

FILE NO. 990743

1 [Procurement Reform]

2 AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE TO DELETE SAFETY BELT
3 REQUIREMENTS FOR CITY VEHICLE PURCHASES FROM CHAPTER 4; TO LIMIT THE
4 APPLICATION OF CHAPTER 6 TO CONTRACTS FOR PUBLIC WORKS AND
5 IMPROVEMENTS AND TO DELETE OBSOLETE PROVISIONS; TO DELETE OBSOLETE
6 PROVISIONS FROM CHAPTER 8; AMENDING CHAPTER 10 TO ELIMINATE THE ROLE
7 OF THE PURCHASER FROM THE RECEIPT OF DONATIONS BY THE HEALTH
8 COMMISSION AND TO SIMPLIFY THE ADMINISTRATION OF THE PURCHASER'S
9 REVOLVING FUND; ADDING A NEW ARTICLE XI-D TO CHAPTER 16 GOVERNING THE
10 PURCHASE OF UNIFORMS FOR CITY EMPLOYEES; AND DELETING CHAPTERS 21
11 AND 21B IN ORDER TO CONSOLIDATE THEIR PROVISIONS IN A REVISED CHAPTER 21
12 AND TO REFORM AND STREAMLINE THE PROCESS FOR ACQUISITION OF GOODS
13 AND SERVICES BY THE CITY.

14 Note: Additions are underlined; deletions are in ~~strikeout~~ text.

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

16 Section 1. Chapter 4, Section 4.16 of the San Francisco Administrative Code is hereby
17 amended by deleting Section 4.16, as follows:

18 ~~SEC 4.16. SAFETY BELTS REQUIRED ON VEHICLES OWNED OR USED BY CITY.~~

19 ~~Subject to the budget and fiscal provisions of the Charter, motor vehicle safety seat belts for the~~
20 ~~protection of driver and passengers in the front seat shall be installed and used on all~~
21 ~~city/county-owned or city/county-rented emergency or passenger motor vehicles, including~~
22 ~~those operated on the basis of reimbursement for mileage traveled, and on such other motor~~
23 ~~vehicles or special mobile equipment as may be determined by each department head. This~~
24 ~~Section shall not apply to public passenger vehicles operated by the Municipal Railway.~~

25
SUPERVISOR KAUFMAN, BROWN
BOARD OF SUPERVISORS

1 Section 2. Chapter 6, Section 6.01 of the San Francisco Administrative Code is hereby
2 amended to read as follows:

3 **SEC. 6.01 SCOPE OF CHAPTER.**

4 Chapter 6 governs contracts for public works and improvements and for the services of
5 architects and engineers associated with public works and improvements. Chapter 6 shall not
6 govern purchases of products and other services, except as they may be contained within
7 contracts for public works and improvements or for the services of architects and engineers
8 associated with public works and improvements. This Chapter does not affect or apply to
9 street improvement work or to other public work, the cost or expense of which is or will be
10 assessed in whole or in part against private property.

11 ~~SEC. 6.01. PURCHASING; MATERIAL, SUPPLIES, EQUIPMENT AND SERVICES.~~

12 ~~(a) The purchaser of supplies shall purchase all materials, supplies and equipment of~~
13 ~~every kind and nature and enter into agreements for all contractual services required by the~~
14 ~~several departments and offices of the City, except as in this Section otherwise provided.~~
15 ~~Purchases of books, magazines and periodicals for the library departments, works of art for~~
16 ~~museums and other articles or things of unusual character as to the purchasing thereof, may,~~
17 ~~on the recommendation of a department head and the approval of the purchaser, be~~
18 ~~purchased directly by said department head.~~

19 ~~(b) Purchases of materials, supplies and equipment involving the expenditure of less~~
20 ~~than \$5,000 may, on the recommendation of the department head in charge thereof and the~~
21 ~~approval of the purchaser, be purchased directly by the department head. Beginning with~~
22 ~~fiscal year 1996-97, the Board of Supervisors shall be authorized to increase or decrease by~~
23 ~~ordinance the dollar amount of purchases of materials, supplies and equipment which may, on~~
24 ~~the recommendation of the department head and approval of the purchaser, be purchased~~
25 ~~directly by the department head.~~

1 ~~———— (c) Purchases for construction operations, or for any operations conducted outside the~~
2 ~~boundaries of the City and County may, on the recommendation of the department head in~~
3 ~~charge thereof, and the approval of the purchaser of supplies, be made by the department~~
4 ~~head. All such purchases made by officials other than the purchaser shall be made in~~
5 ~~accordance with regulations established by the purchaser of supplies.~~

6 ~~———— (d) Materials, supplies and equipment which have been determined to be surplus to~~
7 ~~City needs shall be disposed of in a manner which will best serve the interests of the City. For~~
8 ~~the purposes of this section, the interests of the City shall include the City's ability to maximize~~
9 ~~the City's economic return on surplus goods, the City's interest in maximizing the re-use of~~
10 ~~surplus goods by public entities, non-profit organizations and schools, and the City's interest~~
11 ~~in avoiding any unnecessary additions to the waste stream by maximizing the re-use and~~
12 ~~recycling of surplus goods. Disposal of surplus goods may include sales to, exchanges with,~~
13 ~~or donation to public entities, non-profit organizations, and private organizations for a public~~
14 ~~purpose, or donation to private entities for recycling of parts or materials. The Purchaser shall~~
15 ~~maintain lists of all known local resources for transfer of surplus goods to public entities, non-~~
16 ~~profit organizations, and private organizations for a public purpose, and for the recycling of~~
17 ~~parts.~~

18 ~~———— (1) The purchaser of supplies shall have the authority to exchange used~~
19 ~~materials, supplies, and equipment to the advantage of the City, to advertise for bids, and to~~
20 ~~sell personal property belonging to the City on the recommendation of a department head that~~
21 ~~such articles are surplus to the needs of the department.~~

22 ~~———— (2) The purchaser of supplies shall have authority to donate obsolete, used or~~
23 ~~surplus materials, supplies and equipment if a department head states in writing that such~~
24 ~~articles surplus to the needs of the department. The purchaser shall document in writing each~~
25 ~~donation.~~

1 ~~_____ (A) Donations of articles meeting the criteria listed above may be offered~~
2 ~~to public entities, non-profit organizations, or private organizations serving the public. The~~
3 ~~order of priority for donations shall be to entities or organizations:~~

4 ~~_____ (i) engaged in distributing the surplus goods offered at no cost or~~
5 ~~for a nominal fee to non-profit organizations, schools, or low-income individuals or families~~
6 ~~that are physically located in San Francisco;~~

7 ~~_____ (ii) engaged in distributing the surplus goods offered at no cost or~~
8 ~~for a nominal fee to non-profit organizations, schools, or low-income individuals or families~~
9 ~~that are physically located in the Bay Area;~~

10 ~~_____ (iii) engaged in distributing the surplus goods offered at no cost or~~
11 ~~for a nominal fee to non-profit organizations, schools, or low-income individuals or families~~
12 ~~that are physically located in the United States;~~

13 ~~_____ (iv) engaged in distributing the surplus goods offered at no cost or~~
14 ~~for a nominal fee to non-profit organizations, schools, or low-income individuals or families~~
15 ~~that are physically located in foreign countries;~~

16 ~~_____ (v) engaged in recycling the surplus goods, including parts or~~
17 ~~materials.~~

18 ~~_____ (B) Surplus medical supplies that are no longer in compliance with~~
19 ~~Federal Drug Administration regulations may be offered to entities and organizations which~~
20 ~~are engaged in distributing or administering the surplus medical supplies at no cost or for a~~
21 ~~nominal fee to low-income individuals or families in foreign countries.~~

22 ~~_____ (C) To the extent that more than one organization meets the criteria in a~~
23 ~~category listed above, surplus goods shall be made available on a rotational basis to entities~~
24 ~~and organizations in the same category. If there is a need to dispose of surplus property and~~
25 ~~no entity or organization meeting the criteria noted in subparagraph (d)(2)(A) can be located~~

1 to receive a donation, the Purchaser is authorized to utilize other means that may be available
2 to dispose of such property in a manner that will best serve the interests of the City.

3 ~~—— (e) All purchases in excess of \$2,500 shall be by written contract. Beginning with
4 fiscal year 1996-97, the Board of Supervisors shall be authorized to increase or decrease by
5 ordinance the dollar amount of purchases which shall be made by written contract. Any other
6 provision of this Section notwithstanding, on the recommendation of the department head, in
7 case of an emergency actually existing, the purchaser of supplies, with the approval of the
8 Director of Administrative Services, may make such purchases in the open market on the
9 basis of informal bids. At least three bids or quotations shall be secured on open market
10 purchases. All contracts and purchase orders in excess of \$50,000 for materials, supplies or
11 equipment and all agreements for contractual services in excess of \$50,000 shall require the
12 signature of the Director of Administrative Services in addition to the signature of the
13 purchaser of supplies. Beginning with fiscal year 1987-88, the Board of Supervisors shall be
14 authorized to increase or decrease by ordinance the dollar amount of contracts requiring
15 approval of the Director of Administrative Services under this Section. The purchaser of
16 supplies shall not enter into any contract or issue any purchase order unless the Controller
17 shall certify thereon that sufficient unencumbered balances are available in the proper fund to
18 meet the payments under such purchase order or contract as these become due.~~

19 ~~—— (f) The purchaser of supplies shall establish specifications and tests to cover all
20 recurring purchases of material, supplies and equipment. The purchaser shall, as far as is
21 practicable, standardize materials, supplies and equipment according to the use to which they
22 are to be put, when two or more types, brands or kinds are specified or requested by
23 individual departments.~~

24 ~~—— (g) Purchases of equipment shall be made in accordance with specifications furnished
25 by the department requiring such equipment in case the use of such equipment is peculiar to~~

1 such department. For patented or proprietary articles sold by brand name, the purchaser may
2 require each department requisitioning same by such brand name, to furnish specifications of
3 the article requisitioned and may advertise for bids on the basis of such specifications, under
4 conditions permitting manufacturers of or dealers in other articles made and sold for the same
5 purpose, to bid on such specifications or on the specifications of their own product. If the
6 purchaser of supplies recommends the acceptance of the lowest or best bid, stating his or her
7 reasons in writing therefor, and if the department head concerned recommends the
8 acceptance of any other bid on such proprietary articles, stating his or her reasons in writing
9 therefor, the award shall be determined by the Controller.

10 ~~—— (h) The purchaser of supplies shall require departments to make adequate inspection~~
11 ~~of all purchases, and shall make such other inspections as he or she deems necessary. The~~
12 ~~purchaser shall develop standards for determining when articles or services which may be~~
13 ~~below standards, specifications or samples furnished should be rejected.~~

14 ~~(i) The purchaser of supplies shall have charge of central storerooms and warehouses~~
15 ~~of the City. The purchaser shall also have charge of a central garage and shop for the repair~~
16 ~~of City equipment. All garages and shops heretofore maintained by departments for the~~
17 ~~construction, maintenance, and repair of departmental supplies and equipment, and the~~
18 ~~personnel assigned thereto, excepting the shop and personnel for fire alarm, police telegraph~~
19 ~~and traffic signal manufacture and repair operated by the department of electricity, are hereby~~
20 ~~transferred to said central garage and shop. The purchaser shall have authority to require the~~
21 ~~transfer of surplus property in any department to stores or to other departments.~~

22 Section 3. Chapter 6, Section 6.02, 6.03, 6.04, 6.1-4, 6.32 and 6.62 of the San
23 Francisco Administrative Code are hereby deleted in their entirety as follows:

24 ~~—— SEC. 6.02. PURCHASING; SURPLUS COMMODITIES. The purchaser of supplies,~~
25 ~~with the approval of the Director of Administrative Services, may purchase any commodity~~

1 either from the government of the United States or from the State of California without
2 advertising for bids for said commodity, irrespective as to the cost thereof, and no written
3 contract need be entered into with the government of the United States or with the State of
4 California for the purchase of said commodity. Before any such purchase is made the Controller
5 shall certify as to the availability of funds to pay the purchase price of said commodity.

6 ~~SEC. 6.03. PURCHASING; MONETARY FUNCTIONS. The Board of Supervisors shall~~
7 ~~by ordinance determine the monetary limits of purchases of material, supplies and equipment to~~
8 ~~be made (a) by the taking of informal bids consistent with the manner provided in Section 6.01;~~
9 ~~and (b) by advertising for bids consistent with the manner provided for in Section 6.05.~~

10 ~~The Board of Supervisors shall also provide by ordinance for the monetary limits within~~
11 ~~which procurements of material, supplies and equipment may be made from departmental~~
12 ~~revolving funds. The purchaser of supplies shall by rules and regulations, approved by the~~
13 ~~Director of Administrative Services and the Controller, establish the methods whereby~~
14 ~~procurements may be made from departmental revolving funds.~~

15 ~~SEC. 6.04. PURCHASING; REQUISITION, CONTRACT AND PAYMENT. All purchase~~
16 ~~orders and contracts shall be based on written requisitions, or, for materials or supplies in~~
17 ~~common use in the various departments, on the purchaser's records of average use by all~~
18 ~~departments. Purchase orders and contracts for materials, supplies and equipment in excess of~~
19 ~~\$50,000 must be approved by the Director of Administrative Services. Beginning with fiscal year~~
20 ~~1987-88, the Board of Supervisors shall be authorized to increase or decrease by ordinance the~~
21 ~~dollar amount of contracts requiring approval of the Director of Administrative Services under~~
22 ~~this Section. The purchaser of supplies and Controller shall establish procedures to approve all~~
23 ~~bills and vouchers for materials, supplies and equipment and contractual services. All approvals~~
24 ~~required pursuant to such procedures must be obtained before the Controller shall draw and~~
25 ~~approve warrants therefor. All contracts for the purchase of materials, supplies and equipment~~

1 involving expenditure of \$50,000 or more shall be made after inviting sealed bids by publication.
2 All sealed bids received shall be kept on file. When an award of contract is made, notice that
3 the same has been made shall be given by one publication, and any interested person may
4 examine the bids and records at the purchaser's office.

5 ——— The purchaser of supplies shall by rules and regulations, approved by the Director of
6 Administrative Services and the Controller, designate and authorize appropriate personnel to
7 exercise the purchaser's signature powers for purchase orders and contracts approved as
8 provided in this Section.

9 ——— **SEC. 6.1-4. FINANCIAL AND BOND COUNSEL CONTRACTS.** (a) Prior to the award
10 of any contract or other agreement for bond counsel services, the awarding department,
11 board, commission or authority, shall publish an announcement of intent to award such
12 contract or agreement. The announcement shall be published at least once in a newspaper of
13 general circulation in San Francisco, shall generally describe the services required, the
14 activity or project to be financed by proceeds of bonds, notes or other evidence of
15 indebtedness and qualifications required of bond counsel. The announcement required by this
16 Section shall be published sufficiently in advance of the award of any contract or other
17 agreement to permit the awarding board, commission or authority, time to receive and
18 evaluate responses to the announcement. The announcement, responses and any final
19 written evaluation of the responses by the awarding department, board, commission or
20 authority shall be a public record.

21 ——— (b) ——— Prior to the award or grant of any contract or other agreement for financial or
22 underwriting services, the awarding or granting department, board, commission or authority,
23 shall publish an announcement of intent to award such contract or agreement. The
24 announcement shall be published at least once a month in a daily newspaper of national
25 distribution, available in San Francisco, shall generally describe the services required, the

1 activity or project to be financed and qualifications required of the financial consultant or
2 underwriter. The announcement required by this Section shall be published sufficiently in
3 advance of the award of any contract or other agreement to permit the awarding department,
4 board, commission or authority, time to receive and evaluate responses to the announcement.
5 The announcement, responses and any final written evaluation of the responses by the
6 awarding department, board, commission or authority, shall be a public record.

7 **SEC. 6.32. CHAPTER NOT APPLICABLE TO WORK PAID FOR BY ASSESSMENT**
8 **OF PRIVATE PROPERTY.** This Chapter does not affect or apply to street improvement work
9 or to other public work, the cost or expense of which is or will be assessed in whole or in part
10 against private property.

11 **SEC. 6.62. DISPOSITION OF INDIGENT DEAD.** The Medical Examiner is hereby
12 authorized and directed to provide for either interment or cremation of bodies of persons who
13 have died in indigent circumstances, by contracting for the service or by employment of
14 persons for such purpose.

15 Section 5: Chapter 6, sections 6.05 and 6.64 are hereby amended to read as follows:

16 **SEC. 6.05. PUBLIC WORKS AND PURCHASING CONTRACTS CONTRACT**
17 **PROCEDURES.**

18 (a) The construction, reconstruction or repair of public buildings, streets, utilities or
19 other public works or improvements, and the purchasing of supplies, materials and equipment,
20 when the expenditure involved in each case shall exceed the sum of fifty thousand dollars
21 (\$50,000), shall be done by contract, except as otherwise provided by the charter or the
22 Administrative Code. It shall constitute official misconduct to split or divide any public work or
23 improvement or purchase into two or more units for the purpose of evading the contract
24 provisions of this section. In an emergency, provided an actual emergency be declared by the
25 board of supervisors to exist, and when authorized by resolution of said board, any public

1 work or improvement may be executed in the most expeditious manner. Notwithstanding any
2 other provision in this section or this charter contained, upon the approval of the mayor or the
3 mayor's designee declaring the work to be emergency in character, there may be expended
4 by the department of public works the sum not to exceed five hundred dollars (\$500) for new
5 constructions of any type in or upon unimproved or unaccepted streets.

6 **(b)** Any public work or improvement estimated to cost less than fifty thousand
7 dollars (\$50,000) may be performed under contract or written order or by the employment of
8 the necessary labor and purchase of the necessary materials and supplies directly by the city
9 and county. Any public work or improvement executed by the city, other than routine repair
10 work, shall be authorized by the mayor or the mayor's designee when the cost exceeds fifty
11 thousand dollars (\$50,000) or by the heads of departments not under the mayor, only after
12 detailed estimates have been prepared and submitted by the head of the department
13 concerned. There shall be separate accounting for each work or improvement so executed,
14 which accounting shall include all direct, indirect and supervisory elements of cost chargeable
15 to such work or improvement, and each cost accounting shall be reported to the mayor or the
16 mayor's designee. All such accounts shall be reported to the controller. Any public work or
17 improvement costing less than fifty thousand dollars (\$50,000) and not performed by the use
18 of city and county labor, materials, and supplies shall, if not performed under contract, be
19 covered by written order or agreement which shall be based on not less than three bids,
20 notice of which shall be given by three days' posting. Records of such bids shall be kept by
21 the department.

22 **(c)** When the expenditure for any public work or improvement shall exceed the sum
23 of fifty thousand dollars (\$50,000), the same shall be done by contract, except as otherwise
24 provided in the charter or the Administrative Code. The head of the department in charge of
25 or responsible for the work for which a contract is to be let, or the purchaser of supplies in the

1 ~~case of purchases of materials, supplies and equipment~~, shall let such contract to the lowest
2 reliable and responsible bidder not less than 10 days after advertising by publication for
3 sealed proposals for the work, ~~or improvement or purchase~~ contemplated, in order to develop,
4 implement or improve a qualifying ~~affirmative action~~ nondiscrimination program as required by
5 ~~Section Chapter~~ 12B of the Administrative Code a period in excess of 30 days after receipt of
6 bid shall be required. Each such advertisement shall contain the reservation of the right to
7 reject any and all bids. The officer responsible for the awarding of any such contract shall
8 require from all bidders information concerning their experience and financial qualifications, as
9 provided by general law relative to such investigations authorized by department of public
10 works.

11 ~~Notwithstanding any other provision of the charter or ordinances of the City and County~~
12 ~~of San Francisco, the Municipal Railway, through its department head and through the~~
13 ~~Purchaser, shall be duly authorized to include among their purchasing specifications the use~~
14 ~~of negotiated procurement procedures for the purchase of mass transit vehicles.~~

15 ~~(d)~~ (d) The purchaser of supplies, with the approval of the director of administrative
16 services for bids in excess of fifty thousand dollars (\$50,000), or the The department head
17 concerned, with the approval of the board or commission to which he or she is responsible,
18 may reject any and all bids and readvertise for bids.

19 ~~(e)~~ (e) The department head ~~or the purchaser of supplies, as the case may be,~~ shall
20 have power to sign such contract for the estimated expenditures thereunder not in excess of
21 fifty thousand dollars (\$50,000) or less. Any contract involving the expenditure of more than
22 fifty thousand dollars (\$50,000), if for the purchase of materials, supplies or equipment, shall
23 require the joint approval of the purchaser of supplies and the director of administrative
24 services. ~~If such contract is for any public work or improvement, it~~ Any contract for an amount
25 in excess of \$50,000 shall require the joint approval of the department head and the mayor or

1 the mayor's designee for amounts in excess of fifty thousand dollars (\$50,000) relative to
2 departments under his or her the Mayor's jurisdiction, or the signature of the department head
3 and the approval by resolution of the board or commission concerned for departments not
4 under the mayor.

5 (f) The board of supervisors, by ordinance, shall establish a procedure whereby
6 appropriate city and county departments may file sealed bids for the execution of any work to
7 be performed under contract. If such bid is the lowest, the contract shall be awarded to the
8 department. Accurate unit costs shall be kept of all direct and indirect charges incurred by the
9 department under any such contract, which unit costs shall be reported to and audited by the
10 controller monthly and on the completion of the work.

11 (g) In any case where the lowest gross price or unit cost bid is not accepted, and a
12 contract is entered into with another bidder, written report shall be made to the director of
13 administrative services, the mayor and the controller by the officer authorized to execute the
14 contract, with the reasons for failure to accept such lowest bid.

15 ~~_____ If any provision of this section is in conflict with any provision of Section 6.01, the~~
16 ~~provision contained in Section 6.01 shall govern and control.~~

17 ~~Beginning with fiscal year 1987-88, the board of supervisors shall be authorized to~~
18 ~~increase or decrease by ordinance the dollar amount set forth in any provision of this section.~~

19 **SEC. 6.64. CONTRACTING; PROGRESSIVE PAYMENTS.**

20 Any contract may provide for progressive payments, if the advertisement for sealed
21 proposals shall so specify. No progressive payments under any contract shall be made
22 which, with prior payments, shall exceed in amount, 90 percent of the value of the work and
23 labor and materials furnished; provided, however, that when the department head ~~or the~~
24 ~~purchaser of supplies, as the case may be,~~ who is authorized to approve or sign the contract
25 pursuant to Section 6.05 (hereafter called the "city City representative") determines that the

1 contract is 50 percent or more complete, contractor is making satisfactory progress and there
2 is no specific cause for greater withholding, progressive payments may be made not to
3 exceed in amount the lesser of either 95 percent of the value of the work and labor and
4 material furnished or 95 percent of the contract price, and provided further that when the ~~city~~
5 City representative determines that the contract is 95 percent complete, funds withheld may
6 be reduced to an amount equal to 125 percent of the estimated value of the work yet to be
7 completed as determined by the ~~city~~ City representative.

8 If the advertisement for ~~sealed~~ proposals shall so specify and if adequate provisions
9 are made to protect the City ~~city and county~~ from loss, any contract may provide for
10 progressive payments for equipment and material purchased by the contractor for the project
11 and stored by the contractor prior to actual physical incorporation into the project.

12 Section 5. Chapter 8, Sections 8.12, 8.12.1, 8.13-1 and 8.13-2 of the San Francisco
13 Administrative Code are deleted in their entirety as follows:

14 ~~SEC. 8.12. SUPERVISION; CUSTODY.~~ The Purchaser of Supplies shall have general
15 supervision of the handling and distribution of all publications printed for any department, office,
16 board or commission. The custody of all printed publications subject to public distribution,
17 except as otherwise provided by law, shall be committed to the Purchaser of Supplies.

18 ~~SEC. 8.13-1. CHARTER CHARGE TO REQUISITIONING DEPARTMENT.~~ Copies of
19 the Charter, or amendments thereto, required for use of City and County departments shall,
20 upon the head of the department requisitioning the Purchaser of Supplies, be issued a charge
21 against the proper funds of the requisitioning department.

22 ~~SEC. 8.13-2. CHARTER DISPOSITION OF MONEY.~~ All funds received from the sale
23 of Charters, and amendments thereto, shall be deposited to the credit of the Purchaser's
24 revolving fund and shall be used exclusively for the purchase of additional copies of the
25 Charter, or amendments thereto.

1 ~~SEC 8.12.1. SALES AND SALES PRICE.~~ The Purchaser of Supplies shall dispose or
2 sell any of such documents or printed publications under such conditions and at such price as
3 shall be fixed by the Purchaser of Supplies, with the concurrence of the Controller, in order to
4 adequately cover the cost of printing, handling and distribution thereof.

5 Section 6. Chapter 10, sections 10.110 and 10.158-1 of the San Francisco
6 Administrative Code is amended to read as follows:

7 **SEC. 10.110. DEPARTMENT OF PUBLIC HEALTH; ACCEPTANCE OF GIFTS; SPECIAL**
8 **FUNDS CREATED.** All gifts, donations and contributions of money or personal property of
9 less than \$25,000 in value or amount, which may from time to time be received by the City
10 and County through the Health Commission to be used for the general benefit and comfort of
11 patients of the Department of Public Health without expense other than what may be
12 necessary for proper maintenance, are hereby accepted exclusively for such purposes.

13 All cash received and accepted hereunder for the general benefit and comfort of
14 patients of the San Francisco General Hospital shall be deposited in the treasury of the City
15 and County in a special fund to be known as the "San Francisco General Hospital Gift Fund,"
16 a public trust; all cash received and accepted hereunder, for the general benefit and comfort
17 of patients of the Laguna Honda Hospital shall be deposited in the treasury of the City and
18 County in a special fund to be known as the "Laguna Honda Hospital Gift Fund," a public trust;
19 and all cash received and accepted hereunder for the general benefit and comfort of patients
20 of any other division of the Department of Public Health shall be deposited in the treasury of
21 the City and County in any appropriate special fund established for such purposes. All
22 expenditures from any of said funds shall be made for the purposes for which received and in
23 accordance with the budget and fiscal provisions of the Charter.

24 As to all other forms of gifts or contributions received and accepted hereunder, the
25 Health Commission shall promptly inventory such gifts and contributions ~~give written notice~~

1 thereof to the Purchaser of Supplies who shall inventory the same and provide the Controller
2 with a copy of such inventory.

3 The Department of Public Health shall, on an annual basis, within the first two weeks of
4 July, report in writing to the Board of Supervisors a listing of all gifts, donations and
5 contributions of money or personal property of less than \$25,000 in value or amount. The
6 report shall list the nature, amount and disposition of these gifts, donations and contributions.

7 **SEC 10.158-1. CASH REVOLVING FUNDS--PURCHASING DEPARTMENT;**

8 **\$5,000. PURCHASER'S REVOLVING FUND.** Appropriations for material, supplies, and
9 equipment shall be segregated in each annual appropriation ordinance for each department or
10 office. Any part of each such fund or appropriation may, on the recommendation of the
11 Purchaser of Supplies and the approval of the Controller, be transferred to or made available in
12 the Purchaser's Revolving Fund. Warrants shall be drawn against such fund by the Controller
13 on demand of the Purchaser for the payment of bills on which discount for prompt payment may
14 be secured, or for advantageous cash purchasing, under favorable or emergency market
15 conditions, of material or supplies for future departmental requisition and use. Discounts
16 obtained by the use of the Purchaser's Revolving Fund may be accumulated therein, and the
17 Supervisors may make annual appropriations to such fund until a sufficient sum, as determined
18 by the Controller, is accumulated to meet the average purchasing and discount payment
19 requirements of the City and County.

20 Section 7. Chapter 16, Article XI-D of the Administrative Code is hereby added to read
21 as follows:

22 **ARTICLE XI-D**

23 **EMPLOYEE UNIFORMS**

24 **SEC 16.450. FINDING; UNIFORMS SHOULD BE SUPPLIED AND OWNED BY CITY.**

25 The Board of Supervisors hereby declares and finds that the City should acquire

1 uniforms and equipment items to be furnished as needed to the employees of the Police, Fire,
2 Sheriff and Public Transportation departments. The furnishing of uniforms and equipment
3 items by the City to employees is neither intended to constitute additional compensation nor to
4 be considered a part of the rate of pay for such employees.

5 **SEC. 16.451. UNIFORM SUPPLY RECORDS.**

6 For each employee of the Public Transportation, Police, Fire and Sheriff's Departments
7 required to wear a uniform or carry equipment issued by the department pursuant to this
8 Chapter or regulations of the respective departments, the department head shall maintain a
9 record of uniform items supplied to each such employee.

10 **SEC. 16.452. TERMINATION OR CHANGE OF EMPLOYMENT; RETURN OF UNIFORMS.**

11 **(a) Public Transportation Department.** All items of uniform, uniform insignia, and
12 equipment supplied to an operator by the Public Transportation Department shall be returned
13 as required by management when the operator leaves Public Transportation Department
14 service. Uniforms and equipment not so returned shall be paid for by the former employee at
15 cost. The Public Transportation Department may direct that the employee's final paycheck be
16 held until such equipment has been properly returned.

17 **(b) Police Department.** For employees of the Police Department, upon termination
18 of employment or upon change to a position which does not require wearing of uniforms, each
19 employee having in his or her possession uniform items furnished by City must deliver such
20 items, in good condition, reasonable wear and tear excepted, and which are less than one
21 year old, to such location as may be designated by the department; or pay for uniform items
22 not so delivered at the rate of 60 percent of the City's purchase price where less than three
23 months have elapsed between purchase of the uniform and the date of termination or change;
24 40 percent of City's purchase price where more than three but less than six months have so
25 elapsed; 20 percent where more than six but less than nine months have so elapsed; and 10

1 percent where more than nine but less than 12 months have so elapsed. All equipment items
2 returned to the department shall be delivered in good condition, reasonable wear and tear
3 excepted, to such location as may be designated by the department head. The department
4 head may require any employee who does not return equipment items in good condition,
5 reasonable wear and tear excepted, to pay for such equipment items at the full replacement
6 cost thereof.

7 **(c) Sheriff's Department.** Each employee of the Sheriff's Department who is
8 issued clothing uniform items, safety equipment and leather gear issued by the Sheriff's
9 Department must return such clothing uniform items, safety equipment and leather gear upon
10 termination of employment or upon change to a position which does not require the use of
11 such clothing uniform items, safety equipment and leather gear, as determined by the Sheriff.
12 Employees who have been employed by the Sheriff's Department for two years or more must
13 return only safety equipment and leather gear, as determined by the Sheriff.

14 Section 8. Chapters 21 and 21B of the San Francisco Administrative Code are hereby
15 repealed in their entirety.

16 Section 9. Chapter 21 shall be added to read as follows.

17 **SEC. 21.01. SCOPE OF CHAPTER.**

18 Chapter 21 governs the acquisition of Commodities and Services. Chapter 21 shall not
19 apply to contracts for public works or improvements or to contracts for the purchase, sale or
20 lease of any interest in real property.

21 **SEC. 21.02. DEFINITIONS.**

22 As used in this Chapter the following words shall have the following respective
23 meanings:

24 **(a) "Bid"** shall mean a bid, quotation, or other offer, other than a Proposal, from a
25 person or entity to sell a Commodity or Service to the City at a specified price.

1 **(b)** “Bidder” shall mean any person or entity which submits a Bid.

2 **(c)** “City” shall mean the City and County of San Francisco.

3 **(d)** “COIT” shall mean the Committee on Information Technology of the City and
4 County of San Francisco.

5 **(e)** “Commodity” shall mean products, including materials, equipment and supplies
6 purchased by the City. “Commodity” shall specifically exclude legal and litigation related
7 contracts or contracts entered into pursuant to settlement of legal proceedings, and employee
8 benefits, including, without limitation, health plans, retirement or deferred compensation
9 benefits, insurance and flexible accounts, provided by or through the City’s Human Resources
10 Department or the Retirement Board.

11 **(f)** “Computer Store” shall mean the City-wide, multiple award contract for the
12 procurement of certain Commodities and Services, which is administered by COIT for the
13 benefit of City departments, awarded pursuant to the “Request for Proposal for Computer
14 Hardware, Software, Peripherals and Appropriate Network, Consulting, Maintenance, Training
15 and Support Services,” and any successor contracts thereto.

16 **(g)** “Contractor” shall mean any corporation, partnership, individual, sole
17 proprietorship, joint venture or other legal entity which enters into a contract to sell
18 Commodities or Services to the City.

19 **(h)** “Contracting Officer” shall mean the City employee who is authorized to execute
20 a contract, which may be either the department head or a person designated in writing by the
21 department head, board or commission as having the authority to sign contracts for the
22 department. A designation of authority to sign contracts on behalf of a department may
23 specify authority to sign a single contract, specified classes of contracts, or all contracts
24 entered into by a department.

1 (i) "Disadvantaged Business Enterprise" or "DBE" shall mean a private business
2 located in and doing business in San Francisco with current revenues equal to or less than
3 the limits set for similar businesses eligible for certification by the Human Rights Commission
4 as Minority Owned Business Enterprises (MBEs) or Women Owned Business Enterprises
5 (WBEs). DBE status shall be based only on economic criteria, and shall not include
6 consideration of race or gender. The Purchaser shall verify the DBE status of any Offeror to
7 whom a small business set aside contract is proposed to be awarded prior to award.

8 (j) "Electronic" shall mean electrical, digital, magnetic, optical, electromagnetic or
9 other similar technology for conveying documents or authorizations, excluding facsimile.

10 (k) "General services" shall mean those services that are not Professional Services.
11 Examples of General Services include: janitorial, security guard, pest control, parking lot
12 attendants and landscaping services.

13 (l) "Offer" shall mean a Bid or Proposal submitted to the City in response to an
14 invitation for Bids or a request for Proposals. "Offer" may include a response to a request for
15 qualifications if no further ranking prior to Contractor selection is contemplated by the
16 procurement process.

17 (m) "Offeror" shall mean a person or entity that submits an Offer to the City to
18 provide Commodities or Services.

19 (n) "Professional Services" shall mean those services which require extended
20 analysis, the exercise of discretion and independent judgment in their performance, and/or the
21 application of an advanced, specialized type of knowledge, expertise, or training customarily
22 acquired either by a prolonged course of study or equivalent experience in the field.
23 Examples of professional service providers include licensed professionals such as architects,
24 engineers, and accountants, and non-licensed professionals such as software developers and
25 financial and other consultants.

1 (o) "Proposal" shall mean a response to a request for proposals issued by the City
2 for Commodities or Services, or a response to a request for qualifications if no further ranking
3 prior to Contractor selection is contemplated by the procurement process.

4 (p) "Proposer" shall mean a person or entity that submits a Proposal in response to
5 a request for proposals issued by the City.

6 (q) "Purchase Order" shall mean an authorization document designated as such by
7 the Purchaser for the procurement of Commodities or Services, whether issued in a paper or
8 electronic format, including blanket purchase orders for purchases involving multiple
9 payments.

10 (r) "Purchaser" shall mean the Purchaser of Supplies of the City and County of San
11 Francisco, or his or her designee(s).

12 (s) "Quotation" shall mean a Bid for Commodities or Services which is acquired
13 without the use of advertising to solicit Bids.

14 (t) "Services" shall mean Professional Services and General Services. "Services"
15 shall specifically exclude agreements making a grant of City funds to private entities for the
16 purpose of providing a benefit to the public, which may include incidental purchases of
17 Commodities; legal and litigation related services or contracts entered into pursuant to
18 settlement of legal proceedings; and services related to employee benefits, including, without
19 limitation, health plans, retirement or deferred compensation benefits, insurance and flexible
20 accounts, provided by or through the City's Human Resources Department or the Retirement
21 Board.

22 (u) "Solicitation" shall mean an invitation for Bids, request for Quotations, request
23 for qualifications or request for Proposals issued by the City for the purpose of soliciting Bids,
24 Quotations or Proposals to perform a City contract.

1 **SEC. 21.03 GENERAL AUTHORITY OF THE PURCHASER OF SUPPLIES.**

2 **(a) Approval of Purchases.** The Purchaser shall purchase all Commodities or
3 Services required by City departments and offices of the City, except as otherwise provided in
4 the Charter and Municipal Code of San Francisco. The Purchaser shall, by regulation,
5 designate and authorize appropriate department personnel to exercise the Purchaser's
6 approval authority for contracts approved as provided in this section.

7 **(b) Purchases to be Made on Requisitions; Exception for Large Quantities or**
8 **Common Use.** All purchases made by the Purchaser shall be made on the basis of
9 requisitions of ordering departments; except that Commodities and Services in common use
10 by more than one department, or used in large quantities by a department may be purchased
11 on the basis of the total of such requisitions or estimates previously filed from the various
12 departments. The Purchaser is authorized to enter into City-wide requirements contracts for
13 the purchase of indefinite quantities of Commodities or Services for the period of time and at
14 prices set forth in the contract, under which any department may elect to order such
15 Commodities or Services.

16 **(c) Standardization of Purchases.** The Purchaser may establish specifications,
17 terms and conditions, and product tests to cover all Commodities and Services purchases of
18 i) large quantities or ii) recurring purchases, or iii) Commodities or Services in common use by
19 more than one department. The Purchaser may, as far as is practicable, standardize
20 Commodities according to the use to which they are to be put, when two or more types,
21 brands or kinds are specified or requested by individual departments.

22 **(d) Purchases of Commodities.** Purchases of Commodities shall be made in
23 accordance with selection criteria or specifications furnished by the department requiring such
24 Commodities whenever the need for particular selection criteria or specifications is peculiar to
25 such department. For patented or proprietary Commodities sold by brand name, the

1 Purchaser may require each department requisitioning same by such brand name to furnish
2 specifications of the Commodity requisitioned, and may advertise for Offers on the basis of
3 such specifications, under conditions permitting manufacturers of, or dealers in other products
4 made and sold for the same purpose, to make Offers on such specifications or on the
5 specifications of their own product. If the Purchaser recommends the acceptance of the
6 lowest or best Offer, stating the Purchaser's reasons in writing therefor, and if the department
7 head concerned recommends the acceptance of any other Offer on such proprietary
8 Commodities, stating the department's reasons in writing therefor, the award shall be
9 determined by the Controller.

10 **(e) Procurement Of Vehicles For Use Of City Officials And Employees.**

11 (1) When purchasing, leasing, or otherwise procuring passenger vehicles, including
12 passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and
13 including one ton in payload, departments shall request vehicles of the same functional type
14 and passenger capacity approved by the Board of Supervisors in the budget.

15 (2) In evaluating vehicle purchase requests, the Purchaser is authorized to consider
16 the price, durability, fuel efficiency, resale value, expected repair and maintenance cost, and
17 all other factors, including options and accessories that may among other considerations
18 enhance the safety and resale value of the vehicle and that bear directly on the total cost to
19 the City of the vehicle in relationship to the service it will render.

20 (3) The Purchaser may develop sets of general specifications, including optional
21 equipment, for purchases of compact, midsize and full-size passenger cars, or may specify
22 vehicles by proprietary brand name when purchasing additional vehicles for an existing fleet.
23 The specifications shall note the major items of standard equipment of such vehicles and may
24 include, in the Purchaser's discretion, optional equipment which the Purchaser has
25 determined should be ordered on City passenger cars. When procuring passenger cars, the

1 Purchaser shall include this group of options, to the extent possible, even if the department
2 which will use the car does not request them.

3 If a department requests optional equipment that is not part of the Purchaser's group of
4 options and which would cost in excess of a dollar limit to be set by the Purchaser in
5 regulations, the department must either:

6 (A) itemize the equipment in the description of the vehicle itself when the vehicle
7 purchase is reviewed as part of the City's annual budget process, and obtain the Board's
8 approval of the vehicle as equipped; or

9 (B) obtain the approval of the Mayor's Budget Office before submitting a requisition
10 to the Purchaser.

11 (4) If a department desires to procure a passenger vehicle that is upgraded in terms
12 of the functional type or capacity from what was approved in the budget, then the department
13 must first obtain the approval of the Mayor's Budget Office before submitting a requisition to
14 the Purchaser.

15 (5) This section shall not apply to the procurement of mass transit vehicles over one
16 ton or other specialized vehicles as defined in the Purchaser's regulations.

17 (f) **Payment Procedures.** The Purchaser and Controller shall establish
18 procedures to approve all bills and vouchers for Commodities and Services. All approvals
19 required pursuant to such procedures must be obtained before the Controller shall draw and
20 approve warrants therefor.

21 (g) **Storerooms and Garages.** The Purchaser shall have charge of a garage and
22 shop for the repair of City equipment, and of the Purchaser's storerooms and warehouses for
23 the City and the personnel assigned thereto.

24 (h) **Leasing Of Equipment From Non-profit Corporations Without Competitive**
25 **Bidding.** Notwithstanding any other provisions of this Code, the Purchaser is authorized to

1 award a contract, without issuing Solicitations, to a non-profit corporation for the leasing of
2 equipment; provided, that the non-profit corporation has been formed for the purpose of aiding
3 and assisting the City, and the formation of the non-profit corporation has been approved by
4 resolution of the Board of Supervisors.

5 **(i) Disposal of Surplus.** Commodities which have been determined to be surplus
6 to City needs shall be disposed of in a manner which will best serve the interests of the City.
7 For the purposes of this section, the interests of the City shall include the City's ability to
8 maximize the City's economic return on surplus Commodities, the City's interest in maximizing
9 the re-use of surplus Commodities by public entities, non-profit organizations and schools,
10 and the City's interest in avoiding any unnecessary additions to the waste stream by
11 maximizing the re-use and recycling of surplus Commodities. Disposal of surplus
12 Commodities may include sales to, exchanges with, or donation to public entities, non-profit
13 organizations, and private organizations for a public purpose, or donation to private entities for
14 recycling of parts or materials. The Purchaser may maintain lists of all known local resources
15 for transfer of surplus Commodities to public entities, non-profit organizations, and private
16 organizations for a public purpose, and for the recycling of parts. The Purchaser shall have
17 the authority to require the transfer of surplus property in any department to the Purchaser's
18 stores or to other departments.

19 (1) The Purchaser of supplies shall have the authority to exchange used
20 Commodities to the advantage of the City, to advertise for Bids, and to sell Commodities
21 belonging to the City on the recommendation of a department head that such Commodities
22 are surplus to the needs of the department.

23 (2) The Purchaser shall have the authority to donate obsolete, used or
24 surplus Commodities if a department head states in writing that such Commodities are surplus
25 to the needs of the department. The Purchaser shall document in writing each donation.

1 (A) Donations of Commodities meeting the criteria listed above may be
2 offered to public entities, non-profit organizations, or private organizations serving the public.

3 The order of priority for donations shall be to entities or organizations:

4 (i) engaged in distributing the surplus Commodities offered at no cost or
5 for a nominal fee to non-profit organizations, schools, or low-income individuals or families
6 that are physically located in San Francisco;

7 (ii) engaged in distributing the surplus Commodities offered at no cost or
8 for a nominal fee to non-profit organizations, schools, or low-income individuals or families
9 that are physically located in the Bay Area;

10 (iii) engaged in distributing the surplus Commodities offered at no cost or
11 for a nominal fee to non-profit organizations, schools, or low-income individuals or families
12 that are physically located in the United States;

13 (iv) engaged in distributing the surplus Commodities offered at no cost or
14 for a nominal fee to non-profit organizations, schools, or low-income individuals or families
15 that are physically located in foreign countries;

16 (v) engaged in recycling the surplus Commodities, including parts or
17 materials.

18 (B) Surplus medical supplies that are no longer in compliance with Federal
19 Drug Administration regulations may be offered to entities and organizations which are
20 engaged in distributing or administering the surplus medical supplies at no cost or for a
21 nominal fee to low-income individuals or families in foreign countries.

22 (C) To the extent that more than one organization meets the criteria in a
23 category listed above, surplus Commodities shall be made available on a rotational basis to
24 entities and organizations in the same category. If there is a need to dispose of surplus
25 Commodities and no entity or organization meeting the criteria noted in section 21.03(i)(2)(A)

1 can be located to receive a donation, the Purchaser is authorized to utilize other means that
2 may be available to dispose of such Commodities in a manner that will best serve the
3 interests of the City.

4 **(j) Information Technology Purchases.** All contracts for the acquisition of
5 information technology Commodities or Services shall be made by the Purchaser, under the
6 direction and supervision of COIT. "Information technology" Commodities and Services which
7 are subject to this requirement shall be defined in regulations adopted by the Purchaser, the
8 Department of Telecommunication and Information Services and COIT.

9 **(k) Rules And Regulations.** The Purchaser, with the approval of the Director of
10 Administrative Services and the Controller, shall establish rules and regulations for the
11 purpose of implementing the provisions of this Chapter.

12 **SEC. 21.04. DIRECT PURCHASING AUTHORITY OF DEPARTMENTS.**

13 **(a)** Department heads shall be authorized to purchase Commodities or Services
14 directly and without the approval of Purchasing, as provided in the Charter or Municipal Code
15 of San Francisco, or in the following circumstances:

16 (1) When such purchase is recommended by a department head and is
17 approved by the Purchaser. The Purchaser's approval of direct department purchases may
18 be for individual contracts or for classes of contracts anticipated to be required by the
19 department.

20 (2) Departments may directly enter into contracts with other public entities for
21 the purpose of fulfilling their governmental functions, which may include the provision or
22 exchange of Commodities or Services incidental to the purpose of the contract.

23 (3) Departments may directly enter into contracts for the investment of trust
24 moneys and agreements relating to the management of trust assets.

25 (4) Purchases of works of art or artifacts for museums or to display in public

1 areas, specialized art restoration, insuring, transport, storage, curation and conservation
2 services.

3 (5) The Risk Manager is authorized to purchase insurance and expert
4 services in forms, amounts and by procedures as approved by the Board of Supervisors in the
5 annual Risk Management Budget.

6 (6) The General Manager of the Public Utilities Commission may directly
7 purchase water, power or natural gas, the conveyance or transmission of same, or ancillary
8 Services such as spinning reserve, voltage control, or load scheduling, as required for
9 assuring reliable services in accordance with good utility practice, to or on behalf of the San
10 Francisco Public Utilities Commission.

11 (7) Officers and employees of the City may contract directly for the provision
12 of services related to travel required for official City business, subject to compliance with rules
13 and regulations established by the approving department and the Controller for
14 reimbursement of such expenses.

15 (b) Nothing in this section is intended to affect the authorities granted to
16 departments elsewhere in this Code or in the Charter.

17 **SEC. 21.05 POWERS OF DEPARTMENTS.**

18 (a) **Estimates of Requirements.** All departments shall file estimates of required
19 Commodities and Services at such time and in such manner as shall be determined by the
20 Purchaser.

21 (b) **Procurement of Professional Services.** Departments shall be responsible for
22 defining the scope of a project for contracting purposes, establishing fair evaluation criteria
23 and selection processes for Solicitations, and for the negotiation and award of contracts for
24 Professional Services, with the assistance of the Purchaser and the City Attorney; provided,
25 however, that:

1 _____ (1) if a proposed contract for Professional Services includes the procurement
2 of Commodities, then the department shall seek prior Purchasing approval of the Solicitation
3 document; and

4 _____ (2) the Director of Purchasing shall be the Contracting Officer for
5 Professional Service contracts unless a Contracting Officer other than the Purchaser is
6 authorized to enter into the contract directly.

7 **(c) Cancellation Of Purchase Contracts.** The Contracting Officer shall be the
8 only person authorized to terminate a contract for cause or convenience.

9 **(d) Inspection of Purchases.** Departments shall make adequate inspection of all
10 purchases.

11 **SEC. 21.06. ELECTRONIC TRANSACTIONS.**

12 **(a) Electronic Notification.** For purposes of this Chapter, if a requirement exists
13 that a City official notify another City official of an event, or send a report to another City
14 official, the official with that responsibility may use Electronic notification, rather than a
15 physical document, to effect the notice.

16 **(b) Electronic Filing.** For purposes of this Chapter, if a requirement exists that a
17 City official keep a copy of a form or a document, the official may keep an Electronic record
18 rather than a physical document, provided that the Electronic record contains at least as much
19 information as the physical form or document would have contained. Any departmental
20 record retention policies applicable to physical records also apply to the corresponding
21 Electronic records.

22 **(c) Other Electronic Transactions.** Where the Purchaser, in consultation with the
23 Department of Telecommunications and Information Services and COIT, determines that the
24 technology exists to provide assurance of authentication, message integrity and non-
25 repudiation through secure and reliable Electronic transactions, the Purchaser may establish

1 regulations for the use of Electronic transactions under this Chapter, including authorization,
2 approval or execution of documents, placing orders with Contractors, receiving Offers, making
3 determinations, or providing notice. Such regulations shall include appropriate security to
4 prevent unauthorized access to the Solicitation, Offer, approval and award processes, and
5 accurate retrieval and/or conversion of Electronic forms of such information into a medium
6 that permits inspection and copying.

7 **SEC. 21.1. COMPETITIVE SOLICITATION REQUIRED.**

8 All City contracts for Commodities and/or Services shall be procured through
9 competitive solicitation, except as otherwise authorized in this Code.

10 **SEC 21.2. ADVERTISING SOLICITATIONS.**

11 Notices inviting Offers under the provisions of Sections 21.3 and 21.4 of this Chapter
12 must be published in accordance with the Charter and Municipal Code of San Francisco. At
13 least five calendar days must intervene between the date of last publication and the time for
14 filing such sealed Offers. The published notice must contain a general description of the
15 Commodity or Service, the due date for Offers, and a City contact phone number.

16 **SEC. 21.3. COMPETITIVE SEALED BIDDING.**

17 **(a) Invitation for Bids.** Except as otherwise authorized in this Code, for any
18 Commodity or General Services purchase estimated to cost in excess of \$50,000, an
19 invitation for Bids may be issued to solicit Bids, and shall include a purchase description and
20 all contractual terms and conditions applicable to the procurement, including a reservation of
21 the City's right to reject all Offers. It shall constitute official misconduct to divide any purchase
22 into two or more units with the intent of evading the requirements of this section.

23 **(b) Bid opening.** Bids shall be opened publicly by the Contracting Officer at the
24 time and place designated in the Invitation for Bids in the presence of all Bidders who attend.
25 Relevant information as the Purchaser may specify by regulation shall be recorded. Except

1 for materials protected from disclosure pursuant to Administrative Code § 67.24, the record
2 and each Bid shall be open to public inspection following Bid opening.

3 **(c) Bid Evaluation.** Bids shall be evaluated based on the requirements and
4 specifications set forth in the Invitation for Bids, which may include criteria to determine
5 acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a
6 particular purpose. Those criteria that will affect the Bid price and be considered in evaluation
7 for award shall be objectively measurable, such as discounts, transportation costs, conversion
8 costs and total or life cycle costs.

9 **(d) Correction, Withdrawal or Rejection of Bids; Cancellation of Awards.**
10 Correction or withdrawal of inadvertently erroneous Bids before or after award, or cancellation
11 of awards or contracts based on such Bid mistakes, shall be permitted in accordance with
12 regulations promulgated by the Purchaser. After Bid opening no changes in Bid prices or
13 other provisions of Bids prejudicial to the interest of the City or fair competition shall be
14 permitted. Except as otherwise provided by regulation, all decisions to permit the correction
15 or withdrawal of Bids, or to cancel awards or contracts based on Bid mistakes, shall be
16 supported by a written determination made by the Purchaser. The Purchaser may reject all
17 bids at any time prior to award.

18 **(e) Award.** The contract shall be awarded not less than five working days after Bid
19 opening by written notice to the lowest responsible and responsive Bidder whose Bid meets
20 the requirements and criteria set forth in the Invitation for Bids. Notice of all awards made
21 pursuant to the provisions of this section shall be published as required by the Charter. In the
22 event that all Bids exceed available funds and the lowest responsible and responsive Bidder
23 does not exceed such funds by more than 10 percent, the Purchaser is authorized in
24 situations where time and economic considerations preclude resolicitation of work of a
25 reduced scope to negotiate an adjustment of the Bid price, including changes in the Bid

1 requirements, with the low responsive and responsible Bidder, in order to bring the Bid within
2 the amount of available funds.

3 **(f) Awards in the Public Interest.** If the Purchaser finds that the public interest would
4 be best served by accepting other than the lowest total or unit price the Purchaser is
5 authorized to accept the Bid(s) that in the Purchaser's opinion will best serve the public
6 interest, to make the awards and to enter into the necessary contracts. Prior to making an
7 award to other than the lowest Bidder(s), the Purchaser shall submit a written statement of the
8 basis for the finding to the Director of Administrative Services.

9 **(g) Additional Purchases.** Where the quantity of Commodities or General
10 Services to be provided under a contract is fixed, the Contracting Officer may, within one year
11 after award and subject to the Contractor's consent, purchase additional quantities of the
12 specific Commodities or General Services for which award was made at the award price or a
13 lower price, in accordance with the Purchaser's regulations.

14 **(h) Multi-step Bidding.** A Contracting Officer may prequalify Bidders prior to
15 issuing an Invitation for Bids based on prequalification criteria set forth in a Solicitation.

16 **(i) Bid Protests.** The procedure for resolving bid protests shall be established by
17 regulations adopted by the Purchaser.

18 **SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

19 **(a) Authorization; Evaluation Criteria.** A Contracting Officer may issue a request
20 for Proposals or request for qualifications for the selection of Professional Service
21 Contractors, following consideration of the evaluation factors set forth in the request for
22 Proposals, which may include cost, except as prohibited by law. If a department determines
23 that it would be in the best interests of the City to acquire combined Commodities and
24 Services or General Services by means of a request for Proposals or qualifications, rather
25 than an invitation for Bids, such request for Proposals or qualifications shall be issued by the

1 Purchaser. A request for Proposals or qualifications for Professional Services may be issued
2 directly by the department.

3 (b) **Negotiation.** The Contracting Officer is authorized to negotiate terms and
4 conditions, including price, with the highest ranked Proposer. If the Contracting Officer cannot
5 conclude a contract that, in the opinion of the Contracting Officer is in the City's best interest,
6 the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the
7 event that the Contracting Officer cannot conclude negotiations with the next highest ranked
8 Proposer on terms acceptable to the City, then the Contracting Officer may negotiate with
9 each successively ranked Proposer.

10 (c) **Requests for Qualifications.** A department may issue a request for
11 qualification to determine the qualifications of prospective Contractors for particular types of
12 Commodities and/or Services to be provided to that department. Prequalification may be for
13 the purpose of issuing a further Solicitation to select from among the prequalified entities for a
14 particular contract, or it may be for the purpose of maintaining a list from which Contractors
15 will be selected for future contracts as needed by the department, or the department may
16 select Contractor(s) based on ranking of responses to the request for qualifications. For the
17 procurement of Commodities and Services for which lists of prequalified entities are created
18 by a department, selection of a Contractor for a particular contract may be made without the
19 use of a further Solicitation if the list is maintained by issuing a new request for qualifications
20 at least once every two years. The Purchaser may also maintain City-wide lists of prequalified
21 Contractors.

22 (d) **Content of Requests for Proposals.** A request for Proposals shall specify
23 evaluation criteria for selection, and shall reserve the right to reject or cancel the request for
24 Proposals in whole or in part.

1 (e) Notwithstanding any other provision of the charter or laws of the City, the Public
2 Transportation Department, through its department head and through the Purchaser, is
3 authorized to include among its purchasing specifications the use of negotiated procurement
4 procedures for the purchase of mass-transit vehicles.

5 **SEC 21.5. OTHER PURCHASES.**

6 Notwithstanding any other provision of this Chapter, procurement of the following shall
7 be made in accordance with the Purchaser's regulations:

8 (a) Commodities or Services where the total amount of the purchase does not
9 exceed \$50,000.

10 (b) Commodities or Services available only from a sole source.

11 (c) Perishable foods.

12 (d) Proprietary articles.

13 (e) Contracts involving a pilot project with a term not to exceed two years; provided
14 however, that any further procurement beyond the pilot project phase shall be subject to all
15 applicable competitive procurement requirements.

16 (f) The Purchaser may designate a particular Solicitation as a small business set-
17 aside, and restrict competition for that contract to DBEs. Such set-aside shall not continue for
18 more than two consecutive years for any particular contract, and the Purchaser shall not
19 allocate an aggregate of more than ten million dollars per fiscal year for DBE set-aside
20 contracts. The findings made by the Board of Supervisors with respect to contracting with
21 local businesses in Administrative Code section 12D.A.2 are hereby incorporated by
22 reference into this section.

23 **SEC. 21.6. WHEN NO VALID OFFERS ARE RECEIVED; MULTIPLE LOW OFFERS.**

24 When a Contracting Officer issues a Solicitation for Commodities and/or Services and no
25 responsive and responsible Offers are received, the Contracting Officer shall review the

1 Solicitation to determine whether the Solicitation could be altered and reissued in a manner
2 that would be likely to attract responsive Offers. If the Contracting Officer determines that the
3 lack of responsive Offers is not due to the content of the Solicitation, the Contracting Officer
4 may purchase the Commodities or Services called for from any source. If two or more Bids
5 received are for the same amount or unit price and such Bids are the lowest Bids from
6 responsive and responsible Bidders, then the Contracting Officer may award a contract to
7 either of the lowest responsive and responsible Bidders in accordance with the Purchaser's
8 regulations.

9 **SEC 21.7. REJECTION AND READVERTISING FOR PROPOSALS.**

10 The Contracting Officer, in his or her sole discretion, is authorized to cancel any
11 Solicitation or reject any and all Offers, in whole or in part, prior to award, and may readvertise
12 under such terms as the Contracting Officer deems to be in the City's best interests.

13 **SEC 21.8. MULTIPLE AWARD CONTRACTS.**

14 (a) Generally. A Contracting Officer may award contracts to more than one Offeror
15 if the Contracting Officer determines that it is in the City's best interest to have more than one
16 Contractor provide one or more similar Commodities and/or Services and the Solicitation
17 states that the contract may be subject to multiple award. The Contracting Officer may either
18 require all multiple award Contractors to do business with the City under a single set of terms
19 and conditions, or if the Solicitation is made by means of a request for Proposals, may
20 negotiate separate terms and conditions with each Offeror for specified Commodities and/or
21 Services. Following multiple award and in the administration of multiple award contracts, the
22 Contracting Officer shall use best efforts to fulfill the policies of Chapter 12D.A of this Code.

23 (b) Computer Store. Any department or other entity ordering Commodities or
24 Services through the Computer Store shall pay an administrative fee of up to 1.9 percent of
25 the total purchase price of Commodities and Services purchased through the Computer Store.

1 Such administrative fee shall be used solely to pay for actual costs of administering the
2 Computer Store contract for the benefit of City departments. Beginning in fiscal year 1999-
3 2000, COIT shall annually review the administrative costs from the previous fiscal year and
4 may reduce the administrative fee to conform to projections of actual administrative costs for
5 the succeeding fiscal year. Any excess funds collected during one fiscal year shall be applied
6 by COIT to reduce the administrative fee in the following fiscal year. Such administrative fee
7 shall be collected from procuring departments by Computer Store vendors for each
8 transaction, and shall be paid to and disbursed by the Controller in accordance with
9 procedures to be established by the Controller.

10 **SEC. 21.9. MULTIPLE YEAR CONTRACTS; OPTIONS TO EXTEND OR RENEW.**

11 (a) A contract for multiple years or with options to extend the term or renew the
12 contract may be used when:

13 (1) The City anticipates that the need for acquisition of the Commodities or
14 Services that are the subject of the contract will extend beyond a single fiscal year in the case
15 of multiple year contracts, or beyond the initial contract period in the case of renewals or
16 extensions of contracts; and

17 (2) The initial term of the contract and conditions for renewal or extension are
18 included in the Solicitation, which Solicitation shall not provide for renewals or extensions of
19 the contract for a period in excess of 10 years from the date of the initial contract; and

20 (3) Funds are available for the first fiscal year at the time of contracting; and

21 (4) Payment and performance obligations for succeeding fiscal years are
22 made subject to the appropriation of funds for the contract.

23 (b) Departments are prohibited from entering into contracts involving expenditure of
24 City funds with provisions that would automatically renew the contract term without further
25 action by the City.

1 **SEC 21.10. BOND MAY BE REQUIRED.**

2 Prior to the initiation of performance, the Contracting Officer may require labor,
3 materials or fidelity bonds, or a corporate surety bond conditioned for the faithful performance
4 of any contract for the purchase of Commodities or Services.

5 **SEC 21.11. BID SECURITY.**

6 If required by the Contracting Officer in the Solicitation, an Offer shall be accompanied
7 by a deposit in the form of a certified or cashier's check on a solvent bank, or money order, or
8 Bid bond, payable on sight to the City in the amount fixed in the Solicitation, which amount
9 shall not exceed 10 percent of the estimated cost of the Commodities or Services to be
10 furnished. However, any regular or continual Offeror may, in lieu of the deposit above
11 mentioned, file a corporate surety bond in an amount to be fixed by the Controller to serve as
12 security for a period of at least one year that the Offeror will enter into the contract, and during
13 the contract period, furnish any required performance bond for any and all contracts awarded
14 to that Offeror, with provision for forfeiture under the surety bond in any case of failure,
15 neglect or refusal to do so.

16 **SEC 21.12. APPROVAL OF SURETIES.**

17 The Controller shall approve the sufficiency of assets and qualifications of all sureties
18 submitting any bond or security which is required under the provisions of Section 21.10 and
19 21.11 of this Chapter.

20 **SEC 21.13. PROCEDURE UPON FAILURE TO FILE REQUIRED BOND.**

21 If any Offeror to whom a contract is awarded under the provisions of this Chapter shall
22 fail to file any required bond within 10 working days after receiving notice to file such bond, the
23 Purchaser may deposit any security required to be filed under the provisions of Section 21.11
24 of this Chapter in the treasury for collection. The amount thereof shall be retained by the City
25 as liquidated damages for failure of the Offeror to file such bond. Neither the deposit nor the

1 proceeds thereof shall be returned to such defaulting Offeror; provided, however, that upon
2 the recommendation of the department utilizing the Commodities or Services to be provided
3 under the contract, the Purchaser may approve the return of the amount of the Bid security or
4 excuse a forfeiture under such Bid security.

5 _____ Demand upon an Offeror to file a bond, as hereinbefore set forth, may, at the option of
6 the Purchaser, be made by mail or by facsimile, addressed to the Offeror on whom it is to be
7 served, at his or her mailing address or facsimile number as set forth by the Offeror in the
8 Offer. The service is complete at the time of deposit in the mail or machine confirmation of
9 the facsimile, and the 10-day period shall commence on the first day following such deposit in
10 the mail.

11 _____ The Purchaser shall have the authority to extend the period for the deposit of any
12 required bond, except a Bid bond, whenever in the Purchaser's judgment, circumstances
13 warrant an extension.

14 _____ In all cases of forfeiture hereunder, the amount of the forfeiture after collection by the
15 City shall be entered as a credit to the General Fund.

16 **SEC 21.14. CONTRACTORS REQUIRED TO OBTAIN BUSINESS TAX REGISTRATION**
17 **CERTIFICATE.**

18 _____ If an Offeror must possess a Business Tax Registration Certificate issued by the Tax
19 Collector, but has failed to obtain one, the Contracting Officer shall not execute the contract,
20 except in case of emergency as defined in Section 21.15 of this Chapter.

21 **SEC 21.15. EMERGENCY PROCUREMENT PROCEDURES.**

22 (a) _____ The Board of Supervisors hereby declares that an actual emergency shall exist
23 when it becomes necessary to immediately procure Commodities or Services to make repairs,
24 to safeguard the lives or property of the citizens or the property of the City or to maintain
25 public health or welfare as a result of extraordinary conditions created by war, epidemic,

1 weather, fire, flood, earthquake or other catastrophe, or the breakdown of any plant,
2 equipment, structure, street or public work.

3 (b) For any Commodities or Services that would normally be procured by the
4 Purchaser, a contract may be executed by the Purchaser in the most expeditious manner, and
5 shall be promptly confirmed by issuance of a regular Purchase Order.

6 (c) The department head responsible for the operations for which Commodities or
7 Services are needed may also enter into a contract directly in the most expeditious manner
8 necessary in order to respond to the emergency; however, if the emergency permits, the
9 department head shall first secure the written approval of the president of the board or
10 commission concerned, or from the Mayor or the Mayor's designee for any department under
11 the Mayor's jurisdiction, and in all cases the approval of the Board of Supervisors must be
12 obtained for any contract in excess of \$100,000. If the emergency does not permit such
13 approvals to be obtained before the contract is executed, such approvals shall be obtained as
14 soon thereafter as it is possible to do so.

15 (d) The Purchaser or the department, as the case may be, shall attempt to obtain at
16 least three Bids for emergency purchases.

17 (e) The Board of Supervisors hereby declares that an actual emergency shall exist
18 during a period of material shortages, when goods meeting the exact specifications as
19 ordered are not procurable. When such goods are immediately required, the Purchaser, with
20 the approval of the Director of Administrative Services, shall have authority to accept
21 satisfactory substitutes and to make proper price adjustments therefor; provided, that if such
22 price adjustment should increase the contractual obligation by more than 10 percent, the
23 Purchaser shall first obtain approval by the Controller, who shall reserve the additional
24 amount of money required to meet the increased obligation.

1 **SEC 21.16. USE OF PURCHASING AGREEMENTS OF AND RECIPROCAL**
2 **AGREEMENTS WITH OTHER PUBLIC AND NON-PROFIT AGENCIES; SOLICITATIONS**
3 **FOR MULTIPLE DEPARTMENTS.**

4 (a) Notwithstanding any other provisions of this Code, in cases where the
5 subject to the Board of Supervisors' approval by Resolution
6 Purchaser deems that it is in the City's best interests to do so, the Purchaser is authorized to
7 sell to, acquire from, participate in, sponsor, conduct or administer cooperative purchasing
8 agreements with, or made available by any public agency or non-profit made up of multiple
9 public agencies in California or elsewhere, and may enter into reciprocal agreements with
10 such agencies for the cooperative use of Commodities or Services or the common use or
11 lease of facilities, under the terms agreed upon between the parties.

12 (b) Notwithstanding any other provisions in this Code, the Purchaser may utilize the
13 competitive procurement process of any other public agency or non-profit made up of multiple
14 public agencies to make purchases of Commodities or Services for the use of the City under
15 the terms established in that agency's competitive procurement process and as agreed upon
16 by the City and the procuring agency, upon making a determination that (i) the other agency's
17 procurement process was competitive or the result of a sole source award; and (ii) the use of
18 the other agency's procurement would be in the City's best interests.

19 (c) Departments may utilize the results of competitive solicitation by other City
20 departments if such potential use by other City departments is specified in the Solicitation.

21 **SEC 21.17. CONTRACTS TO BE IN WRITING.**

22 All purchases in excess of \$2,500 shall be by written contract or other instrument.

23 **SEC 21.18. CONTRACTS TO BE IN TRIPLICATE; DISPOSITION OF CONTRACTS.**

24 At a minimum, all Purchasing contracts, excluding Purchase Orders and contracts
25 executed Electronically, shall be executed in triplicate. One original shall be retained by the

1 ordering department, one original shall be retained by the Purchaser, and one original shall be
2 provided to the Contractor.

3 **SEC. 21.19. CONTRACT TERMS—GUARANTEED MAXIMUM COSTS.**

4 All contracts entered into on behalf of the City for Commodities or Services to be
5 purchased at the expense of the City shall contain a paragraph stating all of the following:

6 (a) The City's obligation hereunder shall not at any time exceed the amount certified
7 by the Controller for the purpose and period stated in such certification.

8 (b) Except as may be provided by laws governing emergency procedures, officers
9 and employees of the City are not authorized to request, and the City is not required to
10 reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope
11 unless the changed scope is authorized by amendment and approved as required by law.

12 (c) Officers and employees of the City are not authorized to offer or promise, nor is
13 the City required to honor, any offered or promised additional funding in excess of the maximum
14 amount of funding for which the contract is certified without certification of the additional amount
15 by the Controller.

16 (d) The Controller is not authorized to make payments on any contract for which
17 funds have not been certified as available in the budget or by supplemental appropriation.

18 **SEC 21.20. CONTRACT TERMS-INSURANCE.**

19 All City contracts subject to this Chapter must conform to the insurance requirements
20 established by the Risk Manager. The Risk Manager shall develop uniform insurance
21 requirements for City contracts subject to this Chapter and shall publish such requirements in
22 the Risk Manager's Manual. The Risk Manager shall review and update said insurance
23 requirements annually.

1 **SEC 21.21. CONTRACT TERMS-INFRINGEMENT INDEMNITY.**

2 Each Contractor entering into a contract with the City that could involve the
3 Contractor's provision of intellectual property to the City must save, keep, hold harmless and
4 fully indemnify the City and any of its officers or agents from all damages, or claims for
5 damages, costs or expenses in law or equity that may at any time arise or be set up for
6 infringement of the patent rights, copyright, trademark or other intellectual property claims of
7 any person in consequence of the use by the City, or any of its officers or agents, of articles to
8 be supplied under such contract and of which the Contractor is not the patentee or assignee
9 or has not the lawful right to sell the same.

10 **SEC 21.22. CONTRACT TERMS-ASSIGNMENT.**

11 No contract shall be assigned, except by written instrument executed and approved in
12 the same manner as the original contract, which instrument shall include the signature of the
13 assignee. The Contracting Officer shall notify the Controller in writing of such assignments.

14 **SEC 21.23. CONTRACT TERMS-INCIDENTAL DAMAGE WAIVERS; LIABILITY CAPS.**

15 In any contract for Commodities or Services, the Contracting Officer is hereby
16 authorized, with the approval of the City Attorney, to waive future City rights to incidental and
17 consequential damages arising from the performance of the contract, or to agree to limit
18 damages caused by the contractor's negligence to a specified amount. The factors to be
19 evaluated in determining whether damages should be waived or capped in any particular case
20 shall include, but are not limited to:

21 (a) Whether, in light of insurance and bond requirements, the performance of the
22 contract is likely to create undue risk of damages to the City;

23 (b) Whether the language proposed in the contract waiving future claims to
24 incidental and consequential damages or limiting the Contractor's liability for damages caused
25 by the Contractor's negligence is standard in the industry to which the contract relates;

1 (c) The best interests of the City.

2 **SEC 21.24. CONTRACT TERMS-CONTRACTS EXCEEDING \$10,000,000.**

3 Chapter 12D.A shall not be applicable to any contract for the purchase of Commodities
4 or Services estimated to cost in excess of \$10,000,000.

5 **SEC. 21.25. PREVAILING RATE OF WAGES IN MOTOR BUS SERVICE CONTRACTS.**

6 In the case of any contract for Services wherein motor bus service is to be rendered to
7 the general public on any facility owned by the City, or in the case of any contract for the
8 transportation within the boundaries of the City of any Commodities owned or in the
9 possession of the City, the Purchaser, on recommendation of the department head concerned
10 and approval of the Mayor or the Mayor's designee or the board or commission in charge of
11 such department upon the ground that the public interest would be best served by requiring
12 the inclusion of such a provision in the contract, may require that any person performing labor
13 thereunder shall be paid not less than the highest general prevailing rate of wages, including
14 fringe benefits or the matching equivalents thereof, paid in private employment for similar
15 work in the area in which the contract is being performed, as determined by the Civil Service
16 Commission; provided, however if such a provision is to be included in the contract the notice
17 inviting Offers under Section 21.2 of this Code must call attention of Offerors to the
18 requirements of said provision.

19 **SEC. 21.26. CONTRACT TERMS- IN-HOME SUPPORTIVE SERVICE REQUIREMENTS.**

20 In the case of any contract for homemaker and chore Services to be awarded pursuant
21 to California Welfare and Institutions Code Sections 12300 et seq., the Purchaser, on the
22 recommendation of the department head concerned and the approval of the board or
23 commission in charge of such department, upon the ground that the public interest would be
24 best served by requiring the inclusion of such provisions in the contract, shall require that
25 each Offeror, as part of its Offer, submit a certified semiannual audit, and further shall require

1 each Offeror to give preference to those homemakers employed under the previous contract
2 to ensure continuity of wages, fringe benefits and seniority rights.

3 **SEC. 21.27. CONTRACT TERMS-QUANTITIES.**

4 **(a) Quantities.** Contracts may be made for definite or indefinite quantities of
5 Commodities or Services.

6 **(b) Record Keeping.** Any requirements contract shall include a mechanism for
7 maintaining records of all City orders made pursuant to the contract, including inventories of
8 any Commodity subject to a maintenance service agreement.

9 **SEC. 21.28. CONTRACT TERMS-UPGRADED PRODUCTS.**

10 Whenever a contract for the acquisition of Commodities specifies a particular product,
11 the contract shall allow acquisition of any upgraded comparable equivalent product at an
12 equal or lesser price in lieu of the specified product.

13 **SEC. 21.29. CONTRACT TERMS-PRICING.**

14 **(a) Pricing specifications during the term of a contract for Commodities may require**
15 **fixed pricing, unspecified pricing, or may combine fixed prices for some Commodities and**
16 **unspecified pricing for others, as is determined to be in the best interests of the City by the**
17 **Contracting Officer.**

18 **(b) If fixed prices are required by the Solicitation, such fixed prices shall represent**
19 **the maximum price that the Contractor may charge for the Commodities specified in the**
20 **contract, and the Solicitation shall specify that the Contractor must provide for price reductions**
21 **as a Commodity becomes less expensive and the Contractor's costs for that Commodity are**
22 **reduced.**

23 **(c) Contracting Officers are encouraged to include price warranties or "most-favored**
24 **customer" clauses in contracts, as appropriate, to give the City consistent access to the**
25 **Contractor's lowest prices.**

1 **SEC. 21.30. SOFTWARE LICENSES, SUPPORT, ESCROW, FINANCE AND EQUIPMENT**
2 **MAINTENANCE AGREEMENTS.**

3 (a) The Board of Supervisors hereby approves the execution of perpetual, non-
4 exclusive software licensing agreements which warrant performance of the software
5 according to specifications and which are for an amount of less than ten million dollars,
6 including any associated escrow agreement for source code or finance agreement, without
7 further Board approval.

8 (b) Software licensing procurements are not subject to the contracting requirements
9 of the Administrative Code, but shall be subject to the requirements established by Section
10 21.03(j) and Chapter 67. For the purpose of this section, software licensing procurements
11 shall be deemed to include both the licensed software product, any escrow agreement for
12 source code, finance agreements, and support services for such product where support for
13 that product is available only from the licensor.

14 (c) Agreements for the development of software shall include acceptance testing of
15 the software and/or performance criteria, and shall condition payments on successful
16 completion of the acceptance test or satisfaction of the performance criteria specified in the
17 contract.

18 (d) Where a vendor has proprietary rights to software or where maintenance of
19 equipment by a particular vendor is required to preserve a warranty, software support and
20 equipment maintenance agreements entered into with that vendor shall be treated as a sole
21 source for the purposes of any contract requirements included in the Municipal Code.

22 (e) A Contracting Officer is authorized to make payment for software license fees
23 and software support, equipment maintenance and associated escrow and finance fees in
24 advance of receiving Services under a contract.

1 **SEC. 21.31. ARTICLES NOT TO BE PRISON MADE; EXCEPTION.**

2 No Commodity furnished under any contract made under the provisions of this chapter
3 shall have been made in a prison or by convict labor, except for Commodities made in a
4 prison or by convicts under the supervision and control of the California Department of
5 Corrections and limited to Commodities for use by the City's detention facilities.

6 **SEC. 21.32. FOOD PURCHASED BY THE SEALER OF WEIGHTS AND MEASURES.**

7 Food purchased by the Sealer of Weights and Measures in the course of official duties
8 shall be delivered for use at public institutions of the City and County of San Francisco, or at
9 non-profit organizations, in accordance with procedures established by the Director of
10 Administrative Services.

11 **SEC. 21.33. PROCEDURE UPON CONTRACTOR'S FAILURE TO DELIVER.**

12 When a Contractor fails to deliver a Commodity or Service of the quality, in the
13 quantity, or in the manner specified in the contract within the time specified in the contract, the
14 Contracting Officer may terminate the contract and/or purchase such Commodity or Service
15 from any source; and if a greater price than that named in the contract be paid for such
16 Commodity or Service, the excess price will be charged to and collected from the Contractor
17 or the sureties on the Contractor's bond(s). All items supplied shall be subject to inspection or
18 rejection by the Purchaser, the Director of Agricultural Weights and Measures upon the
19 Purchaser's request, or by the department receiving the Commodity or Service. The
20 Purchaser's authority to procure Commodities or Services from other sources as herein
21 specified shall not preclude the City's exercise of any other remedies, including termination of
22 the contract.

23 **SEC. 21.34. AUDIT OF CONTRACTOR'S RECORDS.**

24 The City may, at reasonable places and times, audit the books and records of a City
25 Contractor under any contract to the extent that such books and records relate to the

1 performance of such contract. Such books and records shall be maintained by the Contractor
2 for three years from the date of final payment under the contract, unless a shorter period is
3 otherwise authorized in writing.

4 **SEC. 21.35. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.**

5 (a) The covenant of good faith and fair dealing is contained in every City
6 Commodities or Services contract, and Contractors and subcontractors shall at all times deal
7 in good faith with the City and shall submit claims, requests for equitable adjustments,
8 requests for change orders, requests for contract modifications or requests of any kind
9 seeking increased compensation on a City contract only upon a good-faith, honest evaluation
10 of the underlying circumstances and a good-faith, honest calculation of the amount sought.
11 Any contractor, subcontractor or consultant who commits any of the following acts shall be
12 liable to the City for three times the amount of damages which the City sustains because of
13 the act of that contractor, subcontractor or consultant. A contractor, subcontractor or
14 consultant who commits any of the following acts shall also be liable to the City for the costs,
15 including attorney's fees, of a civil action brought to recover any of those penalties or
16 damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false
17 claim:

18 _____ (1) Knowingly presents or causes to be presented to an officer or employee
19 of the City a false claim or request for payment or approval;

20 _____ (2) Knowingly makes, uses, or causes to be made or used a false record or
21 statement to get a false claim paid or approved by the City;

22 _____ (3) Conspires to defraud the City by getting a false claim allowed or paid by
23 the City;

24 _____ (4) Knowingly makes, uses, or causes to be made or used a false record or
25 statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to

1 the City:

2 (5) Is a beneficiary of an inadvertent submission of a false claim to the City,
3 subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City
4 within a reasonable time after discovery of the false claim.

5 (b) This Section does not apply to any controversy involving an amount of less than
6 \$500 in value. For purposes of this Section, "controversy" means any one or more false
7 claims submitted by the same contractor, subcontractor or consultant in violation of this
8 Section.

9 (c) Every contract for Commodities or Services performed at the expense of the
10 City, or the cost of which is paid for out of monies deposited in the treasury of City, whether
11 directly awarded or indirectly by or under subcontract, subpartnership, day labor, station work,
12 piece work, or any other arrangement whatsoever, shall contain a clause informing the
13 Contractor of the requirements of Subdivision (a).

14 (d) Liability under this section shall be joint and several for any act committed by
15 two or more persons.

16 (e) For purposes of this Section, the terms "contractor" and "subcontractor" shall
17 have the same definitions as found in Section 12D.A.5 of the San Francisco Administrative
18 Code. The term "consultant" shall be broadly defined to include any person or entity that
19 provides services to the City.

20 (f) For purposes of this Section, "claim" includes any request or demand for money,
21 property, or services made to any employee, officer, or agent of the City, or to any contractor,
22 subcontractor, grantee, or other recipient, whether under contract or not, if any portion of the
23 money, property, or services requested or demanded issued from, or was provided by, the
24 City.

25 (g) For purposes of this section, "knowingly" means that a contractor, subcontractor

1 or consultant, with respect to information, does any of the following:

2 (1) Has actual knowledge of the information;

3 (2) Acts in deliberate ignorance of the truth or falsity of the information;

4 (3) Acts in reckless disregard of the truth or falsity of the information.

5 Proof of specific intent is not required and reliance on the claim by the City is also not
6 required.

7 **SEC. 21.36. CONTRACT DISPUTE RESOLUTION.**

8 With respect to any dispute which arises under, or by virtue of a contract between the
9 City and a Contractor, including disputes based on breach of contract, mistake,
10 misrepresentation, or other cause for contract modification or rescission, the Contractor may
11 submit to the Contracting Officer a written request for administrative review and
12 documentation of the Contractor's claims. Upon such request, the Contracting Officer shall
13 promptly issue an administrative decision in writing, stating the reasons for the action taken
14 and informing the Contractor of its right to judicial review. A copy of the Contracting Officer's
15 decision shall be mailed or otherwise promptly delivered to the Contractor. The Contracting
16 Officer's decision shall be final unless appealed to a court of competent jurisdiction by the
17 Contractor. If the Contracting Officer does not issue a written decision within 120 days after
18 written request for a final decision, or within such longer period as may be agreed upon by the
19 parties, then the Contractor may proceed as if an adverse decision had been received.

20 **SEC. 21.37. DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.**

21 When charges are brought for violation of Sections 21.35 or 21.38 of this Chapter, the
22 Contractor or subcontractor shall be given notice of the charges and of all evidence
23 supporting such charges. The Contractor or subcontractor or its attorney shall be entitled to
24 offer rebuttal evidence and any other evidence in support of its position. The Purchaser and
25 the Controller shall conduct a hearing, where the charges and all evidence shall be presented.

1 In the alternative, the Purchaser and the Controller may appoint a hearing officer to conduct
2 such a hearing and make written findings of fact to be submitted to them to render the final
3 decision. Violation of sections 21.35 or 21.38 by a Contractor may serve as the basis for
4 finding that Contractor or subcontractor irresponsible and subject to the penalties listed in
5 those sections. Following any decision finding a Contractor or subcontractor irresponsible,
6 the Purchaser and the Controller shall retain authority to modify the decision.

7 **SEC. 21.38. EFFECT OF DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.**

8 Any Contractor who fails to comply with the terms of its contract with the City may be
9 declared an irresponsible Contractor through the procedures listed in section 21.37. Upon
10 such determination, the Contractor shall not be permitted to act as a Contractor or
11 subcontractor on any City contract for a period of up to five years as determined by the
12 Purchaser and the Controller. The contract of any such person may, at the option of the
13 Purchaser and the Controller, be canceled and in the event of such cancellation, no recovery
14 shall be had thereon by the Contractor.

15 **SEC. 21.39. COLLUSION IN CONTRACTING.**

16 If any party or parties to whom a contract has been awarded participates in collusion
17 with any representative of the City or any other party or parties in the submission of any Offer
18 or for the purpose of preventing an Offer from being made, or in knowingly receiving
19 preferential treatment by any officer or employee of the City, then any contract so awarded, if
20 not completed, may be declared null and void by the Board of Supervisors on the
21 recommendation of the Contracting Officer, and the Contracting Officer shall thereupon
22 reissue a Solicitation for the uncompleted portion of such contract. If the work under such
23 contract shall have been completed, the matter shall be referred to the City Attorney for such
24 action as may be necessary. Any party or parties determined to have participated in such
25 collusion shall be deemed an irresponsible Contractor.

1 **21.40. CONSTRUCTION AGAINST IMPLICIT REPEALER.**

2 No part of this Chapter shall be deemed to be impliedly repealed by subsequent
3 legislation if such construction of the subsequent legislation can be reasonably avoided.

4 **21.41. SEVERABILITY.**

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

9
10
11 APPROVED AS TO FORM:
12 LOUISE H. RENNE, City Attorney

13
14 By:

15 
16 CHRISTIANE HAYASHI
17 Deputy City Attorney
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24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 990743

Date Passed:

Ordinance amending Administrative Code to delete safety belt requirements for City vehicle purchases from Chapter 4; to limit the application of Chapter 6 to contracts for public works and improvements and to delete obsolete provisions; to delete obsolete provisions from Chapter 8; amending Chapter 10 to eliminate the role of the purchaser from the receipt of donations by the Health Commission and to simplify the administration of the Purchaser's revolving fund; adding a new Article XI-D to Chapter 16 governing the purchase of uniforms for City employees; and deleting Chapters 21 and 21B in order to consolidate their provisions in a revised Chapter 21 and to reform and streamline the process for acquisition of goods and services by the City.

May 24, 1999 Board of Supervisors — PASSED ON FIRST READING


Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

June 1, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki
Absent: 1 - Yee

File No. 990743

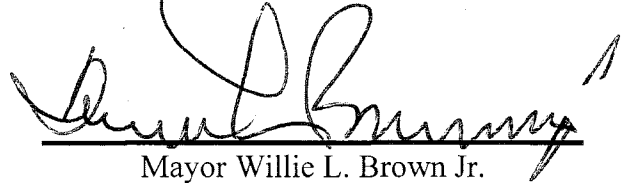
I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 1, 1999 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young
Clerk of the Board

JUN - 2 1999

Date Approved



Mayor Willie L. Brown Jr.