

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 4, CHAPTER 4.08 OF THE PASADENA MUNICIPAL CODE, THE PURCHASING ORDINANCE, TO ADOPT PROCEDURES FOR USE OF ALTERNATIVE PROJECT DELIVERY METHODS

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication, will be published by title and summary as permitted in Section 4.08 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

“Summary

This proposed ordinance amends and adds provisions to Title 4, Chapter 4.08 of the Pasadena Municipal Code, the Purchasing Ordinance, to adopt procedures for use of alternative project delivery methods in accordance with Section 1002 of the Charter.

Ordinance No. _____ shall take effect upon publication.”

SECTION 2. Pasadena Municipal Code, Title 4, Chapter 4.08 (Purchasing Ordinance), Section 4.08.020 (Definitions) is amended to read as follows:

“4.08.020 - Definitions.

- A. “Alternative project delivery method” means a procurement for the financing, design, construction, improvement, repair, materials, maintenance and/or operation of a public works project that is not design-bid-build. Alternative project delivery methods include but are not limited to:
1. Design-build;
 2. Progressive design-build;
 3. Design-build-operate-maintain;
 4. Design-build-finance-operate-maintain; and
 5. Construction manager at-risk.

- B. "Alternative technical proposal" means a proposal that includes proposed changes to the project or service sought in the city's solicitation.
- C. "Best value" means a selection method for alternative project delivery method entities based on evaluation of stated criteria. Stated criteria are those deemed appropriate for an alternative project delivery method contract and must include price and may include some or all of the following criteria: features, functions, life-cycle costs, experience, and/or past performance.
- D. "City Council" means city council the city of Pasadena.
- E. "City" means city of Pasadena.
- F. "Construction manager at-risk" means a project delivery method in which the city awards separate contracts for architectural and engineering services to design a public works project, and for licensed general contractor services. The licensed general contractor provides construction management services for the project throughout the design, pre-construction services, and construction phases and also provides a guaranteed maximum price for construction.
- G. "Contract" means a written order for labor, material, supplies or services entered into by the city; any concession granted by the city; any license granted by the city which results in the production of income by the licensee; and any franchise granted by the city except for franchises of gas, electric, water or telephone utilities.
- H. "Design-bid-build" means a traditional project delivery method for public works projects in which the city sequentially awards separate contracts, the first for architectural and engineering services for design, and the second for construction of the project according to the design.
- I. "Design-build" means an alternative project delivery method in which the city contracts with a single entity for the design and construction of a public works project.

- J. "Design-build-operate-maintain" means an alternative project delivery method in which the city contracts for design, construction, operation, and maintenance services of a facility for a set period.
- K. "Design-build-finance-operate-maintain" means an alternative project delivery method in which the city enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period.
- L. "Employer" means a contractor or subcontractor as the context requires.
- M. "Good Faith Efforts" include but are not limited to the following factors:
 - 1. Attendance at pre-solicitation or pre-bid meetings that were scheduled by the city to inform contractors or subcontractors of contracting and subcontracting opportunities for minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises, and other business enterprises.
 - 2. Advertisement in minority, women, and other media concerning contracting and subcontracting opportunities.
 - 3. Providing written notice to a reasonable number of minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises soliciting their interest in contracting or subcontracting in sufficient time to allow them to participate effectively.
 - 4. Following up initial solicitation of interest by contacting minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises by telephone to determine with certainty whether they are interested in participating.
 - 5. Selecting portions of the work to be performed by minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises.
 - 6. Providing interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business

enterprises and other enterprises with adequate information about the plans, specifications and requirements of contracts and subcontracts.

7. Negotiating in good faith with interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises. Not rejecting as unqualified without documented reasons based on a thorough investigation of the business enterprises' capabilities.
8. Making efforts to assist interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises in obtaining necessary sources of supply, lines of credit or insurance.

N. "Guaranteed Maximum Price" means the agreed amount that the city will pay for a public works project, including, but not limited to:

1. Specified scope of work;
2. Cost of the trade work;
3. General conditions;
4. Construction contingency; and
5. Fees charged by the construction management at-risk firm, design-build firm, or general contractor firm.

Costs exceeding the guaranteed maximum price shall be the responsibility of the firm or contractor.

- O. "Local business" means a business with a fixed place of business located in the city.
- P. "Material" means supplies, equipment, stores, provisions and other personal property.
- Q. "Minority" means African Americans; Hispanic Americans; Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians; Asian Pacific (including persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas); Asian Indians (including persons whose origins are from India,

Pakistan and Bangladesh); and Armenian (including persons whose origins are from the territory east of Asia Minor, known as Armenia and people of the Aryan race that migrated from Europe into that area).

- R. "MWBE" means a business owned and controlled by a woman, minority or a group of women or minorities or other individual or group.
- S. "Owned or Controlled" means owning at least 51 percent of the business and having management control of the business.
- T. "Operating company" means or refers to any non-profit public benefit corporation established by the city, which includes the Rose Bowl Operating Company, Pasadena Center Operating Company, and Pasadena Community Access Corporation.
- U. "Operating company chief executive" means or refers to the operating company's highest ranking executive in charge of day-to-day operations.
- V. "Pre-construction services" means services or activities before construction begins, which include but are not limited to: feasibility studies, design and constructability reviews, sustainability analysis, environmental documentation, value engineering, scheduling, site assessments, cost estimates, preparing bid or proposal packages, and/or reviewing and recommending contract awards.
- W. "Progressive design-build" means an alternative project delivery method in which the city contracts with a single entity for the design and construction of a public works project beginning with the initial project scoping and preliminary engineering documents development phase.
- X. "Public works" means all fixed works for the construction, alteration, repair, improvement, reconstruction, or demolition of any public improvement, including, but not limited to, constructed for public use or protection, including but not limited to, bridges, waterworks, sewers, electric works, public buildings or facilities, street improvements, and park or open space improvements.

- Y. "Purchase order" means a written authorization by the issuing party for the recipient to provide labor, materials or services, for which the issuing party agrees to pay.
- Z. "Services" means, but is not limited to, rental, repair and maintenance of equipment, machinery and other personal property, and professional services, but does not include public works.
- AA. For the purposes of this chapter, "small business" and "microbusiness" shall be any business which has been certified by the state of California or by the city, under purchasing procedures adopted by the city manager, as meeting the definitions set forth in California Government Code Section 14837, or any successor provision."

SECTION 3. Pasadena Municipal Code, Title 4, Chapter 4.08 (Purchasing Ordinance), Section 4.08.035 (Equal employment opportunity – Non-Discrimination certificate), subdivisions (A)(2) and (A)(3) are amended to read as follows:

- “2. Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this contract, state that it is an "equal opportunity employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any other class protected by Government Code Section 12940, subdivision (a).
- 3. Contractor shall, if requested to so do by the city, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or

veteran or military status, or any other class protected by Government Code Section 12940, subdivision (a).”

SECTION 4. Pasadena Municipal Code, Title 4, Chapter 4.08 (Purchasing Ordinance), Section 4.08.047 (Competitive selection) is amended to read as follows:
“4.08.047 - Competitive selection.

For contracts of a total value in excess of the amount specified in Section 4.08.045 that are not required to be competitively bid, a competitive selection process shall be provided which will be open to all persons qualified to perform such service. Competitive selection is a process where factors in addition to cost are weighed, where a contract can be awarded to other than the proposer with the lowest price and shall be based upon a written request for proposals or qualifications approved by the city attorney and the director of finance. 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. Competitive selection using alternative project delivery methods shall be evaluated and determined on a best value basis.”

SECTION 5. Pasadena Municipal Code, Title 4, Chapter 4.08 (Purchasing Ordinance), Section 4.08.075 (Specifications for public works construction) is amended to read as follows:

“4.08.075 - Specifications for public works construction.

Except as may otherwise be provided herein or as required by the procurement documents and/or contract, the provisions of the then current edition of the "Standard Specifications for Public Works Construction," prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Southern California Districts of the Associated General Contractors of California and any supplements thereto issued or approved by the city engineer, are adopted and applicable to all public works construction undertaken after the effective date of the ordinance codified in this chapter.”

SECTION 6. Pasadena Municipal Code, Title 4, Chapter 4.08 (Purchasing Ordinance) is amended by adding Section 4.08.136 (Alternative project delivery) to read as follows:

“4.08.136 Alternative project delivery

- A. The city council may approve the following alternative project delivery methods for the procurement, design, construction, improvement, repair, maintenance, and/or operation of a public works project: design-build, progressive design-build, design-build-operate-maintain, design-build-finance-operate-maintain, construction manager at-risk, or other project delivery methods.
- B. Alternative project delivery methods may be used for projects that are valued at more than \$1 million and for projects that are valued at less than \$1 million if recommended by the city manager, and that meet at least one of the criteria in both of the following subsections (1) and (2), such that the selected method is in the best interests of the city:
 - 1. The project:
 - a. Has a high level of technical complexity;
 - b. Calls for expertise that city staff does not possess;
 - c. Has a scope of work and technical requirements that are difficult to define;
 - d. Benefits from early contractor involvement;
 - e. Calls for a high level of risk management;
 - f. Has complex phasing for implementation;
 - g. Calls for overall schedule acceleration;
 - h. Calls for value engineering or other solutions to reduce construction costs or to improve function, quality, performance, or sustainability;
 - i. Has budget constraints requiring construction cost guarantees; and/or
 - j. Contemplates a third party operating, managing, maintaining, or servicing the building, facility, or infrastructure after the project's completion.

2. The alternative project delivery method is anticipated to:
 - a. Minimize the project delivery time;
 - b. Accelerate the start of project revenue;
 - c. Minimize the project's cost;
 - d. Maximize the project's budget; and/or
 - e. Improve the project's quality or functionality.
- C. City council approval of an alternative project delivery method is required before the preparation of a competitive selection procedure seeking proposals for an alternative project delivery method.
- D. Competitive Selection Procedures
 1. The solicitation shall include the scope and needs of a project, selection method, and selection factors and relative weight of those factors.
 2. The following competitive selection processes may be used:
 - a. Request for qualifications;
 - b. Request for proposals; or
 - c. Request for alternative technical proposals.
- E. Contract Award
 1. The contract shall be awarded by the city council to the best value proposer.
 2. For alternative project delivery methods that will involve negotiation of a guaranteed maximum price, the city council in its sole discretion may direct completion of the project at a cost not to exceed the guaranteed maximum price agreed to by the city and contractor. If the city and contractor do not reach agreement on a guaranteed maximum price, or the city council otherwise elects not to direct completion of the remaining work, the city council may direct solicitation of proposals to complete the project from firms that submitted statements of qualifications or proposals pursuant to subdivision (D)(2) of this section. The city council may also direct, upon determination that it is

in the best interest of the city; solicitation of proposals or bids from other entities to complete the project.”

SECTION 7. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 8. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2024.

Victor Gordo
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____ 2024, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky
City Clerk

Approved as to form:



Caroline Monroy
Deputy City Attorney