

**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

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**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.

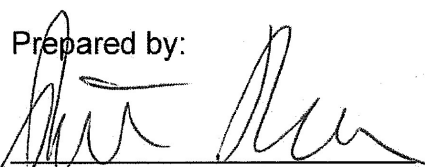
### **FISCAL IMPACT:**

There is no fiscal impact associated with the recommended action.

Respectfully submitted:

  
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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

