

LEGISLATIVE DIGEST

[Contracting Process - Treasure Island Wastewater Treatment Plant - Waiver of Certain Administrative Code Provisions]

Ordinance waiving certain provisions in Administrative Code, Section 6.61, Section 6.64, and Chapter 21, as applied to the proposed design and construction of the Treasure Island Wastewater Treatment Plant (“Plant”) to authorize the Public Utilities Commission to: procure operation and maintenance services for the Plant and for the associated collection system in one procurement in addition to design and construction services for the Plant under Administrative Code, Section 6.61; waive Administrative Code, Section 21.3’s requirement that general services be awarded to the lowest responsible, responsive bidder; waive Administrative Code, Section 21.9(a)(2)’s prohibition against having a solicitation for general or professional services be more than 10 years, as applicable to the operations and maintenance portion of the contract; waive Administrative Code, Section 6.64 as applicable to procurement of as-needed construction services as applicable to the maintenance portion of the contract; waive Administrative Code, Section 6.61(c)(5) as applicable to procurement of trade packages for construction of the Plant; state that the award of the operations and maintenance contract will be subject to the approval of the Board of Supervisors pursuant to Charter, Section 9.118; and adopt findings under the California Environmental Quality Act.

Background and Existing Law

Administrative Code Chapter 6 governs the City’s procurement of public works contracts. Chapter 6 includes several alternatives to the standard bidding process, one of which is the design-build project delivery method in Administrative Code Section 6.61 (“Section 6.61”), which allows the City to procure design and construction services for public works projects, whereby the City retains a design-builder to design and build the project.

Section 6.61 requires pre-qualification and selection by low bid, fixed budget limit or a best value evaluation through a combination of qualifications and cost, with cost constituting at least 40% of the evaluation. Under the best value evaluation method, the design-builder selects trade subcontractors during the project by 1) pre-qualification of subcontractors and evaluation on price and responsibility; 2) evaluation of core trade subcontractors based on qualifications only; 3) self-performance by the design-builder of scopes of work specified in the RFP; or 4) direct negotiation of up to 7.5% of the total estimated construction subcontractor costs.

What the Legislation Will Do

The proposed ordinance seeks permission to use the design-build-operate (DBO) project delivery method for the San Francisco Public Utilities Commission’s Treasure Island

Wastewater Treatment Plant project (Project). Like design-build, this DBO procurement selects a single entity to design and build the Project, but also operate and maintain the treatment plant, and associated collection system for at least 10 years. The benefit of a DBO procurement is to provide a single point of accountability for the Project, as well as to incentivize the DBO contractor to maximize lifecycle costs due its potential long-term responsibility to operate and maintain the Project and associated collection system. The estimated cost of the Project is \$110-\$130 million for the design and construction, and at least \$50 million to operate and maintain the plant and associated collection system for the initial 10-year term.

On April 23, 2019, the SFPUC Commissioners adopted Resolution No. 19-0082, which authorized the SFPUC to use the DBO project delivery method for the Project, and further authorized the General Manager to seek approval from the Board of Supervisors for a project-specific ordinance to implement the DBO delivery method in a manner that is most efficient for the Project. Because of the addition of operations and maintenance services to the procurement, the proposed ordinance modifies certain requirements of Administrative Code Section 6.61 required for design-build contracts, Section 6.64 to the extent as-needed construction services are needed, and Chapter 21, to the extent the procurement includes general and professional services.

Selection of DBO Contractor:

- Administrative Code Section 21.3, which requires selection of a general services contractor based on the lowest responsive, responsible bid, is waived to allow procurement of general services in the DBO best value evaluation process.
- Administrative Code Section 21.9(a)(2), which prohibits a solicitation for a general or professional services contract for multiple years with options to extend the term in excess of 10 years, is waived to allow for long term responsibility for the Project.
- Administrative Code Section 6.64, which authorizes contracts for construction services on an as-needed basis, is waived to allow the SFPUC to include repair and replacement of the Project on an as-needed basis.

Selection of Trade Subcontractors

Because the DBO contractor will propose a fixed price for design and construction, subcontractors will be listed at the time of proposal for all trade subcontracts with a value exceeding 5% of the contract amount applicable to construction work. In addition, the General Manager may specify in the RFP one or more scopes of work that may be self-performed by the DBO contractor or authorize the DBO contractor to self-perform work after determining the cost of the work to be fair and reasonable. Following award of the DBO contract, the DBO contractor may add or substitute trade subcontractors for the remaining construction work. All trade subcontractors shall be afforded all of the protections of the California Subletting and Subcontracting Fair Practices Act at California Public Contract Code Section 4100 *et seq.* as amended from time to time.