



CHAPTER 21: ACQUISITION OF COMMODITIES AND SERVICES WITH APPLICABLE RULES AND REGULATIONS INCORPORATED (Updated 1/18/2021)

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SEC. 21.01. SCOPE OF CHAPTER.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.02. DEFINITIONS.

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

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

"Bidder" shall mean any person or entity which submits a Bid.

"City" shall mean the City and County of San Francisco.

"Code" or "this Code" shall mean the most current version of the San Francisco Charter and the San Francisco Municipal Code.

"Commodity" shall mean products, including materials, equipment and supplies, purchased by the City.

"Commodity" shall specifically exclude legal and litigation related contracts or contracts entered into pursuant to settlement of legal proceedings, and employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the City's Human Resources Department or the Retirement Board.

"Contractor" shall mean any corporation, partnership, individual, sole proprietorship, joint venture or other legal entity which enters into a contract to sell Commodities or Services to the City.

"Contracting Officer" shall mean the City employee who is authorized to execute a contract, which may be either the Department head or a person designated in writing by the Department head, board or commission as having the authority to sign contracts for the Department. A designation of authority to sign contracts on behalf of a Department may specify authority to sign a single contract, specified classes of contracts, or all contracts entered into by a Department.

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

"General Services" shall mean those services that are not Professional Services. General Services include, but are not limited to, janitorial, security guard, pest control, parking lot management, and landscaping services.

"Minimum Competitive Amount" shall mean (i) for the procurement of Commodities and Professional Services, the "Minimum Competitive Amount" as defined in Section 6.40(a) of the Administrative Code, which shall be \$110,000 and (ii) for the procurement of General Services, an amount equivalent to the "Threshold Amount" as defined in Section 6.1 of the Administrative Code which shall be \$600,000, provided that on January 1, 2020 and every five years thereafter, the Controller shall recalculate the Minimum Competitive Amount (and the Threshold Amount from which the Minimum Competitive Amount for General Services is calculated) to reflect any

proportional increase in the Urban Regional Consumer Price Index from January 1, 2015, rounded to the nearest \$1,000.

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

"Offeror" shall mean a person or entity that submits an Offer to the City to provide Commodities or Services.

"Professional Services" shall mean those services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional service providers include, but are not limited to, licensed professionals such as architects, engineers, and accountants, and non-licensed professionals such as software developers and financial consultants.

"Proposal" shall mean a response to a request for Proposals issued by the City for Commodities or Services, or a response to a request for qualifications if no further ranking prior to Contractor selection is contemplated by the procurement process.

"Proposer" shall mean a person or entity that submits a Proposal in response to a request for Proposals issued by the City.

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

"Purchaser" shall mean the Purchaser of Commodities or Services of the City and County of San Francisco, or his or her designee(s).

"Quotation" shall mean an Offer to supply Commodities or Services to the City for a specified price (and possibly subject to other terms and conditions) which is acquired without the use of advertising to solicit Bids.

"Services" shall mean Professional Services and General Services. "Services" shall specifically exclude grants to a nonprofit entity to provide services to the community, which may include incidental purchases of commodities; legal and litigation related services or contracts entered into pursuant to settlement of legal proceedings; and services related to employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the San Francisco Health Service System, the Retirement Board or the Retiree Health Care Trust Fund.

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

"Technology Store" shall mean the City-wide, multiple award contract for the procurement of certain Commodities and Services awarded pursuant to the "Request for Proposal for Computer Hardware, Software, Peripherals and Appropriate Network, Consulting, Maintenance, Training and Support Services," and any successor contracts thereto.

REGULATION 21.02: DEFINITIONS

Definitions set forth in §21.02 of Chapter 21 Acquisition of Commodities and Services are incorporated herein, and supplementary definitions are included as follows:

“CMD” shall mean Contract Monitoring Division of the City and County of San Francisco.

“COIT” shall mean the Committee on Information Technology of the City and County of San Francisco.

“Delegated Department Purchasing” refers to department heads and their designees who have complied with Regulation 21.03(a) and have been authorized by the Purchaser to buy Commodities and General Services up to \$10,000 (including tax and shipping). This was formerly known as “Prop Q” authority. **“DT”** shall mean the San Francisco Department of Technology.

“Formal Bidding” refers to instances where the contract value will be over the Minimum Competitive Amount and a formal solicitation is required.

“Informal Bidding” refers to instances where the contract amount will be less than the Minimum Competitive Amount and are subject to CMD and OCA guidelines.

“Information Technology” means information technology and computer-based equipment and related services designed for the storage, manipulation, and retrieval of data by electronic or mechanical means, or both.

“Local Business Enterprise (LBE)” shall mean a business that is certified by CMD as an LBE under Administrative Code Section 14B.3. LBEs are either Small-LBEs or Micro-LBEs, and are also either MBEs, WBEs, or OBEs.

“OCA” shall mean the Office of Contract Administration, also known as “Purchasing.” The Director of the Office of Contract Administration is the Purchaser of Commodities and Services for the City and County of San Francisco.

“Responsible” shall mean a responsible Bidder/Proposer or supplier who: (1) meets the qualifying criteria or minimum requirements required for a particular Bid/Proposal, including without limitation the expertise, experience, record of prior timely performance, license, resources, bonding and insurance capability necessary to perform the work under the contract and; (2) at all times deals in good faith with the City and shall submit bids, estimates, invoices, claims, requests for change orders, requests for contract modifications or requests of any kind in a good faith and honest manner.

“Responsive” shall mean a responsive Bidder/Proposer or supplier that complies with the requirements of the subject Solicitation without condition or qualification.

“Technology Marketplace”, previously known as “Computer Store” or “Technology Store”, shall mean the City-wide, multiple award term contracts for the procurement of certain Information Technology Commodities and Services, which are administered by OCA for the benefit of City departments.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. [9-11](#), File No. 101007, App. 1/7/2011; Ord. [3-12](#), File No. 111246, App. 1/12/2012, Eff. 2/11/2012; Ord. [46-15](#), File No. 131122, App. 4/17/2015, Eff. 5/17/2015; Ord. [108-15](#), File No. 150175, App. 7/2/2015, Eff. 8/1/2015)

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

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

REGULATION 21.03(a): GENERAL AUTHORITY OF THE PURCHASER OF SUPPLIES: APPROVAL OF PURCHASES

Administrative Code §21.03(a) empowers the Purchaser to delegate signature authority within the Purchasing Division of OCA for contracts as provided in §21.03. Only the Purchaser and the delegated personnel in Purchasing are authorized to purchase the Commodities or Services required by City departments and offices of the City, except as otherwise stated in the Code.

In addition to the above, the Purchaser has the authority to delegate signature and approval authority to departments (“Delegated Departmental Purchasing”) up to the dollar amount stated in regulation 21.5(a) (Currently \$10,000 including tax and shipping.). To use Delegated Departmental Purchasing authority, the following requirements must be met:

1. Departments must submit a roster of employees in the department who are authorized to purchase goods and services using delegated purchasing authority.
2. The roster must list employee name, Civil Service classification, address and telephone number. OCA may restrict the delegated authority to certain Civil Service classifications as appropriate, upon a review of the information submitted.
3. All designated employees are required to attend a Purchasing training class. The roster must indicate the date training was completed.
4. All employees who exercise delegated Purchasing signature authority must adhere to the Principles and Standards of Ethical Purchasing Conduct promulgated by OCA, available on the intranet, and must sign a statement attesting thereto.
5. All designated employees shall file Form 700, Statement of Economic Interests, annually as required by the Article III, Chapter 1, of the San Francisco Campaign and Governmental Conduct Code.

The following items may not be purchased using delegated Purchasing authority unless specifically exempted and allowed by the Purchaser. This list is not exhaustive, and the purchaser retains the authority to reject purchases even if not listed:

1. Unbudgeted equipment
2. Commodities and services on Master or Multi-Year contracts (also known as Term Contracts)
3. Equipment for lease purchase
4. Tropical hardwoods, virgin redwood, and related wood products (See Environment Code Section 801)

- (b) **Purchases to be made on Requisitions; Exception for Large Quantities or Common Use.** All purchases made by the Purchaser shall be made on the basis of requisitions of ordering

departments; except that Commodities and Services in common use by more than one department, or used in large quantities by a department may be purchased on the basis of the total of such requisitions or estimates previously filed from the various departments. The Purchaser is authorized to enter into City-wide requirements contracts for the purchase of indefinite quantities of Commodities or Services for the period of time and at prices set forth in the contract, under which any department may elect to order such Commodities or Services.

- (c) **Standardization of Purchases.** The Purchaser may establish specifications, terms and conditions, and product tests to cover all Commodities and Services purchases of (i) large quantities, or (ii) recurring purchases, or (iii) Commodities or Services in common use by more than one department. The Purchaser may, as far as is practicable, standardize Commodities according to the use to which they are to be put, when two or more types, brands or kinds are specified or requested by individual departments.
- (d) **Purchases of Commodities.** Purchases of Commodities shall be made in accordance with selection criteria or specifications furnished by the department requiring such Commodities whenever the need for particular selection criteria or specifications is peculiar to such department. For patented or proprietary Commodities sold by brand name, the Purchaser may require each department requisitioning same by such brand name to furnish specifications of the Commodity requisitioned, and may advertise for Offers on the basis of such specifications, under conditions permitting manufacturers of, or dealers in other products made and sold for the same purpose, to make Offers on such specifications or on the specifications of their own product. If the Purchaser recommends the acceptance of the lowest or best Offer, stating the Purchaser's reasons in writing therefor, and if the department head concerned recommends the acceptance of any other Offer on such proprietary Commodities, stating the department's reasons in writing therefor, the award shall be determined by the Controller.
- (e) **Procurement of Vehicles for Use of City Officials and Employees.**
 - (1) When purchasing, leasing, or otherwise procuring passenger vehicles, including passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and including one ton in payload, departments shall request vehicles of the same functional type and passenger capacity approved by the Board of Supervisors in the budget.
 - (2) In evaluating vehicle purchase requests, the Purchaser is authorized to consider the price, durability, fuel efficiency, resale value, expected repair and maintenance cost, and all other factors, including options and accessories that may among other considerations enhance the safety and resale value of the vehicle and that bear directly on the total cost to the City of the vehicle in relationship to the service it will render.
 - (3) The Purchaser may develop sets of general specifications, including optional equipment, for purchases of compact, mid-size and full-size passenger cars or may specify vehicles by proprietary brand name when purchasing additional vehicles for an existing fleet. The specifications shall note the major items of standard equipment of such vehicles and may include, in the Purchaser's discretion, optional equipment which the Purchaser has determined should be ordered on City passenger cars. When procuring passenger cars, the purchaser shall include this group of options, to the extent possible, even if the department

which will use the car does not request them. If a department requests optional equipment that is not part of the Purchaser's group of options and which would cost in excess of a dollar limit to be set by the Purchaser in regulations, the department must either:

- (A) Itemize the equipment in the description of the vehicle itself, when the vehicle purchase is reviewed as part of the City's annual budget process, and obtain the Board's approval of the vehicle as equipped; or
- (B) Obtain the approval of the Mayor's Budget Office before submitting a requisition to the Purchaser.

REGULATION 21.03(e)(3): DOLLAR LIMIT FOR OPTIONAL EQUIPMENT IN VEHICLES

If a department requests optional equipment that is not part of the Purchaser's group of options and which would cost \$1,000 and below, it shall be the Purchaser's policy that the department must justify in writing to The Purchaser that the optional equipment is necessary in the course of the regular operation of the vehicle by the officer and/or employee using the vehicle.

If the requested item costs in excess of \$1,000, the department must satisfy the rules set forth in the Administrative Code, §21.03e(3)(A) or §21.03e(3)(B) as follows:

1. Itemize the equipment in the description of the vehicle itself when the vehicle purchase is reviewed as part of the City's annual budget process, and obtain the Board's approval of the vehicle as equipped; or
2. Obtain the approval of the Mayor's Budget Office before submitting a requisition to The Purchaser.

- (4) If a department desires to procure a passenger vehicle that is upgraded in terms of the functional type or capacity from what was approved in the budget, then the department must first obtain the approval of the Mayor's Budget Office before submitting a requisition to the Purchaser.
- (5) This section shall not apply to the procurement of mass transit vehicles over one ton or other specialized vehicles as defined in the Purchaser's regulations.

REGULATION 21.03(e)(5): DEFINITION OF SPECIALIZED VEHICLES

Specialized Vehicles are hereby defined as "vehicles other than passenger vehicles as described in Administrative Code §21.03(e)(1)." Passenger vehicles, as listed under this code, include passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and including one ton in payload.

- (f) **Payment procedures.** The Purchaser and Controller shall establish procedures to approve all

bills and vouchers for Commodities and Services. All approvals required pursuant to such procedures must be obtained before the Controller shall draw and approve warrants therefor.

- (g) **Storerooms and Garages.** The Purchaser shall have charge of a garage and shop for the repair of City equipment, and of the Purchaser's storerooms and warehouses for the City and the personnel assigned thereto.
- (h) **Leasing Of Equipment from Non-profit Corporations Without Competitive Bidding.** Notwithstanding any other provisions of this Code, the Purchaser is authorized to award a Contract, without issuing Solicitations, to a non-profit corporation for the leasing of equipment; provided, that the non-profit corporation has been formed for the purpose of aiding and assisting the City, and the formation of the non-profit corporation has been approved by resolution of the Board of Supervisors.
- (i) **Disposal of Surplus.** Commodities which have been determined to be surplus to City needs shall be disposed of in a manner which will best serve the interests of the City. For the purposes of this section, the interests of the City shall include the City's ability to maximize the City's economic return on surplus Commodities, the City's interest in maximizing the re-use of surplus Commodities by public entities, non-profit organizations and schools, and the City's interest in avoiding any unnecessary additions to the waste stream by maximizing the re-use and recycling of surplus Commodities. Disposal of surplus Commodities may include sales to, exchanges with, or donation to public entities, non-profit organizations, and private organizations for a public purpose, or donation to private entities for recycling of parts or materials. The Purchaser may maintain lists of all known local resources for transfer of surplus Commodities to public entities, non-profit organizations, and private organizations for a public purpose, and for the recycling of parts. The Purchaser shall have the authority to require the transfer of surplus property in any department to the Purchaser's stores or to other departments.
 - (1) The Purchaser shall have the authority to exchange used Commodities to the advantage of the City, to advertise for Bids, and to sell Commodities belonging to the City on the recommendation of a department head that such Commodities are surplus to the needs of the department.
 - (2) The Purchaser shall have the authority to donate obsolete, used or surplus Commodities if a department head states in writing that such Commodities are surplus to the needs of the department. The Purchaser shall document in writing each donation.
 - (A) Donations of Commodities meeting the criteria listed above may be offered to public entities, non-profit organizations, or private organizations serving the public. The order of priority for donations shall be to entities or organizations:
 - (i) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in San Francisco;

- (ii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in the Bay Area;
- (iii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in the United States;
- (iv) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in foreign countries;
- (v) Engaged in recycling the surplus Commodities, including parts or materials.

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

(C) To the extent that more than one organization meets the criteria in a category listed above, surplus Commodities shall be made available on a rotational basis to entities and organizations in the same category. If there is a need to dispose of surplus Commodities and no entity or organization meeting the criteria noted in Section 21.03(i)(2)(A) can be located to receive a donation, the Purchaser is authorized to utilize other means that may be available to dispose of such Commodities in a manner that will best serve the interests of the City.

(j) **Information Technology Purchases.** All contracts for the acquisition of information technology Commodities or Services shall be made by the Purchaser.

REGULATION 21.03(j): INFORMATION TECHNOLOGY (IT) PURCHASES

All Contracts for the acquisition of Information Technology Commodities or Services shall be made with approval by the Purchaser.

Purchasing Policies and Procedures for Information Technology Commodities and Services are available from the Information Technology Procurement Group in OCA at (415) 554-6743.

In general:

1. OCA may instruct departments to consult with DT in accordance with the City's CIO Review Policy.
2. Agreements for the development of software must include user acceptance testing of the software. Acceptance testing must consider the City's obligation

to comply with the Americans with Disabilities Act ("ADA"), and its associated rules and regulations.

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

(l) **Adjusting Scope and Compensation.** The Purchaser shall have the authority to renegotiate the scope of Commodities and Services agreements, and any terms and conditions pertaining thereto, in accordance with any applicable Charter requirements, to ensure continuity of operations, including timely delivery or performance of the Commodities and Services ordered. This authority derives from the ordinance in Board File No. 220392, enacting this subsection (l). Renegotiated terms shall be limited in duration and scope so as to allow the Purchaser adequate time to enter into a new contract as soon as practically possible. The amendment of a contract under this subsection (l) shall follow the City's standard rules and procedures for the approval of a contract.

(1) **Reports.** Upon sunset of this subsection (l) under subsection (2) and upon request, the Controller shall present a report of all contracts renegotiated under the authority of this subsection (l).

(2) **Sunset.** This subsection (l) shall expire by operation of law on July 1, 2023. Upon expiration of this subsection, the City Attorney is authorized to remove it from the Administrative Code.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. [9-11](#), File No. 101007, App. 1/7/2011; amended by Ord. [78-22](#), File No. 220392, App. 5/20/2022, Eff. 6/20/2022)

SEC. 21.04. DIRECT PURCHASING AUTHORITY OF DEPARTMENTS.

- (a) Department heads shall be authorized to purchase Commodities or Services directly and without the approval of purchasing, as provided in the Charter or Municipal Code of San Francisco, or in the following circumstances:
- (1) When such purchase is recommended by a department head and is approved by the Purchaser. The Purchaser's approval of direct department purchases may be for individual contracts or for classes of contracts anticipated to be required by the department.
 - (2) Departments may directly enter into contracts with other public entities for the purpose of fulfilling their governmental functions, which may include the provision or exchange of Commodities or Services incidental to the purpose of the contract.
 - (3) Departments may directly enter into contracts for the investment of trust moneys and agreements relating to the management of trust assets.
 - (4) Purchases of works of art or artifacts for museums or to display in public areas, specialized art restoration, insuring, transport, storage, curation and conservation services.
 - (5) The Risk Manager is authorized to purchase insurance and expert services in forms, amounts and by procedures as approved by the Board of Supervisors in the annual Risk Management Budget.
 - (6) The General Manager of the Public Utilities Commission may directly purchase water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission.
 - (7) Officers and employees of the City may contract directly for the provision of services related to travel required for official City business, subject to compliance with rules and regulations established by the approving department and the Controller for reimbursement of such expenses.
 - (8) When the purchase is made by the Director of Health under the authority of [Chapter 21A](#) of this Code.
- (b) Nothing in this section is intended to affect the authorities granted to departments elsewhere in this Code or in the Charter.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.05. POWERS OF DEPARTMENTS.

- (a) **Estimates of Requirements.** All departments shall file estimates of required Commodities and services at such time and in such manner as shall be determined by the Purchaser.
- (b) **Procurement of Professional Services.** Departments shall be responsible for defining the scope of a project for contracting purposes, establishing fair evaluation criteria and selection processes for Solicitations, and for the negotiation and award of contracts for Professional Services, with the assistance of the Purchaser and the City Attorney, provided, however, that:
 - (1) If a proposed contract for Professional Services includes the procurement of Commodities, then the department shall seek prior Purchasing approval of the Solicitation document; and
 - (2) The Director of Purchasing shall be the Contracting Officer for Professional Service contracts unless a Contracting Officer other than the Purchaser is authorized to enter into the contract directly.

REGULATION 21.05(b): PROCUREMENT OF PROFESSIONAL SERVICES

All departments must attach the P-600 (or other applicable) Checklist to the Professional Service Contract when the contracts are routed to the City Attorney’s Office and to OCA for approval.

OCA updates Checklists and the model contracts periodically as new laws or requirements are mandated. Departments must use the most updated Checklists and model contracts posted on the intranet or uploaded within PeopleSoft.

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

REGULATION 21.05(c): CANCELLATION OF PURCHASE CONTRACTS

Prior to termination for convenience or cause, departments must contact the City Attorney’s Office and OCA before initiating any processes. OCA may choose to issue the termination letter, or may allow the department to do so.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.06. ELECTRONIC TRANSACTIONS.

- (a) **Electronic Notification.** For purposes of this Chapter, if a requirement exists that a City official notify another City official of an event, or send a report to another City official, the official with that responsibility may use Electronic notification, rather than a physical document, to effect the notice.
- (b) **Electronic Filing.** For purposes of this Charter, if a requirement exists that a City official keep a copy of a form or a document, the official may keep an Electronic record rather than a physical document, provided that the electronic record contains at least as much information as the physical form or document would have contained. Any departmental record retention policies applicable to physical records also apply to the corresponding Electronic records.
- (c) **Other Electronic Transactions.** Where the Purchaser, in consultation with the Department of Telecommunications and Information Services and COIT, determines that the technology exists to provide assurance of authentication, message integrity, and nonrepudiation through secure and reliable Electronic transactions, the Purchaser may establish regulations for the use of Electronic transactions under this Chapter, including authorization, approval or execution of documents, placing orders with Contractors, receiving Offers, making determinations, or providing notice. Such regulations shall include appropriate security to prevent unauthorized access to the Solicitation, Offer, approval and award processes, and accurate retrieval and/or conversion of Electronic forms of such information into a medium that permits inspection and copying.

REGULATION 21.06(c): OTHER ELECTRONIC TRANSACTIONS

The Purchaser supports the use of technology to reduce the cost of procuring Commodities and Services and to streamline the procurement process.

All departments must obtain Purchasing approval prior to implementing any system that uses technology or electronic methods to procure Commodities or Services.

The Purchaser may allow appropriate business-to-business systems that meet citywide information technology standards as promulgated by COIT and DT.

The Purchaser may require independent verification that the applications meet citywide standards.

The use of electronic methods to procure Commodities or Services does not excuse the department from meeting Administrative Code requirements that would normally be in effect if the procurement was made by traditional methods. The department must continue to adhere to Administrative Code requirements with any technology solution or electronic procurement that is implemented, including but not limited to:

- Chapter 12B (Nondiscrimination in Contracts),
- Chapter 12T (Consideration of Criminal History in Hiring),

- Chapter 12G (Prohibition on Use of Public Funds for Political Activity by Recipients of City Contracts, Grants, and Loans),
- Chapter 12P (Minimum Compensation Ordinance (MCO)),
- Chapter 12Q (Health Care Accountability Ordinance (HCAO)),
- Chapter 12U (Sweatfree Contracting),
- Chapter 12X (Prohibiting City Travel and Contracting in States that Allow Discrimination Against LGBT Individuals),
- Chapter 14B (Local Business Enterprise Utilization),
- Chapter 21 (Acquisition of Commodities and Services), and
- Chapter 83 (First Source Hiring Program).

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.1. COMPETITIVE SOLICITATION REQUIRED.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.2. ADVERTISING SOLICITATIONS.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.3. COMPETITIVE SEALED BIDDING.

- (a) **Invitation for Bids.** Except as otherwise authorized in this Code, for any Commodity or General Services purchase estimated to cost in excess of the Minimum Competitive Amount, an invitation for Bids shall be issued to solicit Bids and shall include a purchase description and all contractual terms and conditions applicable to the procurement, including a reservation of the City's right to reject all Offers.
- (b) **Bid Opening.** Bids shall be opened publicly by the Contracting Officer at the time and place designated in the Invitation for Bids in the presence of all Bidders who attend. Relevant information as the Purchaser may specify by regulation shall be recorded. Except for materials protected from disclosure pursuant to Administrative Code Section 67.24, the record and each Bid shall be open to public inspection following Bid opening.

REGULATION 21.3(b): COMPETITIVE SEALED BIDDING: BID OPENING

For Commodities and General Services in excess of the Minimum Competitive Amount, pursuant to Administrative Code §21.3(b), the Contracting Officer shall open Bids publicly at the time and place designated in the Invitation for Bids in the presence of all Bidders and interested members of the public who attend. Additionally, it shall be the Purchaser's regulation that all bids must be manually or electronically dated and time stamped upon receipt. The Contracting Officer shall publicly open bids, which were received on or before the submittal deadline, at the time and place designated in the Invitation for Bids, in the presence of all bidders and other interested parties who attend. Bids that are received after the submittal deadline shall be marked as "Late" and shall not be opened at the bid opening and shall not be considered for award. The Contracting Officer shall record the following information at the bid opening, either manually or electronically:

- Date/time of opening*
- Bid number (if available)
- Bid title
- Bidder names
- Other bid document requirements as appropriate (i.e. Bid Security, 14B, date and time bid received, etc.)
- Name of City employees who opened the bids.

* Those bids delivered outside of an electronic ("e Procurement") system will be dated and time-stamped manually. All other bids will be electronically dated and time-stamped.

- (c) **Bid Evaluation.** Bids shall be evaluated based on the requirements and specifications set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the Bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, conversion costs and total or life cycle costs.
- (d) **Correction, Withdrawal, or Rejection of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous Bids before or after award, or cancellation of awards or

contracts based on such Bid mistakes, shall be permitted in accordance with regulations promulgated by the Purchaser. After Bid opening, no changes in Bid prices or other provisions of Bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of Bids, or to cancel awards or Contracts based on Bid mistakes, shall be supported by a written determination made by the Purchaser. The Purchaser may reject all Bids at any time prior to award.

REGULATION 21.3(d): CORRECTION, WITHDRAWAL, OR REJECTION OF BIDS; CANCELLATION OF AWARDS

Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, under Administrative Code §21.3(d), shall be permitted in accordance with the following regulations:

General:

The Contracting Officer shall maintain complete and sufficient written records of bid corrections, withdrawals, or rejections and cancellations of award to ensure that there is no abuse of the bidding process. All such written records shall be retained in the bid file. The Purchaser may reject any and all bids at any time prior to award.

Every bid subject to award shall be carefully examined to ensure compliance with the written specifications and confirm submission of all required documents. Any bid that materially deviates from the bid requirements shall be rejected.

Correction of a bid before bid opening:

The Contracting Officer shall allow any bidder to amend its bid before the submission deadline by submitting an amended bid on or before the bid submission deadline.

Correction to a bid before award:

The Contracting Officer may waive any immaterial irregularity, defect or technicality in any bid received. A bid variation that has either no effect, or only a trivial effect, on price, quantity, quality or delivery is immaterial. Failure to furnish the requested number of copies of bid, corrections of typographical errors and grammatical mistakes, the omission of or mistakes in unit price extension, transposition errors, and mathematical mistakes are common examples of trivial or immaterial bid variations. Any bid variation that affects price, quantity, quality or delivery in any manner that is more than trivial, is material and cannot be waived.

Withdrawal of a bid before award:

The City may allow the withdrawal of a bid prior to award upon written request of the bidder. The written request must include the circumstances and the reasons for the request. The City must evaluate the bidder's reasons for withdrawal, the requirements of the bid,

and the impact of such withdrawal to the City. Withdrawal of a bid, if properly justified, should not unreasonably be denied.

- (e) **Award.** Except for a showing of good cause, a Contract shall be awarded not less than five (5)-working days after Bid opening by written notice to the lowest responsible and responsive Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids. In the event that all Bids exceed available funds and the lowest responsible and responsive Bidder does not exceed such funds by more than ten percent (10%), the Purchaser is authorized in situations where time and economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the Bid price, including changes in the Bid requirements, with the low responsive and responsible Bidder, in order to bring the Bid within the amount of available funds.
- (f) **Awards in the Public Interest.** If the Purchaser finds that the public interest would be best served by **accepting** other than the lowest total or unit price the Purchaser is authorized to accept the Bid(s) that in the Purchaser's opinion will best serve the public interest, to make the awards and to enter into the necessary contracts. Prior to making an award to a Bidder other than the lowest Bidder(s), the Purchaser shall submit a written statement of the basis for the finding to the Director of Administrative Services.
- (g) **Additional Purchases.** Where the quantity of Commodities or General Services to be provided under a contract is fixed, the Contracting Officer may, within one year after award and subject to the Contractor's consent, purchase additional quantities of the specific Commodities or General Services for which award was made at the award price or a lower price, in accordance with the Purchaser's regulations.

REGULATION 21.3(g): ADDITIONAL PURCHASES

It shall be the Purchaser's regulation for Administrative Code §21.3(g) that additional purchases of the same or like Commodities or General Services provided under the original contract are allowed under the following circumstances:

Same Items:

- 1. Additional purchases at the award price or a lower price may be added by mutual agreement of the parties.
- 2. All requests to make additional purchases must be submitted by City Departments in writing to Purchasing for approval.
- 3. All additional purchases shall be memorialized in a written contract modification or a purchase order. The new purchase order must reference a previous competitive bid and cite Administrative Code §21.3(g) as the authority.
- 4. Additional purchases must be made within one year after original award.

New Items (Term Contracts):

- 1. Additional items may be added to a term contract by mutual agreement of the parties.

2. The aggregated cost of all new items added to the contract during the contract term shall not exceed 20% of the total estimated value (cost) of the original contract or Minimum Competitive Amount, whichever is less.
3. All requests to add new items to the contract must be submitted by City departments in writing to Purchasing. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by supplier, for each item. Price must be competitive and will be reviewed by Purchasing.
4. All new items added to the contract shall be approved through issuance of a contract modification.
5. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than the Minimum Competitive Amount, the excess of these limits shall be bid in accordance with Standard Purchasing Procedures. The resulting bid award shall be added to the contract (or separate contracts), through a contract modification and include Contractor's name and information, complete item description (brand name and number, if applicable), and delivery and pricing information.
6. The contract term for the new items added to the contract after the initial award shall be the remaining term of the existing contract and any extension thereof.

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

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

REGULATION 21.3(i): BID PROTESTS
 Bid protests of contracts awarded under §21.3 of the Administrative Code for purchases of Commodities or General Services in excess of the Minimum Competitive Amount shall be submitted and responded to in accordance with the following requirements:

General Requirements:
 All protests shall be in writing, dated, and state in detail each and every ground asserted for the protest. Each protest must cite the law, rule, local ordinance, procedure or bid provision on which the protest is based. To expedite the handling of protests, the envelope or email containing the protest shall be marked "PROTEST." Failure to file a protest within three (3) business days shall waive all rights to protest. Protests shall be made to the Contracting Officer. The Contracting Officer shall notify the protester in writing of the decision regarding the protest.

Protest of Bid Requirements:
 Protests based on the bid specifications or requirements must be received by the Contracting Officer requesting the bids within three (3) business days prior to the deadline

for submission of bids. Bidders who fail to protest by the deadline shall waive all rights to protest the bid based on specifications or requirements.

Protest of Non-responsive and Non-responsible Bidders:

If the Contracting Officer determines that the apparent lowest bidder is either non-responsive or non-responsible, the Contracting Officer shall reject the bid. The Contracting Officer shall notify the bidder in writing that the bid has been rejected, and state the basis for the rejection. The bidder may protest the Contracting Officer's decision. The protest must be in writing and received by the Contracting Officer within three (3) business days of the issuance of the notice of Non-responsiveness and/or Non-responsibility. If a bid and a subsequent protest are rejected for non-responsibility, the Contracting Officer must inform the bidder that they shall have an opportunity for a hearing on the issue of non-responsibility if requested. There is no appeal on the denial of a protest based on a non-responsive bid.

Protest of Award:

A bidder may protest the Contracting Officer's award of a contract to an apparent lowest responsive and responsible bidder. The protest must be in writing and received by the Contracting Officer within three (3) business days of issuance of a notice of intent to award the contract. The Contracting Officer will review the protest and respond in a timely manner.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.

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

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

(c) **Requests for Qualifications.** The Purchaser may issue a request for qualifications ("RFQ") to determine the qualifications of prospective Contractors for particular types of Commodities and/or Services to the City. A department may issue a RFQ to determine the qualifications of prospective Contractors for Professional Services to be provided to that department.

(d) **Prequalified Lists.** The Purchaser may maintain City-wide lists of prequalified contractors for Commodities and Services as follows:

(1) Except as provided in subsection (2) below, prequalification may be for the following purposes:

(A) maintaining a list of prequalified entities from which Contracting Officers may issue a further Solicitation for future contracts as needed by the City, or

(B) the selection of the highest available ranked Contractor(s) based on ranking of responses to an RFQ.

(2) For Contracts less than or equal to the Minimum Competitive Amount, selection of a Contractor(s) for a particular contract may be made without the use of a further Solicitation provided that the department selecting from the prequalified list shall notify other prequalified list members for that contract and document the selection process. At a minimum, the written documentation shall address the following:

(A) The Commodities and/or Services required to meet the department's needs;

(B) The proposed Contractor's unique qualifications or experience to provide the Commodities and/or perform the Services, or why the nature of the Commodities and/or Services requires use of the Contractor; and

(C) The anticipated cost to the City and the department's determination that such cost will be in the best financial interest of the City.

The department shall maintain the selection documentation for at least three years after termination or expiration of the contract. The Controller shall periodically audit the procurement of these prequalified list contracts as provided in Charter Section F1.106.

(3) Except as provided below, prequalification shall be valid for not more than two years following the date of initial prequalification. Prequalification may be valid for not more than four years so long as both the following two conditions are met:

(A) The City re-opens the list by reissuing the same RFQ within two years of the original RFQ; and,

(B) The City uses the same panel of evaluators to score the responses to the RFQ.

Entities included on the list of prequalified entities pursuant to the original RFQ shall not be required to re-qualify under the re-issued RFQ, but may choose to submit updated information regarding their qualifications when the RFQ is re-issued. A list of prequalified entities may only be extended once under this subsection (d)(3) and may not be used for more than four years from the issuance of the original RFQ.

REGULATION 21.4(c): INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS

Extending The Useful Life of Pre-Qualified Lists:

A prequalified pool may be extended up to four years if the original two-year pool is reopened to new qualified vendors by reissuing the same RFQ and using the same panel of evaluators. Deviating from the exact criteria or same evaluators could result in an unfair process.

To utilize the pool for four years, the Reissuance of the RFQ must occur within 15 to 24 months of the publication of the original prequalified list.

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

REGULATION 21.4(d)(e): CONTENT FOR REQUESTS FOR PROPOSALS

To maximize fair and open procurement, Requests for Proposals should give all potential proposers a chance to understand the specific Services the City requires, the anticipated duration of the business opportunity, and the expected compensation.

In general, RFPs should provide estimates of contract duration and expected and possible maximum dollar value. In reviewing contract awards and potential contract amendments, OCA will review the procurement to ensure there is a reasonable relationship between the anticipated and actual final contracts.

Departments should consult with their designated City Attorney regarding RFP content prior to issuance.

The guidance given for this regulation regarding RFPs may also be applied to the development of an RFQ.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. [142-16](#), File No. 160667, App. 7/29/2016, Eff. 8/28/2016; Ord. [255-20](#), File No. 200787, App. 12/18/2020, Eff. 1/18/2021, Oper.1/18/2021)

SEC. 21.5. OTHER PURCHASES.

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

- (a) Commodities or services where the total amount of the purchase does not exceed the Minimum Competitive Amount. It shall constitute official misconduct to divide any proposed procurement in excess of the Minimum Competitive Amount into two or more units for the purpose of evading this Code's competitive solicitation requirements.

REGULATION 21.5(a): OTHER PURCHASES: COMMODITIES AND SERVICES LESS THAN THE MINIMUM COMPETITIVE AMOUNT

In reference to Administrative Code §21.5(a), the following regulations shall apply to the acquisition of Commodities, General Services and Professional Services where the total amount of the transaction is less than the Minimum Competitive Amount.

Department heads and their designees who have complied with Regulation 21.03(a) and have been delegated by the Purchaser may purchase Commodities and General Services up to \$10,000 (including tax and shipping).

Commodities

- \$0 - \$10,000 – no bidding is required. However, departments are encouraged to solicit three (3) written bids or written price quotations, especially from LBEs, and select the lowest responsive and responsible bidder.
- For procurement of Commodities over \$10,000 but less than the Minimum Competitive Amount, departments must submit a requisition to OCA. Purchasing approval is required to authorize purchases; and transactions for these amounts are covered by regulations delegating signature authority to Purchasing staff.
- Formal competitive bidding is required for any amount over the Minimum Competitive Amount, unless otherwise exempted under Chapter 21.

General Services

General Services are those services that are not Professional Services. Examples of General Services per Administrative Code §21.02 include: janitorial, security guard, pest control, parking lot attendants and landscaping services.

- \$0 - \$10,000 – no bidding is required. However, departments are encouraged to solicit three (3) written bids or written price quotations, especially from LBEs, and select the lowest responsive and responsible bidder.
- Over \$10,000 but less than the Minimum Competitive Amount – Purchasing conducts informal bidding in accordance with Purchasing and CMD requirements.
- The Minimum Competitive Amount or more – Purchasing conducts formal bidding in accordance with Purchasing and CMD requirements.

Professional Services

Professional Services are those services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an

advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of professional service providers per Administrative Code §21.02 include architects, engineers, software developers, attorneys, consultants, physicians and dentists.

- \$0 - \$10,000 – no solicitation is required. However, departments are encouraged to solicit three (3) written bids or written price quotations, especially from LBEs, and select the lowest responsive and responsible bidder.
- Over \$10,000 but less than the Minimum Competitive Amount – informal solicitation is required. Departments are to follow the informal bidding rules established by CMD under the Administrative Code and Chapter 14B rules and regulations.
- The Minimum Competitive Amount or more – a formal solicitation is required. Departments are to follow the formal bidding rules established by CMD as set forth in the definition of “Good Faith Efforts” of a contract awarding authority (see Administrative Code Chapter 14B.7).

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

REGULATION 21.5(b): SOLE SOURCE

Administrative Code §21.5(b) provides that Commodities or Services available only from a sole source shall be procured in accordance with the Purchaser’s regulations. It shall be the Purchaser’s regulations that if a department requires a commodity or service which is unique and which is known to be provided by only one vendor/contractor, then only one price quotation is solicited from the single vendor/contractor. The requesting department must submit the “Sole Source Waiver Request” (Form P-21.5(b)) form to Purchasing justifying the transaction as a sole source. From time to time, Purchasing may conduct a formal solicitation to determine the continuing validity of the sole source determination.

Sufficient Documentation

In submitting a Sole Source Waiver Request, the requesting department must provide a written memorandum and supporting documentation to justify the request. The memorandum must provide specific and comprehensive information that explains why the Sole Source Waiver should be approved. Departments are encouraged to consult with CMD prior to submitting the Waiver Request.

The Sole Source Waiver request form identifies four acceptable justifications for Sole Source contracting. In most cases, the department’s justification for making a waiver request should fall within these parameters. If not, additional space has been provided for departments to submit other justification. Among the questions and concerns that must be addressed are as follows:

- Goods or Services are available from only one source – Explain why this is the only product or service that will meet the City’s needs. Why is this the only vendor or contractor that can provide the product or service? What steps were taken to verify that the goods or services are not available from another source? Explain what efforts were made to obtain the best possible price. Why do you consider the price to be fair and reasonable?

- Only one prospective vendor is willing to enter into a contract with the City – Explain why no other vendors are willing to contract with the City. If there are compliance issues, what have you done to get other possible sources to become compliant? Have you received a waiver from CMD?
 - Item has design and/or performance features that are essential to the department and no other source satisfies the City’s requirements – Explain why the design/performance features are essential. Have you contacted other vendors/contractors to evaluate items/services with similar features and capabilities? If no, explain why not. If yes, list the suppliers and explain why their goods or services do not meet the department’s needs.
 - Licensed or patented good or service – Provide proof that the license or patent limits the availability of the product or service to only one source.
Other Provide a justification that would substantiate a Sole Source Waiver for any other reason.
- Finally, the requestor and department head, or his or her designee, must be a signatory to the request. Their signature certifies that they have reviewed the specific Sole Source Waiver Request and agree with the requestor’s justification.

(c) Perishable foods.

REGULATION 21.5(c): PERISHABLE FOODS

Administrative Code §21.5(c) provides that perishable foods shall be procured in accordance with the Purchaser’s regulations. It shall be the Purchaser’s regulations that when purchasing perishable foods, the Contracting Officer shall attempt to comply with competitive bidding requirements of this Chapter. However, when the situation arises where it is impossible or highly impractical to obtain competitive pricing because of the nature of perishable foods; i.e., freshness and spoilage of perishable items, the Purchaser may procure the items in the most expeditious manner. The Purchaser shall require the requesting department to provide a written justification of the perishable nature of the items and why competitive bidding should be waived. A copy of the justification shall be kept on file with the transaction.

(d) Proprietary articles.

REGULATION 21.5(d): PROPRIETARY ARTICLES

Administrative Code §21.5(d) provides that proprietary articles shall be procured in accordance with the Purchaser’s regulations. It shall be the Purchaser’s regulations that purchasing uses the terms “proprietary” and “no substitute” to mean purchases that are made where no alternate brand or model will be considered or accepted.

“Proprietary” purchases:
The item must be the one described in the current Proprietary List. Although an item may be considered proprietary, **it may still be subject to competitive bidding if there is more**

than one source of supply for that item. If the item is put out to bid, alternate brands and models need not be considered. Purchasing periodically accepts bids for alternate brands to monitor the appropriateness of continuing to consider certain purchases proprietary.

All proprietary purchases must be justified with documentation on department letterhead from the requesting department and must be approved by the Purchaser within his/her approval limits. The documentation must clearly state why only one make or model will meet the department’s needs. Proprietary purchases should also include documentation that clearly explains the nature of the proprietary rights involved.

Below is a list of approved proprietary articles and their corresponding descriptions. Purchasing may revise the list from time to time as requirements change.

Proprietary (PROP) Number	Descriptions
1	Charts, globes and maps.
2	Books, magazines, pamphlets, periodicals, online content agreements and streaming services containing proprietary content.
3	Specialized equipment, materials and supplies for instructional purposes. Specialized educational tests and testing services.
4	Fine arts; music; plays; works of art; films; audio and video cassettes; etc.
5	Medicines and drugs.
6	Medical, surgical and dental equipment; instruments; prosthetic devices, special supplies
10	Animals.
12	Repairs for equipment, including service and parts when repairs must be done by the manufacturer, the installer of equipment or system, or when repairs by others would void the warranty.

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

REGULATION 21.5(e): PILOT PROJECT

Administrative Code §21.5(e) provides that contracts involving a pilot project with a term not to exceed two years shall be procured in accordance with the Purchaser’s regulations.

Some business problems offer unique challenges where the use of competitive bidding requirements of this Chapter may not be appropriate. For instance: the department may not know what the final outcome of the procurement will look like, and there is a need to engage in an experimental exploration process.

A different procurement method is allowed for a pilot project. A department may initiate a pilot project procurement by making a request to the Purchaser specifying the problem to

be solved and the reason why a competitive process is not being used. The request must also specify how competition, fairness, and compliance with other OCA requirements for bidding will be achieved, and how the pilot will allow the department to develop evaluation criteria for a competitive solicitation in the future. The Purchaser will evaluate the request and shall either approve or deny the request. At the end of the pilot term, within 90 days, the requesting department must submit a report stating the results of the project with recommendations for future procurement. If the pilot includes the creation of any work that may be copyrighted or patented, the Purchaser, in cooperation with the requesting department, shall determine if it is advantageous to obtain the rights of ownership or rights to use the work. Any further procurement beyond the pilot project phase shall be subject to all applicable competitive procurement requirements.

If the service or product can practicably be acquired through a competitive process, it should be procured in this manner regardless of the department's intent to utilize the service or product only on a pilot basis. Pilot Projects should not be used to circumvent the competitive solicitation process.

- (f) Contracts set aside for competitive award to Micro-LBEs in accordance with Chapter 14B.7(K) of the Administrative Code.
- (g) Commodities or Services purchased with federal grant funds when an informal solicitation is consistent with Federal contracting requirements. Federal grant funds include federal monies awarded to the City through the state or other governmental entities. This subsection does not cover Commodities or Services identified by the grant as an administrative or management cost or expense.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. 296-04, File No. 041450, App. 12/24/2004; Ord. 17-10, File No. 091162, App. 2/10/2010; Ord. 35-10, File No. 091231, App. 2/18/2010; Ord. [9-11](#), File No. 101007, App. 1/7/2011)

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

When a Contracting Officer issues a Solicitation for Commodities and/or Services and no responsive and responsible Offers are received, the Contracting Officer shall review the Solicitation to determine whether the Solicitation could be altered and reissued in a manner that would be likely to attract responsive offers. If the Contracting Officer determines that the lack of responsive Offers is not due to the content of the Solicitation, the Contracting Officer may purchase the Commodities or Services called for from any source. If two or more Bids received are for the same amount or unit price and Such Bids are the lowest Bids from responsive and responsible Bidders, then the Contracting Officer may award a contract to either of the lowest responsive and responsible Bidders in accordance with the Purchaser's regulations.

REGULATION 21.6: MULTIPLE LOW OFFERS

Pursuant to Administrative Code §21.6, if two or more bids received are for the same amount or unit price and such bids are the lowest bids from responsive and responsible bidders, then the Contracting Officer may award a contract to either of the lowest responsive and responsible bidders.

It shall be the Purchaser's regulations that to resolve tie bids, the following criteria shall be applied in sequence until a tie bid is resolved:

1. If there is any doubt as to quality, performance or functionality, a specified item receives consideration over an alternative.
2. A San Francisco bidder receives consideration over an out-of-town bidder.
3. Delivery time – Any significant difference, e.g., 3 days vs. 3 weeks.
4. Tie bid items should be aggregated with the items that are being awarded to one of the bidders. For example, if a bidder is low on several items and is in a tie on one item, do not award the tied item to another vendor if the result will add an additional vendor to the contract.
5. A California bidder receives consideration over an out-of-state bidder.
6. The Contracting Officer and the user department, at their sole discretion, may divide the award subject to the mutual agreement of the tied bidders.
7. As a final resort, the Contracting Officer may roll a die. The tied bidders must be notified and invited to attend the tiebreaker event. The highest rolled number will indicate the successful bidder. A second representative of the awarding department must be present to witness the event. Adequate documentation of the award must be maintained in the file.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.7. REJECTION AND READVERTISING FOR PROPOSALS.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.8. MULTIPLE AWARD CONTRACTS.

- (a) **Generally.** A Contracting Officer may award contracts to more than one Offeror if the Contracting Officer determines that it is in the City's best interest to have more than one Contractor provide one or more similar Commodities and/or Services and the Solicitation states that the contract may be subject to multiple award. The Contracting Officer may either require all multiple award contractors to do business with the City under a single set of terms and conditions, or if the Solicitation is made by means of a request for Proposals, may negotiate separate terms and conditions with each Offeror for specified Commodities and/or Services. Following multiple award and in the administration of multiple award contracts, the Contracting Officer shall use best efforts to fulfill the policies of Chapter 14B of this Code.
- (b) **Technology Store.** Any department or other entity ordering Commodities or Services through the Technology Store shall pay an administrative fee of up to one and nine tenths percent (1.9%) of the total purchase price of Commodities and Services purchased through the Technology Store. Such administrative fee shall be used solely to pay the City's actual costs of administering the Technology Store contracts for the benefit of City departments.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. [9-11](#), File No. 101007, App. 1/7/2011)

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

- (a) A contract for multiple years or with options to extend the term or renew the contract may be used when:
- (1) The City anticipates that the need for acquisition of the Commodities or Services that are the subject of the contract will extend beyond a single fiscal year in the case of multiple year contracts, or beyond the initial contract period in the case of renewals or extensions of contracts; and
 - (2) The initial term of the contract and conditions for renewal or extension are included in the Solicitation, which Solicitation shall not provide for renewals or extensions of the contract for a period in excess of 10 years from the date of the initial contract; and
 - (3) Funds are available for the first fiscal year at the time of contracting; and
 - (4) Payment and performance obligations for succeeding fiscal years are made subject to the appropriation of funds for the contract.
- (b) Departments are prohibited from entering into contracts involving expenditure of City funds with provisions that would automatically renew the contract term without further action by the City.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.10. BOND MAY BE REQUIRED.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.11. BID SECURITY.

If required by the Contracting Officer in the Solicitation, an Offer shall be accompanied by a deposit in the form of a certified or cashier's check on a solvent bank, or money order, or bid bond, payable on sight to the City in the amount fixed in the Solicitation, which amount shall not exceed 10 percent of the estimated cost of the Commodities or Services to be furnished. However, any regular or continual offeror may, in lieu of the deposit above mentioned, file a corporate surety bond in an amount to be fixed by the Controller to serve as security for a period of at least one year that the Offeror will enter into the contract, and during the contract period, furnish any required performance bond for any and all contracts awarded to that Offeror, with provision for forfeiture under the surety bond in any case of failure, neglect, or refusal to do so. The Controller may delegate to the Risk Manager the authority to fix the amount of corporate surety bonds for such types of Commodities or Services contracts and in such amounts as the Controller deems appropriate.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. [165-13](#), File No. 130540, App. 8/2/2013, Eff. 9/1/2013)

SEC. 21.12. APPROVAL OF SURETIES.

The Controller shall approve the sufficiency of assets and qualifications of all sureties submitting any bond or security which is required under the provisions of Section 21.10 and 21.11 of this Chapter. The Controller may delegate to the Risk Manager the authority to approve the sufficiency of assets and qualifications of sureties for such types or classes of agreements requiring surety or security bonds and in such amounts as the Controller deems appropriate.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. [165-13](#), File No. 130540, App. 8/2/2013, Eff. 9/1/2013)

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

If any Offeror to whom a contract is awarded under the provisions of this Charter shall fail to file any required bond within 10 working days after receiving notice to file such bond, the Purchaser may deposit any security required to be filed under the provisions of Section 21.11 of this Chapter in the treasury for collection. The amount thereof shall be retained by the City as liquidated damages for failure of the Offeror to file such bond. Neither the deposit nor the proceeds thereof shall be returned to such defaulting Offeror; provided, however, that upon the recommendation of the department utilizing the Commodities or Services to be provided under the contract, the Purchaser may approve the return of the amount of the Bid security to excuse a forfeiture under such Bid security.

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

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

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.14. CONTRACTORS REQUIRED TO OBTAIN BUSINESS TAX REGISTRATION CERTIFICATE.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.15. EMERGENCY PROCUREMENT PROCEDURES.

(a) The Board of Supervisors hereby declares that an actual emergency shall exist when it becomes necessary to immediately procure Commodities or Services to make repairs, to safeguard the lives or property of the citizens or the property of the City or to maintain public health or welfare as a result of extraordinary conditions created by war, epidemic, weather, fire, flood, earthquake or other catastrophe, or the breakdown of any plant equipment, structure, street or public work.

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

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

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

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. [220-20](#), File No. 200949, App. 11/6/2020, Eff. 12/7/2020)

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

- (a) Notwithstanding any other provisions of this Municipal Code, in cases where the Purchaser deems that it is in the City's best interests to do so, the Purchaser is authorized, subject to the Board of Supervisors' approval by Resolution, to sell to, acquire from, participate in, sponsor, conduct or administer cooperative purchasing agreements with or made available by any public agency or non-profit made up of multiple public agencies in California or elsewhere, and may enter into reciprocal agreements with such agencies for the cooperative use of Commodities or Services or the common use or lease of facilities, under the terms agreed upon between the parties.
- (b) Notwithstanding any other provisions in this Municipal Code, the Purchaser may utilize the competitive procurement process of any other public agency or non-profit made up of multiple public agencies to make purchases of Commodities or Services for the use of the City under the terms established in that agency's competitive procurement process and as agreed upon by the City and the procuring agency, upon making a determination that (i) the other agency's procurement process was competitive or the result of a sole source award, and (ii) the use of the other agency's procurement would be in the City's best interests.

REGULATION 21.16(b): USE OF COOPERATIVE AGREEMENTS AND CONTRACTS HELD BY OTHER GOVERNMENT AGENCIES

In some circumstances, City departments may use or “piggyback” off the procurement process of another public agency or non-profit cooperative made up of multiple public agencies to purchase Commodities or Services for the City under the terms established in that agency's competitive procurement process and as agreed upon by the City and the procuring agency. In these instances, departments must conduct due diligence before requesting approval from the City Purchaser pursuant to Section 21.16(b).

Piggybacking may be permitted if a department wishes to buy the same Commodities or Services detailed in another agency’s solicitation. Professional services require a degree of discretion that renders a procurement unique, and piggybacking off of another procurement is generally not appropriate.

In order for the Purchaser to evaluate if the request conforms with the requirements of the Code, departments must submit a piggyback justification memorandum to the Purchaser that assesses the following items:

- An overview of the competitive process or sole source process utilized by the cooperative agency, other government entity in procuring the contract;
- Why the pricing offered under the contract is better than what the City can otherwise obtain, or that the administrative benefits of using the contract outweighs any likely cost difference;
- An assessment of whether piggybacking will materially hinder the City’s ability to meet its LBE participation goals;

- A summation of any fees that must be paid by the City to the entity that established the contract in question.
- A description of due diligence undertaken prior to seeking a piggyback approval, including but not limited to:
 - Comparing the contracts available for the required product or service, conducting market research, and evaluating whether the use of another agency's contract is in the best interest of the City.
 - Reviewing the contract for conformance with applicable laws and best practices.
 - Analyzing the product or service specifications, price, terms and conditions and other factors such as: cost to utilize the contract, shipping, minimum spending requirements, and availability of contract documentation, to ensure that the contract produces best value.
 - Contacting the lead agency to verify contract application and eligibility.

Departments should also include the full competitive solicitation of the other agency that they seek to use in any justification memorandum.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 115-05, File No. 050595, App. 6/17/2005)

SEC. 21.17. CONTRACTS TO BE IN WRITING.

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

REGULATION 21.17: CONTRACTS TO BE IN WRITING

Contracts must be in a form approved or pre-approved by the Purchaser and City Attorney. Agreements without the proper approval shall be null and void. Examples of unapproved contracts include but are not limited to: Click-wrap or click through license agreements, end user license agreements, and/or generally contracts agreed to by personnel not authorized to bind the City to obligations.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

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

At a minimum, all Purchasing contracts, excluding Purchase Orders and contracts executed electronically, shall be executed in triplicate. One original shall be retained by the ordering department, one original shall be retained by the Purchaser, and one original shall be provided to the contractor.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.19. CONTRACT TERMS – GUARANTEED MAXIMUM COSTS.

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

- (a) The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- (b) Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- (c) Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- (d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.20. CONTRACT TERMS – INSURANCE.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.21. CONTRACT TERMS – INFRINGEMENT INDEMNITY.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.22. CONTRACT TERMS – ASSIGNMENT.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.23. CONTRACT TERMS – INCIDENTAL DAMAGE WAIVERS; LIABILITY CAPS.

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

- (a) Whether, in light of insurance and bond requirements, the performance of the contract is likely to create undue risk of damages to the City;
- (b) Whether the language proposed in the contract waiving future claims to incidental and consequential damages or limiting the contractor's liability for damages caused by the contractor's negligence is standard in the industry to which the contract relates;
- (c) The best interests of the City.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.24. SHORT-TERM CONTRACT EXTENSIONS.

(a) **Extension.** For agreements that expire on or before July 1, 2023, and for which no remaining purchasing authority exists, Departments are authorized to extend agreements for a period of 12 months and to increase the not-to-exceed amount of the agreement as necessary given the extension duration, in accordance with any applicable Charter requirements, but without complying with the competitive solicitation and procurement procedures in this Chapter 21. This authority derives from the ordinance in Board File No. 220392, enacting this Section 21.24. The amendment of a contract shall otherwise follow the City's standard rules and procedures for the approval of contracts.

(b) **Reports.** Upon sunset of this Section 21.24 under subsection (c) and upon request, the Controller shall present a report of all contracts extended under the authority of this Section.

(c) **Sunset.** This Section 21.24 shall expire by operation of law on July 1, 2023. Upon expiration of this Section, the City Attorney is authorized to remove it from the Administrative Code.

(Added by Ord. [78-22](#), File No. 220392, App. 5/20/2022, Eff. 6/20/2022)

(Former Sec. 21.24 added by Ord. 156-99, File No. 990743, App. 6/2/99; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25. RESERVED.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25-1. RESERVED.

(Added by Ord. 222-99, File No. 990877, App. 8/6/99; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25-2. RESERVED.

(Added by Ord. 3-03, File No. 021504, App. 1/24/2003; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25-3. RESERVED.

(Added by Ord. 76-04, File No. 021505, App. 5/6/2004; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25-5. RESERVED.

(Added by Ord. 299-06, File No. 061468, App. 12/12/2006; Ord. 5-07, File No. 061584, App. 1/19/2007; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.25-x. RESERVED.

(Added by Ord. 169-04, File No. 040540, App. 7/22/2004; Repealed by Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.26. CONTRACT TERMS – IN-HOME SUPPORTIVE SERVICE REQUIREMENTS.

In the case of any contract for homemaker and chore Services to be awarded pursuant to California Welfare and Institutions Code Sections 12300 et seq., the Purchaser, on the recommendation of the department head concerned and the approval of the board or commission in charge of such department, upon the ground that the public interest would be best served by requiring the inclusion of such provisions in the contract, shall require that each Offeror, as part of its Offer, submit a certified semi-annual audit, and further shall require each offeror to give preference to those homemakers employed under the previous contract to ensure continuity of wages, fringe benefits and seniority rights.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.27. CONTRACT TERMS – QUANTITIES.

- (a) **Quantities.** Contracts may be made for definite or indefinite quantities of Commodities or Services.
- (b) **Record Keeping.** Any requirements contract shall include a mechanism for maintaining records of all City orders made pursuant to the contract, including inventories of any Commodity subject to a maintenance service agreement.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.28. CONTRACT TERMS – UPGRADED PRODUCTS.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.29. CONTRACT TERMS – PRICING.

- (a) Pricing specifications during the term of a contract for Commodities may require fixed pricing, unspecified pricing, or may combine fixed prices for some Commodities and unspecified pricing for others, as is determined to be in the best interests of the City by the Contracting Officer.
- (b) If fixed prices are required by the Solicitation, such fixed prices shall represent the maximum price that the contractor may charge for the Commodities specified in the contract, and the Solicitation shall specify that the contractor must provide for price reductions as a Commodity becomes less expensive and the contractor's costs for that Commodity are reduced.
- (c) Contracting Officers are encouraged to include price warranties or "most-favored customer" clauses in contracts, as appropriate, to give the City consistent access to the contractor's lowest prices.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

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

- (a) The Board of Supervisors hereby approves the execution of perpetual, nonexclusive software licensing agreements which warrant performance of the software according to specifications and which are for an amount of less than ten million dollars, including any associated escrow agreement for source code or finance agreement, without further Board approval.
- (b) Software licensing procurements are not subject to the contracting requirements of the Administrative or Environment Code, but shall be subject to the requirements established by Section 21.03(j) and Chapter 67. For the purpose of this section, software licensing procurements shall be deemed to include both the licensed software product, any escrow agreement for source code, finance agreements, and support services for such product where support for that product is available only from the licensor.
- (c) Agreements for the development of software shall include acceptance testing of the software and/or performance criteria, and shall condition payments on successful completion of the acceptance test or satisfaction of the performance criteria specified in the contract.
- (d) Where a vendor has proprietary rights to software or where maintenance of equipment by a particular vendor is required to preserve a warranty, software support and equipment maintenance agreements entered into with that vendor shall be treated as a sole source for the purposes of any contract requirements included in the Municipal Code.
- (e) A Contracting Officer is authorized to make payment for software license fees and software support, equipment maintenance and associated escrow and finance fees in advance of receiving services under a contract.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 115-05, File No. 050595, App. 6/17/2005)

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

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.32. PRICE ADJUSTMENT FOR ANTICIPATED LOCAL TAX REVENUE.

- (a) **Local Bidder Defined.** For the purposes of determining eligibility for the price adjustment set forth in this Section 21.32 only, "Local Bidder" shall mean a business that is physically located at, and registered with the Office of the Treasurer & Tax Collector's Business Registration records as at, an address located within the geographic limits of the City.
- (b) Bids for the purchase of Commodities with an estimated value in excess of \$1,000 submitted by Local Bidders shall be reduced by an amount equal to 1.25% of the Bid amount for the purpose of determining the lowest responsible Bidder.
- (c) For Bids from Local Bidders for purchase of Commodities of an indefinite quantity, the Purchaser shall select a fixed quantity of the identified Commodity based on the minimum amount of the Commodity the Purchaser estimates, in his or her sole discretion, the City will purchase over the term of the contract, and apply the 1.25% price adjustment required by Paragraph (b) to Bids from Local Bidders to that same fixed quantity for the purpose of comparing prices offered.
- (d) For Bids from Local Bidders for General or Professional Services which include the purchase of Commodities with an estimated value of Commodities in excess of \$1,000, the Purchaser shall reduce the Bid price of the included Commodities only by 1.25% for the purpose of determining the lowest responsible bidder. No bid adjustment shall be made for Services Contracts that will be awarded according to criteria other than lowest price.
- (e) The Bid adjustment required by Paragraph (b) shall be in addition to any other discounts, preferences, or adjustments required by City law.
- (f) **Exception.** The following Commodities purchases shall not be subject to the 1.25% price adjustment: (1) purchases paid for with City Retirement or Health Services System trust funds; (2) purchases where the City is entering into a cooperative procurement with one or more other jurisdiction; and (3) purchases where the price adjustment would conflict with conditions contained in federal or state grants or violate preemptive federal or state law or the City Charter.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. [9-11](#), File No. 101007, App. 1/7/2011)

Cross reference

Duties of the Sealer of Weights and Measures assumed by the Director of the Department of Consumer Assurance, Regulatory Compliance and Agricultural Standards, see Administrative Code Section 16.3-7.5.

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

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 187-04, File No. 040759, App. 7/22/2004)

SEC. 21.34. AUDIT OF CONTRACTOR'S RECORDS.

The City may, at reasonable places and times, audit the books and records of a City contractor under any contract to the extent that such books and records relate to the performance of such contract. Such books and records shall be maintained by the contractor for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.35. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.

- (a) The covenant of good faith and fair dealing is contained in every City Commodities or Services Contract, and Contractors and subcontractors shall at all times deal in good faith with the City and shall submit claims, requests for equitable adjustments, requests for change orders, requests for contract modifications or requests of any kind seeking increased compensation on a City contract only upon a good-faith, honest evaluation of the underlying circumstances and a good-faith, honest calculation of the amount sought. Any Contractor, subcontractor, or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that Contractor, subcontractor or consultant. A Contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim:
- (1) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
 - (2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
 - (3) Conspires to defraud the City by getting a false claim allowed or paid by the City;
 - (4) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;
 - (5) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
- (b) This Section does not apply to any controversy involving an amount of less than \$500 in value. For purposes of this Section, "controversy" means any one or more false claims submitted by the same Contractor, subcontractor, or consultant in violation of this Section.
- (c) Every Contractor for Commodities or Services performed at the expense of the City or the cost of which is paid for out of monies deposited in the treasury of City, whether directly awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or any other arrangement whatsoever, is subject to the requirements of Subdivision (a).
- (d) Liability under this Section shall be joint and several for any act committed by two or more persons.
- (e) For purposes of this Section, the terms "Contractor" and "subcontractor" shall have the same definitions as found in Section 14B of the San Francisco Administrative Code. The term "consultant" shall be broadly defined to include any person or entity that provides services to the City.
- (f) For purposes of this Section, "claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the City, or to any Contractor, subcontractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by the City.
- (g) For purposes of this Section, "knowingly" means that a Contractor, subcontractor, or

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

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information;
- (3) Acts in reckless disregard of the truth or falsity of the information.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. 23-10, File No. 091233, App. 2/11/2010; Ord. [9-11](#), File No. 101007, App. 1/7/2011)

SEC. 21.36. CONTRACT DISPUTE RESOLUTION.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.37. DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.

When charges are brought for violation of Sections 21.35 or 21.38 of this Chapter, the Contractor or subcontractor shall be given notice of the charges and of all evidence supporting such charges. The Contractor or subcontractor or its attorney shall be entitled to offer rebuttal evidence and any other evidence in support of its position. The Purchaser and the Controller shall conduct a hearing, where the charges and all evidence shall be presented. In the alternative, the Purchaser and the Controller may appoint a hearing officer to conduct such a hearing and make written findings of fact to be submitted to them to render the final decision. Violation of Sections 21.35 or 21.38 by a Contractor may serve as the basis for finding that Contractor or subcontractor irresponsible and subject to the penalties listed in those sections. Following any decision finding a Contractor or subcontractor irresponsible, the Purchaser and the Controller shall retain authority to modify the decision.

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.38. EFFECT OF DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.39. COLLUSION IN CONTRACTING.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.40. CONSTRUCTION AGAINST IMPLICIT REPEALER.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.41. SEVERABILITY.

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

(Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.42. PROFESSIONAL SERVICES CONTRACTS FOR HEALTH AND BEHAVIORAL HEALTH SERVICES AND SUPPORT.

- (a) The Board of Supervisors hereby authorizes the San Francisco Health Commission to designate as sole source, professional services contracts for health and behavioral health services and support, where such services are provided by non-profit organizations and a sole source designation is recommended by the San Francisco Department of Public Health.
- (b) Prior to the expiration of an existing contract, the Director of the Department of Public Health will survey the availability of providers for the health and behavioral health services and support services required by the Department of Public Health where such services are (1) unique to the Department of Public Health, (2) consistent with the its mission and goals, and (3) require specialized knowledge, training, personnel, facilities or other resources that are known to be provided by a limited number of non-profit contractors. Based upon the results of such surveys, the Director of the Department of Public Health may recommend a sole source designation to the San Francisco Health Commission for those services.
- (c) Nothing herein limits the ability of the Department of Public Health to engage in a competitive process for services provided by non-profit providers.
- (d) The Board of Supervisors authorizes the Department of Public Health to contract for behavioral health services to children in the foster care system under the jurisdiction of the City and County of San Francisco and located outside of San Francisco utilizing contracting language and forms mandated by the State of California under California Welfare and Institutions Code section 5777.7.

(Added by Ord. 309-06, File No. 061569, App. 12/18/2006; Ord. 243-10, File No. 100922, App. 10/6/2010)

SEC. 21.43. [REDESIGNATED.]

(Added as Sec. 15.104 by Ord. 29-97, App. 2/7/97; amended by Ord. 337-99, File No. 992043, App. 12/30/99; redesignated and amended by Ord. [176-14](#), File No. 140596, App. 8/7/2014, Eff. 9/6/2014; redesignated as Sec. 21A.2 and amended by Ord. [142-15](#), File No. 150567, App. 8/6/2015, Eff. 9/5/2015)

SEC. 21.44. [REDESIGNATED.]

(Added by Ord. [245-14](#), File No. 141097, App. 12/4/2014, Eff. 1/3/2015; redesignated as Sec. 21A.3 and amended by Ord. [151-16](#), File No. 160634, App. 8/1/2016, Eff. 8/31/2016)