professional services contracts, SFPUC issues a Request for Proposals (RFP) or Request for Qualifications (RFQ) and designates one or more panels to review proposals and rate respondents. Based on the results of the panel review, SFPUC recommends award of the

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<sup>2</sup> Selection of vendors differs for some alternative delivery methods. For example, a Design-Build vendor can be selected by either lowest bid, a fixed price, or best value procurement.

contract. For professional services contracts, it is the responsibility of the CAB contract analyst and CMD analyst to determine the responsiveness of each proposal submission, and for the contract owner to review the proposal to ensure the proposer(s) meet the minimum qualifications of the RFP.

- Following submittals, the CAB contract analyst conducts an initial screening for compliance and submits a summary of non-compliance to the CAB Contracts Manager. The contract analyst reviews the overall responsiveness of each package. CMD also reviews each submittal for compliance with the RFP's local business enterprise requirements.
- The CAB contract analyst sends proposals to the contract owner to review proposals for compliance with the minimum qualifications criteria.
- An evaluation panel reviews each responsive submittal, and (if required) the CAB contract analyst administers oral interviews. Following the evaluation panel and interviews, the CAB contract analyst reviews and tabulates the final scores to identify the highest-scoring proposer to recommend for contract award.

The one sustained bid protest for professional services contracts in our scope period concluded with the determination that the proposer failed to meet the minimum qualifications in the RFP. In the initial screening for compliance, the contract owner failed to determine that the bidder did not meet the minimum qualifications in the RFP.

## Risks of Inadequate Bid or Proposal Evaluation

The initial review of bids and proposals by SFPUC and CMD staff is essential to ensure that SFPUC only awards Chapter 6 construction and professional services contracts to qualified responsive bidders. Failure to properly assess bidders'/proposers' responsiveness as part of the initial bid/proposal review increases SFPUC's risk of failed or poorly-executed projects carried out by unqualified contractors, especially for traditional construction contracts that are awarded to the responsive and responsible bidder with the lowest price. Although the four sustained bid protests represent only three percent of the 124 construction and professional services contracts in our scope, the sustained bid protests do indicate potential confusion in solicitation documents and evaluation flaws on the part of the SFPUC and CMD staff who evaluated the bids.

SFPUC should ensure that all individuals responsible for evaluating bidder/proposer responsiveness and qualifications receive regular training and instruction on minimum qualifications and bid evaluation. As discussed in *Section 1: SFPUC Procurement Policies, Procedures, and Training* of this report, we found that SFPUC does not adequately maintain its internal policies and procedures for contract procurement activities, and does not have a

formalized training program to onboard new staff or provide ongoing training to existing staff. Our recommendations in Section 1 include the creation of a single, comprehensive policy manual; the establishment of a formal training program; and the development of a framework to assess staff competency of procurement skills. In addition, we specifically recommend that the SFPUC Contract Administration Bureau provide annual instruction and training to all individuals responsible for reviewing minimum qualifications and evaluating bids, drawing on specific examples from recent sustained bid protests, in order to minimize the risk of awarding contracts to bidders who do not meet minimum qualifications.

## Conclusion

Overall, while it appears that SFPUC's protest procedure is properly administered, SFPUC should take steps to minimize protests that are sustained for failure to meet minimum qualifications. If SFPUC and CMD staff do not properly assess bidders'/proposers' responsiveness as part of the initial bid review, it increases SFPUC's risk of failed or poorly-executed projects carried out by unqualified contractors.

## Recommendations

The SFPUC Contract Administration Bureau Manager should:

- 6.1 Provide annual mandatory instruction and training on minimum qualifications and proposal evaluation to all SFPUC individuals who are responsible for evaluating bids for Chapter 6 construction and professional services contracts, drawing on specific examples from recent sustained bid protests.

## Benefits and Costs

Implementation of the proposed recommendations would reduce the risk that SFPUC awards a contract to an unqualified bidder/proposer, and by extension would reduce the risk of failed or poorly-executed projects. Implementation of the proposed recommendations may also decrease (but would not eliminate) the number of protests SFPUC receives, which would decrease the amount of staff time and effort spent responding to protests. These recommendations would require annual investment of staff time to prepare and attend the trainings, and can be accomplished with existing resources.

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## 7. Chapter 6 Contractor Performance and Evaluation Database

The City's Chapter 6 departments (Public Works, Public Utilities Commission, Municipal Transportation Agency, Recreation and Parks, the Port, and the Airport) are not using the City's contractor performance and evaluation database, as required by section 6.26 of the City's Administrative Code, to document, evaluate, and report on construction contractor performance. Although a database was developed and piloted in FY 2018-19, rollout of the database to all Chapter 6 departments was stalled during the COVID-19 pandemic and has not resumed. There are software problems and bugs in the database that need to be addressed, and Public Works management has stated that sufficient resources have not been allocated to support this work. The lack of consistent use of the Chapter 6 contractor performance and evaluation database increases the risk that the City is hiring construction contractors with past records of poor performance, and could lead to the City wasting money on ineffective, inefficient contractors. We recommend that the Mayor's Office and the Board of Supervisors consider providing Public Works with the sufficient staffing resources in FY 2025-26 for management of the database, and that the Director of Technology ensure that the database is fully operational. The Director of Public Works, the Director of Transportation, the General Manager of the Public Utilities Commission, the Director of the Airport, the General Manager of Recreation and Parks, and the Director of the Port Authority should direct their project managers to use the contract database.

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### Use of the Contractor Performance and Evaluation Database

None of the Chapter 6 departments (Public Works, Public Utilities Commission, Municipal Transportation Agency, Recreation and Parks, the Port, or the Airport) consistently document, evaluate, and report on the performance of Chapter 6 contractors in the City's contractor performance and evaluation database, as required by section 6.26 of the City's Administrative Code. Section 6.26, which requires Chapter 6 departments to work with the Controller's Office to create and maintain a contractor performance and evaluation database, was added to the City's Administrative Code by the Board of Supervisors in Ordinance 94-16 following a 2014-15 Civil Grand Jury report titled "San Francisco's City Construction Program: It Needs Work," which recommended that Chapter 6 be amended to require contractor performance as an additional criterion for awarding construction contracts and to make past performance a construction award criterion for all future City construction contracts. This recommendation addressed the Civil Grand Jury's finding that the existing lowest bid contracting method was not optimal because it increased costs due to additional project change orders and reduced the number of quality contractors willing to bid on City projects. The Civil Grand Jury reasoned that including

past performance as an evaluation criterion would address issues of contractor performance that arise when contractors are selected based on the lowest price to perform the work.

Under the terms of section 6.26 of the Administrative Code, all Chapter 6 departments are required to: document, evaluate, and report the performance of all construction contractors awarded contracts first advertised or initiated on or after March 31, 2017; work with the Controller's Office to create and maintain a database of contractor performance evaluations; and submit a report to the Board of Supervisors describing the implementation of the contractor evaluation program and database.

In 2022, a subsequent 2021-22 Civil Grand Jury report on construction contracting titled "Shovel Ready: Best Practices and Collaboration to Improve San Francisco's Capital Construction Program" found that the original recommendations from the 2014-15 Civil Grand Jury had not been fully implemented, and recommended that the Mayor's Office assign a specific department to manage the contractor performance and evaluation database and its rollout. The Mayor's Office responded by identifying the Department of Public Works to be the responsible department. According to Public Works staff, the Mayor's Office also identified that the database was no longer supported by the vendor. Furthermore, in September 2022 the Board of Supervisors passed resolution 409-22 urging Public Works to assign a project manager to the database rollout by December 31, 2022. Public Works has since been responsible for the database.

### Stalled Contractor Performance and Evaluation Database Rollout

According to staff from the Controller's Office and Public Works, following the 2016 ordinance that added section 6.26 to the Administrative Code, Public Works assigned a staff member to work with the Controller's Office and the Department of Technology to create the contractor performance and evaluation database. The Controller's Office hired a contractor to build out the database, and in FY 2018-19 the database was piloted with 10 construction projects and their contractors. The database includes basic information about the project, a section for the City project manager to rate their experience working with the contractor, and a section for the contractor to rate their experience working with the City. Public Works began using the database in 2020, and the plan was to roll out the database to the other five Chapter 6 departments individually.

However, the rollout of the database to the other departments was paused in 2020 during the COVID-19 pandemic and has not resumed. As of August 2024, there are only 12 projects with evaluations marked as "Complete" in the contractor performance and evaluation database out of a total of 176 projects entered into the database so far. The remaining 164 evaluations are marked as either "In progress," "Draft," or have their progress field left blank. (Some of these



evaluations are for projects where construction is ongoing, so the evaluation is not yet due.) The department associated with 165 out of 176 projects in the database is Public Works, but Public Works is not consistently completing evaluations for all of its construction contractors as evidenced by only 12 completed evaluations in the database.

The other five Chapter 6 departments (Public Utilities Commission, Municipal Transportation Agency, Recreation and Parks, the Port, and the Airport) are not utilizing the database at all. Each of those departments only has one completed evaluation in the database.

### Database Bugs and Lack of Implementation Management

According to staff from the Controller's Office and Public Works, the database is not being used by Chapter 6 project managers because there is no position dedicated to implementing its use across all six Chapter 6 departments and because the database is currently under repair. The Public Works employee assigned to oversee the database left the Department in 2022. As a result, there is no full-time employee at Public Works dedicated to implementing and managing the contractor performance and evaluation database, despite Board of Supervisors Resolution 409-22 that urged the Department to hire a dedicated database manager. Public Works staff asserted that no funding was identified, nor was a position provided, for the Department to handle this additional responsibility. During the initial implementation, Public Works provided an existing staff member to do work related to the roll-out of the system.<sup>1</sup>

In addition, the contractor performance and evaluation database are experiencing bugs that make it much less effective and need to be fixed, including a problem with the email notification system that is supposed to notify staff that they are required to complete a contractor evaluation. As of August 2024, Department of Technology staff are working to fix these bugs and migrate the database to a more functional platform. Staff under Public Works' City Architect have been assigned to work with the Department of Technology to fix the problems with the database and eventually train the other Chapter 6 departments on its use, but there is currently no workorder for the project so any hours that staff from the Controller's Office or the Department of Technology spend on the database are not reimbursed, which is further hampering implementation efforts.

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<sup>1</sup> According to Public Works staff, administrative functions in Public Works are funded using an indirect cost plan that complies with federal law (2 CFR 200). Under federal law, this position could not work on administrative items for other departments and thus would need to be funded by the General Fund or directly funded by other Chapter 6 departments based on an allocation.

## The Importance of Contractor Performance Evaluations

The absence of consistent, centralized contractor performance evaluations increases the risk that Chapter 6 departments could award construction contracts to underperforming contractors and waste money on inefficient construction contracts. The Administrative Code currently mandates that most construction contracts be awarded to the bidder that submits the lowest-cost proposal and meets the minimum qualifications for the project. This process does not enable Chapter 6 departments to consider past contractor performance on City projects and could lead them to select contractors that have performed poorly on past projects or who have formed difficult working relationships with City project owners. Departments are not required to utilize information included in the contractor database when awarding contracts, and further action from the Board of Supervisors would be necessary to make it a requirement.

Three distinct Civil Grand Jury reports (the 2014-15 and 2021-22 Civil Grand Jury reports mentioned above as well as a 2020-21 Civil Grand Jury report on the Van Ness Bus Rapid Transit project) have highlighted the risks of the City's existing construction contracting methods and have made numerous recommendations to improve construction contracting, including the creation and implementation of the contractor performance and evaluation database. Additionally, the National Association of State Procurement Officials (NASPO) recommends that vendor performance be measured as a key performance indicator for procurement offices. In addition to an overall lack of compliance with the requirements in section 6.26 of the Administrative Code, without a functioning contractor performance and evaluation database, Chapter 6 departments do not have a streamlined, centralized method to evaluate their construction contractors and share the results of their evaluations with other City departments, which increases the risk that the City could hire contractors that have performed poorly on projects in the past. However, Chapter 6 department staff as well as staff from the City Attorney's Office noted that there are potential logistical challenges to using information on past contractor performance when awarding contracts. Further action will be needed once the database is functional and utilized to incorporate evaluations into the contract award process.

## Conclusion

To comply with section 6.26 of the City's Administrative Code and to improve overall contractor performance monitoring and evaluation, the Chapter 6 departments should be documenting, evaluating, and reporting on construction contractor performance using a database set up by the Controller's Office. Although the database was created, it requires maintenance and updates by the Department of Technology and ongoing management to ensure it is usable. Without this maintenance, none of the Chapter 6 departments are able to use it to evaluate their construction

contractors, which puts the City at risk of hiring construction contractors with past records of poor performance and could waste money on ineffective, inefficient contractors.

## Recommendations

The Board of Supervisors and the Mayor's Office should:

- 7.1 Consider providing Public Works with sufficient staffing resources, from enterprise and General Fund monies as appropriate, in FY 2025-26 for management of the contractor performance and evaluation database.

The Director of Public Works, the Director of Transportation, the General Manager of the Public Utilities Commission, the Director of the Airport, the General Manager of Recreation and Parks, and the Director of the Port Authority should:

- 7.2 Direct their project managers, contract managers, and any other staff responsible for contract management to use the contractor performance and evaluation database to complete evaluations for all construction contractors who completed projects with contracts executed on or after the functional start date of the database.
- 7.3 Report to the Board of Supervisors on progress implementing these recommendations no later than January 1, 2026.

The Director of Technology should:

- 7.4 Ensure that the contractor performance and evaluation database is fully operational no later than January 1, 2026.

## Benefits and Costs

Implementation of the proposed recommendations would reduce the City's risk of wasting funds on underperforming construction contractors and ensure Chapter 6 departments are able to comply with the requirements of section 6.26 of the Administrative Code. The proposed recommendations would generate an ongoing cost to enterprise funds, including to the San Francisco Public Utilities Commission, Airport, and Port as well as to the City's General Fund for staffing resources. The total cost would be determined by the Mayor and Board of Supervisors. The breakdown of costs between enterprise funds and the General Fund is dependent on the estimated use of the database by each Chapter 6 department. The departments with General Fund support and delegated authority under Chapter 6 include Public Works, Recreation and Parks, and San Francisco Municipal Transportation Agency. Annual costs will increase each year according to cost-of-living adjustments and collective bargaining agreements.

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## Appendix A: SFPUC Chapter 6 Procurement Process

### SFPUC Service Provision and Chapter 6 Contract Procurement

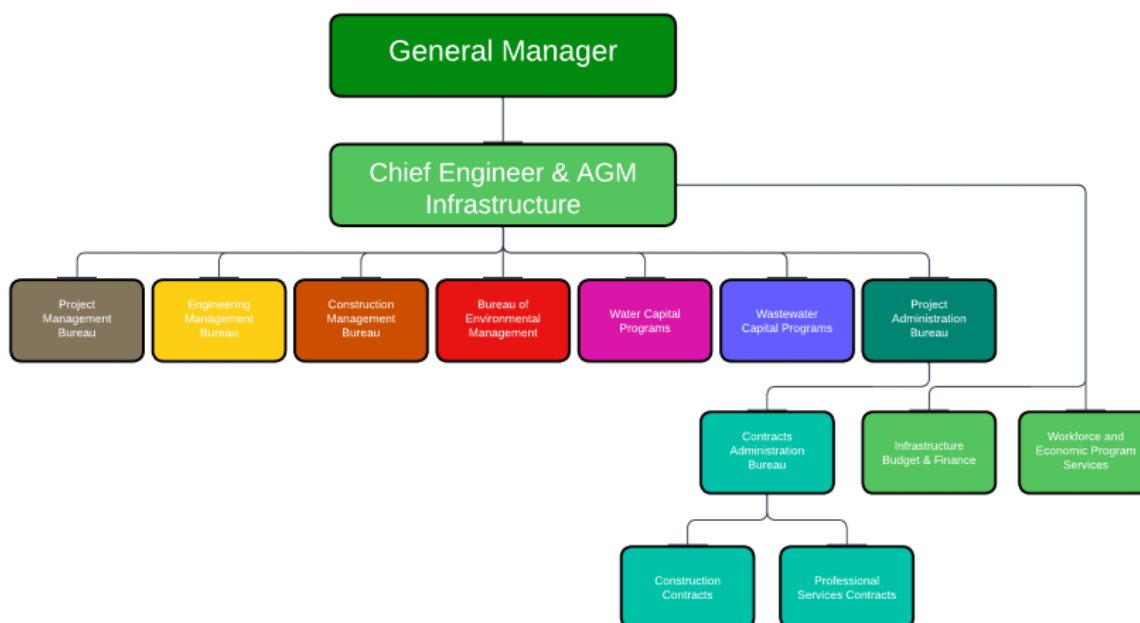
The San Francisco Public Utilities Commission (SFPUC) is responsible for delivering the City's water, wastewater, and municipal power utility services.

- **Water Services:** SFPUC manages the Hetch Hetchy Regional Water System, which brings water from the Sierra Nevada mountains to the Bay Area. SFPUC is responsible for the water collection from regional reservoirs, watersheds, and dams, water treatment services, and water transmission through a system of various facilities and plants, pipelines, and tunnels. SFPUC provides water directly to customers in San Francisco and wholesale service areas in Alameda, Santa Clara, and San Mateo counties. San Francisco's water supply is sourced from more than 1,250 miles of distribution pipelines, 12 in-City reservoirs, and eight water tanks.
- **Wastewater Services:** SFPUC provides wastewater management for San Francisco, including the collection, treatment, and disposal of sewage and stormwater.
- **Municipal Power Services:** SFPUC owns and operates all aspects of the Hetch Hetchy Power System, which provides municipal power to San Francisco through hydroelectric and solar power. The Hetch Hetchy Power System includes three hydroelectric powerhouses, two of which receive water from the Hetch Hetchy Reservoir and one which receives water from Lake Eleanor and Cherry Lake. Additionally, SFPUC operates solar installations located on City-owned property, including Moscone Center, City Hall, Sunset Reservoir, and Davies Symphony Hall. The installations assist in powering the City-owned buildings and other Hetch Hetchy Power customers.

SFPUC procures public works construction and professional services contracts in response to the Department-identified infrastructure needs. SFPUC's public works contract procurement process must adhere to a regulatory framework, including various federal, state, and local requirements. Specifically, Chapter 6 of the San Francisco Administrative Code governs the public works contracting policies and procedures for SFPUC, including policies and procedures for the procurement of professional design, consulting, and construction management services. Chapter 6 outlines which methods of procurement may be utilized for public works contracts, depending on the project complexity, budget, and needs. Chapter 6 also requires contracts to be awarded in compliance with the local business enterprise and non-discrimination procedures established in the City's Administrative Code and Labor and Employment Code.

The procurement process for all SFPUC Chapter 6 contracts is a collaborative effort among several SFPUC bureaus, the City Attorney’s office, the requesting enterprise or division, the Contract Monitoring Division (CMD) and Risk Management Division under the San Francisco City Administrator’s Office, the Civil Service Commission, the Department of Human Resources, and the Controller’s Office. The contract type (professional services or construction) determines the responsibilities and level of involvement of each entity in the procurement of the contract. Below is an overview of SFPUC’s procurement process for both Chapter 6 professional services contracts and construction contracts. Exhibit A.1 below shows the organizational structure of the various SFPUC bureaus involved in the procurement process.

**Exhibit A.1: Organizational Structure of SFPUC Bureaus Involved in the Procurement Process**



Source: SFPUC Infrastructure organizational chart.

## Professional Services Contract Procurement Process

Per Administrative Code section 6.40, a department seeking outside professional services for a public work or improvement project, such as design, consultant, or construction management services, that exceeds the minimum competitive amount of \$200,000 must procure services through a competitive process based primarily on proposer qualifications. According to SFPUC

staff, contracts valued under \$20,000<sup>1</sup> do not require a competitive solicitation, and contracts greater than \$20,000 and less than the minimum competitive amount of \$200,000 may follow an informal solicitation process. Per Administrative Code section 6.40, for professional services contracts exceeding the minimum competitive amount, the department is required to issue a formal Request for Proposals (RFP) or Request for Qualifications (RFQ) and to designate one or more panels to review proposals and rate respondents. Based on the results of the panel evaluation, the department recommends the highest-ranked qualified respondent(s) be awarded the contract(s). Per Administrative Code section 6.41, the competitive proposals for professional services must at a minimum require evaluation criteria. The evaluation criteria is to be determined by the department on a project-by-project basis.

The SFPUC bureaus primarily involved in professional services contract procurement are the Contract Administration Bureau (CAB) and either the Engineering Management Bureau(EMB), the Project Management Bureau (PMB), and/or the Construction Management Bureau within the SFPUC Infrastructure Division, or other enterprise groups such as the Power or Wastewater enterprise

- **CAB** is responsible for managing and issuing a Request for Proposals/Qualifications (RFP/Q), monitoring and tracking forms for RFP/Q approval, facilitating the proposal review and selection processes, negotiating the contract with the selected respondent, administering the executed contracts, and ensuring compliance with applicable policies, laws, and contract terms.
- **The Contract Owner** (either the PMB, EMB, and/or Construction Management Bureau within the SFPUC Infrastructure Division, or other enterprise groups such as the Power or Wastewater enterprise) is responsible for securing project funding, authorizing the issuance of an RFP/Q, submitting all agenda items to CAB, approving invoices, and tracking contract capacity, insurance renewals, and contract duration. The Contract Owner is also responsible for the execution of the project scope, schedule, and budget.

According to SFPUC internal policy, the procurement of a professional services contract involves six phases: (1) Contract Request/RFP/Q Initiation, (2) RFP/Q Development, (3) Advertisement, (4) Proposal Evaluation and Selection, (5) Contract Approval and Award, and (6) Contract Execution and Certification. These phases are described below.

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<sup>1</sup> Following the receipt of the draft report, SFPUC staff reported this threshold, which was formerly \$10,000, was increased to \$20,000 in early 2024.

*Phase 1, Contract Request/RFP/Q Initiation:*

During phase 1, a Contract Owner obtains approval from their supervisor to initiate a new contract. Upon approval, the Contract Owner submits a contract request form to CAB. This form includes basic information, including but not limited to funding source, value of contract, desired contract start date, and a summary of the scope of work. The Contract Owner submits the request form to CAB.

*Phase 2, RFP/Q Development:*

*RFP Document Development and Approval:*

- After the contract request form is submitted to CAB, the contract workflow is initiated in SFBid, SFPUC's online bidding platform for professional services contracts, and the CAB Contracts Manager assigns a contracts analyst<sup>2</sup> to the contract. The contract analyst generates an RFP document template and a suggested contract schedule, which is submitted to the Contract Owner for review and completion. The Contract Owner develops the RFP with high-level tasks and the type of work that will be performed under the contract. The Contract Owner also expands on the scope of work.
- The contract analyst reviews the RFP and scope of work and sends the RFP to the Contract Monitoring Division (CMD) for determination of compliance with local business enterprise (LBE) requirements. Upon CMD approval, a supervisor of the Contract Owner reviews and approves the RFP/Q. Upon Contract Owner supervisor approval, the contract analyst drafts the Professional Services agreement, using the City's P-606 template.
- The RFP and agreement are sent to the City Attorney's Office for review and approval of the RFP and draft agreement. If the City Attorney provides edits, the contract analyst will incorporate the edits and resubmit the documents to the City Attorney. This task will be repeated until all edits are resolved.
- Upon City Attorney approval, the contract analyst submits the draft of the RFP and agreement to the CAB Contract Manager for final approval. Upon final approval by the CAB Contracts Manager, the contract analyst posts a publicly available advertisement for the RFP/Q on SFBid.

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<sup>2</sup> The contract analyst serves as CAB's primary point of contact for the PM, other internal stakeholders, and the public regarding the solicitation.

*Civil Service Commission/Department of Human Resources Approval:* Parallel to the initial steps of RFP document development, the Contract Owner prepares the Personal Services Contract (PSC) Summary Form to obtain approval from the Civil Service Commission (CSC) or the Department of Human Resources (DHR) that the services be contracted out. CSC approval is required for contracts over \$100,000<sup>3</sup>, but DHR may approve contracts under \$100,000. Prior to approval, the appropriate unions are given the opportunity to raise any concerns regarding the services to be contracted out.

*Initiation of Evaluation Process and Advertisement:* Parallel to the RFP document development, the Contract Owner begins planning the solicitation evaluation process and advertisement. At this stage, the Contract Owner considers the individuals who could serve as evaluation panelists, drafts evaluation guidelines for the solicitation, and prepares an advertising summary. Parallel to the RFP document approval process, the contract analyst sends a Panelist Selection Form (PSF) to the Contract Owner for completion. The contract analyst then submits the PSF to CMD for approval.

### *Phase 3, Advertisement and Proposal Submittal*

About 10 days following the posting of the advertisement, a pre-submittal meeting is held with internal and external stakeholders. The pre-submittal meeting is scheduled by the contract analyst and led by the Contract Owner, and includes presentations from relevant external stakeholders such as CMD<sup>4</sup>, First Source Hiring<sup>5</sup>, and/or OLSE<sup>6</sup>. During the pre-submittal meeting, potential proposers are informed about the solicitation process and discuss the proposal requirements of the solicitation and any applicable addenda. Topics covered include project minimum qualifications, reference projects, addenda, the proposal due date and submission process, the proposal evaluation process, notices of contract award, and verification of required insurance. After the pre-submittal meeting, CAB publicly posts relevant attachments and documents to SFBid. Following the meeting,

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<sup>3</sup> Following the receipt of the draft report, SFPUC staff reported the \$100,000 to \$200,000 increase was approved by the SFPUC Commission in November 2023, however the increase was operationalized at a later date due to required software system updates.

<sup>4</sup> The Contract Monitoring Division (CMD) is a part of the San Francisco City Administrator's Office. CMD oversees the City's contracting process to ensure compliance with relevant Administrative Code requirements, including Chapters 12B and 14B.

<sup>5</sup> The First Source Hiring Program, administered by the Office of Economic & Workforce Development (OEWD), was enacted in 1998 under Administrative Code Chapter 83. The program requires that developers, contractors, and employers use good-faith efforts to hire economically disadvantaged San Franciscan residents for new entry level positions.

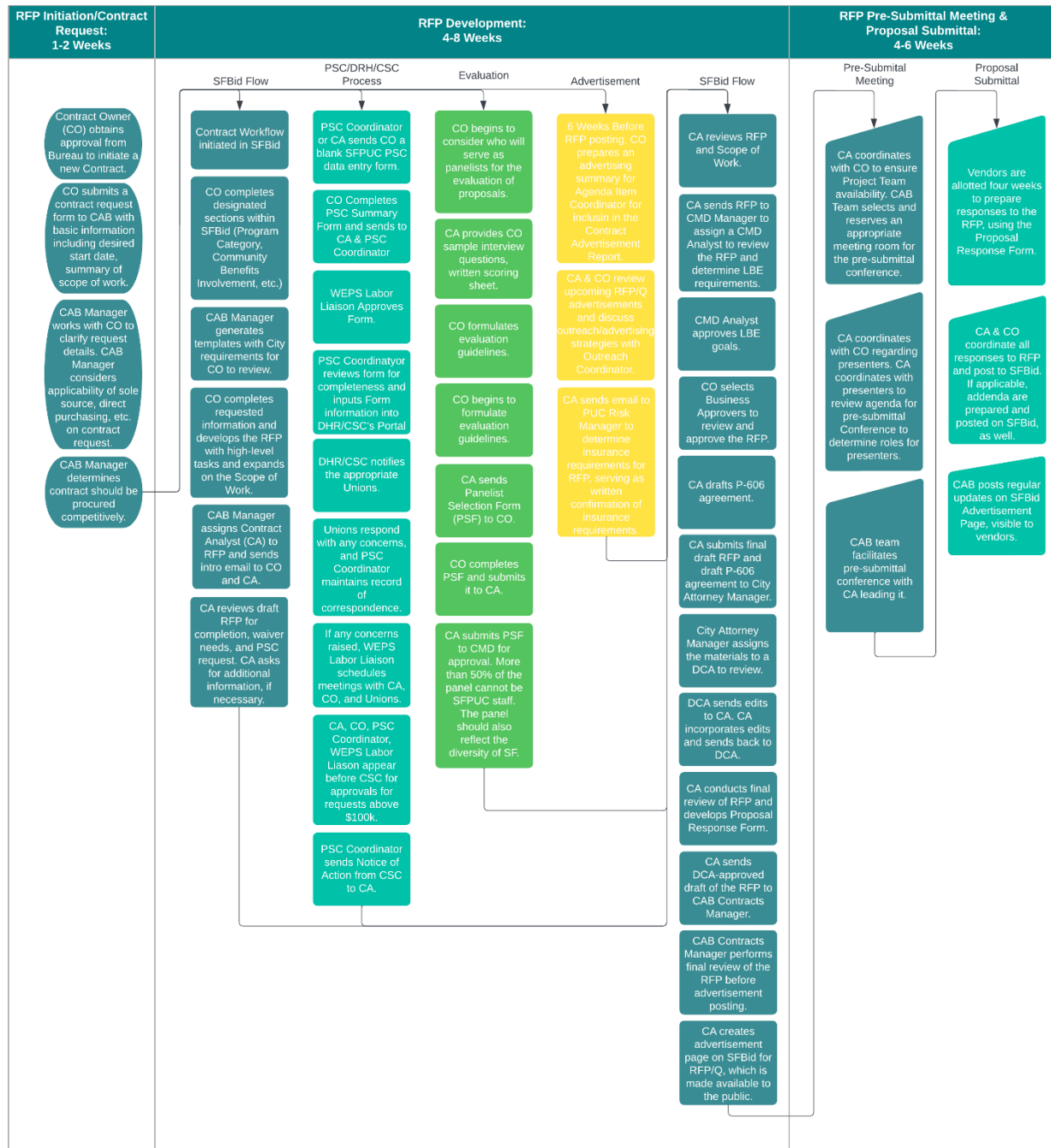
<sup>6</sup> The Office of Labor Standards Enforcement (OLSE) enforces San Francisco's labor laws, including but not limited to minimum wage, paid sick leave, health care security, and worker protections.



at least three weeks are given to vendors to prepare responses to the solicitation. During this time, CAB posts updates to the SFBid solicitation page.

Exhibit A.2 maps phases one through four of the procurement process for SFPUC professional services contracts, from contract request through proposal submittal. The mapping is continued in Exhibit A.3, providing the latter half of the procurement process for professional services contracts, from proposal evaluation through contract certification.

## Exhibit A.2: SFPUC Professional Services Process Mapping, Contract Request through Proposal Submittal



Source: BLA summary of SFPUC procedure manual and SFPUC staff feedback.

*Phase 4, Proposal Evaluation and Vendor Selection*

Following submittals, the contract analyst conducts an initial screening for compliance with SFPUC's internal contract checklist, and submits a summary of non-compliance to the CAB Contracts Manager. The contract analyst reviews the overall completeness of each package. The analyst sends the proposal to the Contract Owner to determine if proposers meet the minimum qualifications. The Contract Owner then sends the minimum qualifications determination to the analyst. Following the minimum qualification determination, the analyst confirms the responsiveness determination with CMD. After CMD's confirmation of responsiveness, the proposal package is ready to be received by the evaluation panel.

Each responsive submittal is then reviewed by an evaluation panel. CAB schedules a panelist orientation conference call with the Contract Owner (and CMD, if there is a Local Business Enterprise requirement) and sends a panelist packet to each panelist, including overall evaluation procedures, a conflict-of-interest statement for panelist signature, a copy of the RFP, and the scoring sheet. Following the conference call and the panelist review of the packets, the panelists submit their scores, and CAB compiles and reviews the tabulation. If the solicitation document requires an oral interview, the contract analyst sends notification to the proposers identified for oral interviews. The contract analyst administers the oral interviews, and the panelists submit their oral interview scores to the contract analyst. CAB compiles and reviews the tabulation.

The contract analyst tabulates the overall scores with all applicable CMD rating bonuses, and the CAB Contracts Manager reviews the overall score tabulations.

The contract analyst posts the proposer recommended for the contract award on SFBid, following approval from the CAB Contracts Manager. If there no protests are submitted during the five-day protest period, the contract analyst notifies the selected proposer of insurance requirements, CMD compliance provisions, and other City requirements including Minimum Compensation Ordinance,<sup>7</sup> Healthcare Security Ordinance,<sup>8</sup> and

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<sup>7</sup> San Francisco's Minimum Compensation Ordinance (MCO) requires employers with at least 20 employees to meet a minimum compensation level for covered employees, which includes both hourly wages and employer-paid healthcare expenditures. The ordinance is designed to ensure that workers receive a certain level of overall compensation, taking into account wages and health benefits, to address the city's high cost of living.

<sup>8</sup> San Francisco's Health Care Security Ordinance (HCSO) requires certain employers to make health care expenditures on behalf of their covered employees, either by providing health insurance or by making specified contributions to the city's health access program. The ordinance aims to ensure that employees have access to healthcare benefits and to contribute to the overall health and well-being of the workforce.

Business Tax Registration.<sup>9</sup> If any protests are submitted within the five-day protest period, the contract analyst works with the Contract Owner and the City Attorney's Office to facilitate the protest process.

#### *Phase 5, Contract Approval and Award*

Following the recommendation for award and the resolution of any protests, CAB and the PM receive the CMD Award Memo, determining that the recommended awardee complies with Administrative Code Chapter 14B LBE requirements. Professional services contracts over \$1,000,000 must be approved by the SFPUC Commission. Currently, contract award approval has been delegated by the Commission to the General Manager for contracts below the Threshold Amount (as defined in Administrative Code Chapter 6). If the contract is equal to or more than \$10,000,000 or the term is more than 10 years, the contract must also be approved by the Board of Supervisors. The Contract Owner compiles the necessary information needed for the contract to be included on the SFPUC Commission agenda for approval.

#### *Phase 6, Contract Certification*

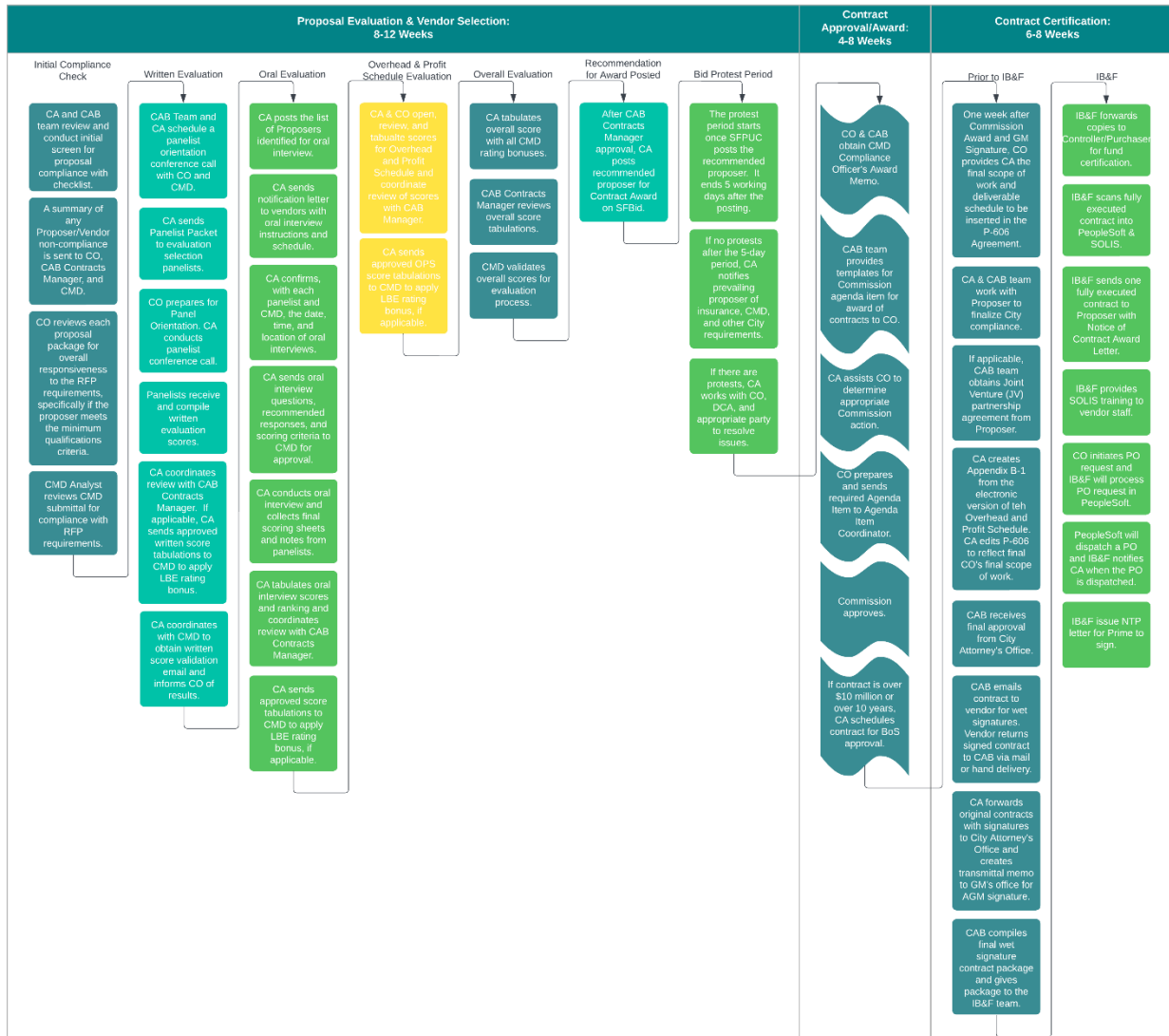
Following Commission approval, the contract analyst finalizes the final scope of work from the RFP to be included in the agreement. CAB assists the proposer with City requirements, including insurance, Labor and Employment Code compliance, and Business Tax Registration. The contract analyst incorporates the necessary appendices to the agreement and submits the documentation to the City Attorney's Office. The City Attorney's Office reviews, finalizes, and approves the agreement and appendices, and CAB sends the final version to the proposer for signature. Upon signature receipt, CAB submits a certification packet to SFPUC's Infrastructure Budget & Finance (IB&F) Division. The IB&F Division works to receive the Controller fund certification, uploads all necessary documents to the applicable internal databases, and sends a Notice of Contract Award Letter to the proposer. IB&F dispatches a purchase order and issues a Notice to Proceed Letter for the proposer to sign.

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<sup>9</sup> San Francisco's business tax registration requirements mandate that all businesses operating within the city, including individuals and entities conducting business activities, must register with the San Francisco Treasurer & Tax Collector's Office and obtain a Business Registration Certificate. The business tax is calculated based on various factors such as gross receipts and payroll expenses, and compliance with these requirements is essential for legal operation within the city.

Exhibit A.3 below maps the latter half of the procurement process for professional services contracts, from proposal evaluation through contract certification.

**Exhibit A.3: SFPUC Professional Services Process Mapping, Proposal Evaluation through Contract Certification**



Source: BLA summary of SFPUC procedure manual and SFPUC staff feedback.

## Construction Contract Procurement Process

Chapter 6 of the City's Administrative Code establishes procurement rules for public works construction contracts.

- Per Administrative Code section 6.20, a department seeking outside construction services for a public work or improvement project exceeding the threshold amount of \$1,000,000 shall award the contract to the lowest responsive bid. Prior to recommending an above-threshold construction contract, the department must prepare detailed program requirements and estimates for the work to be performed.
- For construction contracts less than or equal to the threshold amount of \$1,000,000, the department is required to obtain not fewer than three quotes and shall award the contract to the bidder offering the lowest quotation. For construction contracts less than or equal to \$10,000, no competitive solicitation is required.

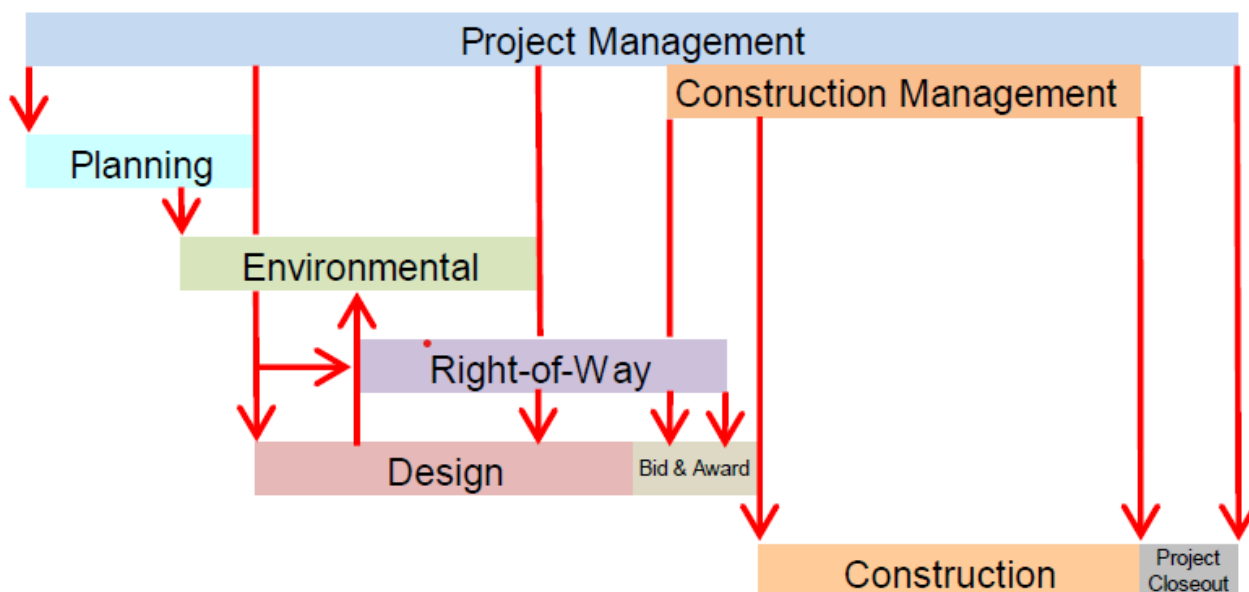
The procurement of construction contracts requires involvement from various SFPUC bureaus and enterprises. The responsibilities of SFPUC bureaus are as follows:

- **Project Management Bureau (PMB)** is responsible for execution of the project work scope, schedule, budget, and administration of all construction contracts through closeout. PMB is also responsible for overall project communication and coordination, both internal and external to SFPUC.
- **Engineering Management Bureau (EMB)** is responsible for the design phases of construction work including staff guidance, engineering standards, design criteria, technical quality assurance, and design quality control. EMB also ensures the completion of technical information for engineering reports, drawings, calculations, specifications, and cost estimates.
- **Construction Management Bureau (CMB)** is responsible for construction quality assurance and provides overall construction management oversight and construction contract administration during construction.
- The enterprise or division (Hetch Hetchy, Water, City Distribution, Power, or Wastewater) assigns an Operations Representative to represent the interests of the enterprise or division involved in the construction.
- **Bureau of Environmental Management (BEM)** provides specialized environmental expertise to assist PMB in obtaining the project's compliance with applicable environmental regulations, including the California Environmental Quality Act (CEQA). BEM informs PMB of the CEQA strategy, budget, and schedule. BEM also provides environmental compliance oversight during construction.

- **Contract Administration Bureau (CAB)** is responsible for the procurement of construction contracts following the development of the solicitation documents. CAB advertises the bid, oversees the selection, award, and execution cycles, and processes certain subsequent contract modifications.
- The **Capital Improvements Projects (CIP) Steering Committee** is responsible for recommending that a particular project move to the next phase of development and the contract selection and delivery method. The Committee consists of SFPUC senior managers and is led by the Assistant General Manager for Infrastructure.

According to SFPUC's internal policies, the development of a construction project can be divided into nine major phases: (1) Project Management, (2) Planning, (3) Environmental, (4) Design, (5) Right-of-Way, (6) Bid and Award, (7) Construction Management, (8) Construction, and (9) Project Closeout. Exhibit A.4 below illustrates the construction development process, beginning with initial planning through project close-out.

**Exhibit A.4: SFPUC Construction Contract Development Process**



**Note:** Actual start and ending dates for each phase varies by project.

The Planning Phase consists of three subphases (Needs Assessment, Alternatives Analysis, and Conceptual Engineering).

Source: SFPUC Policy PM 2.01, Project Development Process.

*Phase 1, Project Management Phase*

The Project Management phase encompasses the entirety of the construction project's lifecycle, from planning through project close-out. Included within the Project Management phase are all tasks related to project management functions and oversight, project controls, records management, and legal support.

*Phase 2, Planning Phase*

During the Planning phase, the Project Management Plan (PMP) is initiated by the project manager within PMB. The PMP is the management plan for each project that includes project objectives, scope, and quality control. The PMP is initiated at the beginning of the Planning Phase but not finalized until the end of the Design Phase. Site investigations and the selection of a consultant and/or an in-house design team to facilitate the design of the project also take place during the Planning Phase. The Planning Phase also includes three subphases: needs assessment, alternatives analysis, and conceptual engineering report.

- In the needs assessment subphase, the Needs Assessment Team (NAT) works to determine the needs of a project, based on the Capital Improvement Plan (CIP) and a comparison of current conditions with the Department's needs and desires. The NAT is comprised of PMB, EMB, BEM, the Operations Representative, the City Attorney's Office, and other SFPUC staff involved in real estate services, engineering, and public affairs. The NAT issues a report identifying the current problem and needs and defining the project objectives and potential options. The NAT submits the report to the CIP Steering Committee for the Committee's recommendation. The Committee determines a need for the project, and then recommends approval to the Assistant General Manager of Infrastructure (AGM). The AGM approves the need of the project.
- Following approval of the Needs Assessment Report, the project may move to the alternatives analysis activities. According to SFPUC internal policy, not all projects require an alternatives analysis. For those projects that do require an alternatives analysis, this phase of the process determines if an alternative delivery method, such as Design-Build or Construction Manager/General Contractor methods, should be used instead of the standard Design-Bid-Build method. The Alternatives Analysis Team (AAT), comprised of PMB, EMB, BEM, the Operations Representative, and other SFPUC staff involved in engineering, safety, health, public affairs, and auditing, works to develop alternative options that satisfy the project's goals and requirements related to (1) projected costs and schedules and



- (2) engineering and design. The AAT gathers relevant information and prepares criteria for a technical evaluation and builds on the NAT's assessment of current conditions. From this analysis, the AAT prepares a report recommending the preferred alternative solution. The report is reviewed by the project manager, project engineer, and Operations Representative, and then submitted to the CIP Steering Committee for their recommendation to the AGM.
- Following the approval of the Alternatives Analysis, the Conceptual Engineering subphase begins. The Conceptual Engineering Report Team (CERT) works to prepare an engineering analysis based on the recommended preferred alternative. CERT develops a Conceptual Engineering Report (CER) including the scope of work, design criteria, sketches of conceptual designs, permit requirements, and other requirements related to the project. The report is reviewed by the project manager, project engineer, and the Operations Representative, and then submitted to the CIP Steering Committee for their recommendation to the AGM.

### *Phase 3, Environmental Phase*

Near the end of the Planning phase, the Environmental Phase begins. This phase includes all environmental review and permitting activities to meet the applicable local, state, and federal requirements. The project manager from PMB requests the environmental project manager from BEM initiate the California Environmental Quality Act (CEQA)<sup>10</sup> application process housed in the Environmental Planning Division of the San Francisco Planning Department. If applicable, the application for the federal lead agency for National Environmental Policy Act (NEPA)<sup>11</sup> begins during this phase, however SFPUC internal policy states that most projects do not require NEPA. Certifications are typically issued at the end of the Design Phase but must be issued prior to the Construction Phase. The initiation of permitting requirements, which are not covered by CEQA, occur at the beginning of the Design Phase.

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<sup>10</sup> The California Environmental Quality Act (CEQA) is a state law that requires state and local agencies in California to identify and analyze the environmental impacts of proposed projects before approving them. CEQA aims to inform decision-makers and the public about potential environmental consequences and to promote environmentally sustainable development.

<sup>11</sup> The National Environmental Policy Act (NEPA) is a U.S. federal law enacted in 1970 that mandates federal agencies to assess the environmental impacts of their proposed actions, such as projects or regulations. NEPA requires the preparation of environmental documents, including Environmental Assessments (EAs) or Environmental Impact Statements (EISs), to inform decision-makers and the public about potential environmental consequences.

*Phase 4, Design Phase*

Following the completion of the Planning phase, the Design phase begins. The Design phase is largely led by EMB, with PMB overseeing the progress. The major deliverables of the Design phase are finalizing drawings and specifications, the technical aspects of bid documents, and the Project Management Plan (PMP). The Department divides the design deliverable deadlines into four different milestones of completion: 35 percent, 65 percent, 95 percent, and 100 percent, and each milestone is formally reviewed by EMB. By 35 percent of design completion, the project scope and design criteria should be finalized and can only be changed if the Department found the facility would not operate properly, would be unsafe, cannot be properly maintained, or would not meet codes, standards, or regulatory requirements. Following the review of 95 percent completion, PMB and EMB work to refine construction costs and the delivery schedule. PMB and EMB also work with CMD to complete the local business enterprise requirements, based on the cost estimate at the 95 percent milestone. EMB prepares an estimate of work hours needed by CMB for approval. The design documents required at the 100 percent milestone are sent to the CIP Steering Committee for their recommendation to the AGM. Upon AGM approval, PMB and EMB work with CAB to determine prequalification requirements for bidders. At the end of the Design phase, the technical section of the bid package is submitted by EMB's contract standards division to CAB to initiate bid advertisement.

Exhibit A.5 below maps the procurement process for SFPUC construction contracts, including the phases for planning, environmental, and design. The mapping is continued in Exhibit A.6 below, providing the remaining phases of the procurement process construction contracts, including the phases for right-of-way, bid and award, and contract certification.

Exhibit A.5: SFPUC Construction Services Process Mapping Part 1, Planning, Environmental, and Design



Source: BLA summary of SFPUC procedure manual and SFPUC staff feedback.

*Phase 5, Right-of-Way Phase*

The Right-of-Way (ROW) phase officially begins after the Design phase. However, there are some ROW activities that occur during the Planning phase, including initial geographic mapping and general right of way needs for the project. The ROW phase includes planning, property investigations, obtaining permission for geologic studies, groundwater monitoring programs, and other site investigations. At 65 percent of design completion, work pertaining to ROW requirements begin, including fee acquisitions, easements, and any other necessary appraisals for property rights.

*Phase 6, Bid and Award Phase*

At the completion of the Design phase and after EMB has submitted the technical aspects of the bid documents to CAB, the project enters the Bid and Award phase. PMB submits the bid package to the City Attorney's Office for review.

*Pre-Advertisement and Advertisement:* Upon receipt of the project information, a CAB contract analyst is assigned to the contract, and PMB and CAB prepare a Commission Advertisement Report. The SFPUC Commission is presented with the report pursuant to their Communications Policy. Upon Commission approval and prior to advertisement, CAB reviews the bid documents received by EMB, specifically ensuring that all quality assurance requirements of the design phase have been completed. CAB advertises the bid documents to the SFPUC website, the Library, and sometimes the local newspaper, depending on funding requirements.

*Bid Opening and Proposal Submittal:* Following the advertisement of the bid, PMB, EMB, and CAB conduct pre-bid meetings with potential bidders. CAB compiles questions from the potential bidders and facilitates with PMB and EMB to provide answers. CAB posts the questions and answers to the SFPUC website. CAB distributes any addenda prepared by CAB or EMB. At the conclusion of the bid period, as determined by the PM, CAB facilitates a bid opening meeting. The bid opening meeting starts the five-day period for low-bid selections.

*Proposal Evaluation & Vendor Selection:* Following bidder submissions, CAB, PMB, EMB, and CMD all work to evaluate the submissions. CAB prepares the bid tabulation summary and checks licenses, DIR registration, debarment, and completeness of the bid documents. PMB and EMB evaluates minimum technical qualifications, which includes a comparison to the original cost estimate included in the bid documents. CMD assesses each bidder's LBE goals for responsiveness and compliance. If there is a protest, CAB

works with PMB, EMB, CMB, CMD and City Attorney to resolve the protest prior to completion of selection. For traditional construction contracts, the responsive and responsible bidder who submitted the lowest bid is identified for award. In selection methods using Best Value, the responsive and responsible proposer who submitted the proposal with the highest score or lowest quotient is identified for award and the determination is posted to the website. CAB facilitates the subjective scoring process for Best Value selections. The five-day protest period for Best Value selections starts once the selection is announced. If there are protests from other bidders within the five-day protest period, the CAB contract analyst works with the PM and the City Attorney's Office to facilitate the protest process. If there are no protests after the five-day protest period, selection is completed.

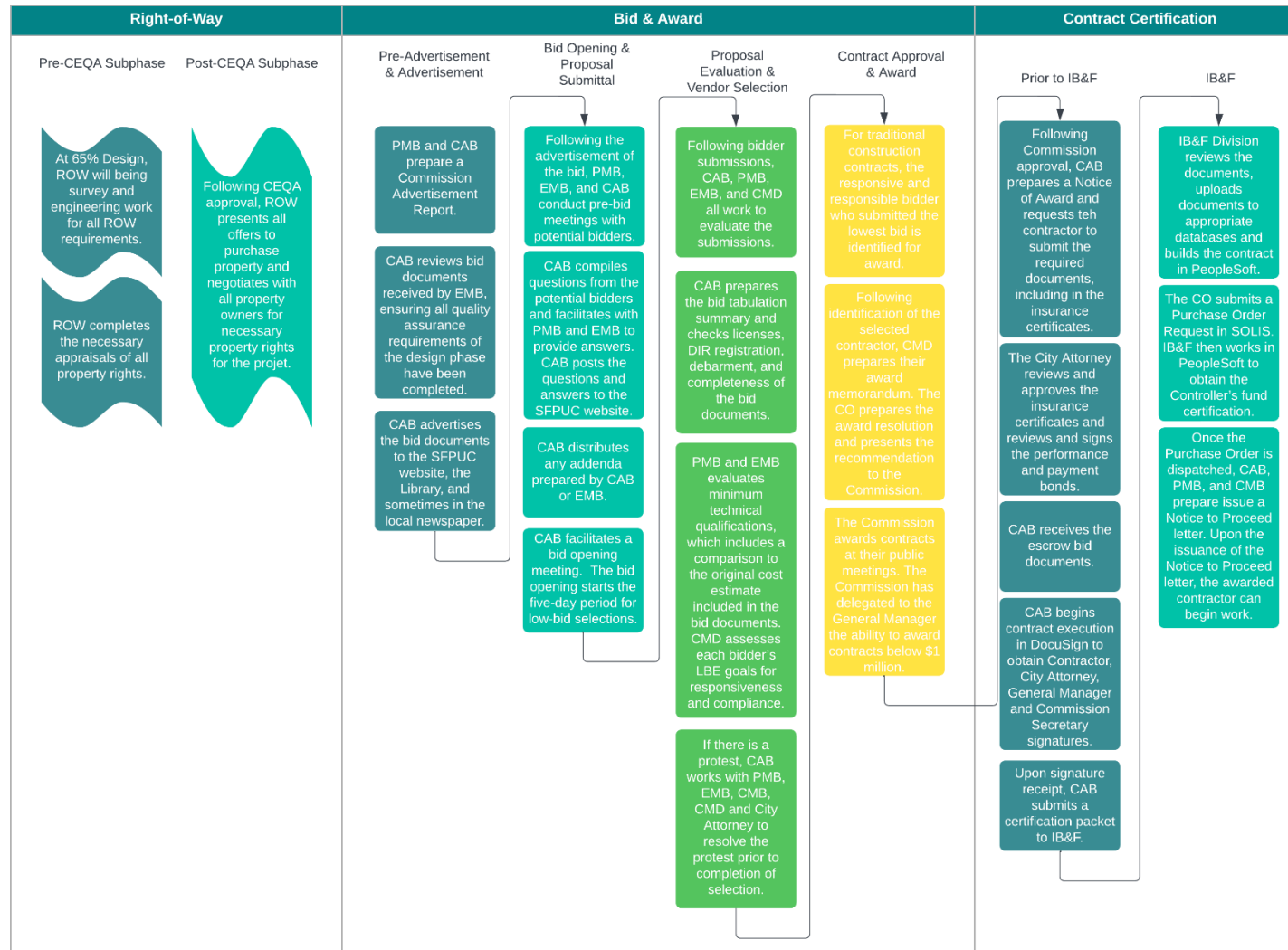
*Contract Approval and Award:* Following identification of the selected contractor, CMD prepares their award memorandum. The PM prepares the award resolution and presents the recommendation to the Commission. The Commission awards contracts at their public meetings. The Commission has delegated to the General Manager the ability to award contracts below \$1 million.

*Contract Execution:* Upon the required award approval, CAB prepares the Notice of Award and requests the contractor to submit required documents, including insurance certificates, escrow bid documents and the performance and payment bonds for review and approval. The City Attorney reviews and approves the insurance certificates and reviews and signs the performance and payment bonds. CAB receives the escrow bid documents. Once these documents are received, approved and signed, CAB begins contract execution in DocuSign to obtain Contractor, City Attorney, General Manager and Commission Secretary signatures.

*Award Certification:* Upon signature receipt, CAB submits a certification packet to SFPUC's Infrastructure Budget & Finance (IB&F) Division. The IB&F Division reviews the documents, uploads documents to appropriate databases and builds the contract in PeopleSoft. The PM submits a Purchase Order Request in SOLIS. IB&F then works in PeopleSoft to obtain the Controller's fund certification. Once the Purchase Order is dispatched, CAB, PMB, and CMB prepare issue a Notice to Proceed letter. Upon the issuance of the Notice to Proceed letter, the awarded contractor can begin work.

Exhibit A.6 below maps the remaining phases of the procurement process construction contracts, including the phases for right-of-way, bid and award, and contract certification.

# Exhibit A.6: SFPUC Construction Services Process Mapping Part 2, Right-of-Way, Bid & Award, and Contract Certification



Source: BLA summary of SFPUC procedure manual and SFPUC staff feedback

*Phase 7, Construction Management*

The Construction Management phase includes all soft-cost tasks needed for contract administration and oversight during the Construction phase. The roles and responsibilities of the Construction Management phase are determined by the project team, including PMB, EMB, CAB, CMB, the Operations Representative, and BEM. Activities for pre-construction, facility start-up, and post construction are identified and designated, including field inspections, quality assurance audits, environmental permitting and responding to requests for information, and managing schedule and budget changes through change orders.

*Phases 8 and 9, Construction and Project Close-Out*

The Construction phase includes all hard costs for construction. In the Project Close-Out phase, which takes place after the construction project has been completed, SFPUC finalizes all contracts, including change orders. PMB prepares a project summary, lessons learned, proof of completion, and all contract deliverables. CAB returns or destroys the escrow bid documents. PMB briefs upper management on the project completion and any recommended follow-up. PMB, EMB, and the Operations Representative all sign-off on a completed project close-out list.



December 9, 2024

Dan Goncher  
San Francisco Budget and Legislative Analyst's Office  
Board of Supervisors, City and County of San Francisco

Subject: Performance Audit of the Authority Delegated to the San  
Francisco Public Utilities Commission for Public Works  
Contracts Under Chapter 6 of the Administrative Code

Dear Mr. Goncher,

Thank you for providing us the opportunity to review the audit report,  
*Performance Audit of the Authority Delegated to the San Francisco Public  
Utilities Commission for Public Works Contracts Under Chapter 6 of the  
Administrative Code*, prepared by the Board of Supervisors' Budget and  
Legislative Analyst.

We appreciate the time your staff dedicated to this audit and concur with all 16  
recommendations. We are committed to incorporating these recommendations  
into our business practices and continually strengthening contracting policies  
and procedures pertaining to public works and related professional design,  
consulting, and construction management services.

If there are any questions or additional information is needed, please do not  
hesitate to contact me at 415-554-1600.

Sincerely,

Dennis Herrera  
General Manager

CC: Ronald Flynn, Deputy General Manager  
Nancy Hom, AGM Business Services/CFO  
Stephen Robinson, AGM Infrastructure  
Irella Blackwood, Audit Director

**London N. Breed**  
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