

**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.