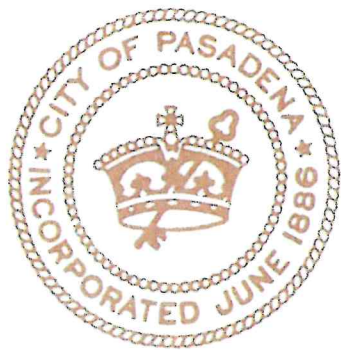


ATTACHMENT A

NOVEMBER 6, 2023 STAFF REPORT



Agenda Report

November 6, 2023

TO: Honorable Mayor and City Council

THROUGH: Finance/Audit Committee (October 23, 2023)

FROM: Department of Finance

SUBJECT: **DIRECTION TO STAFF TO PREPARE THE NECESSARY RESOLUTIONS TO SUBMIT PROPOSED CITY CHARTER AMENDMENTS FOR VOTER CONSIDERATION AT THE MARCH 5, 2024 PRIMARY MUNICIPAL ELECTION RELATED TO CONTRACTS AND PURCHASES, REVISION OF PROCUREMENT TERMS TO UTILIZE ALTERNATIVE PROJECT DELIVERY METHODS, THE GENERAL FUND TRANSFER FROM THE ELECTRIC UTILITY, AND VARIOUS OTHER CLERICAL CORRECTIONS AND AMENDMENTS**

RECOMMENDATION:

1. Find that the recommended action is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines per Section 15061(b)(3), the "Common Sense" exemption that CEQA only applies to projects that may have an effect on the environment;
2. Direct staff to prepare and return with resolutions required to place a Charter Amendment measure regarding contracts and purchases as described in the report to amend Section 1001 and 1002 of the Charter on the General Municipal Election of the City of Pasadena on Tuesday, March 5, 2024; and
3. Direct staff to prepare and return with resolutions required to place a Charter amendment measure regarding the General Fund transfer from the electric utility to Amend Article XIV, Section 1408 of the Charter, and various other clerical corrections/amendments to Articles VII, XII, and XVIII, as detailed in the agenda report, on the General Municipal Election of the City of Pasadena on Tuesday, March 5, 2024.

BACKGROUND:

As directed by the City Council on September 18, 2023, City staff have been working on technical charter amendments for City Council consideration that may be placed on the March 5, 2024, Primary Municipal Election ballot. This report encompasses

recommendations that fall within the technical charter amendment category and include revisions for procurement limits and methods, the General Fund Transfer from the Electric Utility, and clerical changes in various sections of the Charter.

Contracts and Purchases

Procurement Limit

Section 1001 of the City Charter establishes that all contracts of \$75,000 or more shall be approved by the City Council. The \$75,000 amount was increased from \$10,000 in 1984 as approved by voters. The \$75,000 amount was originally approved by the City Council for consideration in April 1983; however, that election was not conducted due to financial considerations. While the Charter does not provide for periodic or annual increases based on the Consumer Price Index (CPI), an analysis was completed to determine what the \$75,000 would equate to in today's dollars. Using the methodology of Chapter 1.08.060 of the Pasadena Municipal Code (PMC) for annual CPI adjustments, the \$75,000 would be equivalent to \$245,000 in 2023.

In consideration of the Charter and PMC requirements, staff conducted peer research and hired a consultant to make recommendations regarding the various limits to improve the overall procurement process and facilitate more contracts with Pasadena businesses. The following recommendation was approved by the Finance Committee:

Propose an amendment to increase the Charter Section 1001 threshold from \$75,000 to \$250,000. This increase is commensurate with the Consumer Price Index growth over time.

The Finance/Audit Committee expressed interest in language that would allow the amount to be increased over time by CPI; however, that was not included in the motion, but it is being presented as an option.

The proposed increase to the procurement limit is exclusive to procurements. Limits related to claims against the City, the Taxpayer Protection Act, or other non-procurement related authorizations in the Charter or PMC would not be affected by the proposed changes.

Alternative Project Delivery

In an effort to deliver capital improvement projects in the most efficient and cost-effective manner, staff is proposing to use alternative project delivery methods that are prevalent in the design and construction industry to help expedite project delivery, resulting in lower overall project cost and significant time savings. Section 1002 of the City Charter establishes that Competitive Bidding is required except as otherwise provided in the Charter. In addition to the exceptions enumerated in the Charter, a published (precedential) California Court of Appeal case involving the Plaza Pasadena underground parking garage held that cities may dispense with competitive bidding when it "would not produce an advantage" and advertisement for competitive bid would

be undesirable, impractical, or impossible. *Graydon v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 631 (1980).

Unless a project falls within one of the foregoing exceptions, the City must use competitive bidding. Because certain projects may not qualify for the enumerated exceptions or meet the requirements of the *Graydon* exception, Staff recommends a charter amendment for clarity and certainty on authorized procurement procedures, and to permit alternative procurement for all suitable projects. The Finance/Audit Committee reviewed and supported the proposal (Attachment A - Memo to Finance/Audit Committee) to amend the Charter to allow the City to use alternative procurement methods. Staff presented two types of alternative procurement methods, Design-Build and Construction Manager at Risk, as examples that have been authorized by the Public Contracts Code and that are used by other California municipalities and could be beneficial to Pasadena for delivery of large and complex capital projects in the future. Staff recommends that Section 1002 of the Charter be amended to enumerate an additional exception to competitive bidding that permits a City department to use alternative procurement methods.

This amendment is intended to authorize alternative procurement methods when appropriate and in accordance with rules and regulations as the City may later adopt. Staff proposes to recommend procedures for alternative procurement through a revision to the PMC should the voters approve the Charter amendment. The future ordinance revision would address administration of alternative procurement contracts including matters such as use of local labor and other requirements as appropriate.

Subsequent Updates to PMC

In addition to the procurement threshold and alternative procurement changes, the Finance/Audit Committee also received recommendations to clean-up the PMC language regarding how solicitations for procurement are advertised, how bids are submitted, and the requirement to encumber funds for all contracts. All the proposed PMC changes will return to the City Council in a future meeting.

General Fund Transfer

In November 2020, Pasadena voters passed Measure P, with over 85 percent voting to approve the measure. Measure P amended the Charter by reconfirming the General Fund Transfer (GFT) from the Light and Power Fund, limiting the maximum GFT, and simplifying the restrictions on the transfer. The maximum GFT was reduced from 16 percent to 12 percent of the electric utility's gross income. The entire 12 percent maximum GFT may now be used for any municipal purpose, so the Charter no longer has improvement/bond restrictions on a portion of the transfer.

Section 1408 of the City Charter establishes the transfer amount at 12 percent of gross income, and also provides that, "The amount to be so transferred from the Light and Power Fund shall not exceed the net income of the electric works as shown on the books of account of the power utility, after payment of the maintenance and operating expenses of such works, the expenses of conducting the power utility, depreciation, and

the principal, interest, and premiums, if any, upon the redemption thereof, of electric works revenue bonds.”

This language regarding the net income of the power utility does not reflect how net income is presently calculated under Generally Accepted Accounting Principles (GAAP), nor does it reflect how net income is presently reported in the City's and utility's annual financial reports. The language in the Charter specifically provides for the double counting of expenditures related to capital investments funded by bond proceeds. Both the depreciation on the capital investment and the principal on the debt results in a duplication of amounts and does not reflect GAAP.

The Finance/Audit Committee considered several options for a Charter amendment and approved the following recommendation:

Amend Charter Section 1408 - Remove the net income requirement and replace it with language that empowers the City Council to establish a process for determining if the transfer would be detrimental to the proper functioning and administration of the power utility.

Charter Section 1408 currently states, “If the City Council shall determine that the transfer of an amount less than twelve percent (12%) from the Light and Power Fund would not be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so declare by resolution, and shall transfer a smaller amount.” Therefore, it is not necessary to add language establishing a process as the existing language provides for a resolution that can include a process or findings to clarify how the transfer was determined. Instead, the Finance/Audit Committee's recommendation can be implemented by simply removing the existing paragraph that describes the net income requirement.

Clerical Corrections/Amendments

In addition, staff is suggesting several corrections and minor amendments that are needed in the City Charter to ensure provisions contained in Articles VII, XII, and XVIII are accurate and clear. These proposed changes have been identified by staff and have occurred over time, during prior Charter Amendment changes. Following are the proposed changes:

- Article VII, Board of Education, Section 704, codify the removal of the term “primary election”, as the Board of Education now only conducts General Elections utilizing plurality voting.
- Article XII, Elections, Section 1204, add the words, “Except that,” changing the sentence to read, “Except that, any person who, at the primary election, shall receive a majority of the total vote cast for candidates for said office shall be elected to such office.”
- Article XVIII, Pasadena Fair and Equitable Housing Charter Amendment:
 - Section 1803(v), codify the replacement of “~~1811(k)(1)~~” with “1811(l)(1)”

- Section 1811(a), codify the replacement of "~~1810(j)~~" with "1811(k)"
- Section 1811(e)(4), codify the replacement of "~~1813(a)~~" with "1814(a)", "~~1810(b)~~" with "1811(c)", and "~~1810(p)~~" with "1811(q)"
- Section 1811(k), codify the replacement of "~~1810(b)~~" with "1811(c)", and "~~1810(a) and 1810(b)~~" with "1811(a) and 1811(b)"
- Section 1812(g), codify the replacement of "~~(e) and (f)~~" with "(d) and (e)"
- Section 1812(i), codify the replacement of "~~1817(f)~~" with "1817(g)"
- Section 1813(6)(A)(x), codify the replacement of "~~1810(k)(1)~~" with "1803(v) and 1811(l)(1)".

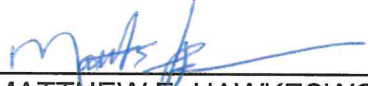
ENVIRONMENTAL ANALYSIS:

The action proposed herein has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with the proposed Charter amendment.

FISCAL IMPACT:

There is no direct fiscal impact the to the proposed changes; however, there will be a cost to place a charter amendment on the ballot. The adopted Fiscal Year 2024 Election Budget is \$515,000, and recent changes to the Los Angeles County's estimated election cost calculator may cause the City's direct costs to exceed the budgeted amount. Once cost factors are more fully known, the City Clerk's Office will return after January 2024 as part of a future budget clean-up report to request additional appropriation of funds for City Council consideration.

Respectfully submitted,




MATTHEW E. HAWKESWORTH
Director of Finance

Concurred by:




MARK JOMSKY
City Clerk

Concurred by:



TONY OLMOS
Director of Public Works

Approved by:



MIGUEL MARQUEZ
City Manager

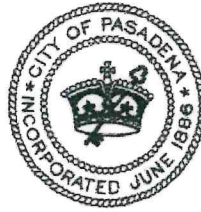
Concurred by:



SIDNEY JACKSON
General Manager, Water and Power

Attachments (2)

Attachment A - Memo to Finance/Audit Committee: Alternative Project Delivery Methods
Attachment B – Section 1408 of the City Charter



DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

DATE: October 23, 2023
TO: Finance Committee
FROM: Tony Olmos, P.E., Director of Public Works *TO*
SUBJECT: Alternate Project Delivery Methods

RECOMMENDATION:

This is an informational item.

BACKGROUND:

City of Pasadena's City Charter states that for contracts exceeding \$75,000, "...no contract for supplies, material, labor, or other valuable consideration, to be furnished to the City shall be authorized by the City Council except with the lowest and best bidder after competitive bidding..." The City Charter also specifies that competitive bidding shall not be required for:

- (A) Labor or services rendered by any City officer or employee, (B) Labor, material, supplies or services furnished by one City department to another City department, (C) Contracts for labor, material, supplies, or services available from only one vendor, (D) Contracts for labor, material, supplies, or services under \$75,000 or less, (E) Contracts relating to the acquisition of real property, (F) Contracts for professional or unique services, (G) Contracts for labor, material, or supplies for actual emergency work, (H) Contracts with other governmental entities or their contractors for labor, material, supplies, or services.

Section 4.08 (Competitive Bidding and Purchasing) of the Pasadena Municipal Code (PMC) includes additional bidding requirements that are consistent with the City Charter.

DISCUSSION:

City staff continues to work on delivering capital improvement projects in the most efficient and cost-effective manner and are always looking for way to improve the process. As a result, staff has internally discussed the possibility of using alternative

project delivery methods that are prevalent in the design and construction industry to help expedite project delivery, resulting in lower overall cost and significant time savings.

Currently, the City uses the Design-Bid-Build (DBB) method. This method involves City entering into a single or multiple contracts with a design team to develop the design through final construction drawings. Once final construction drawings are completed, the City advertises the project for construction bids and awards the contract to the lowest responsible and responsive bidder. The City team will then oversee the construction phase and process payments and change orders. However, this low bid process does not permit the City to consider the proposer's qualifications and technical quality – both of which are critical especially on large and complex projects. Another challenge with DBB is the propensity of contractors to file for change orders, whether they're justified or not.

With alternate delivery methods, the designer and general contractor are retained as key members of the project team to work together during the development of the design plans and construction drawings so that a Guaranteed Maximum Price (GMP) is developed. If a construction contract is awarded to the project team based on the GMP, the project team will deliver a turnkey project within the approved GMP. This process is not currently permitted under the PMC due to the requirement to award public works contracts to the lowest responsive bidder, although alternative project delivery typically results in lower overall project cost primarily due to improved construction efficiency and lower amount of change orders.

There are two main alternative delivery methods that staff want to consider for larger and more complex projects. One is Design-Build and the other is Construction Manager at Risk.

Design-Build (DB)

Design-Build involves the City entering into a single professional services contract with a Design-Builder at the onset of a project. The Design-Builder will assemble a team comprised of an architect, engineer, general contractor superintendent, estimator, and other consultants as needed. The DB team works with the City to develop the design along key phases including Conceptual Design, Schematic Design, Design Development and final Construction Drawings. The GMP would be prepared after Design Development is completed. If City Council awards a construction contract to the Design-Builder based on the GMP, construction work would be phased to allow for initial work such as demolition to begin while the final construction drawings are being finalized. Quality of work is assured since the Design-Builder would have pre-qualified the list of subcontractors that will submit bids for each major trade, with all trades publicly bid for transparency and competitiveness. All construction contracts after GMP are executed between the Design-Builder and the subcontractors. Any subcontractor costs that exceed the estimated amounts in the GMP would be absorbed by the Design-Builder. There is time savings due to the overlap of construction and final design phases and since there is no need for a stand-alone bid process for the overall construction phase.

This method has been popular in private sector and federal government construction for decades and has been used since the early 1990's for public agency contracts in California. Legislation passed in 2000 allowed certain General Law cities to use it and, subsequently, the legislature expanded design-build authority to be available for all General Law cities. In 2014, the laws allowing local agencies (including General Law cities) to use design-build were consolidated and codified at Public Contract Code Section 221060 et seq. Various agencies, including a number of charter cities (e.g., Riverside, Anaheim, and Ventura), have used a design-build variation known as "progressive" design-build, which maximizes innovation by selecting the design-builder at the earliest feasible stage of the project very similar to what's described above. For progressive design-build projects, certain pricing elements may be set based on the design-builder's original proposal, but the price for construction work is negotiated after the design reaches an appropriate level. The California legislature has adopted statutes specifically allowing use of progressive design-build, including a law passed in 2021 codified at Public Contract Code Section 10198 et seq.

Construction Manager at Risk (CMAR)

CMAR involves the City contracting with a design team with one or multiple contracts that would include all the professionals needed for design including architect, engineer, and required subconsultants. The City would enter into a separate contract with a Construction Manager at Risk team. The CMAR team includes the Construction Manager, general contractor superintendent, and other consultants needed for the construction phase. The CMAR team would work with the City's design team and provide input during the preliminary design phases leading to the development of a GMP. Similar to DB, if City Council awards the construction phase, the CMAR team proceeds with construction while final design is being completed. The CMAR team shares any savings with the City if the bids from subcontractors are favorable or if work proceeds better than expected and there is remaining contractor contingency.

Although not yet authorized for use for General Law cities, CMAR has been used by many California agencies including Charter cities, and the legislature has specifically authorized its use by various state and local agencies, including laws codified at Public Contract Code Section 20146 et seq. and Public Utilities Code Section 100150 et seq. As with the design-build laws, the CMAR statutes include provisions addressing compliance with the subcontractor listing law.

Advantages of Alternate Delivery Methods

Based on information from both the public and private sector, there are several advantages in using the design-build and CMAR project delivery processes. Some of the advantages may include:

- Enhanced design quality due to contractor involvement in the design process;
- For design-build, a single point of accountability as the same firm is responsible for both the design and construction of the facility;
- Fewer change orders;

- Fewer claims;
- Reduced delivery time as design and construction can overlap;
- Higher-quality construction work;
- Greater cost certainty; and
- Lower project cost.

Attachment A includes a comparison between Design-Bid-Build and Construction Manager at Risk to show time savings.

Possible Amendments to City Charter

To authorize the City and staff to pursue Design-Build and Construction Manager at Risk delivery methods, amendments to the City Charter are required. Potential Charter amendment approaches include the following:


- Language similar to the following that was used by City of Lawrence, Kansas used for their charter amendment: “. . . the Governing Body may authorize the City Manager to cause the City . . . to undertake the construction and reconstruction of any public improvements by or through an alternative project delivery method upon a finding by the Governing Body that such alternative project delivery method is in the public interest. The City Manager may adopt procedures for selecting the delivery method and for the conduct of the alternative project delivery process.”
- Expressly authorize alternative project delivery methods as an alternative to competitive bidding upon adoption of an ordinance by City Council: “Design-build or other project delivery methods may be used as established by ordinance.”

The City Attorney’s Office (CAO) is studying potential charter amendment language for this item, which will be included in any subsequent reports to City Council. CAO is also reviewing our existing charter and code to determine if the City can approximate alternative project delivery methods within the existing requirements.

FISCAL IMPACT:

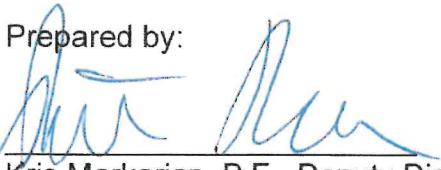
There is no fiscal impact associated with the recommended action.

Respectfully submitted:



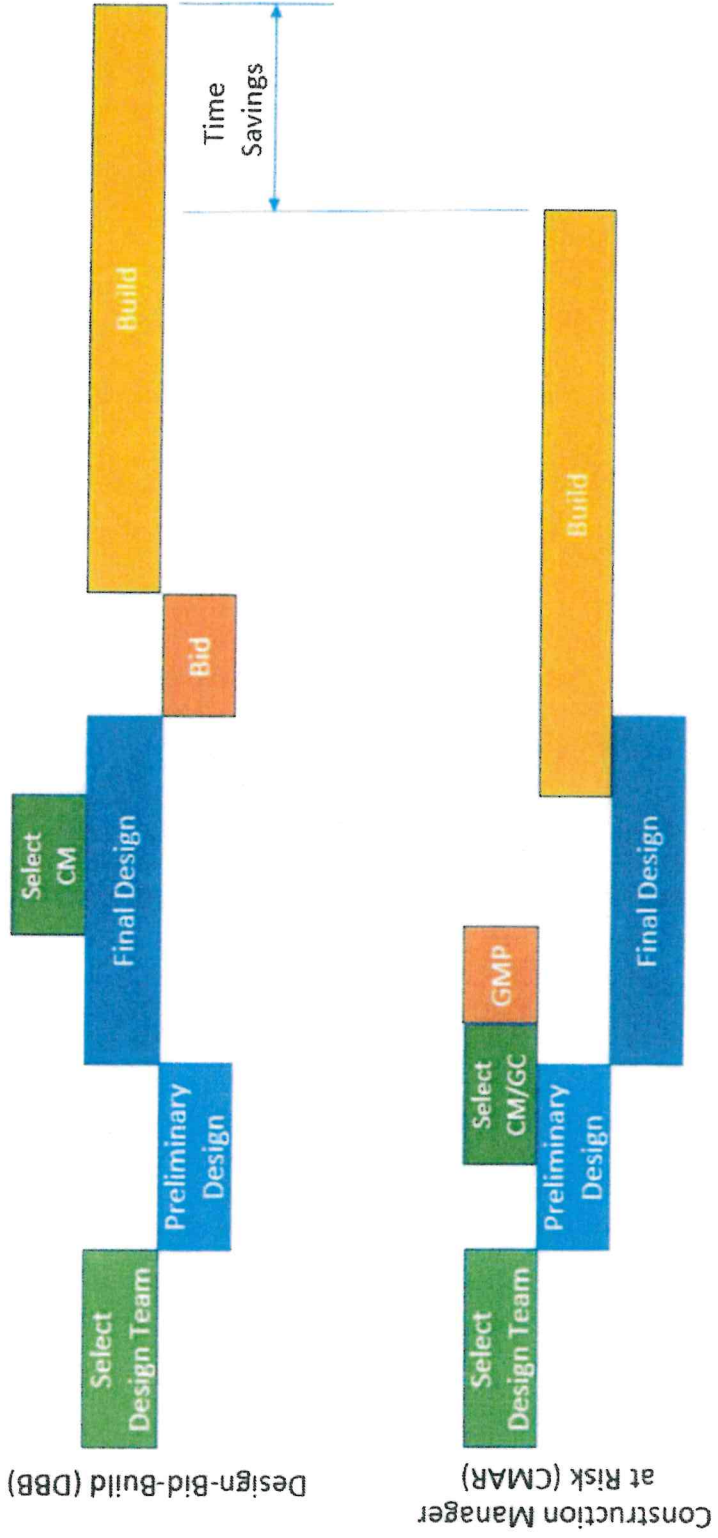
Tony Olmos, P.E., Director
Department of Public Works

Prepared by:


For Kris Markarian, P.E., Deputy Director of Public Works/City Engineer

Attachment A

Project Delivery Approach Comparison



Section 1408. - Annual contribution for any municipal purpose.

Each fiscal year the City Council shall transfer from the Light and Power Fund an amount equal to twelve percent (12%) of the gross income of the electric works received during the immediately preceding fiscal year from the sale of electric energy at rates and charges fixed by ordinance. Said sum shall be transferred to the General Fund of the City by resolution not earlier than the receipt of the report by an independent certified public accountant on the examination of the books of account of the power utility nor later than the first day of June next succeeding the date of determination of the amount to be transferred. Nothing herein contained shall prohibit an advance of not to exceed seventy-five percent (75%) of the estimated amount prior to the receipt of the said report. The amount thus transferred may be expended for any municipal purpose.

The amount to be so transferred from the Light and Power Fund shall not exceed the net income of the electric works as shown on the books of account of the power utility, after payment of the maintenance and operating expenses of such works, the expenses of conducting the power utility, depreciation, and the principal, interest and premiums, if any, upon the redemption thereof, of electric works revenue bonds.

Notwithstanding anything herein contained, if the City Council at the time of or before the adoption of the budget shall determine that the transfer of such amount from the Light and Power Fund would be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so find by resolution, and, in such event, no transfer of such amount shall be made within that fiscal year. If the City Council shall determine that the transfer of an amount less than twelve percent (12%) from the Light and Power Fund would not be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so declare by resolution, and shall transfer a smaller amount.

The City Council is authorized to set charges for electric service that, during the period when the charges are in effect, are sufficient to pay both the expenses of the power utility, as set forth in Section 1405, and all amounts that the City Council projects will be directed for transfer pursuant to this Section, before any adjustments based on the net income of the electric works.

(Sec. 1408 amended by vote of the people 11-3-2020: Sec. 1408 amended by vote of the people 3-9-1993: Sec. 1408 amended by vote of the people 6-6-1972.)