

File No. 100332

Committee Item No. 1

Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 3, 2010

Board of Supervisors Meeting Date May 4, 2010

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Completed by: Alisa Somera Date April 30, 2010

Completed by: Alisa Somera Date May 4, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Revisions to Integrated Project Delivery Construction Contracting Procedures; Signature
2 Authority for Administrative Code Chapter 6 Contracts and Related Documents]

3 **Ordinance amending San Francisco Administrative Code Chapter 6 to revise Section**
4 **6.68 concerning integrated project delivery contracting procedures and revise**
5 **Subsection 6.1(H) to allow a department head to designate an individual to execute on**
6 **his or her behalf contracts awarded under Chapter 6 and related documents.**

7 NOTE: Additions are *single-underline italics Times New Roman*;
8 deletions are *strike-through italics Times New Roman*.
9 Board amendment additions are double-underlined;
10 Board amendment deletions are ~~strikethrough normal~~.

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

12 Section 1. The San Francisco Administrative Code is hereby amended by amending
13 Section 6.68, to read as follows:

14 **SEC. 6.68. INTEGRATED PROJECT DELIVERY**

15 Integrated project delivery is an approach to the procurement of construction services
16 whereby a construction manager/general contractor ("CM/GC") is retained during the design
17 process to review and provide comments as to the constructability of the Architect/Engineer's
18 design within the established budget. The department heads authorized to execute contracts
19 for public work projects are authorized to seek proposals from qualified CM/GCs for
20 construction of public work projects using an integrated project delivery under the following
21 conditions:

22 (A) Before the request for qualifications is issued, the department head shall
23 determine that an integrated project delivery is necessary or appropriate to achieve
24
25

1 anticipated cost savings or time efficiencies, or both, and that such a process is in the public's
2 best interest.

3 (B) If the proposed public work project is for the use or benefit of a department that
4 is under the jurisdiction of a commission, then such commission shall first approve the
5 solicitation of integrated project delivery proposals. If the public work is for the use or benefit
6 of a department not under the jurisdiction of a commission, then the City Administrator must
7 first approve this process.

8 (C) Pre-qualification. Department heads shall require that prospective proposers be
9 pre-qualified to submit proposals on a specific project. The procedure for pre-qualification is
10 as follows:

11
12 (1) The department head shall issue a request for qualifications inviting interested
13 parties to submit their qualifications to perform the project. The request for qualifications shall
14 include criteria by which the prospective proposers shall be evaluated. The evaluation criteria
15 shall be based on qualifications and experience relevant to the services needed for the
16 particular project. The list of criteria may include, but is not limited to the following: including: (i)
17 ability to perform required pre-construction and construction phase services; (ii) evidence of
18 financial capacity; (iii) experience on ~~similar~~ projects of similar size and complexity; (iv)
19 commitment to comply with the goals and requirements of Administrative Code Chapters 12
20 and 14; (v) ability to collaboratively and cooperatively deliver projects on time and on budget;
21 (vi) liquidated damages for delay and other damages paid on prior projects, and prior litigation
22 history; (vii) reputation with owners of prior projects; (viii) claims history with insurance carriers
23 and sureties; and (ix) compliance with all of the requirements established in the request for
24 qualifications and other criteria that the department head in consultation with the Human Rights
25

1 Commission may deem appropriate. The department head shall set objective scoring criteria
2 and incorporate the criteria into any scoring procedure.

3 (2) The department head shall designate a panel to review pre-qualification
4 responses and interview and rate respondents with respect to the request for qualifications.
5 Only those respondents found to be qualified will be eligible to submit proposals. The list of
6 pre-qualified respondents shall be valid for not more than two years following the date of initial
7 pre-qualification.

8 (D) Request for Proposals and Selection Process. The department head shall issue
9 a request for proposals inviting pre-qualified CM/GCs to submit competitive cost proposals for
10 the project. The request for proposals shall include information describing the scope of pre-
11 construction and construction phase services for the project. The request for proposals shall
12 request the following minimum cost information from each proposer: (i) fees for pre-
13 construction services and (ii) fees for construction phase services, including overhead, profit
14 and general conditions, and (iii) the qualitative criteria as described in (1) below.

15 ~~(E) Final Selection Process. The department head may recommend the award of a~~
16 ~~contract to the responsible CM/GC bidder submitting the lowest responsive bid. If the award~~
17 ~~to that CM/GC bidder is not made for any reason, the department head may recommend the~~
18 ~~award of a contract to the responsible CM/GC bidder submitting the next lowest responsive~~
19 ~~bid, and so forth. The department head may, at his or her sole discretion, conduct any~~
20 ~~negotiations that are necessary to effectuate the award of a contract.~~

21 ~~(F) Alternative Final Selection Process. If the department head determines that it is~~
22 ~~in the City's best interest to consider non-cost criteria as part of the final selection process, the~~
23 ~~department head shall issue a request for proposals inviting pre-qualified CM/GCs to submit~~
24 ~~integrated project delivery proposals, which will be evaluated based upon both non-cost~~
25 ~~criteria and project costs.~~

1 (1) The department head shall designate a panel to evaluate integrated project delivery
2 proposals and rank the proposals to determine which provides the overall best value to the City with
3 respect to non-cost and cost criteria. The list of non-cost criteria may include but is not limited to the
4 following: (i) plan for expediency in completing the proposed project; (ii) quality of proposal; (iii)
5 commitment to comply with the goals set by the Human Rights Commission and requirements of
6 Administrative Code Chapters 12 and 14; (iv) commitment to meet City hiring goals (e.g. CityBuild or
7 First Source Hiring); and (v) compliance with all the requirements and criteria established by the
8 department head or HRC in the request for proposals. The department head shall set objective scoring
9 criteria and incorporate the criteria into any scoring procedure. The cost criterion shall constitute not
10 less than sixty-five percent (65%) of the overall evaluation.

11 (2) The department head shall set forth in the request for proposals and in the contract
12 liquidated damages to be assessed against the successful CM/GC in the event it fails to fulfill the
13 commitments made in its proposal.

14 (3) The department head may recommend the award of a contract to the highest-ranked
15 CM/GC whose total proposed fee is not more than twenty percent (20%) greater for contracts the
16 estimated cost of which is \$10 million or less, or is not more than ten percent (10%) greater for
17 contracts the estimated cost of which is in excess of \$10 million, than the total proposed fee of the
18 lowest responsive bid. If award to such CM/GC is not made for any reason, the department head may
19 recommend the award of a contract to the next highest-ranked CM/GC whose total proposed fee is not
20 more than ten percent (10%) greater than the total proposed fee of the lowest responsive bid, and so
21 forth. In making the final determination, the department head shall apply the LBE discount to
22 proposals submitted by LBEs, in accordance with Administrative Code Chapter 14B.

23 (E) Alternate Request for Proposals and Selection Process. If the department head
24 determines that it is in the City's best interest to exclude consideration of non-cost criteria as
25 part of the final selection process, the department head shall issue a request for proposals

1 inviting pre-qualified CM/GCs to submit integrated project delivery proposals, which will be
2 evaluated based upon project costs only. If the proposed public work project is for the use or
3 benefit of a department that is under jurisdiction of a commission, then such commission shall
4 approve the use of this alternate process. If the public work is for the use or benefit of a
5 department not under the jurisdiction of a commission, then the City Administrator must
6 approve the use this alternate process.

7 (EGF) The City shall retain the absolute discretion to determine, at any time during the
8 process, not to proceed with any proposed project, which right may be exercised without
9 liability to CM/GCs for costs incurred during the entire pre-qualification, proposal and
10 negotiation process, and such rights shall be reserved in all requests for qualifications and
11 proposals.

12 (GHG) The bid security and subcontractor listing requirements of section 6.21 will not
13 apply to the selection of CM/GCs under this section 6.68. Any resulting contract with a
14 CM/GC shall comply with section 6.22.

15 (HH) Procurement of Trade Subcontractors. Department heads shall require the
16 selected CM/GC to procure trade work contracts through a pre-qualification and competitive
17 bid process, as follows:

18 (1) Pre-qualification. The department head shall require the CM/GC to pre-qualify
19 all trade subcontractors, subject to the approval of the department head. The CM/GC shall
20 attempt to establish a pool of no fewer than three pre-qualified subcontractors for each trade
21 package, subject to the approval of the department head.

22 (2) Competitive Bid. The department head shall require the CM/GC to receive
23 sealed bids from the pre-qualified trade subcontractors. The bid security provisions of section
24 6.21 will not apply. The CM/GC shall award a trade package subcontract to the responsible
25 bidder submitting the lowest responsive bid, except that the CM/GC may negotiate and award

1 a portion of the trade package subcontracts as provided in paragraph (3), below. Only those
2 Administrative Code provisions that normally apply to subcontracts will apply to the trade
3 package subcontracts.

4 (3) The department head may authorize the CM/GC to negotiate subcontracts for
5 trade work as appropriate for the project, up to an amount not exceeding seven and one-half
6 percent of the total estimated subcontract costs. The department head shall establish a
7 maximum dollar value for each negotiated trade subcontract as appropriate for the project.

8 (~~J~~) All actions heretofore taken by a department head consistent with the provisions
9 of this section are hereby approved.

10
11 Section 2. The San Francisco Administrative Code is hereby amended by amending
12 Section 6.1(H), to read as follows:

13
14 Sec. 6.1. DEFINITIONS.

15
16 (A) Advertisement For Bid: An Advertisement For Bid is a set of documents which
17 includes without limitation the published advertisement for bids on a construction contract; the
18 forms to be submitted with a bid, as required by the contracting department and the Human
19 Rights Commission; the construction contract general and special conditions; and the plans
20 and specifications for the public work or improvement.

21 (B) Award. For contracts in excess of the Threshold Amount as defined below, a
22 contract is awarded by the City and County of San Francisco when the following events have
23 occurred:
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1 (1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has
2 approved the contract for award and (b) the department head has then issued an order of
3 award;

4 (2) For departments with boards or commissions, (a) the department head has
5 recommended to the board or commission concerned a contract for award and (b) such board
6 or commission has then adopted a resolution awarding the contract.

7 For contracts less than or equal to the Threshold Amount as defined below, a contract
8 is awarded when the department head either signs the contract or issues an order of award,
9 whichever occurs first. Pursuant to Charter Section 3.105, all contract awards are subject to
10 certification by the Controller as to the availability of funds.

11
12 (C) Bid. A sealed document submitted in response to an Advertisement For Bids.
13 No bid shall be deemed accepted by the City and County of San Francisco until such time as
14 the contract is awarded in accordance with this Chapter.

15 (D) Bidder. One who submits a bid in response to an Advertisement For Bids.

16 (E) Construction Manager. Any individual, firm, partnership, corporation,
17 association, joint venture or other legal entity permitted by law to furnish construction
18 management services to the City and County.

19 (F) Contract. For the purposes of this Chapter, a contract is an agreement in writing
20 between the City and County of San Francisco and any party to perform professional design
21 services, consultant services, construction management services or construction services
22 relative to a public work or improvement. No contract shall be deemed awarded effective or
23 binding on the City and County of San Francisco until such time as the requirements for
24 award are met, as provided in this Chapter.

1 (G) Contractor. A party who contracts directly with the City and County of San
2 Francisco to perform professional design services, consultant services, construction
3 management services or construction services relevant to a public work or improvement. A
4 contractor performing construction services may also be referred to as a "general contractor"
5 or a "prime contractor."

6 (H) Department Head. The duly appointed General Manager, Director, or Executive
7 Director of a City and County of San Francisco department authorized to perform public work
8 under this Chapter. For purposes of this Chapter only, an authorized department head may
9 designate ~~a Deputy General Manager or Deputy Director~~ an individual to execute on his or her
10 behalf any document referenced in this Chapter, including but not limited to Contracts,
11 Change Orders, Modifications, Service Orders, Task Orders, approvals, progress payments,
12 and certificates of completion. Such designation shall be in writing and shall identify the
13 individual deputy by name and title and the scope and term of the designation.

14 (I) Prevailing Wage or Prevailing Rate of Wage. The prevailing wage, as used in
15 this Chapter, is the highest general prevailing rate of wage plus "per diem wages" and wages
16 paid for overtime and holiday work paid in private employment in the City and County of San
17 Francisco for the various crafts and kinds of labor employed in the performance of any public
18 work or improvement under this Chapter. "Per diem wages" are defined pursuant to Labor
19 Code section 1773.1, as amended from time to time.

20 (J) Public Work or Improvement. A public work or public work or improvement, as
21 used in this Chapter, is any erection, construction, renovation, alteration, improvement,
22 demolition, excavation, installation, or repair of any public building, structure, infrastructure,
23 bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the
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1 City and County of San Francisco, the cost of which is to be paid wholly or partially out of
2 moneys deposited in the treasury of the City and County.

3 (K) Responsible. A responsible bidder or contractor is one who (1) meets the
4 qualifying criteria required for a particular project, including without limitation the expertise,
5 experience, record of prior timely performance, license, resources, bonding and insurance
6 capability necessary to perform the work under the contract and (2) at all times deals in good
7 faith with the City and County and shall submit bids, estimates, invoices claims, requests for
8 equitable adjustments, requests for change orders, requests for contract modifications or
9 requests of any kind seeking compensation on a City contract only upon a good faith honest
10 evaluation of the underlying circumstances and a good faith, honest calculation of the amount
11 sought.

12 (L) Responsive. A responsive bid is one that complies with the requirements of the
13 subject Advertisement For Bids without condition or qualification.

14 (M) Threshold Amount. The Threshold Amount, for the purposes of this Chapter, is
15 \$400,000. On January 1, 2015, and every five years thereafter, the Controller shall recalculate
16 the Threshold Amount to reflect any proportional increase in the Urban Regional Consumer
17 Price Index from January 1, 2010, rounded to the nearest \$1,000.

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19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: 
23 George K. Wong
24 Deputy City Attorney
25

LEGISLATIVE DIGEST

Revisions to Integrated Project Delivery Construction Contracting Procedures; Signature Authority for Administrative Code Chapter 6 Contracts and Related Documents.

Ordinance amending San Francisco Administrative Code Chapter 6 to revise Section 6.68 concerning integrated project delivery contracting procedures and revise Subsection 6.1(H) to allow a department head to designate an individual to execute on his or her behalf contracts awarded under Chapter 6 and related documents.

Existing Law

Administrative Code Chapter 6 addresses public work or improvement contracting policies and procedures.

Section 6.68 authorizes department heads to execute integrated project delivery construction contracts under which construction managers/general contractors (CM/GCs) provide pre-construction and construction phase services. Section 6.68 provides for a selection process under which a department head may recommend award of a contract to the CM/GC who submits the lowest responsive bid.

Amendments to Current Law

Section 6.68 is amended to:

- Remove the word "cost" from the second line of subsection 6.68(D).
- Replace the term "bidder" with "CM/GC" in subsection 6.68(E).
- Remove the authorization for department heads to conduct contract negotiations as part of the final selection process. (Subsection 6.68(E).)
- Authorize the consideration of qualifications and/or other non-cost criteria as part of the final selection process. Proposals will be evaluated based upon these non-cost criteria and project cost; the cost criterion shall constitute not less than sixty-five percent of the overall evaluation. Non-cost criteria include: (i) plan for expediency in completing the proposed project; (ii) quality of proposal; (iii) compliance with the goals set by the Human Rights Commission and requirements of Administrative Code Chapters 12 and 14; (iv) commitment to meet City hiring goals (e.g., CityBuild or First Source Hiring); and (v) compliance with all the requirements and criteria established by the department head in the request for proposals. The cost criterion shall constitute not less than sixty-five percent (65%) of the overall evaluation. (Amended subsection 6.68(D).)

- The foregoing selection process using qualifications and/or other non-cost criteria together with cost shall be the norm. Use of cost as the only criterion shall require the approval of a department's commission or the City Administrator. (New subsection 6.68 (E).)
- Authorize department heads using the alternative final selection process to recommend the award of a contract to the highest-ranked CM/GC whose total proposed fee is not more than ten percent (10%) or twenty percent (20%) greater than the total proposed fee of the lowest responsive bid. (New subsection 6.68(D)(3).)
- Renumber existing subsections 6.68(F), 6.68(G), 6.68(H), and 6.68(I) for clarity and logic within amended section 6.68.

Background Information

This legislation provides City departments with greater flexibility in using integrated project delivery to promote competition for certain public work projects, help achieve cost savings or time efficiencies for such projects, and help ensure the selection of a CM/GC whose proposal represents the overall best value to the City.