

**LEGISLATIVE DIGEST**

[Waiver of Certain Contract Requirements for Project Delivery Agreement for New Central Shops Facilities - Oryx Development I, LLC - \$55,000,000 Project Cost; Interdepartmental Property Transfers]

**Ordinance approving and authorizing the Director of Property of the General Services Agency's Real Estate Division ("RED") to execute a Project Delivery Agreement with Oryx Development I, LLC, a Nevada limited liability company ("Developer" or "Oryx") for the design and construction of proposed improvements to future City owned real estate at 555 Selby Street and 1975 Galvez Avenue (Assessors Block 5250, Lot 15, Assessors Block 5250, Lot 16), and tenant improvements to future City leased property at 450 Toland Street (Assessors Block 5230, Lot 18), to create new facilities for the relocation of the City's Central Fleet Maintenance Shop ("Central Shops") from 1800 Jerrold Street (portions of Assessors Blocks 5262 and 5270), with total anticipated project delivery cost of \$55,000,000 from San Francisco Public Utilities Commission ("SFPUC") Wastewater Enterprise funds; exempting the project from certain contracting requirements in Administrative Code Chapter 6 by waiving the requirements of Administrative Code Sections 6.61(b) and 6.61(c)(1) – (4), and approving the selection of Oryx Development I, LLC as Developer, and Developer's selection of FM&E Architecture & Design as a Subcontractor to serve as the Project Architect and Charles Pankow Builders, Ltd. as a Subcontractor to serve as General Contractor, without competitive bidding; authorizing the jurisdictional transfer of 1800 Jerrold Street, from General Services Agency's Office of Contract Administration ("OCA") to the SFPUC Wastewater Enterprise, and the jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue, and the leasehold of 450 Toland Street, from the SFPUC to OCA, subject to the terms and conditions of the Memorandum of Understanding entered into between the RED, OCA and SFPUC; and finding the proposed transactions are in conformance with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

Administrative Code Chapter 6 sets forth the City's public works contracting policies and procedures. Chapter 6, Section 6.61 governs award of Design-Build contracts. Section 6.61(b) requires a pre-qualification process and selection through either an invitation for bids or a request for qualifications for a type of Design-Build contract referred to as "Competitive Bid or Fixed Budget Limit Procurement." Alternatively, a department can pursue a Design-Build contract under Section 6.61(c) for "Best Value Procurement", and under Section 6.61(c) subsections (1) – (4), the department is required to pursue a pre-qualification process or issuance of a combined request for qualifications and request for proposals, and selection

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based on the ranking process. These requirements are generally referred to as competitive bidding for Design-Build contracts.

Administrative Code Chapter 23, Article II, establishes the policies and procedures for City departments to seek jurisdictional transfers of property from one department to another.

#### Amendments to Current Law

The San Francisco Public Utilities Commission (SFPUC) seeks to acquire jurisdiction over 1800 Jerrold Avenue for its Wastewater Enterprise, which is the current location of the City's Central Shops, under the jurisdiction of General Services Administration, Office of Contract Administration (OCA), consistent with Administrative Code Chapter 23 policies and procedures. The City Real Estate Division (RED), Director of Property determined that the current fair market value of 1800 Jerrold Avenue is less than the reasonable and necessary expense required to relocate Central Shops to facilities that are functionally equivalent to Central Shops' existing facilities, including property acquisition costs, rent, development, design and construction of replacement improvements. SFPUC approved a Memorandum of Understanding (MOU) with OCA and RED, agreeing to incur costs and pay OCA the total amount of Seventy Three Million Seven Hundred Thousand dollars (\$73,700,000) to accomplish the jurisdictional transfer, provided that OCA agree to obtain or construct the necessary functionally equivalent facilities for Central Shops, and relocate by June 2017.

To accomplish this objective on that timeline, OCA and RED seek a waiver of Administrative Code Chapter 6, Sections 6.61(b) and 6.61(c) (1) – (4), which otherwise would require a competitive selection process for the Design-Build contract required to construct the new Central Shops facilities. Instead, they seek approval of the selection of Oryx Development I, LLC as Developer, and Developer's selection of FM&E Architecture & Design as a subcontractor to serve as the Project Architect and Charles Pankow Builders, Ltd. as a subcontractor to serve as General Contractor under a Project Delivery Agreement (Design-Build), with a not to exceed cost of Fifty Five Million dollars (\$55,000,000).

OCA is not seeking waiver of other Administrative Code provisions applicable to Design-Build contracts. The Project Delivery Agreement will require competitive bidding for subcontracting opportunities consistent with the procedures and requirements regarding procurement of trade work (subcontractors) under Administrative Code Chapter 6, Section 6.61(c)(5). The proposed PDA shall also require compliance with Administrative Code Chapter 6, Sections 6.61, subsections (d) (e) (f) and (g), among other provisions, which incorporate by reference City requirements governing contract terms and working conditions in Administrative Code Chapter 6, Section 6.22, including but not limited to provisions for Insurance, Prevailing Wage, Local Hiring, Liquidated Damages, Bonds, City Right to Terminate for Convenience, Employment of Apprentices, Contractor Prompt Payment to Subcontractors, and Administrative Code Chapters 12 and 14. OCA will also seek Civil Service Commission approval for the Project Delivery Agreement, as required by the Charter.

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The SFPUC, OCA and RED, with the Mayor's consent, seek Board approval of the jurisdictional transfer of 1800 Jerrold Avenue from OCA to SFPUC, and the jurisdictional transfer of property that SFPUC will acquire if authorized by a Companion Resolution (Board File No.151215) to OCA, for the new Central Shops facilities, subject to the terms and conditions of the MOU.

#### Background Information

In 1946, the City acquired real property for the construction of the North Point Sludge Treatment Plant near Islais Creek", now commonly known as the Southeast Water Pollution Control Plant ("Southeast Plant"). The Southeast Plant facilities are in need of substantial maintenance, repair and replacement, and the adopted WWE Capital Plan includes an allocation over the next ten years of \$164,000,000 toward treatment plant improvements, together with various other allocations for repairs and replacements. The SFPUC seeks to secure a large parcel of land in proximity to the Southeast Plant to support capital improvements necessary to maintain essential utility services, and there is a very limited supply of such available land.

Since the 1960's, the City's Central Shops, a facility providing repair services to the City's non-revenue vehicle fleet, has been located on a portion of Assessor's Block 5262, Lot No. 009, (approximately 6 acres) with an address of 1800 Jerrold Avenue, adjacent to the Southeast Plant. SFPUC seeks jurisdiction over 1800 Jerrold Avenue for its Wastewater Enterprise by June 2017, consistent with the requirements of its capital improvement program schedule. OCA would consent to a jurisdictional transfer to the SFPUC, provided that OCA receives compensation sufficient to enable occupancy of functionally equivalent facilities and for necessary incurred relocation expenses. The SFPUC Commission approved an MOU with OCA and RED, providing that SFPUC would incur costs and pay OCA the total transfer price of \$73,700,000 for OCA to construct functionally equivalent facilities, provided that OCA relocated from the existing Central Shops facilities by June 2017.

Due to time constraints brought on by the challenges of finding suitable relocation sites for Central Shops in the current extraordinarily competitive real estate market for industrial land, and the SFPUC's pressing need for land to accommodate its WWE capital improvement program by the summer of 2017, the Director of Property informally approached entities capable of executing the proposed project and identified one team reasonably available and deemed capable of carrying out the Proposed Project within the time frame required and within the budget developed. The City and Oryx Development I, LLC, the Developer, subsequently entered into negotiations for a Project Delivery Agreement (the "PDA") for Oryx to complete the development, design and construction of the proposed project, subject to obtaining authorization to waive the competitive selection requirements in Administrative Code Chapter 6, Sections 6.61(b) and 6.61(c) (1) – (4).

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The OCA, RED and SFPUC have determined that the design-build project delivery method is necessary and appropriate to achieve anticipated time efficiencies and that the use of the design-build project delivery method is in the public's best interest. The proposed PDA is a design-build agreement with two phases. During the first phase, for a negotiated price of \$10,300,000, the Developer and its approved subcontractors will complete design of the proposed improvements, permitting and initial construction work to prepare the sites and install piles. The proposed PDA would obligate the Developer to design the project based on RED and OCA's budget of \$55 million, and in recognition of the City's desire to obtain beneficial occupancy by June 29, 2017. When its Architect completes 100% construction drawing to the City's satisfaction, the Developer will provide the City with a proposed Guaranteed Maximum Price and schedule establishing the duration for completion of the construction work. If the Guaranteed Maximum Price does not exceed \$55 million, and the schedule is acceptable, the City may authorize the second phase of the contract, and issue a Notice to Proceed to the Developer for the construction; provided that the Mayor and Board of Supervisors approve Phase II of the PDA, in their sole and separate discretion. If the cost of the Proposed Project exceeds the \$55 million in SFPUC funds as provided in the MOU, then OCA and RED will work with the Developer to amend the scope of the Proposed Project to bring it within budget, or seek the Mayor and Board's approval of supplemental authorization.

The departments seek waiver of the Administrative Code Chapter 6, Sections 6.61(b) and 6.61(c) (1) – (4) to enter into a design-build contract to relocate Central Shops to new functionally equivalent facilities on an expedited timeline, so that the SFPUC Wastewater Enterprise can assume jurisdiction over 1800 Jerrold Avenue, to support implementation of the Wastewater Enterprise capital improvement program on the approved schedule.

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