

1 [Contracting Process - Van Ness Bus Rapid Transit Project]

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3 **Ordinance modifying the requirements of Administrative Code, Section 6.68, as applied**
4 **to the proposed construction of the Van Ness Bus Rapid Transit Project to authorize**
5 **the Municipal Transportation Agency to, instead of a formal Request for Qualifications,**
6 **issue a Request for Proposals (RFP) to potential construction managers/general**
7 **contractors (CM/GC), to include their teams of core trade subcontractors, which RFP**
8 **will contain minimum qualifications for the CM/GC and certain subcontractors;**
9 **evaluate the CM/GC primarily on non-cost criteria; negotiate a guaranteed maximum**
10 **price with the selected CM/GC when the design is sufficiently complete, provided the**
11 **price is fair and reasonable; and making environmental findings.**

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

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

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19 Section 1. General Background and Findings.

20 (a) The Van Ness Bus Rapid Transit (BRT) Project, now known as the Van Ness
21 Corridor Transit Improvement Project (the Project), is a large-scale plan to implement “full-
22 feature” BRT on one of the busiest transit routes that is also a major “north-south”
23 transportation corridor for all transportation modes in San Francisco; once completed, it will be
24 an integral part of the Muni “Rapid” network of transit service proposed in 2008 that will
25 gradually be implemented on all major transportation corridors in San Francisco. The San

1 Francisco Municipal Transportation Agency (SFMTA) anticipates that the Federal Transit
2 Administration (FTA) of the U.S. Department of Transportation will provide \$75,000,000 in
3 funding for the Project as part of its Small Starts Program.

4 (b) On September 13, 2013, the San Francisco County Transportation Authority
5 (“SFCTA”), as the lead agency under the California Environmental Quality Act (“CEQA”)
6 adopted Resolution No. 14-18, in which it certified the Final Environmental Impact
7 Statement/Environmental Impact Report (EIS/EIR) for the Project as adequate, accurate and
8 objective, and reflecting the independent judgment of the SFCTA in accordance with the
9 adopted CEQA Findings, including a statement of overriding considerations and a mitigation
10 monitoring and reporting program; and approved the locally preferred alternative (“LPA”), “The
11 Center-running BRT with Right Side Boarding Platforms Single Median and Limited Left
12 Turns,” along with the Vallejo Northbound Station Variant. The SFCTA determined that the
13 LPA has the transit performance attributes of a center-running BRT (e.g., faster, more reliable
14 service), while avoiding the need to acquire left-right door vehicles and completely rebuild the
15 median; further, the Vallejo Northbound Station Variant would provide enhanced access for
16 residents in the northern part of the Project corridor.

17 (c) On September 17, 2013, the SFMTA Board of Directors, acting in its capacity as
18 a responsible agency under CEQA, considered the Final EIS/EIR; adopted CEQA Findings,
19 including a statement of overriding considerations, and a mitigation monitoring and reporting
20 program; and approved the Project by Resolution No. 13-214. The previously adopted CEQA
21 Findings are incorporated by reference.

22 (d) The Board of Supervisors finds that this approval action is within the scope of
23 the Project analyzed in the Final EIS/EIR and approved by the SFMTA Board by Resolution
24 No. 13-214. The documents related to the Final EIS/EIR have been made available to this
25

1 Board and the public and are on file with the Clerk of the Board of Supervisors in File No.

2 _____.

3 (e) The Board of Supervisors has considered the Final EIS/EIR, the previously adopted
4 CEQA Findings, which it adopts as its own in support of this approval, and finds, on the basis
5 of substantial evidence and in light of the whole record, that since the approval of the Project
6 no further environmental review beyond the Final EIS/EIR is required under CEQA for the
7 following reasons: there have been no changes in the Project, the circumstances under which
8 the Project will be undertaken, or new information that has become available about the Project
9 that would require major revisions to the Final EIS/EIR due to new significant impacts or a
10 substantial increase in the severity of previously identified significant impacts; and no new
11 information has become available to indicate that mitigation measures or alternatives found
12 not feasible, which would reduce one or more significant impacts have become feasible, or
13 considerably different mitigation measures or alternatives would substantially reduce one or
14 more significant effects on the environment.

15 Section 2. Construction Manager/General Contractor and Core Trade Subcontractors
16 Contracting Procedure for the Van Ness BRT Project.

17 (a) Administrative Code, Section 6.68, allows the City to procure construction
18 services for public works projects by a process known as “integrated project delivery” (IPD),
19 whereby the City retains a construction manager/general contractor (CM/GC) during the
20 design process to review and comment on the constructability of the design within the
21 established budget for the project. Under the IPD process, Section 6.68(C) requires that a
22 request for qualifications (RFQ) be issued to pre-qualify firms prior to issuance of a request for
23 proposals (RFP); pre-qualified firms are then invited to submit competitive proposals for the
24 project in response to the RFP. Under Section 6.68(D), each proposal is ranked to determine
25 which proposal provides the overall best value to the City with respect to non-cost and cost

1 criteria, with the cost criteria (the fees proposed for pre-construction services and for
2 construction phase services, including overhead, profit, and general conditions) constituting
3 not less than 65 percent of the overall evaluation.

4 (b) The City held a charrette regarding the Project with potential CM/GC proposers,
5 and the SFMTA issued a request for information to solicit feedback from firms not present at
6 the charrette. Based on those activities, the SFMTA has determined that it will not be
7 necessary to pre-qualify firms under an RFQ process; rather, the SFMTA intends to issue an
8 RFP with minimum qualifications listed for the CM/GC and certain core subcontractors.

9 (c) Other CM/GC transit projects that have been funded through the FTA have
10 placed more weight on non-cost considerations, such as experience, qualifications, diversity
11 and workforce approaches, than what is permitted under Administrative Code Section 6.68.
12 In order to meet and exceed federal disadvantaged business and workforce hiring
13 requirements, and obtain the most qualified CM/GC team for the Project, the SFMTA also
14 wishes to give more weight to non-cost criteria. SFMTA will ask for price proposals to include
15 (1) pre-construction costs, and (2) a fixed fee (profit and other fixed expenses) for all
16 construction work, based on the estimated cost of the construction, which may be adjusted if
17 actual construction costs differ significantly from the estimate. The evaluation of the price
18 proposals will constitute not less than 30 percent of the overall evaluation; evaluation of non-
19 cost criteria will constitute a maximum of 70 percent of the overall evaluation.

20 (d) Other CM/GC transit projects have negotiated a guaranteed maximum price
21 (GMP) with the selected CM/GC after the final design is sufficiently completed. The SFMTA
22 intends to negotiate portions of the GMP, including the general conditions and the cost of all
23 construction work for the Project. The fixed fee referred to in subsection (c) above will also
24 become part of the GMP. The SFMTA will retain independent estimators who shall provide
25 the SFMTA with cost estimates of all Project construction work. After receiving a GMP

1 proposal from the CM/GC, the SFMTA will meet with the CM/GC to discuss and negotiate
2 elements of the proposal. The SFMTA will conduct a cost/price analysis in accordance with
3 FTA requirements to ensure that the final GMP is fair and reasonable. If the SFMTA and the
4 CM/GC are unable to agree on what the SFMTA considers to be a reasonable price for the
5 work, the SFMTA may terminate the contract with the CM/GC, issue an invitation for bids, and
6 award a contract for the Project to the lowest responsive and responsible bidder.

7 (e) Under Administrative Code section 6.68(H), the selected CM/GC procures
8 subcontracts for the trade work by inviting pre-qualified trade subcontractors to submit
9 competitive bids. Those bids are evaluated on price alone, and the CM/GC awards the
10 subcontract to the lowest responsive bidder.

11 (f) The SFMTA has determined that selection of all subcontractors according to the
12 procedures in Section 6.68(H) would not be the most cost- and time-efficient way of
13 implementing the Project, which is unusual relative to other CM/GC projects that have been
14 constructed in San Francisco, given that it is a “horizontal” project that will be constructed in
15 the middle of a major traffic corridor in San Francisco (as opposed to construction of an office
16 building or other “vertical” project). Of great advantage in the pre-construction final design
17 and construction planning process will be the assistance of core subcontractors, such as
18 those with specialties in overhead contact system/traction power construction, paving,
19 sewer/water main replacement, and traffic control, to develop the best plan for scheduling
20 construction in the corridor. Non-core subcontractors who meet the minimum qualifications
21 will be solicited competitively by the CM/GC, based on low bid.

22 (g) On October 7, 2014, the SFMTA Board of Directors adopted Resolution No. 14-
23 147, which authorized the SFMTA to use a Construction Manager/General Contractor project
24 delivery method for the Van Ness BRT Project, and further authorized the Director of
25 Transportation, in his discretion, to seek approval from the Board of Supervisors for a Project-

1 specific ordinance to implement the CM/GC delivery method in a manner that is most efficient
2 for the Project.

3 Section 3. Modification of Requirements of Administrative Code, Section 6.68.

4 Notwithstanding the provisions of Administrative Code, Section 6.68, the Board of
5 Supervisors authorizes the SFMTA to take all necessary steps to procure the CM/GC and its
6 core trade work subcontractor team for the Van Ness BRT Project as described in and in
7 conformance with Sections 2(b), 2(c), 2(d), and 2(f) of this ordinance.

8 Section 4. No Conflict with Federal or State Law. Nothing in this ordinance shall be
9 interpreted or applied so as to create any requirement, power, or duty in conflict with any
10 federal or state law, regulation or other requirement.

11 Section 5. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance.

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

18 By: _____
19 Robin M. Reitzes
Deputy City Attorney

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