

1 [Administrative Code - Pubic Works Contracting and Contractor Performance Evaluations]

2

3 **Ordinance amending the Administrative Code to remove the minimum cost criterion**
4 **weighting for Design-Build and Construction Manager/General Contractor best value**
5 **procurements; and to require consideration of available contractor performance**
6 **evaluations when considering contractors for award of a public works construction**
7 **contract.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. Chapter 6 of the Administrative Code is hereby amended by revising
17 Sections 6.26, 6.61, and 6.68, to read as follows:

18 **SEC. 6.26. CONTRACTOR PERFORMANCE EVALUATION AND DATABASE.**

19 (a) Each Department Head or Director authorized to enter into Contracts for Public
20 Works or Improvements under Article IV of this Chapter 6 shall document, evaluate, and
21 report the performance of all Contractors awarded construction Contracts under this Chapter
22 6. The performance evaluation shall include, but is not limited to, documentation as applicable of any
23 notice of violation, citation, third party claim filed against the City in connection with the Contractor's
24 work, or instance of non-compliance with Contract terms and conditions.

25 (b) A department shall consider relevant Contractor performance evaluations, if available,
when the department evaluates a Contractor's Responsibility for award of a Contract.

1 (~~bc~~) The awarding departments shall work with the Office of the Controller to create
2 and maintain a database to collect the Contractor performance evaluations.

3 (~~ed~~) This Section 6.26 shall become operative on March 31, 2017 and shall apply to
4 all Contracts first advertised or initiated on or after this date.

5 (~~de~~) Within one year of the effective date of this Section 6.26, the Department Heads
6 referenced in subsection (a) shall submit to the Board of Supervisors a report that describes
7 the departments' implementation of this contractor performance evaluation program and
8 database. The report shall include each department's outreach with different stakeholders
9 including the Contract Monitoring Division. Concurrent with the report, the Department Heads
10 shall submit to the Board of Supervisors a proposed resolution to accept the report.

11 **SEC. 6.61. DESIGN-BUILD.**

12 Design-build is an approach to the procurement of design and construction services,
13 whereby a single entity, known as the "Design-Builder," is retained to provide both
14 professional design services and general contractor services. Department Heads are
15 authorized to seek bids or proposals from qualified private entities ("Design-Builders") for
16 design-build construction and/or financing of Public Work projects under the following
17 conditions:

18 * * * *

19 (c) **Best Value Procurement.** Under best value procurement, the department shall select
20 the Design-Builder based on a combination of cost and non-cost criteria. The weighting of the cost and
21 non-cost criteria in the overall evaluation is at the discretion of the Department Head. If the project
22 seeks private financing proposals and/or the Department Head determines that it is in the
23 public's best interest to consider qualifications and/or other subjective criteria (e.g., quality of
24 design proposal) as part of the final selection process, the Department Head shall require that
25 prospective proposers be pre-qualified pursuant to the process in ~~subsection~~Section 6.61(a)(1)

1 or shall issue a combined request for qualifications and proposals inviting Design-Builders, or
2 a combination of Design-Builders and their Core Trade Subcontractors meeting specified
3 minimum qualification criteria, to submit design-build proposals, which will be evaluated based
4 upon Responsibility and qualifications, stated subjective criteria, and project and/or financing
5 costs. The license and business tax requirements of subsections 6.21(a)(6) and (8) shall
6 apply to requests for proposals under this subsection 6.61(c).

7 (1) Non-cost criteria. The Department Head shall designate a qualified panel to
8 evaluate design-build proposals and rank the proposals to determine which provides the
9 overall best value to the City. The non-cost evaluation criteria may include, but is not limited to
10 the following: (A) plan for expediency in completing the proposed project; (B) lifecycle cost to
11 the City; (C) qualifications to finance the proposed project; (D) quality of design proposal; (E) if
12 private financing is sought, commitment of funds, cost of funds and terms to the City; and (F)
13 other criteria established by the Department Head in the request for proposals. ~~The cost~~
14 ~~criterion shall constitute not less than 40% of the overall evaluation.~~

15 * * * *

16 **SEC. 6.68. CONSTRUCTION MANAGER/GENERAL CONTRACTOR.**

17 Construction Manager/General Contractor is an approach to the procurement of
18 construction services whereby a construction manager/general Contractor ("CM/GC") is
19 retained during the design process to review and provide comments as to the constructability
20 of the Architect/Engineer's design within the established budget. Department Heads are
21 authorized to seek proposals from qualified CM/GCs for construction of public work projects
22 under the following conditions:

23 (a) Before the request for qualifications or proposals is issued, the Department
24 Head shall determine that a CM/GC delivery method is necessary or appropriate to achieve
25

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

3 (b) **Procurement of CM/GC.** Department Heads are authorized to procure CM/GC
4 services through one of the following three methods:

5 * * * *

6 (2) **Best Value Procurement.** Under best value procurement, the department shall
7 select the CM/GC based on a combination of cost and non-cost criteria. The weighting of the cost and
8 non-cost criteria in the overall evaluation is at the discretion of the Department Head. The
9 Department Head shall require that prospective CM/GCs be pre-qualified according to the
10 process in subsection 6.68(b)(1)(A), or shall issue a combined request for qualifications and
11 proposals inviting CM/GCs to submit competitive proposals for the project. In the case of a
12 combined request for qualifications and proposals, the department may include a set of
13 minimum qualifications that all potential proposers must meet in order for their proposals to be
14 evaluated. The request for proposals shall include information describing the scope of pre-
15 construction and construction phase services for the project. The request for proposals shall
16 request the following minimum information from each proposer: (i) fees for pre-construction
17 services; (ii) fees for construction phase services, such as profit or general conditions; and (iii)
18 the qualitative criteria described in subsection 6.68(b)(2)(A).

19 (A) Non-Cost Criteria. The Department Head shall designate a qualified panel to
20 evaluate and rank the proposals to determine which provides the overall best value to the City
21 with respect to non-cost and cost criteria. In cases where proposers were pre-qualified in
22 advance, this panel may be the same panel that reviewed the pre-qualification responses, or
23 may include different qualified panelists. The list of non-cost criteria may include but is not
24 limited to the following: (i) plan for expediency in completing the proposed project; (ii) quality
25 of proposal; and (iii) other criteria established by the Department Head in the request for

1 proposals. The Department Head shall set objective scoring criteria and incorporate the
2 criteria into any scoring procedure. ~~The cost criterion shall constitute not less than 40% of the~~
3 ~~overall evaluation.~~

4 * * * *

5 Section 2. Effective and Operative Dates.

6 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
7 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
8 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
9 Mayor's veto of the ordinance.

10 (b) This ordinance shall become operative on March 1, 2023 or on the effective date of
11 the ordinance, whichever is later, and shall apply to all Contracts first advertised for Bids on or
12 after said operative date.

13 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DAVID CHIU, City Attorney

22 By: /S/
23 YADIRA TAYLOR
24 Deputy City Attorney

25
n:\legana\as2022\2200498\01634407.docx