

File No. 230408

Committee Item No. _____

Board Item No. 21

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date April 10, 2023

Board of Supervisors Meeting

Date April 18, 2023

Cmte Board

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Completed by: Victor Young Date April 6, 2023

Completed by: _____ Date _____

1 [Administrative Code - Public 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 evaluations
6 when considering contractors for award of a public works construction contract.

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

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

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

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

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

1 ~~C~~ontract.

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

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

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

12 **SEC. 6.61. DESIGN-BUILD.**

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

19 * * * *

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

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

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

16 * * * *

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

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

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

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~~July 1, 2023 or on the effective
11 date of the ordinance, whichever is later, and shall apply to all Contracts first advertised for
12 Bids on or 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

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LEGISLATIVE DIGEST
(Amended in Committee 4/10/2023)

[Administrative Code – Public Works Contracting]

Ordinance amending the Administrative Code to remove the minimum cost criterion weighting for Design-Build and Construction Manager/General Contractor best value procurements.

Existing Law

Cost component in Design-Build and CM/GC Best Value Procurements. For Design-Build and Construction Manager/General Contractor best value procurements under Chapter 6 of the Administrative Code, existing law requires that the cost account for at minimum 40% of the overall evaluation score.

Amendments to Current Law

Cost component in Design-Build and CM/GC Best Value procurements. This ordinance would remove the requirement that the cost account for at minimum 40% of the overall evaluation score, and would instead allow the department the discretion to determine the weighting of the cost and non-cost criteria in the overall evaluation of the Design-Builder or CM/GC.

Background Information

This digest reflects amendments made at the Rules Committee on April 10, 2023.

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CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST
1390 Market Street, Suite 1150, San Francisco, CA 94102
PHONE (415) 552-9292 FAX (415) 252-0461

Policy Analysis Report

To: President Shamann Walton
CC: Board of Supervisors
From: Budget and Legislative Analyst's Office
Re: Options and Key Considerations Regarding an Amendment to the Administrative Code to Remove the Mandatory Cost Criterion in Awarding CMGC Contracts
Date: March 31, 2022



Summary of Requested Action

The Board of Supervisors directed the Budget and Legislative Analyst to issue a report laying out options and key considerations for an ordinance to amend the Administrative Code to remove the mandatory cost criterion in awarding Construction Manager/General Contractor (CMGC) contracts. This direction was given in Board Resolution 496-21 (File 21-0703), which was unanimously approved on October 19, 2021.

For further information about this report, contact Dan Goncher at the Budget and Legislative Analyst's Office.

Executive Summary

- The 2020-2021 San Francisco Civil Grand Jury made the Van Ness Improvement Project the subject of one of their reports. The project had significant cost and schedule overruns, and in their report, "Van Ness Avenue: What Lies Beneath," the Grand Jury found that the contracting processes for the project failed to instill accountability.
- The SFMTA utilized an alternative project delivery method called Construction Manager/General Contractor (CMGC) for the Van Ness BRT project. The CMGC method is considered alternative because it brings the project contractor into the project at a much earlier stage than in traditional methods, ideally no later than at 30 percent of design completion. The contractor is then available to provide input on the design of the project and collaborate with the designer and project sponsor.
- The San Francisco Administrative Code requires that, when evaluating bidders for a CMGC contract, the cost criterion must weigh at least 40 percent. The Grand Jury found that this mandatory minimum led to the selection of the less technically

Budget and Legislative Analyst

qualified bidder to award the contract for the Van Ness project, which led to problems throughout the project.

- We reviewed a judgmental sample of other jurisdictions' CMGC procurement processes and found that nearly all the other jurisdictions sampled did not require a mandatory minimum cost criterion when evaluating bidders for CMGC contracts.
- Furthermore, we reviewed industry best practice reports and found that it is typically in the best interest of the project sponsor to be able to weigh the cost criterion relative to non-cost criteria flexibly, depending on how important price and cost are going to be for the project relative to non-cost criteria like experience and expertise. Additionally, the Transportation Research Board highlighted instances in which cost was weighted as a factor, and the weights used were all lower than San Francisco's.
- We also interviewed representatives from departments with the authority to contract for public works projects and every representative agreed that the required 40 percent minimum threshold was too high and/or rigid. However, department representatives stressed that cost is an important criterion for construction contracts and should continue to be required as a factor.
- Additionally, we found that the Administrative Code requires a minimum 40 percent weight for cost for Design-Build construction contracts.

Policy Options

Regarding the City's policy on the cost criterion in CMGC contracts, the Board could:

1. Eliminate the 40 percent weighting threshold on the cost criterion in Administrative Code Chapter 6.68, but continue to require that cost be a mandatory criterion. Each project sponsor could determine, on a project-by-project basis, how to weigh cost compared to non-cost criteria. This would allow flexibility for different projects based on their needs. For example, for more complex projects, staff might want to weigh cost less heavily given the greater experience and technical expertise needed to carry out such projects, whereas less complex projects may not need to rely so much on experience and technical expertise when selecting a CMGC contractor.
2. Eliminate the 40 percent weighting threshold on the cost criterion in Administrative Code Chapter 6.68, but require that departments develop their own minimum thresholds in a written policy. This would allow departments the flexibility to determine a threshold that works for their projects' needs, but would be more

prescriptive than Policy Option #1 by requiring a uniform minimum weighting across all CMGC projects within each department.

3. Reduce the 40 percent weighting threshold on the cost criterion in Administrative Code Chapter 6.68 to a lower amount similar to one of the three jurisdictions that had such a threshold in the Transportation Research Board study (e.g. 15, 25, or 30 percent). This would provide departments with more flexibility in their weighting of cost but would still ensure a minimum weighting of costs on CMGC procurements.
4. Do not change the current minimum weighting for the cost criterion on CMGC contracts. The current threshold of 40 percent has worked for some project sponsors. Additionally, it is important to continue to use cost as an evaluation factor for CMGC contracts and keeping the status quo of minimum 40 percent cost would ensure cost continues to be represented as a criterion.

Regarding the City's policy on the cost criterion in Design-Build contracts, the Board should consider:

5. Revising Chapter 6.61 of the Administrative Code, which, similar to Chapter 6.68 for CMGC projects, requires that departments weigh cost at a minimum of 40 percent of the overall evaluation for Design-Build contracts. We recommend that, if the Board revises Chapter 6.68 for CMGC projects, that it revise Chapter 6.61 in a manner so that it is consistent with the revisions made to Chapter 6.68. This would minimize confusion and prevent the creation of an incentive to select a project delivery method based on the permissiveness of the Administrative Code related to cost criterion requirements.

Project Staff: Dan Goncher, Anna Garfink

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Background

The Van Ness Improvement Project

The Van Ness Improvement Project is a major capital project involving infrastructure upgrades and the installation of bus rapid transit (BRT) lanes along the length of the Van Ness corridor. The project was first studied for feasibility following the 2003 passage of the Prop K sales tax, and in 2013 the Board of Supervisors voted to authorize the Van Ness BRT project. The original goals of the project, as stated by the San Francisco County Transportation Authority in the initial 2006 feasibility study, were to:

1. Improve the level of service for existing transit passengers;
2. Establish an efficient north/south link in San Francisco's transit network;
3. Support the identity of the Van Ness corridor through a robust landscape and urban design program that also integrates new transit infrastructure with adjacent land uses; and
4. Develop standards for implementing BRT services citywide.

The project spans Van Ness Avenue from Lombard Street to Mission Street and includes the replacement of aging sewer, water, and streetlight infrastructure throughout the corridor, improved pedestrian safety designs, and two center-running BRT lanes (one northbound, one southbound) with nine new median bus stops. As of March 2022, the project is nearing completion, and the San Francisco Municipal Transportation Agency (SFMTA) estimates that BRT service will begin on the corridor on April 1, 2022.

The Civil Grand Jury Report

The current project completion date is nearly three years later than the project was originally scheduled to be completed, and the budget has increased from its original estimates as well. The significant schedule and cost overruns of the project were the subject of a 2020-2021 San Francisco Civil Grand Jury report entitled "Van Ness Avenue: What Lies Beneath." The original project budget was estimated at \$309 million, including \$193 million in construction costs, with construction beginning in 2016 and a planned construction completion date of late 2019. However, the final budget for the project has increased – as of June 2021 it was \$346 million, which is 12 percent higher than the original budget – and the revenue service date is scheduled for April 1, 2022.

The 2020-2021 Grand Jury investigated the causes of the schedule delays and cost increases and made over a dozen findings and recommendations related to the City's ability to deliver major capital projects like Van Ness BRT. The Grand Jury's major finding was that the Van Ness BRT project and its delays are emblematic of systematic issues that the City faces when delivering major capital infrastructure projects. Specifically, the Grand Jury found that:

1. Planning and design processes failed to capture the scope of the project adequately;

2. Contracting processes failed to instill accountability; and
3. Ongoing project management failed to remediate problems efficiently and effectively.

The scope of this report, as directed by the Board of Supervisors in Resolution 496-21 (File 21-0703), focuses on item #2: *Contracting processes failed to instill accountability*. The Grand Jury had several specific findings and recommendations related to City procurement processes; however, the focus of this report is on one specific finding and one recommendation relating to procurement of the general contractor.

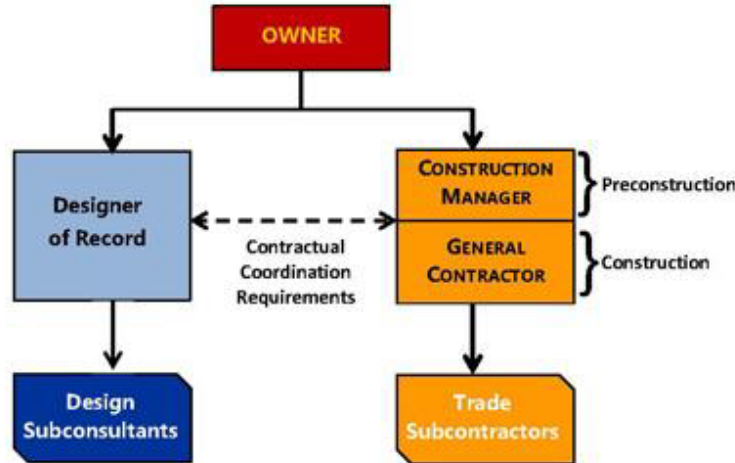
Contractor and the CMGC Method

The general contractor on the Van Ness BRT project is Walsh Construction and they were procured through the Construction Manager/General Contractor (CMGC) method, which is considered an alternative project delivery method for public works projects. Traditionally, local jurisdictions have been required by state law to contract out their public works projects using the Design-Bid-Build project delivery method. In this method, the local jurisdiction uses their internal staff and/or design consultants to have a complete design of the public works project before soliciting bids for the construction portion of the project. The jurisdictions are required to select the lowest qualified bidder when using this method. However, there are alternative project delivery methods that have been available to the private sector for several decades, including: Design-Build, Progressive Design-Build, Construction Manager-at-Risk, Construction Manager/General Contractor, Job-Order Contracting, and others. In the mid-2000s, California changed its laws to allow local jurisdictions to use some alternative project delivery methods for their public works projects.

CMGC is considered an alternative project delivery method because it brings the project contractor into the project at a much earlier stage than the traditional Design-Bid-Build method as illustrated by Exhibit 1 below. With the CMGC method, the agency responsible for the project brings the contractor in ideally no later than at 30 percent of design completion. The agency responsible for the project does this by issuing a request for proposals (RFP) for preconstruction services and the selected general contractor firm acts as a consultant/construction manager during the design phase. As a construction manager, they offer feedback on design, pricing, and help identifying potential risks as the project is being designed. When the design is complete, and if the project owner is satisfied with the construction manager's work, then the construction

manager can negotiate a price for the construction portion of the project. They then become the general contractor for the project.¹

Exhibit 1: CMGC Contract Management Structure



Source: Federal Highway Administration

In 2008, the San Francisco Board of Supervisors amended Chapter Six of the San Francisco Administrative Code (Ordinance No. 119-08; File 08-0277) to add a section allowing for the CMGC method. Chapter 6.68 authorizes department heads to utilize CMGC contracts at their discretion and outlines the three methods by which CMGC contracts can be procured, which are Cost Only, Best-Value, and CMGC Team Best Value.

The Cost Only method requires that departments pre-qualify firms using a request for qualifications (RFQ) and criteria determined by the department and then invites qualified firms to submit a response to an RFP. The Department must then select the lowest responsive bidder.

In the Best Value method, the department can issue a combined RFQ/RFP and then evaluate the proposals based on non-cost and cost criteria. Although the department may select its own criteria, **Chapter 6.68 currently requires that cost be included as a criterion and that it be weighted no less than 40 percent for all CMGC contracts citywide.** The CMGC Team Best Value method is the same as the Best Value method, except that the entire team, including subcontractors, is evaluated under the CMGC Team Best Value method.

¹ We received feedback from the SFPUC that this description more accurately reflects their description of the Construction Manager-at-Risk method. The definitions of each of these methods are sometimes interpreted in different ways by different organizations.

According to the Grand Jury’s report, the first City department used CMGC to deliver a project in 2007. Notably, Public Works has used CMGC on several major new building projects, such as General Hospital and the Academy of Sciences, to successfully deliver projects on time and on budget. Public Works primarily uses CMGC for building projects. Currently, some City departments use CMGC, and others do not. The Van Ness Improvement Project was the SFMTA’s first CMGC project, and the Port has never awarded a CMGC contract. However, the San Francisco Public Utilities Commission (SFPUC), Department of Public Works (DPW), and the Airport use CMGC regularly for large capital projects.

Project owners may choose to select CMGC as their project delivery method for public works projects for several reasons. Industry best practices note that CMGC is best suited for highly complicated projects involving coordination with many entities. By enabling the designer to work directly with the contractor early in the design process, CMGC provides for many more opportunities for risks to be identified and for changes to be made in the design before they become highly problematic during construction. CMGC also allows for a close working relationship to form between the owner of the project and the general contractor, which is important for large projects. Lastly, CMGC can drive innovation and improve quality by involving collaboration throughout the design process.

The SFMTA chose the CMGC method for the Van Ness BRT project and awarded Walsh the preconstruction contract following a competitive RFP process that used the Best Value method to evaluate the bidders. At the time, the Administrative Code required that the cost criterion constitute no less than 65 percent of the overall evaluation. However, realizing the complexity of the project, SFMTA initiated specific authorization from the Board of Supervisors to reduce the 65 percent weight on cost down to 30 percent.² Despite this reduction, one of the Grand Jury’s main findings is that Walsh was not the most technically qualified bidder – there was one additional bidder that scored more points on their written proposal and oral presentation – but due to the structure of the scoring criteria, Walsh won the bid. The cost criterion played a major role in the outcome of the bid, and Walsh had the lowest costs for the preconstruction bid of the two bidders. According to the Grand Jury, this weighting of the scoring criteria led Walsh to earn the most points and be awarded the contract.

² The Grand Jury reported that the SFMTA received authorization to reduce the cost criterion weight from 65 percent, and SFMTA staff indicated they received authorization to reduce it to 30 percent. However, since then, the City’s Administrative Code has been amended and the mandatory cost criterion weight is now 40 percent.

The Cost Criterion Recommendation

The selection of Walsh as the general contractor for the CMGC contract led the Grand Jury to make the following finding and recommendation:

Finding: The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.

Recommendation: By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.

The Grand Jury recommended changing the Administrative Code to ensure that a situation in which a less-qualified bidder wins a major construction contract does not happen again. Specifically, the Grand Jury recommended changing or eliminating the following language from Chapter 6.68 subsection (b)(2)(A) of the San Francisco Administrative Code, which currently states:

The cost criterion shall constitute not less than 40% of the overall evaluation.

The following sections analyze this recommendation and present options and key considerations to the Board regarding how to implement it.

Analysis

We analyzed a judgmental sample of other jurisdictions' use of cost in evaluating CMGC contracts and compared it to San Francisco's Administrative Code. We also briefly analyzed the City's use of cost in other construction contracting methods compared to the CMGC method.

San Francisco's Use of Cost in Construction Contracting

The City's Administrative Code requires that cost be included as a criterion and weighted no less than 40 percent for CMGC contracts, but that requirement varies for other types of construction contracting methods, both traditional and alternative:

- For Design-Build, cost must also be weighted at 40 percent.³
- The City does not have any code regulating procurement for projects utilizing Construction Manager-at-Risk projects.

³ See Chapter 6.61 in the San Francisco Administrative Code.

- For traditional Design-Bid-Build, the Administrative Code requires that the award go to the bidder submitting the lowest bid that is responsive to the requirements specified in the bid documents (i.e. “lowest responsive bidder”).
- For Job Order Contracts, departments must follow the procedures of traditional Design-Bid-Build procurement.⁴

CMGC and Design-Build are the only two forms of construction procurement that have mandatory minimum cost criterion thresholds in San Francisco. Additionally, there are other forms of construction procurement outlined in the Administrative Code; however, they are not discussed here because they are not the focus of this report.

Comparison: Peer Jurisdictions’ Use of Cost in Construction Contracting

We analyzed a judgmental sample of other cities’, counties’, and states’ CMGC procurement processes and found that virtually none of the jurisdictions we sampled require a mandatory weighting of the cost criterion for CMGC contracts. Jurisdictions vary in their approach to integrating cost into their evaluations of CMGC bids despite uniformly not requiring a specific cost weighting threshold, as summarized below in Exhibit 2. To obtain this information, we reviewed jurisdictions’ administrative codes, written policies and procedures on CMGC contracting, and, in some cases, corresponded directly with jurisdiction representatives regarding their CMGC policies.

⁴ Job Order Contracting is defined by Caltrans as “an on-call construction services contract where construction work and performance is determined by issuing Work Orders with the contractor during a fixed period of time.”

Exhibit 2: Comparison of Peer Jurisdictions' CMGC Cost Criterion

Jurisdiction	Mandatory Cost Criterion	Weighting	Comments
Cities			
San Francisco, CA	For CMGC: Yes For Design-Build: Yes	40%	
Los Angeles, CA	For CMGC: Cost Only – none Best Value – N/A	N/A	The only CMGC contract LA has procured was the Sixth Street Viaduct, which used the Cost Only method of evaluating bidders and thus only considered cost after the non-cost criteria had already been evaluated.
Seattle, WA	No	None required	
Austin, TX	For Construction Manager-at-Risk: Yes For Design-Build: Yes	See Comments	Cost is permitted to be a <i>maximum</i> of 30 points out of a total of 180 points (17%).
San Diego, CA	For Design-Build: Yes	None required	San Diego rarely weights Design-Build cost below 40%.
Counties			
Los Angeles County, CA	N/A	N/A	Does not utilize CMGC.
Contra Costa County, CA	N/A	N/A	Does not utilize CMGC for horizontal projects.
Regional and State Transportation Authorities			
California Department of Transportation (Caltrans)	No	N/A	
Minnesota Department of Transportation (MnDOT)	For CMGC: Best Value - Yes	None required	
Massachusetts Bay Transportation Authority	For CMGC: Yes	40%	
Colorado Department of Transportation	For CMGC: Yes	30%	

Source: BLA outreach to jurisdictions and review of online administrative codes and policies.

As Exhibit 2 above shows, most jurisdictions that use CMGC do not require a mandatory weighting on the cost criterion – especially cities. Out of the five cities surveyed, only San Francisco has a mandatory minimum weight for its cost criterion while the other counties surveyed do not use CMGC. Caltrans does not require cost to be a factor at all when evaluating CMGC bids and the Minnesota Department of Transportation does not require a minimum weighting on cost, only that cost be included as a criterion. However, the Massachusetts Bay

Transportation Authority and the Colorado Department of Transportation require mandatory weighting at 40 percent and 30 percent, respectively.

Feedback from City Departments

We interviewed representatives from all City departments with the authority to contract for public works projects to obtain their feedback on how changing the CMGC cost criterion might affect their contracting practices. None of the staff we spoke with from SFMTA, DPW, SFPUC, the Airport, the Port, or REC was opposed to changing the mandatory weighting of the cost criterion. However, most representatives noted that cost is an important criterion to include and cautioned against eliminating it entirely. A summary of the departments we surveyed and their feedback is included in Exhibit 3 below.

Exhibit 3: Departmental Feedback on Revising Mandatory Cost Criterion for CMGC contracts

Departments with Authority to Contract for Public Works	Support Eliminating Mandatory 40% Weighting?
Public Works	Yes
SFMTA	Yes
SFPUC	Yes
Airport	Yes
Port	Yes
Rec & Park	Yes

Source: BLA outreach to departmental staff

Most department representatives raised no concerns over the proposed change to the cost criterion for CMGC contracts. Bruce Robertson, Deputy Director for Financial Management and Administration at DPW, stated that 40 percent is too high of a mandatory minimum weight for the cost criterion. He also said that specifically prescribing certain policies to certain project delivery methods is challenging because project delivery methods evolve over time; therefore, prescribing the mandatory minimum weights for CMGC and Design-Build contracts only is not necessarily a best practice. City Architect Ron Alameida agrees – he was part of the team that originally wrote Chapter 6.68 of the Administrative Code and he said that he worried that the code was going to be too prescriptive when they wrote it. He emphasized the importance of cost being a factor in evaluating CMGC bids, but said that flexibility in determining the amount of influence it has over the evaluation on a project by project basis is important.

City Engineer Albert Ko and Acting Engineering Manager Iqbal Dhapa agreed that 40 percent may be too high of a mandatory weighting, but urged more strongly the importance of keeping cost as a mandatory factor in the evaluation of CMGC bids. They noted that cost as a factor protects the City from overpaying for construction services, and suggested that the weighting of the cost criterion could be set depending on the size, cost, and risk complexity of the project. Representatives at Recreation and Parks also expressed concern at overly reducing the cost criterion. Melinda Sullivan and Kelli Rudnick, both Project Managers at REC, noted that cost is a crucial factor in construction contracts and needs to be considered. Project Manager Sullivan also noted that, for the Department's first CMGC contract which is currently out to bid, they weighted cost at 50 percent. REC has not yet executed a CMGC project, but REC staff expressed their support for removing the mandatory cost criterion while also noting the importance of cost control and that they would not want it prohibited as a criterion.

The other departments we spoke to indicated that changing the cost criterion for CMGC contracts would not significantly impact their procurement processes. Judi Mosqueda, Director of Project Management for Planning, Design, and Construction at the Airport, said that eliminating the mandatory 40 percent minimum weighting for cost would not affect the Airport's procurement. The Port has not yet issued a contract under the CMGC model, so Port representatives were unsure as to how a change in CMGC criteria policy would affect the Port's construction procurement, but they generally were favorable to the idea.

The SFMTA and the SFPUC both agreed with the Grand Jury's recommendation to eliminate the mandatory cost criterion in their official responses to the Grand Jury report and when we spoke with their representatives that had not changed. At the SFMTA, Tom Maguire, Director of Streets, and Jane Wang, Acting Capital Programs and Construction Manager, both reiterated that changing the 40 percent threshold was a good idea so long as cost is not eliminated or forbidden entirely as a criterion. At the SFPUC, Alan Johanson, the Acting Assistant General Manager of Infrastructure, noted that the cost criterion sends an important signal to bidders that the City cares about the value of the services it procures. He said that there likely would not be negative effects of changing the mandatory weighting, although he noted that the SFPUC has not had issues associated with the 40 percent threshold and CMGC procurement to date.

Our main takeaways from the department interviews are listed below:

1. The current 40 percent cost weighting is too high, and it would likely not be detrimental to lower it.
2. Cost should not be prohibited as an evaluation factor for CMGC contracts. Cost is still a valuable contract evaluation criterion.
3. Overly prescriptive policies regarding major capital projects – such as a mandatory cost criterion weighting – are challenging to implement because of the variation across capital projects. Flexibility should be favored.

Industry Best Practices

There have been many best practice reports written about the CMGC method in general and evaluating its efficacy as a project delivery method. Some of these reports include recommended best practices regarding CMGC procurement and the use of cost. A 2010 Transportation Research Board study on CMGC for highway programs⁵ found that, of the 10 jurisdictions reviewed as case studies, three used cost as a selection criterion and the weights assigned to them were determined on a project-by-project basis. Furthermore, the weights were 15, 25, and 30 percent - all lower than San Francisco's 40 percent requirement. The Transportation Research Board concluded that it is in the best interest of the project sponsor to be able to weigh the cost criterion relative to non-cost criteria flexibly, depending on how important price and cost are going to be for the project relative to non-cost criteria like experience and expertise. Another best practices manual, *CM/GC Guidelines for Public Owners*,⁶ was published jointly by the National Association of State Facilities Administrators and the Associated General Contractors of America in 2007 and was cited in the Grand Jury report. This report notes that, if cost is being used as a criterion for the selection of a CMGC contractor (some states prohibit the use of cost as a CMGC selection criterion), then it is best to be able to change the weight on cost/fees based on how important it is to the project.

Policy Options

Regarding the City's policy on the cost criterion in CMGC contracts, the Board could:

1. Eliminate the 40 percent weighting threshold on the cost criterion in Administrative Code Chapter 6.68, but continue to require that cost be a mandatory criterion. Each project sponsor could determine, on a project-by-project basis, how to weigh cost compared to non-cost criteria. This would allow flexibility for different projects based on their needs. For example, for more complex projects, staff might want to weigh cost less heavily given the greater experience and technical expertise needed to carry out such projects, whereas less complex projects may not need to rely so much on experience and technical expertise when selecting a CMGC contractor.

⁵ *Construction Manager-at-Risk Project Delivery for Highway Programs*, National Cooperative Highway Research Program Synthesis 402, 2010:

https://www.researchgate.net/publication/280610007_Construction_Manager-at-Risk_Project_Delivery_for_Highway_Programs

⁶ https://www.agc.org/sites/default/files/Files/Construction%20Markets/CM_GC_Guidelines.pdf

2. Reduce the 40 percent weighting threshold on the cost criterion in Administrative Code Chapter 6.68 to a lower amount similar to one of the three jurisdictions that had such a threshold in the 2010 Transportation Research Board study (e.g. 15, 25, or 30 percent). This would provide departments with more flexibility in their weighting of cost but would still ensure a minimum weighting of costs on CMGC procurements.
3. Do not change the current minimum weighting for the cost criterion on CMGC contracts. The current threshold of 40 percent has worked for some project sponsors. Additionally, it is important to continue to use cost as an evaluation factor for CMGC contracts and keeping the status quo of minimum 40 percent cost would ensure cost continues to be represented as a criterion.

Regarding the City's policy on the cost criterion in Design-Build contracts, the Board should consider:

4. Revising Chapter 6.61 of the Administrative Code, which, similar to Chapter 6.68 for CMGC projects, requires that departments weight cost at a minimum of 40 percent of the overall evaluation for Design-Build contracts. We recommend that, if the Board revises Chapter 6.68 for CMGC projects, that it revise Chapter 6.61 in a manner so that it is consistent with the revisions made to Chapter 6.68. This would minimize confusion and prevent the creation of an incentive to select a project delivery method based on the permissiveness of the Administrative Code related to cost criterion requirements.

1 [Board Response - Civil Grand Jury Report - Van Ness Avenue: What Lies Beneath]

2
3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2020-2021 Civil Grand Jury Report, entitled**
5 **“Van Ness Avenue: What Lies Beneath;” and urging the Mayor to cause the**
6 **implementation of accepted findings and recommendations through her department**
7 **heads and through the development of the annual budget.**

8
9 WHEREAS, Under California Penal Code, Section 933 et seq., the Board of
10 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
11 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

12 WHEREAS, In accordance with California Penal Code, Section 933.05(c), if a finding or
13 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
14 county agency or a department headed by an elected officer, the agency or department head
15 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
16 response of the Board of Supervisors shall address only budgetary or personnel matters over
17 which it has some decision making authority; and

18 WHEREAS, Under San Francisco Administrative Code, Section 2.10(a), the Board of
19 Supervisors must conduct a public hearing by a committee to consider a final report of the
20 findings and recommendations submitted, and notify the current foreperson and immediate
21 past foreperson of the civil grand jury when such hearing is scheduled; and

22 WHEREAS, In accordance with San Francisco Administrative Code, Section 2.10(b),
23 the Controller must report to the Board of Supervisors on the implementation of
24 recommendations that pertain to fiscal matters that were considered at a public hearing held
25 by a Board of Supervisors Committee; and

1 WHEREAS, The 2020-2021 Civil Grand Jury Report, entitled “Van Ness Avenue: What
2 Lies Beneath” (“Report”) is on file with the Clerk of the Board of Supervisors in File
3 No. 210702, which is hereby declared to be a part of this Resolution as if set forth fully herein;
4 and

5 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
6 to Finding Nos. F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as well as
7 Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained in the
8 subject Report; and

9 WHEREAS, Finding No. F1 states: “The delays in completion of the Van Ness BRT
10 Project were caused primarily by avoidable setbacks in replacement of the water and sewer
11 infrastructure;” and

12 WHEREAS, Finding No. F2 states: “The potential impact of utility replacement on the
13 cost and duration of the overall project was given insufficient consideration in the initial
14 planning process;” and

15 WHEREAS, Finding No. F3 states: “The potential impact of utility replacement was
16 known to City engineers to be a major risk but was only considered a moderate risk and
17 assigned no mitigation strategy in the official risk register;” and

18 WHEREAS, Finding No. F4 states: “Project timelines could not be estimated accurately
19 because documents did not reflect the extent and location of underground utilities accurately;”
20 and

21 WHEREAS, Finding No. F5 states: “The evaluation rubric for preconstruction contract
22 bids weighted cost too heavily, as compared to technical expertise, even after project-specific
23 legislation allowed for a lower weight to be assigned to cost;” and

24 WHEREAS, Finding No. F6 states: “Practical work during preconstruction that could
25 have derisked the subsequent construction phase of the project was insufficient;” and

1 WHEREAS, Finding No. F7 states: "Review of preconstruction deliverables did not
2 sufficiently measure the contractor's preparedness for construction, which resulted in both
3 inaccurate cost estimates and timelines;" and

4 WHEREAS, Finding No. F8 states: "The effectiveness of the CMGC contract was
5 greatly reduced because the general contractor was brought into the design process too late;"
6 and

7 WHEREAS, Finding No. F9 states: "Underspecification in technical requirements led to
8 additional costs for work that could have been predicted and included in the original contract;"
9 and

10 WHEREAS, Finding No. F10 states: "Contention over underspecified or unclear
11 contract terms and technical requirements led to a deterioration in the relationship between
12 the City and Walsh, the general contractor;" and

13 WHEREAS, Finding No. F11 states: "The removal of Synergy, the underground
14 subcontractor, from the project, partially as a result of poor cost estimates, contributed to the
15 deterioration of the relationship between Walsh, the general contractor, and the City;" and

16 WHEREAS, Finding No. F12 states: "The contentious relationship between Walsh, the
17 general contractor, and the City made it difficult to resolve problems as they arose, despite
18 close collaboration being one of the potential advantages of the CMGC contract;" and

19 WHEREAS, Finding No. F13 states: "Lack of an in-the-field point of contact between
20 Walsh and the City during early stages of construction led to delays and increased costs on
21 the project;" and

22 WHEREAS, Finding No. F14 states: "Confusion related to the contractual requirements
23 for pedestrian monitoring contributed to the deterioration of the relationship between Walsh,
24 the general contractor, and the City;" and

25

1 WHEREAS, Recommendation No. R1 states: "By June 2022, the City should adopt a
2 policy that all capital project feasibility plans include an itemized assessment of risks to project
3 timelines and costs, which must be accompanied with specific procedures that will be
4 undertaken to mitigate those risks early in the project;" and

5 WHEREAS, Recommendation No. R2 states: "By June 2022, the City should adopt a
6 policy that all capital project sponsors publish, before proceeding to the construction phase,
7 an itemized assessment of derisking activities actually performed;" and

8 WHEREAS, Recommendation No. R3 states: "By June 2022, the Board of Supervisors
9 and SFPUC should review and update policies and regulations to ensure that detailed as-built
10 documentation of both private and public utilities is filed after all underground projects
11 (whether undertaken by SFPUC, another City agency, or a private enterprise), with sufficient
12 resolution and precision to allow accurate design of any future work;" and

13 WHEREAS, Recommendation No. R4 states: "The Board of Supervisors should direct
14 all City departments to adopt a policy that all projects that involve underground work in the
15 City's main corridors include, as part of the design process, the use of exploratory potholing,
16 or another equivalent industry best-practice to identify unknown underground obstructions
17 adhering to CI/ASCE 38-02 ("Standard Guideline for the Collection and Depiction of Existing
18 Subsurface Utility Data") Quality Level A. This policy should take effect for all contracts signed
19 after January 1, 2022, and the work should be required to be performed before final
20 construction terms or prices are agreed to;" and

21 WHEREAS, Recommendation No. R5 states: "By June 2022, and before entering into
22 future CMGC relationships, the Board of Supervisors should direct all City departments to
23 adopt, publish, and enforce in all future contracts industry-standard best practices for
24 management of CMGC projects;" and

25

1 WHEREAS, Recommendation No. R6 states: "The adopted CMGC management policy
2 should specifically include the industry best practice of awarding the contract before project
3 design continues past 30% completion;" and

4 WHEREAS, Recommendation No. R7 states: "By June 2022, the Board of Supervisors
5 should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion
6 in awarding CMGC contracts;" and

7 WHEREAS, Recommendation No. R8 states: "SFMTA should establish a policy for
8 review of technical quality of preconstruction and design deliverables, to be used in all CMGC
9 or design contracts signed after January 2022, including in-the-field validation of key
10 assumptions of site conditions by City engineers;" and

11 WHEREAS, Recommendation No. R9 states: "Beginning January 1, 2022, SFMTA
12 should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate
13 collaborative problem resolution, and sufficient support staff to monitor actual progress and
14 site conditions;" and

15 WHEREAS, Recommendation No. R10 states: "By June 2022, the City should adopt a
16 policy that any public communication about a planned or in-progress capital project that
17 includes disruption of public services or right-of-way should include itemized assessments of
18 risk to projected costs and duration;" and

19 WHEREAS, Recommendation No. R11 states: "Beginning immediately, and in all
20 future capital or maintenance projects that require pedestrian monitors, the City should ensure
21 that associated costs are either specifically included in the primary construction contract, or
22 explicitly planned for and funded by the City, before construction begins;" and

23 WHEREAS, In accordance with California Penal Code, Section 933.05(c), the Board of
24 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
25 Court on Finding Nos. F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as

1 well as Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained
2 in the subject Report; now, therefore, be it

3 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
4 Superior Court that they agree with Finding No. F1; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
6 of the Superior Court that they agree with Finding No. F2; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
8 of the Superior Court that they disagree partially with Finding No. F3 for reason as follows: the
9 preparation of a risk register was a shared responsibility of City staff, the contractor, and an
10 independent consultant, and the risks were deemed moderate because mitigation measures
11 were identified that were not carried out by the contractor as required and, be it

12 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
13 of the Superior Court that they disagree partially with Finding No. F4 for reason as follows:
14 even with accurate documentation of existing underground utilities, project timelines still may
15 not have been estimated accurately without sufficient pre-construction field investigation; and,
16 be it

17 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
18 of the Superior Court that they agree with Finding No. F5; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
20 of the Superior Court that they agree with Finding No. F6; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
22 of the Superior Court that they agree with Finding No. F7 and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
24 of the Superior Court that they disagree partially with Finding No. F8 for reason as follows:
25 while the benefits of bringing in the CMGC contractor earlier in the project is acknowledged,

1 the record reflects that the contract effectiveness was also reduced by subsequent actions of
2 the contractor; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
4 of the Superior Court that they disagree partially with Finding No. F9 for reason as follows: the
5 record reflects that underspecification of technical requirements was not necessarily
6 responsible for cost overruns and that the contractor's own settlement of claims on this issue
7 and lack of requests for clarification of technical requirements during pre-construction support
8 this conclusion; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
10 of the Superior Court that they disagree partially with Finding No. F10 for reason as follows:
11 the record reflects that numerous other factors contributed to the deterioration in relationship
12 between the City and Contractor and, be it

13 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
14 of the Superior Court that they disagree partially with Finding No. F11 for reason as follows:
15 the record does not demonstrate that the cost estimates were necessarily poor, only that there
16 was disagreement over the subcontractor's proposed price; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
18 of the Superior Court that they agree with Finding No. F12; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
20 of the Superior Court that they disagree wholly with Finding No. F13; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
22 of the Superior Court that they agree with Finding No. F14; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
24 No. R1 has been implemented; and, be it

25

1 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
2 No. R2 requires further analysis, and hereby directs the Budget and Legislative Analyst to
3 issue a report by March 31, 2022 analyzing options for the adoption of a policy regarding
4 itemized assessments of de-risking activities for major capital projects; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
6 No. R3 requires further analysis, and hereby urges the San Francisco Public Utilities
7 Commission to review its policies regarding as-built documentation and the feasibility of
8 establishing a digital as-built document repository and to deliver its findings to the Board of
9 Supervisors by March 31, 2022; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
11 No. R4 requires further analysis, and hereby urges the San Francisco Municipal
12 Transportation Agency to analyze options for adopting a dynamic policy setting forth best
13 practices for exploratory potholing or equivalent industry-standard practices for major capital
14 projects, and to deliver its findings to the Board of Supervisors by March 31, 2022; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
16 No. R5 requires further analysis, and hereby urges the SFMTA to analyze options for adopting
17 a dynamic policy setting forth best practices for CMGC contracts for major capital projects,
18 and to deliver its findings to the Board of Supervisors by March 31, 2022; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
20 No. R6 requires further analysis, and hereby urges the SFMTA to analyze options for adopting
21 a dynamic policy setting forth a standard expectation for CMGC contracts to be awarded no
22 later than at the 30% design stage for major capital projects, and to deliver its findings to the
23 Board of Supervisors by March 31, 2022; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
25 No. R7 has not been implemented but will be implemented, and hereby directs the Budget

1 and Legislative Analyst to issue a report by March 31, 2022 laying out options and key
2 considerations for an ordinance to amend the Administrative Code to remove the mandatory
3 cost criterion in awarding CMGC contracts; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
5 No. R8 has not been implemented but will be implemented, and hereby urges the SFMTA to
6 develop a formalized process for reviewing and commenting on pre-construction deliverables
7 by March 31, 2022; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
9 No. R9 has been implemented; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
11 No. R10 requires further analysis, and hereby urges the SFMTA to develop a policy for the
12 public communication of capital project risk assessment and to delivery its findings to the
13 Board of Supervisors by March 31, 2022; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
15 No. R11 has been implemented; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
17 implementation of the accepted findings and recommendations through her department heads
18 and through the development of the annual budget.

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City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 210703

Date Passed: October 19, 2021

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2020-2021 Civil Grand Jury Report, entitled "Van Ness Avenue: What Lies Beneath;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

September 30, 2021 Government Audit and Oversight Committee - CONTINUED

October 07, 2021 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE


October 07, 2021 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED

October 19, 2021 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 210703

I hereby certify that the foregoing Resolution was ADOPTED on 10/19/2021 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Unsigned

10/29/2021

London N. Breed
Mayor

Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.



Angela Calvillo
Clerk of the Board

10/29/2021

Date

File No.
210703

1 [Board Response - Civil Grand Jury Report - Shovel Ready: Best Practices and Collaboration
2 to Improve San Francisco's Capital Construction Program]

3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2021-2022 Civil Grand Jury Report, entitled**
5 **“Shovel Ready: Best Practices and Collaboration to Improve San Francisco’s Capital**
6 **Construction Program;” and urging the Mayor to cause the implementation of accepted**
7 **findings and recommendations through her department heads and through the**
8 **development of the annual budget.**

9
10 WHEREAS, Under California Penal Code, Section 933 et seq., the Board of
11 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
12 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

13 WHEREAS, In accordance with California Penal Code, Section 933.05(c), if a finding or
14 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
15 county agency or a department headed by an elected officer, the agency or department head
16 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
17 response of the Board of Supervisors shall address only budgetary or personnel matters over
18 which it has some decision making authority; and

19 WHEREAS, Under San Francisco Administrative Code, Section 2.10(a), the Board of
20 Supervisors must conduct a public hearing by a committee to consider a final report of the
21 findings and recommendations submitted, and notify the current foreperson and immediate
22 past foreperson of the Civil Grand Jury when such hearing is scheduled; and

23 WHEREAS, In accordance with San Francisco Administrative Code, Section 2.10(b),
24 the Controller must report to the Board of Supervisors on the implementation of
25

1 recommendations that pertain to fiscal matters that were considered at a public hearing held
2 by a Board of Supervisors Committee; and

3 WHEREAS, The 2021-2022 Civil Grand Jury Report, entitled "Shovel Ready: Best
4 Practices and Collaboration to Improve San Francisco's Capital Construction Program"
5 ("Report") is on file with the Clerk of the Board of Supervisors in File No. 220505, which is
6 hereby declared to be a part of this Resolution as if set forth fully herein; and

7 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
8 to Finding Nos. F1, F2, F3, F4, F5, F6, and F8, as well as Recommendation Nos. R1, R2, R3,
9 R4, R5, R6, R7, R8, and R9, contained in the subject Report; and

10 WHEREAS, Finding No. F1 states: "Without a clear project manager with full
11 responsibility and authority, the contractor performance evaluation database project lacked
12 sufficient momentum to be completed, fully adopted and used;" and

13 WHEREAS, Finding No. F2 states: "The existing project team and Chapter 6
14 departments failed to implement the database in a timely manner, delaying the benefits it
15 could provide in improving construction quality, meeting budgets and timelines, and improving
16 contractor relationships;" and

17 WHEREAS, Finding No. F3 states: "Chapter 6 departments failed to enter performance
18 evaluations into the database, thus negating its value;" and

19 WHEREAS, Finding No. F4 states: "Prior updates to Section 6.26 of the Administrative
20 Code excluded language that the database *must* be used to evaluate contractors going
21 forward;" and

22 WHEREAS, Finding No. F5 states: "In designing and developing the database, the
23 project team neglected to add the technical capability to see who consults the database,
24 making it difficult to hold departments accountable for using the database;" and
25

1 WHEREAS, Finding No. F6 states: “When evaluators omit ‘Lessons Learned’ entries in
2 that data field, the evaluations lack the most critical information to help inform future
3 contractor selections;” and

4 WHEREAS, Finding No. F8 states: “The database fails to provide a way for non-
5 Chapter 6 departments to provide feedback on both contractors and Chapter 6 department
6 performance, resulting in no accountability for either the contracting department or the
7 contractor;” and

8 WHEREAS, Recommendation No. R1 states: “We recommend that by 6/15/22 the
9 Mayor specify which department shall manage and have responsibility and authority for the
10 contractor performance evaluation database to improve compliance, monitoring and
11 consistent use. We further recommend that the director of the specified department appoint
12 the project manager by 6/30/22;” and

13 WHEREAS, Recommendation No. R2 states: “We recommend that by 9/30/22, the
14 database project manager specified in R1 complete implementation, training sessions and ‘go
15 live’ workshops with all Chapter 6 departments;” and

16 WHEREAS, Recommendation No. R3 states: “We recommend that by 12/31/2022, the
17 Mayor require that all Chapter 6 departments to begin submitting evaluations into the
18 database;” and

19 WHEREAS, Recommendation No. R4 states: “We recommend that by 12/31/2022, the
20 Mayor explicitly directs all Chapter 6 departments to consult the database when selecting
21 contractors;” and

22 WHEREAS, Recommendation No. R5 states: “We recommend that by 6/30/2023 the
23 project manager update the database technology to include the capability to hold evaluators
24 accountable by observing who is using the database and when;” and
25

1 WHEREAS, Recommendation No. R6 states: “We recommend that by 6/30/2023, the
2 project manager update the database technology to require the ‘Lessons Learned’ data field
3 be filled out before an evaluation can be marked ‘complete;” and

4 WHEREAS, Recommendation No. R7 states: “We recommend that by 6/30/2023, the
5 project manager include sections in the database to cover contractor compliance with the SIP
6 program;” and

7 WHEREAS, Recommendation No. R8 states: “We recommend that by 6/30/2023, the
8 project manager expand the database to include input from non-Chapter 6 departments
9 receiving construction services from Chapter 6 departments;” and

10 WHEREAS, Recommendation No. R9 states: “We recommend that starting in FY
11 2022-2023, the City Services Auditor Department within the Controller’s Office conduct
12 performance audits of the City construction program every two years focusing on use of best
13 practices, collaboration, and other successes and challenges. The Controller’s report from
14 2014 can serve as a template;” and

15 WHEREAS, In accordance with California Penal Code, Section 933.05(c), the Board of
16 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
17 Court on Finding Nos. F1, F2, F3, F4, F5, F6, and F8, as well as Recommendation Nos. R1,
18 R2, R3, R4, R5, R6, R7, R8, and R9 contained in the subject Report; now, therefore, be it

19 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
20 Superior Court that they agree with Finding No. F1; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
22 of the Superior Court that they agree with Finding No. F2; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
24 of the Superior Court that they agree with Finding No. F3; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
2 of the Superior Court that they agree with Finding No. F4; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
4 of the Superior Court that they agree with Finding No. F5; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
6 of the Superior Court that they agree with Finding No. F6; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
8 of the Superior Court that they agree with Finding No. F8; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
10 No. R1 will not be implemented by the Board of Supervisors because the Board does not
11 have jurisdiction, and that the Board hereby urges the Department of Public Works to assign a
12 project manager by December 31, 2022; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
14 No. R2 will not be implemented by the Board of Supervisors because the Board does not
15 have jurisdiction, and that the Board hereby urges the Department of Public Works to hold
16 necessary outreach and training sessions with all Chapter 6 departments by December 31,
17 2022 and to present an implementation report to the Board by March 31, 2023; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
19 No. R3 will not be implemented by the Board of Supervisors because the Board does not
20 have jurisdiction, and that the Board hereby urges all Chapter 6 departments to begin
21 submitting evaluations into the database by December 31, 2022; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
23 No. R4 has not been implemented but will be implemented and that the Board of Supervisors
24 will introduce an ordinance by December 31, 2022 amending the Administrative Code to
25

1 require all Chapter 6 departments to consult contractor performance evaluations when
2 selecting contractors; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
4 No. R5 requires further analysis and urges the Department of Public Works to report to the
5 Board of Supervisors by March 31, 2023 on the feasibility of updating the database
6 technology to include the capability to observe who is using the database and when or to
7 present alternative methods of increasing accountability for evaluators in using the database;
8 and, be it

9 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
10 No. R6 requires further analysis and urges the Department of Public Works to report to the
11 Board of Supervisors by March 31, 2023 on the feasibility of updating the database
12 technology to require the "Lessons Learned" field to be filled out before the evaluation can be
13 marked complete or to present alternative methods of collecting this information from Chapter
14 6 departments; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
16 No. R7 the recommendation will not be implemented because the maintenance of a
17 customized database by the Public Utilities Commission for Social Impact Partnership (SIP)
18 projects does not impede that or other Chapter 6 departments' ability to also submit entries to
19 the Contractor Performance Evaluation Database for those and other applicable public works
20 projects; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
22 No. R8 will not be implemented because the Contractor Performance Evaluation Database is
23 designed to collect information about construction contractors that are managed directly by
24 Chapter 6 departments, and because other forums including the Capital Planning Committee
25

1 are available for Chapter 6 and non-Chapter 6 departments to coordinate and improve
2 construction management practices; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
4 No. R9 has been implemented by the Controller's City Services Auditor in its FY22-23 work
5 plan; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
7 implementation of the accepted findings and recommendations through her department heads
8 and through the development of the annual budget.

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City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220506

Date Passed: September 27, 2022

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2021-2022 Civil Grand Jury Report, entitled "Shovel Ready: Best Practices and Collaboration to Improve San Francisco's Capital Construction Program;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

July 21, 2022 Government Audit and Oversight Committee - CONTINUED

September 15, 2022 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

September 15, 2022 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

September 20, 2022 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

September 27, 2022 Board of Supervisors - ADOPTED

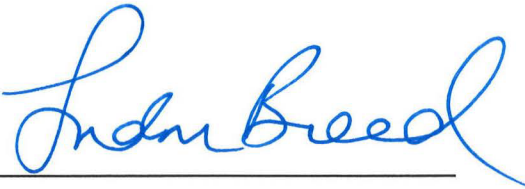
Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 220506

I hereby certify that the foregoing
Resolution was ADOPTED on 9/27/2022 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board



London N. Breed
Mayor

10/6/22

Date Approved

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Romulus Asenloo, Acting Director, Contract Monitoring Division
Sailaja Kurella, Director and Purchaser, Office of Contract Administration

FROM: Victor Young, Assistant Clerk

A handwritten signature in black ink that reads "Victor Young".

DATE: December 22, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 221268

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

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Rochelle Fretty, Contract Monitoring Division
Taraneh Moayed, Office of Contract Administration
Rachel Cukierman, Office of Contract Administration