



THE PRESIDIO TRUST

PROCUREMENT POLICY

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Section 1. OVERVIEW

1.1 PURPOSE

The Presidio Trust Procurement Policy establishes both policy and guidance to provide an efficient and effective way to maximize the quality, timeliness, and cost-effectiveness of delivering needed goods and services toward fulfillment of The Presidio Trust's mission.

1.2 LEGAL AUTHORITY

The Presidio Trust developed this Procurement Policy in response to Public Law 104-333 which was signed by the President on November 12, 1996. Section 104 of the law directed The Presidio Trust to establish and promulgate procedures applicable to the Trust's procurement of goods and services including, but not limited to, the award of contracts on the basis of contractor qualifications, price, commercially reasonable buying practices, and reasonable competition. P.L. 104-333 states that federal laws and regulations governing procurement by federal agencies shall not apply to the Trust, with the exception of laws and regulations related to Federal government contracts governing working conditions and wage rates, including the provisions of sections 276a - 276a-6 of title 40, United States Code (Davis-Bacon Act), and any civil rights provisions otherwise applicable thereto. Although The Presidio Trust is exempt from most Federal procurement laws and regulations, it has the discretion to adopt as part of its Procurement Policy the substance of those laws or regulations it deems appropriate. Unless otherwise stated specifically in this Procurement Policy or in legislation subsequently enacted, no procurement statute or regulation shall apply to The Presidio Trust procurements. The following statutes and regulations shall apply:

The Davis-Bacon Act; 40 U.S.C. §§276a - 276a-6

The Copeland Act, 18 U.S.C. 874; 40 U.S.C. §276c;

The Community Improvement Volunteer Act of 1994; 40 U.S.C. §276d note;

The Service Contract Act, 41 U.S.C. §§351-358;

The Contract Work Hours and Safety Standards Act - Overtime Premiums, 40 U.S.C. §§327-333;

The Walsh Healey Public Contracts Act, 41 U.S.C. §§35-45;

The Drug-Free Workplace Act, 41 U.S.C. §701 note;

Executive Order 11246, Equal Opportunity;

Executive Order 12933, Non-Displacement of Qualified Workers Under Certain Contracts;

Executive Order 11141, Nondiscrimination Because of Age; and

Those Federal regulations implementing the above statutes.

The following laws shall not apply to The Presidio Trust:

The Federal Property and Administrative Services Act of 1949
(41 U.S.C. §§252-266);

Office of Federal Procurement Policy Act (41 U.S.C. §401 et seq.);

Small Business and Federal Procurement Competition Enhancement Act of 1984, (Pub.L. 98-577);

Competition in Contracting Act of 1984, (Pub.L. 98-369);

Federal Acquisition Streamlining Act of 1994, (Pub.L. 103-355);

Small Business Act (15 U.S.C. §631 et seq.), except that The Presidio Trust shall make all reasonable efforts to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals have the opportunity to participate in contracting opportunities;

The Buy American Act (41 U.S.C. §§10a-10c);

The Contract Disputes Act (41 U.S.C. §601 et seq.);

The Prompt Payment Act (31 U.S.C. §§3901-3907), except that every effort will be made to pay proper invoices within 30 days after receipt by The Presidio Trust and interest will be paid on late payments;

The Procurement Protest System set forth in Subchapter V of Title 31 (31 U.S.C. §§3551-3556);

The Miller Act, 41 U.S.C. §§270a-270d), except that The Presidio Trust may require contractors to furnish bid guarantees and performance and/or payments bonds on construction contracts;

The Federal Acquisition Regulations and any other Federal regulations implementing the above statutes.

1.3 LEGAL EFFECT OF THIS DOCUMENT

This document brings The Presidio Trust's Procurement Policy into effect and establishes policies, guiding principles, and internal procedures for The Presidio Trust's procurement activities. Nothing in this document creates or conveys any substantive rights.

1.4 MODIFICATION OF THIS POLICY

The Presidio Trust may modify this Procurement Policy from time to time, as deemed appropriate by the Board of Directors.

1.5 PRECEDENCE

This Procurement Policy defines all procurement policy for The Presidio Trust. It replaces the Interim Policy adopted by The Presidio Trust Board of Directors on August 19, 1997.

1.6 APPLICABILITY

This Procurement Policy applies to all procurements by The Presidio Trust with the exception of purchases of real property, utilities, and assistance relationships, such as grants and cooperative agreements. Waivers or deviations from this Policy may be approved by the Executive Director, provided such waivers or deviations are reported to the Board of Directors.

1.7 KEY ATTRIBUTES

The Presidio Trust Procurement Policy embodies five key attributes considered essential for achieving good procurement management. These attributes are:

- Effectiveness - the timely and cost-effective procurement of products and services that work well for the customer.
- Flexibility - the ability to make good decisions based on best practices for particular circumstances rather than rigid adherence to standard procedures.
- Efficiency - simple processes that achieve good results without undue oversight or waste of resources.
- Public trust - achieved through fairness and open and honest communications with contractors and the public.

1.8 KEY FEATURES

The following are key features of The Presidio Trust Procurement Policy:

- Establishes reasonable competition as the preferred method of source selection.
- Enables innovative and creative tailoring of procurement processes to meet individual requirements, so that the right contractor is selected for each requirement.
- Selects contractors on the basis of the best value to The Presidio Trust.
- Strives to provide small businesses, small businesses owned by socially and economically disadvantaged individuals and women owned small businesses with attainable and reasonable opportunities to participate as contractors and subcontractors.
- Resolves protests and contract disputes through Alternative Dispute Resolution whenever possible.

Section 2. PROCUREMENT POLICY

2.1 OVERVIEW

2.1.1 Contracting Authority

Pursuant to Public Law 104-333, The Presidio Trust is authorized to establish and promulgate procedures applicable to the Trust's procurement of goods and services. Through this Presidio Trust Procurement Policy, approved by The Presidio Trust Board of Directors, the Executive Director is designated the authority for carrying out all functions, powers, and duties related to the procurement and maintenance of property and equipment of The Presidio Trust. Subject to the provisions of this policy, the Executive Director, or his/her designee, has broad authority to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of The Presidio Trust with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Executive Director may consider appropriate.

The Executive Director of The Presidio Trust may delegate to The Presidio Trust Procurement Program Manager broad authority to manage The Presidio Trust contracting functions. Contracts, agreements and other transactions may be approved on behalf of The Presidio Trust as follows:

Procurements up to \$100,000	Executive Director or Executive Director's Designee
Procurements between \$100,000 and \$500,000	Executive Director or Board Chairperson
Procurements over \$500,000	Board of Directors (budget approval constitutes procurement approval; Executive Director or Board Chairperson may execute transaction)

2.1.2 Conflict of Interest

Any Presidio Trust employee or Board member who has a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions regarding procurement. Any employee or Board member who has a real or apparent conflict of interest, must withdraw from participation in the procurement if law (18 U.S.C. §208) or regulation (5 CFR Part 2635) requires it.

Unless an employee involved in a procurement decision receives prior authorization, that employee should not participate if the result is likely to affect the financial interests of his or her household, or if a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter. The law does not require that non-government members of evaluation teams be removed when they have an apparent conflict, but The Presidio Trust's public image, as well as work force morale and considerations of equity dictate in favor of treating them exactly as Presidio Trust employees are treated.

2.1.3 Contracts With Employees of The Presidio Trust or U.S. Government

Unless approved by the Executive Director, The Presidio Trust shall not knowingly award a contract to a Trust or U.S. Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Trust or U.S. Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Trust toward its employees.

2.1.4 Disclosure of Information

Source selection information shall not be disclosed to or discussed with anyone other than Presidio Trust personnel and consultants on a need to know basis.

2.1.5 Organizational Conflicts of Interest

The policy of The Presidio Trust is to avoid awarding contracts to contractors that have unacceptable organizational conflicts of interest. An organizational conflict of interest means that, because of activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance to The Presidio Trust, or the person's objectivity in performing the contract work is or might be impaired, or the person has an unfair competitive advantage.

Persons with an actual or potential organizational conflict of interest should be instructed to contact The Presidio Trust at the earliest possible time to evaluate whether any conflicts of interest can be avoided or mitigated. The Presidio Trust will resolve organizational conflict of interest issues on a case-by-case basis. When necessary to further the interests of The Presidio Trust, an actual or potential conflict may be waived or mitigated at the Trust's discretion. As used

herein, the term "person" includes any legal entity including a partnership, corporation, or association.

2.1.6 Guiding Principles

The following should be considered in planning for procurements.

2.1.6.1 Best Value. The Presidio Trust's Policy is to procure products and services from sources that offer the best value to satisfy The Presidio Trust's mission needs. In selecting sources, the preferred method is to compete requirements for products and/or services among two or more sources.

2.1.6.2 Preference for Commercial Items. Preference should be given to using commercial items whenever possible. Development of a product, and its associated costs and risks, should be avoided unless commercial items capable of meeting The Presidio Trust's needs are not available. If developmental items are required, the need should be documented in the procurement plan.

2.1.6.3 Small Business and Socially and Economically Disadvantaged Business. The Procurement Program Manager shall identify contracting opportunities for, and shall reach out to, small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and small women owned businesses.

2.1.6.4 Quality Assurance. For developmental items, the Procurement Program Manager should establish quality assurance requirements.

2.1.6.5 Single-Source Approval. The Procurement Program Manager determines whether the procurement should be conducted on a competitive or single source basis. The rationale for the single source procurement should be documented in writing and included in the procurement plan, if a procurement plan is needed. Approval of the procurement plan constitutes approval of a single source procurement and no further approval or documentation is necessary.

2.1.7 Procurement Planning

2.1.7.1 Market Analysis. Market analysis is used to initiate industry involvement, develop and refine the procurement strategy, obtain price information, determine whether commercial items exist, determine the level of competition, identify market practices, or obtain industry comments on requirements. Market analysis may be as simple as a telephone call or as formal as a market survey advertisement to learn of industry capabilities. All market analyses, formal or informal, should be appropriately documented.

2.1.7.2 Procurement Plans. The procurement plan is an important component of the total procurement process. It is an opportunity to evaluate the entire procurement process, so that sound judgments and decision making will facilitate the success of the overall program. The Procurement Program Manager determines the type and degree of procurement planning necessary for a procurement or a related group of procurements. Consideration should be given to complexity, significance of the procurement, dollar value and schedule requirements. A procurement plan is not required for micro purchases and small purchases.

2.1.7.3 Types of Procurement Plans

- **Written Procurement Plan.** For Development and Complex Purchases a written procurement is required.
- **Procurement Strategy Meeting.** For Simple Non-Developmental Purchases planning generally can be satisfied through a Procurement Strategy Meeting (“PSM”), which includes representatives of those Presidio Trust departments with an interest in the contemplated procurement. Approval of the PSM presentation constitutes approval of the procurement approach. Minutes from a PSM may serve as a written procurement plan.

2.1.7.4 Public Announcements. All procurements expected to exceed \$50,000 must be publicly announced over the Internet, in newspapers, trade publications or by other means. When appropriate, public announcements should be targeted to small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and women owned small businesses. This requirement does not apply to emergency single source actions, purchases from a qualified vendor list (“QVL”), the exercise of options, or contract changes. For actions under \$ 50,000, a public announcement is optional.

2.2 CONTRACTING

2.2.1 Types of Procurements

2.2.1.1 Micro Purchases. Micro Purchases are purchases costing \$5,000 or less. (See section 2.8.2 regarding the preference for small businesses in the award of micro purchases.)

2.2.1.2 Small Purchases. Small Purchase are purchases costing \$25,000 or less. (See section 2.8.2 regarding the preference for small businesses in the award of small purchases.)

2.2.1.3 Simple Non-Developmental Purchases. Simple Non-developmental Purchases are purchases of commercially available goods and services costing \$250,000 or less, and construction costing \$100,000 or less. This method is typically used to acquire commercial products and services, as well as for simple construction projects. Such products or services are generally routine in nature and purchased on a fixed price basis.

2.2.1.4 Developmental and Complex Purchases. Developmental and Complex Purchases are purchases of developmental items, commercially available goods and services costing over \$250,000, and construction costing over \$100,000.

2.2.2 Source Selection. The source selection process depends on the type of procurement. Price shall be considered in all selection decisions.

2.2.2.1 Micro Purchases. Competition is not required for micro purchases. Reasonable efforts should be made to ascertain that the price to be paid is fair and reasonable.

2.2.2.1.1 Contracting mechanisms. Contracting mechanisms are at the discretion of the Procurement Program Manager. Purchases may be made using:

- cash, provided purchase documents/receipts are included in the file;
- Presidio Trust credit cards, provided purchase documents are included in the file;
- purchase orders; or
- other methods when deemed appropriate and properly documented.

2.2.2.2 Small Purchases. Some form of Market Analysis should be employed for Small Purchases. Formal competition is limited to obtaining quotes from at least two qualified suppliers. If award is made on other than lowest price, the documentation must reflect why the selected supplier offered the best value.

2.2.2.2.1 Contracting mechanisms. Contracting mechanisms are at the discretion of the Procurement Program Manager. Purchases may be made using purchase orders or other methods when deemed appropriate and properly documented.

2.2.2.3 Simple Non-Developmental Purchases. The Presidio Trust may acquire commercial products and services and construction from the competitive market place by using the simplified purchase method described herein and best commercial practices.

2.2.2.3.1 Planning. Procurement planning should be accomplished for all Simple Non-Developmental Purchases. The level of planning should be dictated by the nature and complexity of the requirement, commercial availability, dollar value, urgency of the requirement and previous procurement history. For all procurements other than construction, planning typically will be accomplished through a PSM.

2.2.2.3.2 Market Analysis. Market analysis should be simple and straight-forward, and may include information based on personal knowledge of the market, historical purchase information, qualified vendor lists, commercial catalogs, trade journals, newspapers, other professional publications or local telephone directories.

2.2.2.3.3 Soliciting Sources. The Procurement Program Manager should solicit an appropriate number of sources to ensure quality products and services are delivered in a timely manner at a fair and reasonable price. Requirements should be stated in commercial terms generally understood and accepted in the industry.

2.2.2.3.4 Screening Sources. The Procurement Program Manager should determine the appropriate method of screening vendors (*e.g.*, electronic, written or oral requests for information). The Procurement Program Manager may also communicate with individual offerors, as appropriate, to address the offeror's understanding of the requirement, performance capabilities, prices, and other terms and conditions.

2.2.2.3.5 Selection Decision and Award. The contractor shall be selected based on the best value to The Presidio Trust, taking into account factors including, but not limited to, price, quality, delivery, warranty, and payment terms. This may be accomplished through establishing specific evaluation criteria with an accompanying evaluation plan and making the selection based on the stated criteria. It also may be accomplished based on written findings that one offeror has proposed the most favorable solution at the most favorable price available in the market. The method used should depend on the complexity, risk, dollar value, and urgency of the requirement. A selection decision should not be made until all vendors remaining in the final screening process have had an opportunity to submit binding offers.

2.2.2.3.6 Documentation. The method of selection and rationale for awards, and a determination that the price is fair and reasonable shall be documented.

2.2.2.4 Developmental and Complex Contracts. This section establishes The Presidio Trust's guidance for evaluating and selecting sources for developmental and complex competitive contracts. This process consists of four distinct phases, with the planning phase being the cornerstone. The phases are: planning, screening, selection, and debriefing.

2.2.2.4.1 Communications with Offerors. Communications with potential offerors should take place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated with the Procurement Program Manager. Communications may start in the planning phase and continue through contract award. All PIRs should clearly inform offerors how communications will be handled.

To ensure that offerors fully understand The Presidio Trust's needs as stated in the PIR, the Trust may hold conferences and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the Procurement Program Manager. Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the Procurement Program Manager should ensure that such communications do not afford any offeror an unfair competitive advantage.

If, after a PIR is released, it is determined that there has been a change in The Presidio Trust's requirement(s), all offerors competing at that stage should be advised of the change(s) and afforded an opportunity to update their submittals accordingly. The Selection Official may waive a requirement in a PIR with respect to any offeror without notifying other offerors if the PIR states that such offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement. All determinations relating to changes in requirements, including waivers, will be documented in the evaluation report.

2.2.2.4.2 Planning. A written procurement plan shall be developed for each Developmental and/or Complex procurement.

2.2.2.4.3 Screening. A Procurement Information Request (“PIR”) should be part of the procurement plan. The purpose of the PIR is to obtain information which ultimately will allow The Presidio Trust to identify the offeror that provides the best value, make a selection decision, and award the contract. A PIR is a request by The Presidio Trust for documentation, information, presentations, proposals, or binding offers. The Presidio Trust may make a selection decision after receipt of responses to

one PIR, or after a series of PIRs (provided there has been a screening decision after each one) to arrive at the selection decision. If a selection decision is made after one PIR, that PIR should be a Request for Proposal (“RFP”). In general, when multiple PIRs are contemplated, the initial PIR should request only general information, and future PIRs should request successively more specific information. Initial PIRs need not state firm requirements, thus allowing The Presidio Trust to convey its needs to offerors in the form of desired features or other appropriate means. However, firm requirements ultimately must be established. Each PIR should contain the following information:

- a statement identifying the purpose of the PIR (*e.g.*, a Screening Request (“SR”) to obtain information, or an RFP to obtain offers);
- a description of what is needed;
- a request for specific information from offerors;
- a closing date stating when submittals must be received in order to be considered or evaluated;
- if the request is an RFP, it should contain evaluation criteria by which an offer will be evaluated; and
- a statement informing potential offerors how communications will be conducted during the screening.

2.2.2.4.3.1 Types of PIRs

- Screening Request. A Screening Request allows The Presidio Trust to determine which offeror(s) are most likely to receive the award, and ultimately which offeror(s) will provide The Presidio Trust with the best value. The screening information requested should focus on information that directly relates to the procurement. The following are examples of the types of information that may be requested in a screening request:
 - ∇ contractor capability statements,
 - ∇ contractor quality assurance information,
 - ∇ performance experience,
 - ∇ samples,
 - ∇ technical proposals (including oral presentations, if appropriate and practical),
 - ∇ commercial pricing information,
 - ∇ financial condition information,

- ∇ cost or price information, and
- ∇ cost or price proposals.

Request for Proposal. A Request for Proposal (“RFP”) is a request for an offeror to formally commit to provide the products or services required by the procurement under stated terms and conditions. The response to the RFP is a binding offer, which is intended to become a binding contract if/when it is signed by the authorized Presidio Trust official. An RFP should not be issued until the requirement is well defined through screening or other means.

2.2.2.4.3.2 Evaluation Criteria.

The evaluation criteria form the basis on which each offeror's submissions are to be evaluated. Evaluation criteria should be tailored to the characteristics of a particular requirement. Each PIR shall contain the specific evaluation criteria to be used to evaluate offeror submittals. Establishing the relative importance among criteria is not required but when relative importance is used, the relative order of importance should be disclosed to offerors. Once the criteria have been disclosed to offerors, criteria should not be modified without first notifying offerors competing at that stage of the process and allowing them the opportunity to revise their submissions accordingly. Past performance and experience should be an evaluation criterion in all selection decisions. For software procurements the evaluation criteria should include, whenever appropriate, an evaluation of the maturity of the offeror's software and maintenance policies.

2.2.2.4.3.3 Evaluation Plan.

An evaluation plan shall be part of the procurement plan. Evaluation plans should be concise and tailored to the specific needs of the procurement and include the evaluation methods and processes to be used.

Evaluation Method. The evaluation method should allow for maximum flexibility in selecting the offeror providing the best value. To facilitate such flexibility, the following should be considered:

- ∇ Using adjectival ratings to score offerors;
- ∇ Comparing offerors' proposals/products;
- ∇ Testing of products to the maximum extent practical ("try before you buy").

Evaluation Process. The evaluations shall be conducted in accordance with the stated evaluation criteria and the evaluation plan. The Evaluation team is to apply

sound business judgment in evaluating the offeror's proposed solution against the stated evaluation criteria. The Evaluation Team should be limited in size and dedicated through the completion of the procurement. Verifiable information from outside sources may be considered in the evaluation.

2.2.2.4.4 Evaluation Report. The Evaluation Team shall document the results of the evaluation, including recommendations, if applicable.

2.2.2.4.5 Selection. Based on a review of the Evaluation Team's findings, the Selection Official (either the Executive Director or his/her designee) may either:

- make a selection decision;
- direct that further screening be conducted, thus continuing the screening phase; or
- cancel the procurement.

The Evaluation Team may brief the Selection Official on its evaluation findings. The selection of the offeror who is expected to provide the best value is a matter committed entirely to the discretion of the Selection Official. In making the selection decision, the Selection Official may accept or reject the Evaluation Team's recommendations. The Selection Official should document the basis for the selection decision if it is other than that proposed by the Evaluation Team. The selection decision is not authority for The Presidio Trust to award a contract. Awards must be approved by the Executive Director or Board of Directors.

2.2.2.4.6 Debriefing. Once an award has been made, all offerors who participated in the procurement will be notified of the award and given the opportunity to receive feedback on the rationale for the decision.

2.2.2.4.7 Responsibilities. The responsibilities listed below are intended to be guidelines to ensure a successful evaluation. The Executive Director may apportion these responsibilities to fit the needs of specific procurements.

Selection Official. The Selection Official is responsible for selecting the offeror for award. The Executive Director shall designate the Selection Official. The Selection Official's responsibilities are to:

- approve the PIR;
- approve the evaluation plan;
- ensure that the Evaluation Team is properly constituted and includes all necessary disciplines; and
- make the selection decision.

Procurement Program Manager. The Procurement Program Manager is responsible for the proper and efficient conduct of the procurement process. The Procurement Program Manager's responsibilities may be delegated. Responsibilities are to:

- draft the PIRs;
- formulate the evaluation plan;
- select the Evaluation Team and ensure that team members are briefed on the prohibition against unauthorized disclosure of information and the requirements pertaining to conflicts of interest;
- determine, with legal counsel review, if any conflicts or apparent conflicts of interests exist, and if so, resolve them;
- ensure that each submission is reviewed and evaluated against The Presidio Trust's requirements and the stated evaluation criteria;
- exercise oversight of all procedural and administrative aspects of the procurement;
- prepare the documentation, at the Selection Official's request, that provides the Selection Official's decision rationale;
- coordinate communications with industry;
- participate during the screening and selection phases of source selection to ensure fair treatment of all offerors;
- issue amendments to procurement documents;
- control all written communications with industry;
- ensure that the contract is signed by an official with the authority to bind the contractor;
- with guidance from legal counsel, assure that all contractual documents are in compliance with applicable laws and regulations; and
- prepare, administer, and terminate contracts and make related determinations and decisions that are contractually binding.

General Counsel. The Presidio Trust General Counsel has the following responsibilities:

- consult with the Procurement Program Manager to determine appropriate contract clauses for a given procurement or type of procurement;
- advise the Procurement Program Manager and Executive Director on resolution of contract disputes;
- advise the Procurement Program Manager and Executive Director about changes to the law and the applicability of statutes to the procurement process; and
- approve all contracts as to form prior to presentation for signature.

2.2.2.5 Single Source Selection. The Presidio Trust may contract with a single source when it is determined that doing so is in the best interest of The Presidio Trust and the decision is documented. This decision may be based, for example, on an emergency need, a need for standardization, or a finding that there is only a single source available to satisfy the requirement within the time required. The Procurement Program Manager shall

document the decision. Examples of the type of information that might be included are the results of market analysis, cost/price data, unique qualifications/performance capability, and past performance.

2.2.2.6 Qualified Vendor Lists. Qualified Vendor Lists (“QVLs”) are used to pre-qualify vendors in situations where the quality and/or performance of a product or service is critical but varies greatly among manufactures or suppliers. QVLs are established through the procurement planning procedures described above. Typically, the screening process commences with a public announcement that a Request for Qualification Information is being issued. The request should be tailored to solicit information that will allow The Presidio Trust to determine which vendors meet The Presidio Trust's minimum requirements for the required products or services. For products, the information required to make such a determination might be, for example, equipment/products for Presidio Trust testing, product documentation, and/or production capability. For services, the information required might be, for example, a capabilities statement or performance experience. For software intensive products or services, the information required might include, for example, descriptions about the offeror's software development and maintenance processes, in addition to other general information suggested above for products or services.

Once qualification information is received and evaluated, a QVL may be established for the given product/service. All respondents with the minimum capabilities to meet The Presidio Trust's requirements should be listed on the appropriate QVL for the stated products or services. Once a QVL is established, The Presidio Trust may limit competition to only those vendors on the list. Public announcements are not required for individual purchases. Each QVL should be reviewed regularly to determine whether it should be updated.

2.2.2.7 Unsolicited Proposals. Unsolicited proposals are a valuable means for The Presidio Trust to obtain innovative or unique methods or approaches to accomplishing its mission. The Presidio Trust may consider and/or accept unsolicited proposals when it is determined to be in its best interest to do so, based on the guidance provided herein.

2.2.2.7.1 Guidance. A valid unsolicited proposal must:

- be innovative and unique;
- be independently originated and developed by the offeror;
- be prepared without The Presidio Trust supervision;
- include sufficient detail to permit a determination that the proposed work could benefit The Presidio Trust's mission responsibilities;
- not be an advance proposal for a known Presidio Trust requirement that can be acquired by competitive methods; and
- not be advertising or promotional material, or offers for commercial items.

2.2.2.7.2 Evaluation of Unsolicited Proposals. The Procurement Program Manager, in consultation with appropriate Presidio Trust staff, shall determine if the unsolicited proposal:

- contains sufficient technical and cost information; and
- has been signed by a responsible official or other representative authorized to contractually obligate the offeror before initiating a comprehensive evaluation.

If the proposal meets these requirements, the Procurement Program Manager shall process the proposal. If it does not, the offeror may be given the opportunity to submit the required data.

2.2.2.7.3 Prohibitions. Presidio Trust personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a PIR unless the offeror is notified of and agrees to the intended use. Presidio Trust personnel should not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

2.2.2.8 Contractor Qualifications

2.2.2.8.1 Applicability. This section prescribes standards and procedures pertaining to prospective contractor's responsibility.

2.2.2.8.2 Policy. The Procurement Program Manager shall ensure that contracts are awarded only to responsible contractors. No contract other than micro purchases and small purchases shall be awarded unless the Procurement Program Manager makes an affirmative determination that the contractor is financially responsible, meaning that it has both the capacity and credit as well as the tenacity and perseverance to perform the contract. The Presidio Trust will not award a contract to any company or person, or company controlled by a person, who is suspended or debarred from receiving contracts by any agency of the United States Government, unless The Presidio Trust has a compelling need to obtain the requirement from that company and the decision is documented.

2.2.3 Subcontracting

The Procurement Program Manager shall consider requiring "Consent to Subcontracts" in all cost reimbursable contracts and in developmental contracts where subcontracting is anticipated and the subcontract work is complex, or the dollar value is substantial.

2.2.4 Termination of Contracts

2.2.4.1 Applicability. The section is applicable to purchases other than micro purchases.

2.2.4.2 Termination for Convenience. Contracts shall contain clauses similar in substance to those found at 48 CFR Part 52.249, permitting The Presidio Trust to terminate the contract for the convenience of the Trust.

2.2.4.3 Termination for Default. Contracts shall contain clauses similar in substance to those found at 48 CFR Part 52.249 specifying the rights and remedies of the Trust in the event the contractor defaults in the performance of the contract.

2.3 COST AND PRICE ANALYSIS

2.3.1 Policy

The Presidio Trust policy is to employ cost or price analysis to determine fair and reasonable prices for the procurement of goods and services other than micro purchases and small purchases. Cost or price analysis should be used not only to determine if the proposed cost estimate or proposed price is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract.

2.3.1.1 Price Analysis. Price analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Price analysis is the preferred method for evaluating competitive proposals. With respect to commercial items sold at established catalog or market prices, or where prices are set by law or regulation, price analysis is sufficient and cost or pricing data should not be requested. The following techniques are examples of price analysis that may be used:

- Compare the proposed prices received in response to a screening request.
- Compare prior proposed prices and contract prices with current proposed prices for the same or similar products and services. To provide a suitable basis for comparison, consider differences in specifications, quantities ordered, time for delivery, and when prior acquisitions occurred.
- Compare proposed prices with published price lists, published market prices of commodities, similar indexes, and obtain discount or rebate arrangements.

2.3.1.2 Cost Analysis. Cost analysis means the review and evaluation of the separate cost elements and proposed profit of an offeror's proposal. Cost analysis requires judgment in projecting from the cost data an estimate of what the cost of the contract should be, assuming reasonable economy and efficiency. Cost Analysis should be used only in:

- Single-Source Procurements for other than commercial items that are sold at established catalog or market prices;
- Developmental and Complex Procurements when the Procurement Program Manager determines that there is insufficient pricing information from which to determine that prices are fair and reasonable;
- cost reimbursable contracts; and
- modifications to developmental and/or complex contracts.

2.3.1.3 Cost or pricing data. Offerors should be required to furnish cost and pricing data to support their proposed costs only when cost analysis is necessary. Cost or pricing data means that information that can be reasonably expected to contribute to the soundness of estimates of a contractor's proposed costs and to the validity of determinations of costs already incurred. Examples of cost and pricing data are:

- vendor/subcontractor quotations;
- estimates of nonrecurring costs;
- information on changes in production methods and in production or purchasing volume;
- data supporting projections of business prospects and objectives related to determining indirect cost allocation;
- unit-cost trends such as those associated with labor efficiency;
- make-or-buy decisions; and
- other information on management decisions that could have a significant bearing on costs.

2.4 CONTRACT TYPES

2.4.1 Policy

Selecting the contract type requires the exercise of sound judgment. Contract type and price are closely related and should be considered together. The objective is to choose a contract type and price that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Fixed price contracts should be used whenever appropriate. All contracts, except those issued in emergency situations, shall be in writing.

2.4.2 Contract Types. The types of agreements (whether they be in the form of purchase orders, contracts, basic ordering agreements, blanket agreements) that may be used for Presidio Trust procurements include:

- Fixed Price:

- ∇ Firm fixed price - the contractor is paid a predetermined fixed price for successfully completing all specified work.
- ∇ Fixed unit price - a unit price is established in the contract and is subsequently used to determine the ultimate price to be paid to the contractor for successful performance (*i.e.*, unit price multiplied by quantities delivered).
- Level of effort:
 - ∇ Time and materials. The work is described in terms of the level of services to be provided. The contractor is paid for labor at the unit price set in the contract. Materials are paid at cost to the contractor.
 - ∇ Labor hour. Similar to time and materials contract, except that the contractor is required to provide any supplies or material needed no additional cost.
 - ∇ Fixed price level-of-effort. Similar to a labor hour contract except that the contractor is paid a fixed price upon completion of the required level of effort. This type of contract should be used only when no other fixed price or level of effort arrangement is practical since the contractor is not required to produce any result other than completing the prescribed level of effort.
- Cost-reimbursement. These contracts provide for payment of allowable incurred costs to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of The Presidio Trust. Cost-reimbursement contracts should be used only for the acquisition of developmental items and only when:
 - ∇ the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of a fixed-price contract;
 - ∇ the contractor's accounting system is adequate for determining costs applicable to the contract; and

- ∇ appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

Types of cost reimbursement contracts. Cost reimbursement contracts may be:

- ∇ cost contracts, in which the contractor receives no fee or profit;
- ∇ cost-sharing contracts, in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs;
- ∇ cost-plus-incentive-fee contracts, which provide for an initially negotiated fee to be adjusted based on factors agreed to in the contract; or
- ∇ cost-plus-fixed-fee contracts which provide for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract.

2.5 CONTRACT FUNDING AND PAYMENT

2.5.1 Applicability. This section applies to all contracts. This section includes:

- payments to contractors for delivery and acceptance of goods and services;
- progress payments to contractors to help finance the contractor's performance;
- prompt payment of contractor invoices; and
- pricing of changes and payment of costs.

2.5.2 Policy. Prudent contract payment schemes expedite the performance of essential contracts. Contracts should be structured to allow payment promptly upon partial delivery and acceptance of goods and services. If partial deliveries are not possible or the interval between deliveries is long, progress payments may be necessary for efficient and economical contract performance. With respect to Micro Purchases and Small Purchases, payments should be made only upon delivery and acceptance of the goods and services.

2.5.3 Progress Payments. Progress payments are a method of financing contract performance to be used when commercial financing is not available or would be too costly. Progress payments may be considered with respect to developmental contracts and construction contracts. Progress payments should not be made to finance the performance of contracts for commercial items unless The Presidio Trust would not otherwise be able to obtain the goods. Progress payments may be based on cost incurred or percentage or stage of completion. When progress payments are based on costs, The Presidio Trust should incrementally fund no more than 80 percent of incurred costs. When progress payments are based on percentage or stage of

completion, The Presidio Trust should retain at least 10 percent of the total contract funds pending final completion and acceptance of the work.

2.5.3.1 Security for Progress Payments. When progress payments are made, The Presidio Trust should obtain a perfected purchase money security interest in the equipment and materials obtained for contract performance and all work in process. If the Procurement Program Manager considers it necessary, The Presidio Trust may require additional security, such as the following:

- personal or corporate guarantees;
- subordinations or standbys of indebtedness;
- special bank accounts; or
- other protective covenants as deemed necessary.

2.5.4 Prompt Payment

The Presidio Trust shall make payment within 30 days after receipt of a proper invoice and receiving report, whichever is later, or in the case of progress payments, receipt of a proper progress billing request. For payments made later than 45 days after receipt of a proper invoice, The Presidio Trust shall pay interest commencing on the 31st day after receipt of the invoice at the rate set by the Secretary of Treasury pursuant to 41 U.S.C. §611.

2.5.5 Changes and Allowable Costs. All contracts must contain provisions governing the methodology by which contract changes will be priced. Cost reimbursable contracts must contain provisions governing the allowability of costs. The Presidio Trust may use as guidance the principles set forth in 48 CFR Part 31.

2.6 INTELLECTUAL PROPERTY

2.6.1 Applicability

The policies prescribed in this section are applicable to all contracts involving intellectual property.

2.6.2 Policy

Patents, copyrights, and other rights in data are valuable intellectual property. It is Presidio Trust policy not to acquire from contractors greater intellectual property rights than are necessary to accomplish the Trust's mission. If during the performance of any contract and as an incident thereto, a copyrightable work is first created or an invention is first conceived or reduced to practice, The Presidio Trust shall obtain a non-exclusive, paid-up, royalty free license throughout

the world to allowing the U.S. Government to (i) use, disclose and reproduce the work (inclusive of all the rights of copyright), or (ii) practice the invention, for U.S. Government purposes. If, however, the purpose of the contract is to produce for The Presidio Trust one or more copyrightable works of art, including without limitation, books or other written material, films or other audio-visual works, or computer generated works, the contract shall provide that each work so created is a work made for hire and shall require the contractor to assign to The Presidio Trust all right, title and interest to the work.

2.7 BONDS, INSURANCE, AND TAXES

2.7.1 Bonds. With respect to construction contracts expected to exceed \$100,000, the Procurement Program Manager may require offerors to provide bid guarantees and/or payment and performance bonds. When payment and/or performance bonds are required, corporate sureties should be listed in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." Individual sureties should not be accepted unless failing to do so would exclude small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and women owned small businesses. Individual sureties must pledge as security:

- cash;
- certificates of deposit or other cash equivalents from a federally insured financial institution;
- United States Government securities at market value;
- stocks and bonds actively traded on a national U.S. security exchange with the certificates issued in the name of the individual surety (these assets may be accepted at 90 percent of their 52-week low, as reflected at the time of submission of the bond);
- real property owned in fee simple by the surety without any form of concurrent ownership and located within the 50 United States (these assets will be accepted at 100 percent of the most current tax assessment value, exclusive of encumbrances, or 75 percent of the property's unencumbered market value provided a current appraisal is furnished); and
- irrevocable letters of credit issued by a federally insured financial institution in the name of The Presidio Trust.

2.7.2 Insurance. The Presidio Trust ordinarily is not concerned with the contractor's insurance coverage if the contract is fixed-price. However, when the contract is cost reimbursable or when the work is to be performed on Presidio Trust property, the contractor shall provide and maintain workers' compensation (employer's liability), comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage), and such other insurance (such as Builder's Risk) as the Procurement Program Manager may require and in amounts that he/she determines are satisfactory given the nature of the contract work.

2.7.3 Taxes

2.7.3.1 Purchases Made By The Presidio Trust - Exemption from Taxes. The Presidio Trust is exempt from Federal excise taxes levied on the sale or use of products or services, and from state and local sales and use taxes. In addition, The Presidio Trust is exempt from the following Federal taxes:

- Pursuant to 26 U.S.C. §4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. §4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.);
- Pursuant to 26 U.S.C. §4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. §4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

2.7.3.2 Purchases Made by Prime Contractors and Subcontractors. When purchases are not made by The Presidio Trust, itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from state and local sales or use taxes may not rest on The Presidio Trust's immunity from direct taxation by states and localities. It may rest instead on provisions of the particular state or local law involved, and in some cases the transaction may not be exempt from the tax. Unless otherwise directed by the Procurement Program Manager, on advise from the General Counsel, contracts are to provide that the prices for goods and services shall include all applicable sales, use and property taxes.

2.7.3.3 Contractors Acting as Agents for The Presidio Trust. Presidio Trust prime contractors and subcontractors shall not normally be designated as agents of The Presidio Trust for the purpose of claiming immunity from state or local sales or use taxes. Before any contractor is authorized to act as an agent of The Presidio Trust, the Procurement Program Manager shall obtain the approval of the General Counsel.

2.7.3.4 Taxes on Presidio Trust Property. This applies to Presidio Trust property in the possession of contractors. Situations may arise in which states or localities assert the right to tax this property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of the property. In such cases, the Procurement Program Manager shall seek review and advice from the General Counsel on the appropriate course of action prior to authorizing the payment of the tax.

2.8 SMALL AND SMALL DISADVANTAGED BUSINESS PROGRAM

2.8.1 Small and Small Disadvantaged Business Utilization Program. The Presidio Trust shall implement and aggressively strive to provide small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and women owned small businesses attainable and reasonable opportunities to participate as prime contractors and subcontractors for the products and services procured by The Presidio Trust. The Procurement Program Manager has responsibility for:

- implementing Presidio Trust policies, as adopted by the Board of Directors, on the utilization of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and women owned small businesses; and
- establishing mechanisms for monitoring and evaluating the effectiveness of the small business utilization program.

- 2.8.2 Contracting with Small Businesses, Small Disadvantaged Businesses and Small Women Owned Businesses.** Whenever practical, micro purchases and small purchases should be made only from small disadvantaged businesses, small women owned businesses and small businesses, preferably in that order whenever practicable. Other procurements may be set aside for competitive award among all small businesses. When appropriate, individual procurements also may be set-aside for competitive award among Socially and Economically Disadvantaged Businesses (“SEDBs”) that are certified to participate under the Small Business Administration’s 8(a) program. Each firm claiming 8(a) status is required to provide a copy of its SBA 8(a) certification letter to the Procurement Program Manager as evidence of eligibility.
- 2.8.3 Prime Contractor Small and Disadvantaged Business Program.** For Presidio Trust procurements estimated to exceed \$500,000 (\$1,000,000 for construction), the Procurement Program Manager should incorporate subcontracting provisions (including attainable and reasonable subcontracting goals for the participation of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals and small women owned businesses). When commercial items are being procured, the contractor may satisfy this requirement by submission of a company-wide subcontracting program. Small and Small Disadvantaged Business subcontracting programs are not required in procurement where there are no subcontracting possibilities (provided a determination to that effect is included in the procurement file) and when the prime contractor is a small business or a small business owned and controlled by a socially and economically disadvantaged individual. Contractors should be required to report data on subcontracting accomplishments annually and in sufficient detail to determine the extent of the contractor's attainment of any subcontracting goals. The Procurement Program Manager shall include in all contracts containing a Subcontracting Program requirement a provision for liquidated damages, in an amount not to exceed 5 percent of the contract price, to be paid by the Contractor in the event that it fail to take reasonable measures to attain the subcontracting goals set forth in the contract.
- 2.8.4 Small Business Defined.** In determining whether a company qualifies as a small business, a small disadvantaged business, or a small woman-owned business, The Presidio Trust shall apply the size regulations set forth in 13 C.F.R. Part 121, as well as the 48 C.F.R. 31-19.001

2.9 LABOR AND WORKING CONDITIONS

2.9.1 Policy

In awarding contracts for goods, services and construction The Presidio Trust will comply with the Davis-Bacon Act, the Copeland Act, the Walsh-Healey Public Contracts Act, the Service Contract Act, The Contract Work Hours and Safety Standards Act - Overtime Premiums, Executive Order 12933; and the Drug-Free Workplace Act, and their implementing regulations. The Presidio Trust shall cooperate, and encourage contractors to cooperate, with Federal and State agencies responsible for enforcing labor requirements such as:

- safety,
- health and sanitation,
- maximum hours and minimum wages,
- equal employment opportunity,
- child and convict labor,
- age discrimination,
- disabled and Vietnam veteran employment, and
- employment of the handicapped.

2.9.2 The Davis-Bacon Act.

Applies to contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of Presidio Trust buildings. Such contracts shall provide that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rate as determined by the Secretary of Labor. The Davis-Bacon Act does not apply to contracts where:

- the construction work is incidental to the furnishing of supplies, equipment, or services (*e.g.*, simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; provided, however, that if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of the Act apply); or
- the construction work is so merged with non-construction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

2.9.3 Copeland Act. Makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of Presidio Trust buildings or work to give up any part of the compensation to which that

person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall require contractors and subcontractors to comply with regulations issued by the Secretary of Labor under the Copeland Act.

2.9.4 The Service Contract Act of 1965. The Service Contract Act of 1965 (SCA) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts. Whether or not the SCA applies to a specific service contract will be determined by the definitions and exceptions given in the SCA, or implementing regulations. When the SCA applies, the Procurement Program Manager shall seek as Wage Determination from the Wage and Hour Division of the Department of Labor and include in the solicitation and any resulting contract the clauses required by 48 C.F.R. Part 37.

2.9.5 Contract Work Hours and Safety Standards Act (“CWASA”). With respect to contracts on which laborers or mechanics will do any part of the work contemplated by the contract, CWASA provides that such laborers or mechanics shall not be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1½ times the basic rate of pay. Exemptions to CWASA are set forth in 48 CFR Part 22.305.

2.9.6 Walsh-Healey Public Contracts Act. Applies to contracts for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed \$10,000. Contracts subject to the Act shall include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions. Exemptions to the Act are set forth in 48 CFR Part 22.604.

2.9.7 Non-Displacement of Qualified Workers Under Certain Contracts. Executive Order 12933 provides that it is the policy of the Federal Government that contracts for building services at public buildings shall require the contractor under a successor contract for performance of similar services at the same public building, to offer those employees (other than managerial or supervisory employees) under the predecessor contract, whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. Executive Order 12933 states that there shall be no employment openings under the contract until such right of first refusal has been provided. The Presidio Trust will comply with the Executive Order.

2.9.8 Drug-Free Workplace Act. The Presidio Trust will not award a contract to any entity unless it has certified that it is a drug free workplace or the entity will be deemed unqualified and ineligible for award. After determining in writing that there exists adequate evidence to suspect that the contractor submitted a false certification or failed to comply with the certification, The Presidio Trust may suspend contract payments. After determining in writing

that the contractor in fact submitted a false certification or failed to comply with the certification, The Presidio Trust may terminate the contract for default.

2.10 EQUAL EMPLOYMENT OPPORTUNITY

2.10.1 Executive Order 11246

2.10.1.1 Applicability. "E.O. 11246," as used in this subpart, means Parts II and IV of Executive Order 11246, September 24, 1965 (30 F.R. 12319), and any Executive Order amending or superseding this Order. This term specifically includes the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee. Disputes related to compliance with the obligation of E.O. 11246 shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR Part 60-1.1).

2.10.1.2 Policy. Executive Order 11246, as amended, contains an Equal Opportunity clause and requires The Presidio Trust to:

- include the clause in all nonexempt Presidio Trust contracts and subcontracts (see 48 CFR Part 22.807); and
- ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

No contract or modification shall be entered into, and no subcontract shall be approved, with a person who has been found ineligible by the Director of the Equal Employment Opportunity Commission for reasons of noncompliance with the requirements of E.O. 11246. The Presidio Trust shall not contract for supplies or services in a manner so as to avoid applicability of the requirements of E.O. 11246.

2.10.1.3 Affirmative Action Programs

2.10.1.3.1 Non-construction. Except as provided in 48 CFR Part 22.807, each non-construction prime contractor and each subcontractor with 50 or more employees and --

- a contract or subcontract of \$50,000 or more; or
- bills of lading that in any 12-month period, total, or can reasonably be expected to total, \$50,000 or more,

is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Presidio Trust contract, subcontract or bill of lading.

2.10.1.3.2 Construction. Construction contractors that hold a nonexempt (see 48 CFR Part 22.807) Presidio Trust construction contract are required to meet

- the affirmative action goals applicable to contracts performed in the San Francisco geographical areas; and
- the applicable requirements of 41 CFR Part 60-1 and 60-4.

The Procurement Program Manager shall inform the OFCCP regional office within 10 working days of award of a construction contract subject to affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; and the contract number. When requested by the OFCCP regional office, the Procurement Program Manager shall arrange a conference among the contractor and compliance personnel to discuss the contractor's compliance responsibilities.

2.10.1.4 Pre-award clearances for contracts and subcontracts of \$1 million or more (excluding construction). Except as provided in 48 CFR Part 22.805(a)(7), if the estimated amount of a contract, subcontract, or basic ordering agreement is expected to aggregate \$1 million or more or to increase the aggregate value of an existing contract to \$1 million or more, the Procurement Program Manager shall request the OFCCP regional office to determine whether a contract may not be awarded.

2.10.1.5 Furnishing Posters. The Procurement Program Manager shall furnish to the contractor appropriate quantities of the poster entitled "Equal Opportunity Is The Law."

2.10.2 Nondiscrimination Because of Age

2.10.3 Policy. Executive Order 11141, February 12, 1964 (29 F.R. 2477), states that United States Government policy is as follows:

- Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.
- Contractors and subcontractors, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government (including Presidio Trust) contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

The Presidio Trust will bring this policy to the attention of contractors. The use of a contract clauses is not required.

2.11 ENVIRONMENT AND CONSERVATION

2.11.1 Policy

It is Presidio Trust policy to contract only with entities that comply with applicable environmental, energy, safety, laws, orders, and regulations. To implement this policy The Presidio Trust will not contract with entities listed by the U.S. Environmental Protection Agency in 40 CFR Part 15 as violating facilities under the Clean Air Act (42 U.S.C. §7401 *et seq.*) or the Clean Water Act (33 U.S.C. §1251 *et seq.*). If The Presidio Trust must contract with a violating entity in order to meet mission requirements, the reasons should be documented in the contract file and the Procurement Program Manager should initiated discussions with appropriate enforcement agencies.

2.12 PROTECTION OF PRIVACY

2.12.1 Policy. When The Presidio Trust contracts for the design, development, or operation of a system of records on individuals, The Presidio Trust shall apply the requirements of the Privacy Act to the contractor and its employees working on the contract.

2.13 SPECIAL CATEGORIES OF CONTRACTING

2.13.1 Agreements. The Presidio Trust may use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of The Presidio Trust. These agreements may be made with another Federal agency or instrumentality of the Federal government, a state, local government, municipality, other public entity, or non-governmental organization. The following is a list of the more commonly used agreements:

- Interagency Agreements for use with Agencies and Establishments of the United States;
- Co-operative agreements with Non-Governmental Organizations
- agreements with other public entities (state and municipal).

2.13.1.1 Guidance for Using Agreements. All agreements shall be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision. Each agreement should be supported by a written statement describing the technical, program, or business reasons justifying the agreement. While agreements may be entered into without competition, procurement planning, including market analysis, should be employed to ascertain that use of an agreement is the best value to The Presidio Trust.

2.13.2 Federal Supply Schedule Contracts. The Presidio Trust may consider placing orders against Federal Supply Schedules awarded by GSA for recurring products and services when it is determined to be in the best interest of The Presidio Trust to do so. Orders placed against a Federal Supply Schedule contract need not be publicly announced.

2.14 PERSONAL SERVICES CONTRACTS

2.14.1 Applicability

This section applies to advisory and assistance contracts and other personal services such as employees support services. This section does not apply to Presidio Trust employees, temporary, part-time or permanent who are appointed or hired in accordance with Presidio Trust Personnel Policy.

2.14.2 Policy

The Presidio Trust shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government). In no event may a contract be awarded for the performance of an inherently governmental function. Advisory and assistance contracts shall comply with all applicable laws concerning post-employment and other conflict of interest and ethics laws and policies.

2.14.3 Definition. A personal service contract is a contract that, by its express terms, or as administered, establishes what is tantamount to an employer-employee relationship between The Presidio Trust and the contractor's personnel. Such a relationship is created when a Presidio Trust employee exercises relatively continuous supervision and control over one or more contractor employees. Supervision includes directing or assigning work to specific contractor employees; directing that a contractor employee be hired, fired, promoted, rewarded, transferred or granted leave; or exercising control over how specific contractor employees perform their job. Simple monitoring of a contractor's performance, providing technical direction, issuing task orders, or providing comments on the contractor's work, in accordance with the contract's terms, do not in themselves create a personal services contract. Performing any of these functions in a manner not provided for by the contract, however, could create a personal services contract as well as expose The Presidio Trust to liability.

2.14.4 Determination. The Presidio Trust may award personal services contracts only when the Executive Director determines that a personal service contract is in the best interest of The Presidio Trust. Factors to be considered should include:

- worker's compensation payments and other tax implications;
- The Presidio Trust's potential liability for services performed;
- the availability of temporary hires to perform the desired services;
- demonstration of tangible benefits to The Presidio Trust;
- potential post-employment restrictions applicable to former employees;
- potential post employment restrictions pursuant to Federal Workforce Restructuring Act of 1994, Public Law 103-226.

Although personal service contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to The Presidio Trust.

2.14.5 Buyout Employees. The Federal Workforce Restructuring Act of 1994, Public Law 103-226, conditions the employment of former Government employees who received a voluntary separation incentive (buyout) payment. If these former employees perform under a personal services contract in support of (or are employed directly by) The Presidio Trust within 5 years after the date of separation from Government employment they must repay the entire amount of the buyout.

2.15 PRESIDIO TRUST PROPERTY

2.15.1 Policy

When contractors possess Presidio Trust property, the Trust shall:

- delegate property administration authority to a property administrator;
- eliminate, to the maximum practical extent, any competitive advantage that might arise from using such property;
- require contractors to use Presidio Trust property, to the maximum practical extent, in performing Presidio Trust contracts;
- permit the property to be used only when authorized;
- charge appropriate rentals when the property is authorized for use on other than Presidio Trust contracts;
- require contractors to review and provide justification for retaining Presidio Trust property not currently in use;
- require contractors to be responsible and accountable for the property in their possession and control; and
- require contractors to keep property records. Contractor records are The Presidio Trust's official property records in the absence of a delegated property administrator. However, when the Procurement Program Manager retains property administration by delegating a property administrator, the property office records are the official records.

2.16 RESOLUTION OF PROCUREMENT PROTESTS AND CONTRACT DISPUTES

2.16.1 Policy

Protests concerning Presidio Trust contract awards and contract disputes arising under or related to The Presidio Trust contracts, shall be resolved through the procedures described herein.

2.16.2 Contract Award Disputes. All screening requests should notify offerors that The Presidio Trust is not subject to Federal Government procurement protest laws and regulations and that by participating in the procurement they agree to abide by the procurement protest procedures promulgated by The Presidio Trust. All screening requests should apprise offerors that protest procedures may be obtained by written request. Offerors that believe that their proposals were not evaluated fairly and impartially should first be given the opportunity to resolve the matter with the Procurement Program Manager, who should make reasonable efforts to promptly and completely resolve concerns or controversies, wherever possible.

2.16.2.1 Protest Procedures. If the matter cannot be resolved by the Procurement Program Manager, a contractor may file a protest with the Board of Directors of The Presidio Trust. Protests must be filed not later than 7 business days after the date of the agency action or inaction which forms the basis of the protest (*e.g.*, the date of contract award). Protests based upon alleged improprieties in a Procurement Information Request (“PIR”), must be filed prior to the time set for receipt of responses. The Board of Directors may appoint an impartial third party to resolve disputes.

2.16.2.2 Resolution of Protest. Within 30 days after receipt of the protest by The Presidio Trust, the Procurement Program Manager shall provide the Board of Directors a report on the protest, specifying why it should be denied or sustained. The Board or its designee may request that the parties attend an informal hearing if necessary to further develop the issues. Within 30 days after the later of receipt of the Procurement Program Manager’s report or a hearing, the Board or its designee shall rule on the protest. If the Board has designated a third party, his/her ruling shall be a recommendation to the Board, which the Board shall promptly act upon. The Board’s ruling regarding such protest shall constitute the final action by the Presidio Trust.

2.16.3 Contract Disputes. All Presidio Trust contracts shall contain binding disputes resolution procedures promulgated by The Presidio Trust. Disputes should be resolved at the Procurement Program Manager level, whenever possible. With the advice of The Presidio Trust General Counsel and approval by the Executive Director, the Procurement Program Manager has full discretion to settle contract disputes, except when the matter involves fraud.

2.16.3.1 Dispute Procedures. Contract claims shall be in writing and, at a minimum, shall include a statement of facts, adequate supporting data, and a request for relief. Contract disputes must also be signed by a duly authorized representative of the contractor.

Contract claims shall be filed with The Presidio Trust Board of Directors within 6 months after the accrual of the dispute. The accrual of a contract dispute occurs on the date on which all events last occur which fix the alleged liability of either The Presidio Trust or the contractor.

Obligation to Continue Performance. Contractors shall be required to continue performance pending resolution of contract disputes.

Disposition of Contract Disputes. The Presidio Trust Board of Directors, at their sole option, may render a decision regarding the dispute, or refer the dispute to Alternative Dispute Resolution.

2.16.3.2 Alternative Dispute Resolution. The Board of Directors will make available Alternative Dispute Resolution (“ADR”) professionals from outside The Presidio Trust to

serve as neutrals in ADR proceedings. The parties will share the cost of any outside neutral. The neutral should consider the use of any ADR technique proposed by the parties that is deemed to be fair, reasonable, and in the best interest of the parties, including, but not limited to, informal communication, mediation, fact-finding, and binding or nonbinding arbitration.

2.16.3.3 Arbitration. Binding arbitration may be employed prior to ADR only if the contractor and The Presidio Trust agree to waive ADR. All arbitration will be before a single arbitrator. If the parties cannot agree on an arbitrator, each shall nominate its own candidate, who in turn shall select the arbitrator. If either party has not nominated a candidate to select an arbitrator within the time specified, the candidate selected by the other party may, at his sole option, either serve as the arbitrator or appoint an arbitrator. The parties shall endeavor to conduct arbitration outside of any formal organization. However, the Rules of the American Arbitration Association then prevailing shall be used with regard to procedural matters.

2.16.3.4 Judgments. Judgments upon the arbitration award may be entered by the U.S. District Court for the Northern District of California. Fees shall be borne equally by the parties, unless the arbitrator apportions the fees differently. The arbitrator's decisions on matters of law shall not be final and may be reviewed *de novo* by the U.S. District Court for the Northern District of California. The arbitrator shall not be empowered to award punitive or consequential damages, which are hereby waived by the parties.

2.17 OTHER ADMINISTRATIVE MATTERS

2.17.1 Classified Information. The Procurement Program Manager should ensure screening information requests and contracts contain appropriate provisions and clauses if access to classified information is required, in accordance with Executive Order 10865, "Safeguarding Classified Information within Industry," as amended by Executive Order 10909.

2.17.2 Printing and Double Sided Copying. The Procurement Program Manager should ensure contractors are made aware of Executive Order 12873, sections 402(d) and 504, relating to the submission of paper documents to the U.S. Government which are printed/copied double-sided on recycled paper, if possible.