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

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

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

Section 1. General Background and Findings.

(a) The Van Ness Bus Rapid Transit (BRT) Project, now known as the Van Ness Corridor Transit Improvement Project (the Project), is a large-scale plan to implement "full-feature" BRT on one of the busiest transit routes that is also a major "north-south" transportation corridor for all transportation modes in San Francisco; once completed, it will be an integral part of the Muni "Rapid" network of transit service proposed in 2008 that will gradually be implemented on all major transportation corridors in San Francisco. The San
Francisco Municipal Transportation Agency (SFMTA) anticipates that the Federal Transit Administration (FTA) of the U.S. Department of Transportation will provide $75,000,000 in funding for the Project as part of its Small Starts Program.

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

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

(d) The Board of Supervisors finds that this approval action is within the scope of the Project analyzed in the Final EIS/EIR and approved by the SFMTA Board by Resolution No. 13-214. The documents related to the Final EIS/EIR have been made available to this
Board and the public and are on file with the Clerk of the Board of Supervisors in File No.

141148.

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

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

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

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

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

(d) Other CM/GC transit projects have negotiated a guaranteed maximum price
(GMP) with the selected CM/GC after the final design is sufficiently completed. The SFMTA
intends to negotiate portions of the GMP, including the general conditions and the cost of all
construction work for the Project. The fixed fee referred to in subsection (c) above will also
become part of the GMP. The SFMTA will retain independent estimators who shall provide
the SFMTA with cost estimates of all Project construction work. After receiving a GMP
proposal from the CM/GC, the SFMTA will meet with the CM/GC to discuss and negotiate elements of the proposal. The SFMTA will conduct a cost/price analysis in accordance with FTA requirements to ensure that the final GMP is fair and reasonable. If the SFMTA and the CM/GC are unable to agree on what the SFMTA considers to be a reasonable price for the work, the SFMTA may terminate the contract with the CM/GC, issue an invitation for bids, and award a contract for the Project to the lowest responsive and responsible bidder.

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

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

(g) On October 7, 2014, the SFMTA Board of Directors adopted Resolution No. 14-147, which authorized the SFMTA to use a Construction Manager/General Contractor project delivery method for the Van Ness BRT Project, and further authorized the Director of Transportation, in his discretion, to seek approval from the Board of Supervisors for a Project-
specific ordinance to implement the CM/GC delivery method in a manner that is most efficient
for the Project.

Section 3. Modification of Requirements of Administrative Code Section 6.68.
Notwithstanding the provisions of Administrative Code Section 6.68, the Board of
Supervisors authorizes the SFMTA to take all necessary steps to procure the CM/GC and its
core trade work subcontractor team for the Van Ness BRT Project as described in and in
conformance with Sections 2(b), 2(c), 2(d) and 2(f) of this ordinance.

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

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

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

By:                                        
Robin M. Reitzes                           
Deputy City Attorney

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November 17, 2014 Land Use and Economic Development Committee - RECOMMENDED

November 25, 2014 Board of Supervisors - PASSED ON FIRST READING
Ayes: 10 - Avalos, Breed, Campos, Chiu, Farrell, Kim, Mar, Tang, Wiener and Yee
Excused: 1 - Cohen

December 09, 2014 Board of Supervisors - FINALLY PASSED
Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 141148

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/9/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved