

File No. 101051

Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: September 15, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Victor Young

Date: September 10, 2010

Completed by: Victor Young

Date: _____

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

1 [Approval to Implement Alternative Bid Process for Construction Trade Packages for the
2 Renovation and Construction of the George S. Moscone Convention Center.]

3 **Ordinance authorizing the San Francisco Department of Public Works to implement an**
4 **alternative bid process for construction trade packages and to award contracts for**
5 **construction services, for the renovation of and capital improvements to the Moscone**
6 **Convention Center.**

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;
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. General Findings.

12 A. In December 2008, the Board of Supervisors established, by Resolution 504-08
13 (File No. 081517) (the "Resolution"), the Tourism Improvement District ("TID") pursuant to the
14 Property and Business Improvement Law of 1994 (California Streets and Highways Code
15 sections 36600 et seq., the "Act"), as augmented by Article 15 of the San Francisco Business
16 and Tax Regulations Code ("Article 15"), which included authorization of a system of
17 assessments levied and payable by hotels within the TID. The Resolution further provided
18 that a portion of the revenues generated by the assessment would be used for upgrade and
19 renovation, and planning for a possible expansion, of San Francisco's Moscone Convention
20 Center, including capital improvements, installation of state of the art technology and
21 structural work to the North, South and West facilities of the Moscone Convention Center (the
22 "Moscone Convention Center Improvement Project"). (The buildings and improvements in
23 San Francisco known as the George S. Moscone Convention Center, including the Moscone
24
25

1 North, South and West facilities, are the property of the City and County of San Francisco.
2 Funds raised by the TID assessment referred to herein as "Other Funds.")

3 B. In the Resolution, the Board of Supervisors also approved the San Francisco
4 Tourism Improvement District Management Plan, dated December 9, 2008, on file with the
5 Clerk of the Board of Supervisors in File No. 081338 (the "Plan"). In recognition of the
6 significance of the tourism, leisure and convention industry to the overall economic health of
7 the City, and of the critical role that the Moscone Convention Center plays with respect to
8 sustaining growth in this area, the Plan provides that the City would consider authorizing the
9 execution and delivery of Certificates of Participation, the proceeds of which would be used to
10 pay for capital improvements to the Moscone Convention Center that would not be funded by
11 the TID assessment funds.

12 C. Consistent with the Plan, and also in December 2008, in Resolution No. 530-08
13 (File No. 081515), the Board of Supervisors authorized the execution, delivery and sale of
14 Certificates of Participation ("Certificates") for the purpose of financing the Moscone Center
15 Improvement Project in an aggregate amount not to exceed \$45 million. Further, in January
16 2009, the Board of Supervisors, by ordinance 6-09 (File No. 081514), appropriated \$45 million
17 of Certificates to fund the Moscone Center Improvement Project.

18 D. Because of the unique public-private nature of the funding for this renovation
19 and construction project, and because of certain challenges created by the project, including
20 the fact that work on the Convention Center will be performed within certain windows of time
21 when the Convention Center facilities are not otherwise in use by customers, thereby
22 minimizing (a) disruption of those customers events, and (b) the cost to the City in lost
23 revenue if conventions were rescheduled, DPW, in conjunction with the TID, has devised an
24 approach to procurement of construction services, which DPW has determined to be in the
25 best interest of the City, as described below.

1 Section 2. Contracting Procedures.

2 A. Modifications of Article 6.

3 The Board of Supervisors hereby modifies the otherwise applicable bidding and contracting
4 requirements of Administrative Code Section 6.20, et seq. as provided herein, and authorizes DPW to
5 take all necessary steps to procure design and/or construction services for the Moscone Convention
6 Center Improvement Project in accordance with the provisions of this Ordinance.

7 B. General Contract.

8 TID is authorized to solicit proposals and award to a qualified general contractor (the "GC") a
9 contract for all necessary construction services in connection with the Project (the "GC Contract"). The
10 fee and general conditions under the GC Contract shall be paid solely from Other Funds, and not out
11 of City Funds. The requirements of Administrative Code Section 6.68. A-G, which provide an
12 alternative procedure for selecting a GC to be paid out of public funds, shall not apply. The City Trade
13 Contracts as described in sections C and D below shall be added to the GC Contract by written
14 modification and may be funded with a combination of City Funds and Other Funds.

15 C. Trade Contracts and Subcontracts.

16 1. For all work to be funded solely with Other Funds, TID and its GC may solicit
17 and award any subcontracts ("Private Trade Contracts") for labor, equipment, material and
18 supplies, on whatever basis they determine to be in the best interest of the Project, so long as
19 no City Funds will be used to make payments for costs incurred under such Private Trade
20 Contracts. For all work to be paid out of City Funds, trade contracts ("City Trade Contracts")
21 shall be awarded by DPW pursuant to the process described below. The City's financial
22 liability for City Trade Contracts shall not exceed the amount of available City Funds.

23 2. TID, in cooperation with DPW staff, shall prepare all trade bid packages for City
24 Trade Contracts. TID may delegate its responsibility for preparing and soliciting trade bid
25 packages to the GC.

1 3. Bidding for City Trade Contracts may be limited to no less than three qualified
2 contractors, as determined by TID subject to the approval of DPW staff. The provisions of
3 Administrative Code Section 6.21.A.1 shall not apply, but TID shall advertise requests for
4 qualifications in at least one local newspaper of general circulation not fewer than ten (10)
5 days prior to Issuance of bid documents. Bid protest may be required to be received within
6 five (5) calendar days after the date bids are due. DPW shall have the authority to determine
7 and resolve any protest. If DPW or its designee determines that there are not three qualified
8 bidders for a particular trade bid package, TID shall use best efforts to obtain competitive bids
9 from all bidders determined to be qualified. Administrative Code Section 6.21.A.9, which
10 requires designation of subcontractors, shall not apply because the City Trade Contractors will
11 become subcontractors to the TID's GC. The DPW staff shall review and approve the bidding
12 of all City Trade Contracts. The City, acting through DPW, reserves the right to reject any
13 contract/supplier proposed by TID to perform a City Trade Contract and require TID to rebid
14 the work.

15 4. DPW shall award the corresponding City Trade Contracts to the responsible
16 bidder submitting the lowest responsive bid.

17 5. DPW is authorized to negotiate and award Trade Contracts as appropriate for
18 the project, up to an amount not to exceed seven and one-half percent of the money in the
19 City Funds. The Director of DPW shall establish a maximum dollar value for each negotiated
20 trade subcontract as appropriate for the project. For clarity, nothing in this Ordinance is
21 intended to modify Administrative Code Section 6.66, which authorizes certain procedures
22 and contracting authority for the Moscone Convention Center delegated to the
23 operator/manager of the convention center facilities; the provisions of this Ordinance shall be
24 construed to be supplemental to the provisions of section 6.66.

25 D. Novation of City Trade Contracts.

1 1. Following award of any City Trade Contracts, DPW is authorized to novate the
2 City Trade Contract to TID and/or the GC, as appropriate. TID shall have the right, in turn, to
3 novate the City Trade Contract to the GC. The intent is for these novated City Trade
4 Contracts to be subcontracts under the GC.

5 2. Following such novation, and following the issuance of a notice to proceed by
6 the City, the City shall bear the cumulative cost of the novated contracts as they are incurred
7 up to the amount of available City Funds. If and to the extent TID pays the GC or any
8 contractor under a City Trade Contract amounts due under a City Trade Contract, the City
9 shall reimburse TID for such amounts paid under a City Trade Contract; provided however,
10 the total payable by the City on account of the City Trade Contracts shall not exceed the
11 available City Funds.

12 3. All changes in scope or cost which affect the novated City Trade Contracts to be
13 paid with City Funds, in whole or in part, shall be reviewed and approved by DPW in
14 consultation with TID, and shall comply with the requirements of Administrative Code Section
15 6.22(H), including the requirement that any cumulative increase or decrease in price in excess
16 of ten percent of the original contract price shall require the approval of DPW. In no event
17 shall the City have any liability for amounts payable under such contracts in excess of
18 available City Funds. TID may take any necessary measures to produce any modifications
19 which are to be paid solely with Other Funds.

20 E. Assignment of Contract at Conclusion of Moscone Center Improvement Project.

21 Because the Moscone Convention Center is a City-owned facility, upon conclusion of
22 the construction phase of the Moscone Center Improvement Project, the contractual
23 relationships among the parties should provide the City with the legal right to pursue any
24 claims arising from breach of warranties, negligence, latent defects, and the like, with respect
25 to work performed by parties on the Project. Further, the City is better-positioned than the

1 TID to assert any such claims because the TID has no ownership interest in the facility, has a
2 legal existence of limited duration as required by law, and because its funds have already
3 been designated for the purposes set forth in the Plan, including for marketing of the City and
4 for planning of a possible expansion of the Moscone Convention Center facilities, which
5 purposes further the economic interests of the City. Therefore, the TID may assign to the City
6 its legal rights in and to the GC Contract, City Trade Contracts, Private Trade Contracts, and
7 its contracts with the architects, designers and the project manager with regard to design
8 defects, latent construction defects and warranties, provided that in exchange for such
9 assignments the City shall release the TID of liability with respect to design and construction
10 contract claims arising from or related to any acts or omissions of the TID under such
11 contracts.

12 F. LBE Participation.

13 The Executive Director of the Human Rights Commission shall set LBE subcontracting
14 participation goals for the overall CM Contract, taking into account, as applicable, the mix of
15 City Funds and Other Funds used for the Trade Contracts. The goals may be met by any
16 combination of City Trade Contracts and Private Trade Contracts. As City Trade Contracts
17 are intended to become subcontracts under the GC, the provisions of Administrative Code
18 Section 14B.19, governing LBE participation in Integrated Project Delivery contracts shall
19 apply.

20 Section 3. Insurance Requirements.

21 A. Insurance and bond requirements for the GC, the City Trade Contracts, and
22 Private Trade Contracts, as well as for design professionals working on the Project shall be
23 subject to review and approval by the City's Risk Manager.

24 B. Additional Requirements.

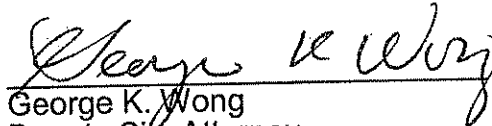
1 1. For general liability and automobile liability insurance, the City, its Board
2 members and commissions, and all authorized agents and representatives, and members,
3 directors, officers, trustees, agents and employees of any of them shall be named as
4 additional insureds.

5 2. Certificates of insurance, in form and with insurers acceptable to the City
6 evidencing all required insurance and with proper endorsements from the GC's insurance
7 carrier identifying as additional insured's the parties indicated above, shall be furnished to the
8 City, with complete copies of policies to be furnished to the City promptly upon request.

9 3. Liability insurance shall be on an occurrence basis, and shall provide that the
10 coverage afforded thereby shall be primary coverage (and non-contributory to any other
11 existing valid and collectable insurance).

12 4. Insurance companies shall be legally authorized to engage in the business of
13 furnishing insurance in the State of California.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: 
18 George K. Wong
19 Deputy City Attorney

LEGISLATIVE DIGEST

[Approval to Implement Alternate Bid Process for Construction Trade Packages for the Renovation and Construction of the George S. Moscone Convention Center.]

Ordinance authorizing the San Francisco Department of Public Works to implement an alternative bid process for the construction trade packages and to award contracts for construction services for the renovation of and capital improvements to the George S. Moscone Convention Center.

Existing Law

Section 6.20 et seq. of the Administrative Code sets forth general requirements for the award of contracts for City-funded public work projects.

Section 6.21.A.1 of the Administrative Code sets forth requirements for issuing advertisements for competitive bids for City-funded public work projects.

Section 6.21.A.9 of the Administrative Code requires bidders on City-funded public work projects to list subcontractors who will perform work on a project in accordance with the requirements of the California Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).

Section 6.22(A) of the Administrative Code sets forth requirements for performance and payment bonds on City-funded public work projects.

Section 6.22(H) of the Administrative Code sets forth procedures and requirements for modifying City-funded public work contracts.

Section 6.66 of the Administrative Code sets forth special procurement procedures for convention facility public work projects.

Section 6.68 of the Administrative Code sets forth procedures for awarding City-funded integrated project delivery contracts.

Section 14B.7 of the Administrative Code governs the application of the City's Local Business Enterprise ("LBE") program to City-funded prime contracts, including public work contracts.

Section 14B.19 of the Administrative Code sets forth procedures for attaining project-wide LBE subcontracting participation goals for City-funded integrated project delivery contracts.

Amendments to Current Law

The ordinance modifies the otherwise applicable bidding and contracting requirements of the Administrative Code and authorizes the Department of Public Works to take all necessary steps to procure construction services for the Moscone Convention Center Improvement Project (the "Project") in accordance with the provisions of this Ordinance, as follows:

1. Authorizes the Tourism Improvement District ("TID") to solicit proposals and award to a qualified general contractor ("GC") a contract for all necessary construction services in connection with the Project (the "GC Contract"). The fee and general conditions under the GC contract shall be paid solely from funds raised by the TID assessment ("Other Funds"). The requirements of Administrative Code Section 6.68 shall not apply to the award of the GC contract.
2. Provides that for work to be funded solely with Other Funds, TID and its GC may solicit and award any subcontracts ("Private Trade Contracts") on whatever basis they determine to be in the best interests of the Project, so long as no City funds will be used to make payments of costs incurred under such Private Trade Contracts.
3. Authorizes the use of City Trade Contracts that may be funded with a combination of City funds and Other Funds. These City Trade Contracts shall be added to the GC Contract by written modification.
4. Authorizes DPW to award City Trade Contracts using a special process, summarized as follows:
 - Directs the TID, in cooperation with DPW, to prepare trade package bids for City Trade Contracts.
 - Sets forth specific bidding requirements for City Trade Contracts, including limiting bidding to no less than three qualified contracts, bid advertisement procedures, and bid protest procedures. Provides that the requirements of Administrative Code Sections 6.21.A.1 and 6.21.A.9 shall not apply to the award of City Trade Contracts.
 - Authorizes DPW to review and approve the bidding of all City Trade Contracts, and reserves the right of the City, acting through DPW, to reject any contractor/supplier proposed by TID to perform a City Trade Contract.
 - Authorizes DPW to award City Trade Contracts to the responsible bidder submitting the lowest responsive bid.
 - Authorizes DPW to negotiate and award Trade Contracts, as appropriate, up to seven and one half percent of the money in the City Funds.

5. Clarifies that this Ordinance does not modify Administrative Code Section 6.66, and that the provisions of this Ordinance shall be construed to be supplemental to the provisions of Section 6.66.
6. Authorizes DPW, following award of any City Trade Contracts, to novate City Trade Contracts to TID and/or the GC, as appropriate. TID shall have the right, in turn, to novate the City Trade Contracts to the GC..
7. Provides that following novation of City Trade Contracts and issuance of notice to proceed by the City, the City shall bear the cumulative cost of the novated City Trade Contracts as they are incurred up to the amount of available City funds.
8. Provides that all changes in scope or cost which affect novated City Trade Contracts to be paid with City funds, in whole or in part, shall be reviewed and approved by DPW in consultation with TID, and shall comply with the requirements of Administrative Code Section 6.22(H). Further provides that in no event shall the City have any liability for amounts payable under such contracts in excess of available City funds.
9. Provides that contracts for the Project should provide the City with the legal right to pursue any claims arising from breach of warranties, negligence, latent defects, and the like, with respect to work performed by the parties on the Project. Further provides that the TID may assign to the City its legal rights in and to the GC Contract, City Trade Contracts, Private Trade Contracts and its contracts with architects, designers and the project manager, with respect to the Project, provided that in exchange for such assignments, the City shall release the TID of liability with respect to design and construction contract claims arising from or related to any acts or omissions of the TID under such contracts.
9. Authorizes the Executive Director of the Human Rights Commission to set LBE subcontracting participation goals for the CM Contract in accordance with the provisions of Administrative Code Section 14B.19, taking into account, as applicable, the mix of City funds and Other Funds used for the Trade Contracts. Provides that the provisions of Administrative Code Section 14B.7 shall not apply to the award of City Trade Contracts.
10. Provides that insurance and bond requirements for the GC Contract, City Trade Contracts, Private Trade Contracts, and contracts with design professionals working on the Project shall be subject to review and approval by the City's Risk Manager.
11. Provides that the requirements of Administrative Code Section 6.22(A) regarding payment and performance bonds shall not apply if the City's Risk Manager and the City Attorney, in their discretion, approve alternative arrangements.
12. Sets forth various insurance requirements for the Project.

Background Information

In December 2008, the Board of Supervisors established, by Resolution 504-08 (File No. 081517) (the "Resolution"), the TID pursuant to the Property and Business Improvement Law of 1994 (California Streets and Highways Code sections 36600 et seq., the "Act"), as augmented by Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), which included authorization of a system of assessments levied and payable by hotels within the TID. The Resolution further provided that a portion of the revenues generated by the assessment would be used for upgrade and renovation, and planning for a possible expansion, of Moscone Convention Center, including capital improvements, installation of state of the art technology and structural work to the North, South and West facilities of the Moscone Convention Center.

In the Resolution, the Board also approved the San Francisco Tourism Improvement District Management Plan, dated December 9, 2008, on file with the Clerk of the Board of Supervisors in File No. 081338 (the "Plan"). In recognition of the significance of the tourism, leisure and convention industry to the overall economic health of the City, and of the critical role that the Moscone Convention Center plays with respect to sustaining growth in this area, the Plan provides that the City would consider authorizing the execution and delivery of Certificates of Participation, the proceeds of which would be used to pay for capital improvements to the Moscone Convention Center that would not be funded by the TID assessment funds.

Consistent with the Plan, and also in December 2008, in Resolution No. 530-08 (File No. 081515), the Board of Supervisors authorized the execution, delivery and sale of Certificates of Participation ("Certificates") for the purpose of financing the Project in an aggregate amount not to exceed \$45 million. Further, in January 2009, the Board of Supervisors, by Ordinance 6-09 (File No. 081514), appropriated \$45 million of Certificates to fund the Project.

Because of the unique public-private nature of the funding for this Project, and because of certain challenges created by the Project, including the fact that work on the Convention Center will be performed within certain windows of time when the Convention Center facilities are not otherwise in use by customers, thereby minimizing (a) disruption of those customers events, and (b) the cost to the City in lost revenue if conventions were rescheduled, DPW, in conjunction with the TID, has devised the approach to procurement of construction services as set forth in this Ordinance, which DPW has determined to be in the best interest of the City.

Item 4
Files 10-1051

Department:
Department of Public Works (DPW)

EXECUTIVE SUMMARY

Legislative Objective

- Ordinance approving an alternative contracting process for the Department of Public Works' (DPW) Moscone Convention Center Improvement Project.

Key Points

- The Moscone Convention Center Improvement Project (MCCIP) is a \$55,500,000 capital project of interior improvements to maintain the facility as a modern, competitive location for conventions, including (a) painting, bathroom renovations, and lighting, (b) elevator and escalator repairs, and (c) renovations to provide increased accessibility for persons with disabilities.
- The subject Moscone Convention Center Improvement Project is a joint project between DPW and the Tourism Improvement District (TID), a non-profit business improvement district established by the Board of Supervisors (File 08-1517) to fund, through assessments charged to San Francisco hotels, (a) the marketing operations of the San Francisco Convention and Visitors Bureau, and (b) a portion (see below) of the Moscone Convention Center Improvement Project.
- Because the existing contracting process in Chapter 6 was not written to accommodate jointly funded projects between the City and a private entity such as the non-profit TID, DPW is requesting the proposed alternative contracting process, in which, (a) the TID, as project leader, would award and exclusively fund contracts for the General Contractor and various Trade Subcontractors (Trade Subcontractors provide specific trade construction services such as painting or electrical work), (b) the City would, according to a competitive bidding process, award and exclusively fund additional Trade Subcontracts, and (c) all Trade Subcontracts would then be assigned to the General Contractor, with direct control over all the Trade Subcontractors. According to Mr. Edgar Lopez, Project Manager for DPW, the proposed alternative contracting process is materially the same as the alternative contracting process approved by the Board of Supervisors for construction of the California Academy of Sciences (File 04-1459).
- At the end of construction, in order to provide DPW with the right to pursue damages against the General Contractor or any Trade Subcontractor for problems arising from their work on the Moscone Convention Center, a public asset, all contracts previously assigned to the General Contractor or the TID would be assigned back to the City.

Fiscal Impacts

- The \$55,500,000 MCCIP would be funded by (a) \$20,500,000 in private funds from the TID, and (b) \$35,000,000 from the issuance of Certificates of Participation (COPs), with such COPs debt service paid from General Fund monies, as previously approved by the Board of Supervisors (File 08-1515).

Recommendations

- In order to provide the City with direct control over all contractors performing work on a City-owned facility after all Trade Subcontracts have been assigned to the General Contractor, amend the proposed ordinance to require that the scope of work for all contracts awarded by, or assigned to, the TID for work on the Moscone Convention Center, and any changes to such scope of work, be subject to the review and approval in writing by DPW.
- Approve the proposed ordinance, as amended.

MANDATE STATEMENT

Chapter 6 of the City's Administrative Code, as previously approved by the Board of Supervisors, specifies the contracting process for public works projects¹ under an Integrated Project Delivery method:

"...is an approach to the procurement of construction services whereby a construction manager / general contractor is retained during the design process to review and provide comments as to the constructability of the Architect/Engineer's design within the established budget."

The contracting process for the General Contractor established by Chapter 6 for public works projects, to be completed under an Integrated Project Delivery method, requires that the City must:

- (a) pre-qualify prospective General Contractor firms,
- (b) issue a Request For Proposals to the pool of pre-qualified General Contractors, advertising the opportunity at least ten days prior to the RFP deadline,
- (c) award the contract to the lowest qualified General Contractor, and
- (d) allow for an award protest period of at least five days.

After the design phase is complete, and the scope of trade services (such as plumbing, electrical, and lighting work) which is necessary for the project has been determined, the Human Rights Commission establishes the Local Business Enterprise (LBE) subcontracting goal for the General Contractor, and the General Contractor can award Trade Subcontracts. Chapter 6 of the Administrative Code requires that in order to award such Trade Subcontracts, the General Contractor must:

- (a) pre-qualify no fewer than three qualified Trade Subcontractors for each type of trade,
- (b) request bids from the pre-qualified Trade Subcontractors, and
- (c) award the bid to the lowest bidding qualified Trade Subcontractor.

Chapter 6 also requires all contractors to (a) pay workers according to the prevailing wage, (b) make a good-faith effort to use local hiring, and (c) maintain specified insurance and bonds.

The proposed ordinance would create an alternative contracting process for the Moscone Center Improvement Project (see Details of Proposed Ordinance Section below).

¹ According to Chapter 6, a public works project is "any erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the City and County of San Francisco, the cost of which is to be paid wholly or partially out of moneys deposited in the treasury of the City and County."

BACKGROUND

The Moscone Convention Center Improvement Project (MCCIP) is a \$55,500,000 capital project to provide interior upgrades and improvements to the Moscone Convention Center including (a) interior finishes (such as painting, carpeting, bathroom renovations, and lighting), (b) elevator and escalator repairs, (c) renovations to provide increased accessibility for persons with disabilities, and (d) upgraded mechanical equipment. According to Mr. Edgar Lopez, Project Manager at DPW, such improvements are needed in order to maintain the convention facility as a modern and competitive location to hold conventions.

The MCCIP is a joint project between DPW and the Tourism Improvement District (TID), a non-profit business improvement district established by the Board of Supervisors (File 08-1517) for the purposes of funding, through assessments charged to San Francisco hotels, (a) the marketing operations of the San Francisco Convention and Visitors Bureau, and (b) a portion of the \$55,000,000 Moscone Convention Center Improvement Project. According to Mr. Lopez, the existing Integrated Project Delivery method contracting process as specified in Chapter 6 of the City's Administrative Code does not include a contracting process which would apply to joint projects between the City and private entities, such as the nonprofit Tourism Improvement District. Therefore, because the MCCIP is a joint project to be funded by both a non-profit entity which receives project funds from assessments to hotels and public monies, DPW is now requesting an alternative contracting procedure to the City's existing Integrated Project Delivery Method contracting requirements described in the Mandate Statement Section above.

As shown in Table 1 below, the \$55,500,000 MCCIP would be funded by (a) \$20,500,000 in private funds from the non-profit Tourism Improvement District, with the TID serving as the project leader, and (b) \$35,000,000 from the issuance by the City of Certificates of Participation, with the debt service on such Certificates of Participation paid from the City's General Fund monies. Such COPs were previously approved by the Board of Supervisors (File 08-1515).

Table 1: Estimated Project Costs

	TID Budget	DPW Budget	Total
Architecture	\$2,861,000	\$0	\$2,861,000
Project Management	1,765,000	762,000	2,527,000
Legal Fees	80,000	25,000	105,000
Surveys, Inspections, and Construction Scope Validation	187,000	23,000	210,000
Building Permits	0	552,000	552,000
LEED Registration ²	90,000	0	90,000
Reimbursements for ADA Compliance ³	285,000	0	285,000
General Contractor Construction Costs	2,430,000	0	2,430,000
Trade Subcontractor Construction Costs	10,335,000	29,438,000	39,773,000
Contingency	2,467,000	4,200,000	6,667,000
Total	\$20,500,000	\$35,000,000	\$55,500,000

According to Mr. Lopez, DPW anticipates beginning construction of the MCCIP in October of 2010 and completing the project in August of 2012, with work only being performed during periods when the convention facilities are vacant.

DETAILS OF PROPOSED ORDINANCE

Under the proposed ordinance, an alternative contracting process would be authorized for the Moscone Convention Center Improvement Project such that there would be three types of contractors (a) the TID General Contractor, whose contract would be awarded and entirely funded by the TID, (b) "TID Trade Subcontractors" (for the purposes of this report, firms awarded Trade Subcontracts by the TID are referred to as "TID Trade Subcontractors"), whose contracts would also be awarded and entirely funded by the TID, and (c) "City Trade Subcontractors" (for the purposes of this report, firms awarded Trade Subcontracts by DPW are referred to as "City Trade Subcontractors"), whose contracts would be awarded and entirely funded by the City. The proposed alternative contracting process also allows for the assignment of all types of contracts between DPW and the TID. A discussion of each type of contract, and the planned assignment of each contract, follows.

The TID General Contractor

According to Mr. Lopez, the duties of the TID General Contractor are (a) during the design phase, to provide feedback from a construction perspective on methods to implement designs and design alternatives, cost validation, and construction schedule validation to the design team, and (b) during the construction phase, to manage all construction of the project including oversight of all Trade Subcontractors.

On July 15, 2010, the TID awarded a contract for General Contracting services for the MCCIP to Webcor Builders (Webcor) with an estimated cost of \$2,430,000 (see Table 1 above),

² Leadership in Energy and Environmental Design (LEED) is a certification available for buildings which meet a minimum number of "environmentally friendly" criteria.

³ The Moscone Convention Center is operated by the Moscone Center Joint Venture, under an agreement approved by the Board of Supervisors (Resolution 895-90). In order to bring the Moscone Convention Center into compliance with requirements of the Americans With Disabilities Act, the Moscone Center Joint Venture funded \$285,000 in accessibility improvements which would be reimbursed by the TID under the MCCIP.

including (a) \$1,800,000 in fixed fees for general services, and (b) \$630,000 in estimated Trade Subcontractor management costs (such costs can fluctuate according to the amount of the Trade Subcontracts). Because the General Contractor contract with Webcor has been, and will continue to be, entirely funded through assessments to private hotels, the selection of the General Contractor was not subject to any of the City's competitive bidding requirements established in Chapter 6 of the Administrative Code.

However, although the award of the General Contractor contract was not subject to the City's competitive bidding requirements under Chapter 6 of the Administrative Code, according to Mr. Lopez, the contract with Webcor requires Webcor to (a) have sufficient certified Local Business Enterprise (LBE) subcontractors to meet the Human Rights Commission (HRC) LBE subcontracting goal of 18.0 percent, with all City Trade Subcontracts and TID Trade Subcontracts awarded to LBE firms included in this LBE subcontracting goal, (b) maintain sufficient insurance and bonds, subject to the review and approval from the City's Risk Manager, (c) pay workers the prevailing wage, and (d) make a good-faith effort to use local hiring.

TID Trade Subcontractors

According to Mr. Lopez, the duties of the TID Trade Subcontractors are to perform construction work which is specialized to the convention industry, such as the construction of information kiosks, customized signage, and installation of convention related furniture, fixtures, and equipment, under the direct management of the General Contractor. Because all TID Trade Subcontracts will be entirely funded by private funds obtained by the TID, the selection of the TID Trade Subcontracts would not be subject to any of the City's competitive bidding requirements established in Chapter 6 of the Administrative Code. According to page 3 line 18 of the proposed ordinance, the TID can select TID Trade Subcontractors "on whatever basis they determine to be in the best interest of the Project, so long as no City Funds will be used to make payments for costs incurred..." under such contracts.

However, although the award of such contracts would not be subject to the City's competitive bidding requirements of Chapter 6, according to Mr. Lopez, all TID Trade Subcontractors would be required to (a) maintain sufficient insurance and bonds, subject to the review and approval from the City's Risk Manager, (b) pay workers the prevailing wage, and (c) make a good-faith effort to use local hiring.

As discussed above, any TID Trade Subcontracts awarded to certified LBEs would count towards Webcor's LBE subcontracting goal.

City Trade Subcontractors

According to Mr. Lopez, the duties of the City Trade Subcontractors are to perform trade specific construction work such as lighting, electrical, and plumbing under the direct management of the General Contractor. Mr. Lopez noted that generally, the City Trade Subcontractors are those who provide more commonly required construction trade services when compared to the TID Trade Subcontractors who provide more convention facility-specific trade services.

Under the proposed alternative contracting process, DPW would (a) prequalify at least three trade subcontractors, (b) award various City Trade Subcontracts subsequent to a competitive bidding process among those prequalified trade subcontractors requiring advertisement of the upcoming bid opportunity and a protest period of five days, and (c) assign the City Trade Subcontracts to the TID, such that the City's Trade Subcontractors become subcontractors under the TID's General Contractor, Webcor. City Trade Subcontractors would be required to (a) maintain sufficient insurance and bonds, subject to the review and approval from the City's Risk Manager, (b) pay workers the prevailing wage, and (c) make a good-faith effort to use local hiring.

DPW would award a portion of the City Trade Subcontracts to Micro-LBEs under the existing Micro-LBE Set-Aside Program established under Section 14B(k) of the City's Administrative Code. The Micro-LBE Set-Aside Program allows public works contracts under \$400,000 to be awarded to the lowest qualified bidder subsequent to receiving quotes from at least three firms. According to Mr. Lopez, the proposed alternative contracting process would not alter the existing contracting requirements of the Micro-LBE Set-Aside Program, however, the proposed alternative contracting process would provide for the assignment of such contracts, along with all other City Trade Subcontracts, as described in the Assignment of Contracts Section below.

Any City Trade Subcontracts awarded to certified LBEs would count towards Webcor's LBE subcontracting goal.

Assignment of Contracts

The proposed alternative contracting process allows all contracts for both the General Contractor and all types of Trade Subcontractors, to be assigned⁴ between DPW, the TID, and the General Contractor.

According to Mr. Lopez, the proposed ability to assign contracts, as described below, is the most significant difference between the existing contracting process established in Chapter 6 of the City's Administrative Code and the proposed alternative contracting process. Assignment would occur in two phases, pre-construction and post-construction.

Pre-Construction Assignment

As discussed above, the duties of the General Contractor include the direct control and management over all trade subcontractors, including TID Trade Subcontractors and City Trade Subcontractors. Under the proposed alternative contracting process, all trade subcontracts would be awarded by either the TID or the City, such that the General Contractor would not have a direct contractual relationship with any of the Trade Subcontractors it is required to manage.

Therefore, in order to provide the General Contractor with a contractual relationship over all Trade Subcontractors, the proposed alternative contracting process allows for the following: (a) DPW would assign all City Trade Subcontracts to the TID, and (b) the TID would assign all such City Trade Subcontracts, as well as all TID Trade Subcontracts, to the General Contractor, Webcor. After such assignments, DPW would continue to fund all costs incurred by the City Trade Subcontractors and related costs, up to the estimated amount of \$35,000,000 (see Table 1

⁴ According to Mr. Lopez, such assignments allow for the party who awards a contract for services to transfer (or "assign") their rights for such services to another party.

above) in available City funds, and the TID would fund the costs incurred by Webcor, the General Contractor, and all TID Trade Subcontractors and related costs up to the estimated amount of \$20,500,000 (see Table 1 above). According to Mr. Lopez, without such assignments, it would not be possible to provide the TID General Contractor with direct oversight over all Trade Subcontractors.

Notably, such assignments are not necessary under the conventional contracting process because, as discussed in the Mandate Statement Section above, the General Contractor awards contracts directly to Trade Subcontractors.

Post-Construction Assignment

According to Mr. Lopez, at the end of construction, in order to provide DPW with the right to pursue potential damages against Webcor or any Trade Subcontractors for problems arising from their work on the Moscone Convention Center Improvement Project, Webcor's contract and all Trade Subcontracts would be assigned back to the City.

FISCAL IMPACTS

The proposed ordinance to create an alternative bidding process, in and of itself, has no fiscal impact. However, approval of the proposed resolution would result in the expenditure of an estimated \$35,000,000 from the proceeds of Certificates of Participation to be issued by the City.

On December 16, 2008, the Board of Supervisors approved File 08-1515 which authorized the issuance of up to \$45,000,000 in Certificates of Participation, including (a) \$35,000,000 in project costs, (b) \$6,908,429 in costs of issuance, and (c) \$3,091,571 in additional issuance authority to allow for potential fluctuations in market conditions.

According to the November 24, 2008 memorandum to the Budget and Finance Committee provided by Ms. Nadia Sesay, Director of the Controller's Office of Public Finance, which accompanied File 08-1515, the COPs are estimated to be issued with an interest rate of 6.0 percent and a term of six years. Total debt service for the \$41,908,429 in COPs (\$45,000,000 less the \$3,091,571 in additional issuance authority to allow for potential fluctuations in market conditions) is estimated at \$46,950,000, including \$5,041,571 in interest and \$41,908,429 in principal, such that average annual debt service over the six year term of the COPs would be \$7,825,000. The debt service on the COPs will be paid from the City's General Fund monies.

According to Mr. Lopez, should the actual cost of the project exceed the estimated cost of \$55,500,000, DPW will reduce the scope of the project to eliminate such cost overruns.

POLICY CONSIDERATIONS

The proposed alternative contracting process differs from the existing contracting process in Chapter 6 because the existing contracting process is not intended for joint projects between the City and private entities, such as the non-profit Tourism Improvement District (TID).

Table 2 below provides a comparison of the existing and the proposed alternative contracting processes.

Table 2: Comparison of the City's Existing and the Proposed Alternative Contracting Processes

Contracting Process	Existing Contracting Process		Proposed Alternative Contracting Process		
	A	B	C	D	E
Contract	General Contractor	Trade Subcontractors	TID General Contractor	City Trade Subcontractors	TID Trade Subcontractors
Awarded and Entirely Paid By	City	General Contractor	TID	City	TID
Prequalification	Required, but no minimum amount of firms	At least 3 firms for each type of trade	Not required	At least 3 firms for each type of trade	Not required
Advertisement of Bid Opportunity	10 Days	Not required	Not required	10 days	Not required
Award Protest Period	5 Days	Not required	Not required	5 days	Not required
LBE Trade Subcontracting	Goal established by HRC.	LBE Firms count towards subcontracting goal.	Goal established by HRC.	LBE Firms count towards subcontracting goal.	LBE Firms count towards subcontracting goal.
Pre-Construction Assignment	Not assignable.	Not assignable.	Not assignable.	Assignable to the General Contractor, through the TID.	Assignable to the General Contractor.
Post-Construction Assignment	Not assignable.	Not assignable.	Assignable to City	Assignable back to City.	Assignable to the City.

As shown in Table 2 above, and as discussed above, the TID's selection process for the General Contractor and the TID Trade Subcontractors and the assignment provisions included in the proposed alternative contracting method are the most significant difference between the existing contracting process established in Chapter 6 of the City's Administrative Code and the proposed alternative contracting process proposed for the Moscone Convention Center Improvement Project (MCCIP).

The proposed alternative contracting process is similar to an alternative contracting process previously approved by the Board of Supervisors for the Recreation and Park Department's California Academy of Sciences renovation project

According to Mr. Lopez, the proposed alternative contracting process described above, including the assignment of City Trade Subcontracts to a private party's General Contractor, is

materially the same as the alternative contracting approach previously approved by the Board of Supervisors for construction of the California Academy of Sciences facility (File 04-1459), a joint project between the Recreation and Park Department and the California Academy of Sciences, a private non-profit entity.

However, the Budget and Legislative Analyst notes that the assignment of contracts back to DPW at the end of construction included in the proposed alternative contracting process was not included in the California Academy of Sciences Project. According to Mr. Lopez, this was not included in the California Academy of Sciences Project because the California Academy of Sciences is not anticipated to cease operations, while the TID is anticipated to cease operations when its authority to levy assessments to private hotels terminates on December 31, 2024.

During construction, and after the City Trade Subcontracts have been assigned to the General Contractor, the City would have no direct control over the day-to-day construction activities of any of the contractors working on the Moscone Convention Center, a City-owned facility.

As discussed above in the Assignment of Contracts Section, in order to provide the General Contractor, Webcor, who is under a contract with TID, with direct control of all Trade Subcontractors, including TID Trade Subcontractors and City Trade Subcontractors, during the construction process, the proposed alternative contracting process would allow the following assignments of contracts: (a) DPW would assign all City Trade Subcontractors to the TID, and (b) in turn, the TID would assign such City Trade Subcontracts, as well as all TID Trade Subcontracts, to Webcor.

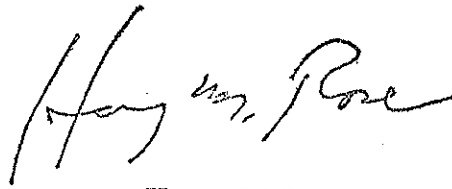
The Budget and Legislative Analyst notes that such assignments would result in a situation where the City has no direct control over the day-to-day construction activities of any of the contractors working on the Moscone Convention Center.

Therefore, the Budget and Legislative Analyst recommends amending the proposed ordinance to require that the scope of work for all contracts awarded by or assigned to the TID for work on the Moscone Convention Center, and any changes to such scope of work, be subject to the review and approval in writing by DPW.

Mr. Lopez advises that he concurs with the recommendation of the Budget and Legislative Analyst and DPW will be submitting an amended ordinance to the Budget and Finance Committee to reflect the recommended amendment.

RECOMMENDATIONS

1. Amend the proposed ordinance to require that the scope of work for all contracts awarded by, or assigned to, the TID for work on the Moscone Convention Center, and any changes to such scope of work, be subject to the review and approval in writing by DPW.
2. Approve the proposed ordinance, as amended.



Harvey M. Rose

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner

