

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF CONTRACT ADMINISTRATION

Sailaja Kurella, City Purchaser and Director

RULES AND REGULATIONS PERTAINING TO THE SAN FRANCISCO ADMINISTRATIVE CODE, CHAPTER 21

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Office of Contract Administration/Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
Tel. (415) 554-6743, Fax (415) 554-6717

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Rules and Regulations Pertaining to the
San Francisco Administrative Code, Chapter 21
Acquisition of Commodities and Services

The Office of Contract Administration (“OCA”) promulgates rules and regulations pursuant to Chapter 21 of the San Francisco Administrative Code. Each Contracting Department shall comply with the requirements of Chapter 21 and cooperate to the fullest extent with OCA in the Acquisition of Commodities and Services.

SCOPE

Chapter 21 governs the acquisition of Commodities and Services. Chapter 21 does not apply to contracts for public works or improvements (which are covered by Chapter 6 of the Administrative Code) or to contracts for the purchase, sale, or lease of any interest in real property (which are covered by Chapter 23 of the Administrative Code). Although Chapter 21 sets forth detailed procedures for procurement, there are sections in Chapter 21 that require further guidelines by the Purchaser. This document sets forth the rules and regulations for the following sections in Chapter 21:

- 21.03(a): General Authority of the Purchaser of Supplies: Approval of Purchases
- 21.03(e)(3): Dollar Limit for Optional Equipment in Vehicles
- 21.03(e)(5): Definition of Specialized Vehicles
- 21.03(j): Information Technology (IT) Purchases
- 21.05(b): Procurement of Professional Services
- 21.06(c): Other Electronic Transactions
- 21.3(b): Competitive Sealed Bidding: Bid Opening
- 21.3(d): Correction, Withdrawal, or Rejection of Bids: Cancellation of Awards
- 21.3(g): Additional Purchases
- 21.3(i): Bid Protests
- 21.4: Invitations for Competitive Proposals or Qualifications
- 21.5(a): Other Purchases: Commodities and Services Less than the Minimum Competitive Amount
- 21.5(b): Sole Source
- 21.5(c): Perishable Foods
- 21.5(d): Proprietary Articles
- 21.5(e): Pilot Project
- 21.6: Multiple Low Offers
- 21.16(b): Use of Cooperative Agreements and Contracts held by other Government Agencies
- 21.17: Contracts to be in Writing

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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.

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“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.

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 OCA’s website, 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)

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5. Information Technology and related products such as video display terminals, computer equipment and supplies, cloud hosting services and telecommunication equipment and wiring
6. Cars, trucks, and vehicles
7. Gift cards
8. Professional Services
9. Sugar sweetened beverages
10. Drones
11. Goods procured from e-marketplaces. For the purpose of this exception, an e-marketplace is an online platform that processes commercial transactions in which customers purchase goods, at least some of which are sold by third-party retailers to consumers through the platform.

Order splitting and using noncompliant vendors are not allowed under any circumstances. Departments are required to follow and adhere to all other City laws, regulations, rules, ordinances, or any commission requirements of the department. Departments are encouraged to obtain at least three bids when cost savings could be achieved in doing so, and should use “good faith efforts” in using LBEs and apply bid discounts as certified by CMD.

Departmental purchases are generally subject to all the procurement provisions of the Code. The departmental use of this authority may be audited annually by the Controller and/or OCA.

The delegation of Purchasing authority may be rescinded at any time if a department does not meet the above requirements, or, has been found to be in violation of any of the Purchasing procedures or rules and regulations cited above.

Departments have the option to use Delegated Departmental Purchasing authority or may continue to send their requests to Purchasing.

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.

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.

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.

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 OCA's website or uploaded within PeopleSoft.

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.

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).

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.

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.

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Correction of a bid after contract award:

The Contracting Officer may allow post award bid correction by a contract modification if correcting the mistake is in the best interests of the City and does not change the essential requirements of the bid specifications, or compromise the integrity of the initial bidding process.

Cancellation of the award or contract at the request of the bidder based on bid mistakes:

If a contractor requests the cancellation of the contract after award, the contractor must submit a written justification with the reasons and circumstances for cancellation. The City may review the request and make a decision in the best interests of the City.

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.

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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.

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.

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.

REGULATION 21.4(d): 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.

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.

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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).

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.

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- 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.

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.

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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.

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“No substitute” purchases:

All “no substitute” purchases must be justified with documentation on department letterhead and signed by the head of the requesting department. The documentation must clearly state why only one make or model will meet the department’s needs.

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.

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.

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.

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

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.