THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- Board of Directors
  Communications and Legislation Committee

10/12/2021 Board Meeting

7-6

Subject

Authorize the General Manager to seek legislation for Metropolitan to utilize alternative project delivery methods for construction of the Regional Recycled Water Program and drought-related projects; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Authorization is requested to propose legislation that would permit Metropolitan to utilize alternative project delivery methods for the design and construction of the Regional Recycled Water Program (RRWP) and drought-related projects. Methods such as Design-Build, Progressive Design-Build, and Construction Manager/General Contractor have the potential to expedite online dates for critical new water infrastructure projects and to reduce their costs and risks.

Details

Under Section 21565 of the Public Contract Code, Metropolitan is currently limited to the traditional design-bid-build (DBB) model for the delivery of public works construction projects. Under this method, a public agency designs (or contracts for the design of) a project, solicits competitive bids, and awards a construction contract to the lowest responsible bidder. This traditional process is appropriate for most public works projects, but it may be inefficient and inflexible for large, time-sensitive, and complex projects such as the RRWP and certain drought-related projects. For these projects, Metropolitan would benefit from a broader range of options, including Design-Build (DB), Progressive Design-Build (PDB), and Construction Manager/General Contractor (CM/GC).

Under the DB project delivery method, the DB contractor designs, engineers, and constructs the project under a single contract, according to design parameters, performance criteria, and other requirements established by the owner. The DB procurement method typically utilizes a two-step solicitation process, with entities short-listed in the Request for Qualifications stage. Shortlisted DB contractors then respond to a Request for Proposals, which is based on the owner's preliminary design documents (approximately 30 percent complete). Ultimately, the DB contractor is selected based on qualifications, capabilities, experience, technical proposal, and price, rather than price alone in the DBB model. Once a contractor is selected, DB proceeds in much the same way as a DBB implementation method, with the owner administering the DB contract and performing construction inspection. The cost of both design and construction is set at the onset when the DB contract is awarded, giving the owner price certainty, although owner-requested changes can result in delays and additional costs. Absent termination of the contract for cause or convenience, DB has no contractual off-ramp.

PDB is a project delivery method similar to DB in that the PDB contractor performs design, construction engineering and management, and construction according to design parameters, performance criteria, and other requirements established by the owner. Unlike DB, however, PDB offers the owner the opportunity to add the design-builder to the overall project team even earlier in the design phase than traditional DB. This approach affords the owner and the contractor more opportunities to collaborate during the project's design phase. Such collaboration can typically reduce overall project risks, costs, and schedules. Since the PDB contractor selection is generally based on qualifications and fees, the selection of the PDB contractor can typically be undertaken with an owner's design that is only five to ten percent complete. As part of the price proposal, PDB teams will only provide their design and preconstruction fees, with a fixed price for construction agreed upon at a later time, once the design work is substantially advanced. PDB thus provides the owner a better understanding of the project's

scope before negotiating a final price—typically referred to as a "Guaranteed Maximum Price" or GMP—as well as the ability to competitively bid the project's construction phase if a GMP cannot be agreed upon. PDB also provides more opportunity than DB for risk-sharing and incentives as well as the ability to minimize conflicts and claims.

CM/GC is a project delivery method that allows an agency to select a contractor early in the project development process to act in an advisory role during the design phase. Under the CM/GC method, the owner is responsible for the design of the project, utilizing their own staff or by contracting with a consultant. The CM/GC contractor provides constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations as the owner's design is progressed. Like the PDB approach, the CM/GC contractor is typically selected at a very early stage in the design process. This ensures that the contractor is collaboratively involved in the ensuing design effort as described above. At an agreed upon point in the design, the CM/GC contractor will propose a price to construct the project. If the price is accepted by the agency, the CM/GC contractor will become the general contractor and will construct the project. If the price is not accepted, the agency will publicly advertise the construction contract. In similar fashion to PDB, the CM/GC delivery methodology is structured to facilitate the ability of the designer/owner and the construction contractor to collaboratively develop the most cost-effective project.

Proposed Legislation

Staff proposes legislation to amend the Public Contract Code to permit Metropolitan to utilize alternative project delivery methods such as DB, PDB, and CM/GC for the RRWP and drought-related projects in addition to traditional DBB.

While design-build has been a common project delivery method in private sector construction for several decades, it is still relatively new in the public sector. The legislature first approved design-build authority for public agencies in 2001 with the passage of AB958 (Chavez, 2001), which authorized "transit operators" to award contracts for transit projects of at least $10 million on a design-build basis. A variety of other statutes followed authorizing other types of public agencies to utilize design-build, including AB 1329 (Wolk, 2005) which authorized cities to utilize design-build. SB 626 (Dodd, 2021) gave the Department of Water Resources the ability to use DB and CM/GC project delivery methods for repairs and improvements to facilities of the State Water Project, excluding Delta Conveyance.

Incorporating alternative delivery methods into Metropolitan's traditional DBB implementation could provide the following benefits:

- Enhanced collaboration between owner and contractor through the design and construction process.
- Enhanced project risk identification and allocation between owner and contractor.
- Greater flexibility in the contract award process, not limited to lowest responsible bidder.
- Potentially shorter project completion schedules, leading to earlier online dates.
- Earlier cost certainty with the potential for lower overall project costs.
- Increased opportunities for innovation.

For drought-related projects, the design and construction of new pump stations to increase delivery capabilities of Diamond Valley Lake supplies and/or Central Pool supplies to State Project Water-dependent portions of Metropolitan's system may benefit from alternative delivery methods. In the RRWP, the design and construction of tunnel portions of the conveyance system, as well as portions of the Advanced Water Treatment facilities, may also benefit from the use of one or more of these alternative delivery approaches. As planning for both drought-related and RRWP projects continue to develop, additional candidate projects for alternative delivery implementation will be identified and analyzed by staff.

Policy

Metropolitan Water District Administrative Code Section 2800. Development, Approval and Support of Legislative Concepts.

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities.

By Minute Item 52205, dated December 8, 2020, the Board adopted the Legislative Priorities and Principles for 2021, Section A.1-2, establishing as top legislative priorities support for measures to defray costs of infrastructure projects and to expedite such projects, including recycled water projects and the RRWP.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves legislative proposals that do not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment (Public Resources Code Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize the General Manager to seek legislation for Metropolitan to utilize alternative project delivery methods for construction of the Regional Recycled Water Program and drought-related projects in addition to traditional Design-Bid-Build.

Fiscal Impact: The costs associated with sponsoring this bill in the state legislature will be absorbed within existing staffing and program budgets. If the proposed legislation is enacted into law, a full assessment of costs and benefits to implement and conduct the activities will be determined and provided to the Office of the Chief Financial Officer and the Board of Directors.

Business Analysis: If legislative efforts authorizing the use of alternative delivery methods are successful, after initial costs of implementation, staff anticipates beneficial fiscal impacts that will be identified in the full assessment of costs and benefits.

Option #2

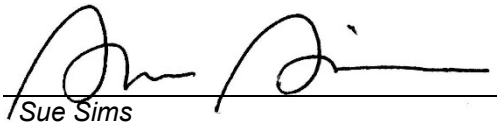
Do not authorize the General Manager to seek legislation for Metropolitan to utilize alternative project delivery methods for construction of the RRWP and drought-related projects in addition to traditional Design-Bid-Build.

Fiscal Impact: Metropolitan would forgo any potential cost and schedule-saving benefits that could be obtained by alternative delivery methods.

Business Analysis: Absent proposed legislation, Metropolitan would continue to implement traditional DBB.

Staff Recommendation

Option #1



9/30/2021

Sue Sims *Date*
External Affairs Manager

10/5/2021

Adel Hagekhalil *Date*
General Manager

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