

Agenda Report

July 8, 2024

TO: Honorable Mayor and City Council

THROUGH: Finance Committee

FROM: Departments of Public Works

SUBJECT: DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE AMENDING PASADENA MUNICIPAL CODE CHAPTER 4.08 TO ADD ALTERNATIVE PROJECT DELIVERY METHODS CONSISTENT WITH VOTER-APPROVED CITY CHARTER AMENDMENT

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from California Environmental Quality Act ("CEQA") Guidelines pursuant to State CEQA Guidelines per Section 15061(b)(3) (Common Sense Exemption); and
2. Direct the City Attorney to prepare and return with an ordinance within 60 days to amend Pasadena Municipal Code to align with the amendments to City Charter Article X – *Contracts, Purchases, and Claims* as further described in this agenda report.

BACKGROUND:

Article X, Section 1002 of the City Charter states, "Except as otherwise provided in this Charter, 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 lowest and best bidder after competitive bidding." The March 5, 2024, voter-approved Charter amendment (Measure T) adds Subsection (I) under Section 1002, providing that competitive bidding shall not be required under this Charter for: "(I) Contracts utilizing alternative project delivery methods, as approved by the City Council, including, but not limited to, design-build and construction manager at-risk." This Charter amendment allows for the use of alternative project delivery methodologies, processes and approaches for designing, constructing, and completing a public works project when in best interest of the City. Per PMC Section 4.08.020, "public works" include "all fixed

works constructed for public use or protection, including but not limited to, bridges, waterworks, sewers, electric works, public buildings, and street improvements”.

The City’s Purchasing Ordinance, PMC Chapter 4.08, defines methodologies and establishes procurement processes for various types of contracts, including competitively bid and competitively selected contracts. Amendments are recommended to the Purchasing Ordinance to define the proposed alternative project delivery methods and their respective procurement processes for public works.

In the past 20 years, the State of California, counties, cities, and special districts have increasingly turned to alternative project delivery methods for completing public works projects to increase the efficiency and effectiveness of their capital improvement programs. Southern California municipalities including the cities of Glendale, Burbank, Arcadia, Anaheim, Riverside, San Diego, and San Bernardino have been successfully using the design-build method for the design and construction of public works projects including building facilities, parks, trails, and water and power infrastructure.

State and local laws authorize a variety of modern and innovative approaches that satisfy public policy concerns of:

1. Ensuring fairness in process;
2. Fostering a competitive construction market;
3. Obtaining high quality design and construction;
4. Using the most highly qualified organization to perform the work;
5. Lowering project costs;
6. Expediting the project’s completion;
7. Reducing life-cycle costs for both financial and environmental sustainability; and
8. Preventing fraud and collusion.

In adopting California Public Contract Code Sections 22160 through 22169, which authorizes cities and counties to procure public works projects in excess of \$1 million through the design-build method of project delivery, the State legislature found that various agencies which had selected design-build delivery, using a best value procurement methodology, "reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method."

The proposed alternative project delivery methods for procuring the City's public works projects shall comply with industry best practices necessary for architectural, engineering, and construction services; inspections, approvals, and certifications; local hiring preferences; and compliance with prevailing wage and apprenticeship requirements.

Proposed Amendments to PMC Chapter 4.08 - Purchasing

Staff recommends amending PMC Chapter 4.08 to add a new section for alternative project delivery methods for public works projects and providing clean-up language to the Purchasing Ordinance. The following is an outline of proposed amendments:

Definitions – Section 4.08.020 will be updated to add the following terms:

- Design-bid-build – A traditional project delivery method (currently used in Pasadena) in which the City sequentially awards separate contracts, the first for architectural and engineering services to design a public works project, and the second for construction of the project according to the design.
- Alternative project delivery method – A procurement approach, process, or system, other than the traditional design-bid-build method, for the design, construction, improvement, repair, maintenance, or operation of a public works project.
- Design-build – An alternative project delivery method in which the City enters into a single contract for the design and construction of a public works project from a single entity.
- Progressive design-build – An alternative project delivery method in which the City enters into a single contract for the design and construction of a public works project from a single entity beginning with the initial project scoping and preliminary engineering documents development phase.
- Design-build-operate-maintain – An alternative project delivery method in which the City enters into a single contract for the design, construction, operation, and maintenance services of a facility for a set period of time.
- Construction management at-risk – An alternative project delivery method in which the City awards separate contracts, one for architectural and engineering services to design a public works project, and the second to a licensed general contractor who provides construction management services throughout the design, pre-construction, and construction phases with a guaranteed maximum price.

Determination of Appropriate Project Delivery Method – In recommending an alternative delivery method for a public works project, staff shall rely on defined criteria and considerations to determine the delivery method to be in the best interest of the City. Factors for consideration shall include, but not be limited to, one or more of the following: project budget constraints requiring construction cost guarantees; high-level of technical complexity; benefits from early contractor involvement; need for value engineering to save on construction costs; acceleration of overall schedule; complex implementation phasing; minimizing risk borne by the City; increasing quality control measures; and minimizing inconvenience to the public.

Authorization by City Council – Staff shall secure City Council's approval to use an alternative project delivery method before a specification, notice inviting bids, request for proposals, request for qualifications, or bid or proposal advertisement for a project in which an alternative project delivery method is proposed for use. Only upon approval by the City Council will staff proceed with the solicitation of proposals or qualifications.

Competitive Selection Process – PMC Section 4.08.047 states, "Competitive selection of professional service firms shall be evaluated and determined on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required." Under the new section for alternative project delivery methods, the competitive selection process will be expanded to include the types of procurement methods for competitive selection solicitations such as request for qualifications (RFQ), request for proposals (RFP), alternative technical proposals, prequalification, shortlisting of qualified proposers, and best and final offer. In addition, the section will reference the guidelines adopted in the City's *Purchasing Procedures Manual* for proposal requirements, selection criteria, selection process, and conflict of interest policy for proposers.

Minimum Project Threshold – It is the intention to utilize alternative delivery methods only when the minimum project value exceeds \$1 million. The proposed threshold amount was determined by considering current codes authorizing use of such project delivery methods. While some cities, such as City of Glendale, do not specify a threshold amount, California Public Contract Code (Section 20146) requires that these methods can only be used for projects that are more than \$1 million and the County of Los Angeles has a minimum project value threshold of \$2.5 million.

Local Preference – The new PMC section for alternative project delivery methods shall comply with PMC Section 4.08.048 - *Local and Small/Micro Business Preference for Competitively Selected Contracts* which states that for contracts subject to competitive selection "local businesses shall receive a preference equal to 5% of the overall evaluation. In addition, small businesses and microbusinesses shall receive a preference equal to 5% of the overall evaluation."

COUNCIL POLICY CONSIDERATION:

The ordinance supports City Council's goals to maintain fiscal responsibility and stability and support and promote the quality of life and local economy as well as the City's Economic Development Strategic Plan, which supports investment in our community that creates new jobs.


ENVIRONMENTAL ANALYSIS:

The adoption of this ordinance amendment is exempt under the California Environmental Quality Act (CEQA) Guidelines in accordance with Title 14, Chapter 3, Article 5, Section 15061(b)(3), Common Sense Exemption and under Section 15308 as an action by a regulatory agency (the City of Pasadena) for the protection of the environment. The Common Sense Exemption (formerly the general rule) states 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. This amendment to City Charter Article X would clarify provisions of the ordinance and not involve any direct or indirect changes to the physical environment.

FISCAL IMPACT:

There is no fiscal impact as a result of this action.

Respectfully submitted,




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Concurred by,




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MIGUEL MÁRQUEZ
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