

1 [Authorizes MTA to proceed with CM/GC project delivery method for Muni Metro East Project.]

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3 **Ordinance exempting the Municipal Transportation Agency (MTA) from subcontractor**
4 **listing requirements of Administrative Code Chapter 6 for the proposed construction of**
5 **the Muni Metro East Light Rail Vehicle Maintenance And Operations Facility Project;**
6 **and authorizing the MTA to take all necessary steps to procure such work through a**
7 **CM/GC contract duly awarded pursuant to this Ordinance.**

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10 Note: This entire section is new.
11 Board amendment additions are double-underlined.
12 Board amendment deletions are ~~strikethrough~~ normal.

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

14 Section 1. Construction Manager / General Contractor Contract.

15 The Municipal Transportation Agency (MTA) has determined that it is in the best
16 interests of the City to procure the construction of the proposed Muni Metro East Light Rail
17 Vehicle Maintenance and Operations Facility Project (Muni Metro East Project) through a
18 contract for a Construction Manager/General Contractor (CM/GC), also commonly referred to
19 as Construction Manager At-Risk or CM At-Risk contract, an alternative project delivery
20 method whereby the CM/GC acting as the prime contractor assumes the risks for full
21 performance of all construction work, for financial overruns, and schedule delays not caused
22 by the MTA.

23 The MTA proposes awarding a CM/GC contract to a qualified CM/GC selected through
24 an open, competitive Request for Qualifications/Sealed Bid process (RFQ/Sealed Bid)
25 outlined below. The CM/GC will subcontract the work to subcontractors and suppliers

1 selected through an open, competitive bidding process, except that the CM/GC may self-
2 perform a limited portion of the work.

3 The Board hereby authorizes the MTA to take all necessary steps to select a qualified
4 firm to serve as CM/GC, and to procure a CM/GC contract for the Muni Metro East Project so
5 long as MTA determines that procuring such services remains in the best interests of the City.

6 Section 2. Selection of Construction Manager/General Contractor and Award.

7 The CM/GC is to be selected through an open, competitive Request for
8 Qualifications/Sealed Bid (RFQ/Sealed Bid) process that conforms to the following:

9 A. Level I Qualifications Evaluation. Respondents shall be required to submit
10 written responses signed under penalty of perjury to a questionnaire included with the
11 RFQ/Sealed Bid documents. Responses to the questionnaire shall be evaluated by the MTA
12 on a pass or fail basis. The questionnaire may address the following areas or any others
13 deemed appropriate by the MTA:

- 14 1. Appropriate Contractor License
- 15 2. Construction experience and CM/GC experience
- 16 3. Staff experience and capabilities
- 17 4. Surety and bonding capacity
- 18 5. Safety record
- 19 6. Insurance limits and deductibles
- 20 7. Quality control program
- 21 8. Disciplinary measures
- 22 9. Litigation history
- 23 10. Financial status

24 B. Level II Qualifications Evaluation. Those firms passing the Level I Evaluation
25 shall be authorized to participate in the Level II Evaluation, which shall consist of submission

1 of supplemental prequalification documents, followed by an interview before a selection panel
2 whose members shall be designated by the MTA. The interview shall be scored on *those*
3 criteria established by the MTA and published in the RFQ/Sealed Bid documents. One of the
4 evaluation criteria may be the CM/GC's ability to understand and approach specific project
5 requirements as demonstrated by its proposed master subcontracting plan, which would
6 identify specific areas of work with anticipated Disadvantaged Business Enterprise
7 participation.

8 C. Final Selection. Only those respondents who achieve the minimum score in the
9 Level II Qualifications Evaluation as pre-determined by the MTA shall be authorized to submit
10 sealed bids on the fixed fee and the cost of general conditions for all anticipated construction
11 work. Bids shall be received and publicly opened at a time and place to be determined by the
12 MTA, and the results published.

13 D. The MTA is hereby authorized to award a CM/GC contract to the respondent
14 successfully completing the Level II Qualifications Evaluation who submits the lowest
15 responsive bid.

16 Section 3. Subcontracts.

17 A. For the Muni Metro East Project, the Board hereby waives any otherwise
18 applicable contracting requirements of Administrative Code Sec. 6.21.A.9 requiring bidders to
19 designate their subcontractors at the time of bid.

20 B. The CM/GC contract awarded pursuant to this ordinance shall require the
21 CM/GC to subdivide and subcontract the work except as provided in subsection D below. The
22 CM/GC shall contract directly with all first tier subcontractors and suppliers. Any subcontract
23 procured under this provision shall not be deemed to be an unlawful assignment of any
24 portion of the CM/GC contract. All subcontracts shall require MTA approval by its Board of
25 Directors ~~or the Board's designee~~ prior to the CM/GC's award of subcontracts except that

1 subcontracts under \$2,000,000 may be approved by the Director of Transportation at the
2 MTA. The CM/GC must rebid all subcontracts that the MTA may reject. Only after the MTA
3 has approved the award may the CM/GC award a subcontract.

4 C. The CM/GC shall use an open, competitive bidding process to procure
5 subcontracts according to the following:

- 6 1. The CM/GC shall advertise the subcontracts for competitive bids in at
7 least one local newspaper or periodical of general circulation;
- 8 2. The CM/GC shall make all reasonable attempts to obtain bids from at
9 least three qualified bidders; and
- 10 3. Subject to the approval of the MTA, subcontracts procured under this
11 provision shall be awarded to the responsible bidder submitting the
12 lowest responsive bid.

13 D. The MTA may permit the CM/GC to self-perform a limited portion of the work.
14 The CM/GC may self-perform work only if it submits the lowest responsive bid for that work.
15 The MTA shall conduct the bidding for such a subcontract.

16 E. In compliance with federal Disadvantaged Business Enterprise (DBE)
17 regulations, the CM/GC shall be required to meet the overall project DBE subcontractor
18 participation goal established by the MTA, or, if it fails to meet the DBE goal, to show that it
19 made good faith efforts in its attempt to achieve the DBE goal. The CM/GC may assign sub-
20 goals to trade packages as appropriate. After the award of the CM/GC contract, but prior to
21 advertising any work other than pile driving, the MTA may require the CM/GC to submit for
22 MTA's review, comment and approval a refined master subcontracting plan, delineating all the
23 subcontracting packages to be broken out for bidding; identifying the areas of work and level
24 of participation for DBEs; and outlining the schedule for bidding out all subcontracts.

25 F. The MTA may delegate the following responsibilities to the CM/GC:

- 1 1. Establishing a pre-qualification process for portions of the work to be
2 subcontracted where the CM/GC deems pre-qualification to be
3 necessary;
4 2. Responding to inquiries from potential bidders; and
5 3. Responding to bid protests, with any decision or recommendation of the
6 CM/GC appealable to the MTA.

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8 Section 3. The Board ~~authorizes and directs~~ acknowledges that the provisions of this
9 ordinance may be subject to MTA to obtaining all necessary approvals from other local, state
10 or federal agencies having jurisdiction of the project.

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12 Section 4. By November 1, 2003 the MTA shall submit to the Board of Supervisors a
13 written report listing all contracts, and their amounts, awarded by MTA and the Director of
14 Transportation under this ordinance, including the identification of DBE contracts and
15 subcontractors and the amounts of their contracts.

16 APPROVED AS TO FORM:

17 DENNIS J. HERRERA, City Attorney

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20 By: _____
21 LYNDON Y. CHEE
22 Deputy City Attorney

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