



Legal & Claims Committee

# Implementation of Alternative Project Delivery Methods

Item # 7-15  
March 13, 2023

Actions  
Needed to  
Implement  
Alternative  
Project  
Delivery

- Approve Administrative Code amendments to implement Alternative Project Delivery (APD)
- Adopt an organizational conflict-of-interest policy for APD
- Request for additional funds for contract with Hanson Bridgett LLP for specialized advice on APD contracting

## APD Legislation Chronology

- Limitations of traditional design-bid-build
- Oct. 2021 Board action on APD legislation
- Feb. 2022 introduction of AB 1845 (Calderon)
- Legislative amendments and testimony
- Sept. 2022 Governor signing of AB 1845
- SB 991 progressive design-build legislation

## Highlights of AB 1845

- Authorizes MWD to use design-build (DB), progressive DB, and construction manager/general contractor (CM/GC)
- 15 drought- or climate change-related capital projects, including Pure Water Southern California, between Jan. 1, 2023 and Dec. 1, 2026 (DB) or Dec. 1, 2028 (PDB, CM/GC)
- Requires “skilled and trained workforce,” which can be met with Project Labor Agreement

Highlights  
of  
**AB 1845**  
(cont'd)

- Standard requirements for bonding, retention, and subcontractor protections
- **Conflict-of-interest** guidelines required for DB and PDB
- MWD forces must perform inspections
- Prohibition on **design-build-operate**

## Highlights of SB 991

- Authorizes PDB for cities, counties, and **special districts that produce, store, supply, treat, or distribute water** from any source
- 15 projects in excess of \$5M between January 1, 2023 and January 1, 2029
- Like AB 1845, provisions regarding procurement process, **skilled and trained workforce**, and conflict-of-interest policy
- Unlike AB 1845, no owner inspection requirements or prohibition on design-build-operate

# Public Works Project Delivery Methods

- Traditional Delivery Method for Local Agencies
- Alternative Delivery Methods
  - Design-Build
  - CM/GC
  - Progressive Design-Build

## Proposed Administrative Code Amendments

- Codify solicitation and contracting requirements for alternative project delivery methods
- Specific Amendments
  - New APD definitions
  - New Section §8148 Alternative Project Delivery
  - Amend change order authority for public works purchasing contracts
  - Minor revisions to conform various sections to items listed above



## Design Build Delivery Method

### Design Build (DB)

- Contracting method where a single design-build entity (DBE) is hired to do both design and construction
- Selection through two-step RFQ/RFP process
- Fixed price award (low bid or best value)

## CM/GC Delivery Method

### Construction Manager/General Contractor (CM/GC)

- Contracting method where a single entity is hired to do CM and construction
- Design performed by Metropolitan
- Selection through qualification-based process
- Once design is complete, Metropolitan would negotiate construction activities as follows:
  - Guaranteed Maximum Price (GMP)
  - Fixed Price

## Progressive Design Build

### Progressive Design Build (PDB)

- Contracting method where a single entity is hired to do both design and construction
- Selection through qualification-based process
- Two Phase Process
  - Design phase – negotiated NTE price
  - Construction phase – negotiated GMP
- Streamlined and collaborative process

## Sepulveda Feeder Pump Stations Project

### Sepulveda Feeder Pump Stations

- Two new 30-cfs pump stations, conveyance pipelines, and associated supporting infrastructure
- Would allow reverse water flow to move water from the Central Pool to the Jensen Exclusive Area

### Approximate value

- \$80-\$100M

### Delivery method

- Progressive Design Build (PDB)

PBD Benefits  
Sepulveda  
Feeder  
Project

- Potential for schedule advancement (earlier online date)
- Enhanced opportunities for:
  - Collaboration during project development phase
  - Risk identification & allocation
- Earlier cost certainty; possible cost savings
- Greater flexibility in selection process
- Increased opportunities for innovation

Public  
Works  
Purchases  
Change  
Order  
Authority

## Change Order Authority Amendment

- Amend public works purchasing change order authority to greater of \$250,000 or 5%
- Assists in expediting project completion
- Allows Metropolitan, DBE, or CM/GC greater flexibility for large scale materials and equipment purchases

## Conflict- of-Interest Policy

- **Purpose** of conflict-of-interest (COI) policy for DB and PDB
- Coordination with **Ethics Office**
- **Elements**
  - Description of prohibited conflicts
  - Obligations of design-build entities
  - Mitigation of conflicts
  - Remedial measures
  - Attestation

## Examples of Potential Conflicts

- Firm A advised Metropolitan on solicitation process for Project X before responding to RFQ for Project X.
- Firm B performed work for another entity related to Project X before responding to an MWD RFQ for Project X.
- Firm C employs former MWD employees with knowledge of Project X before responding to an RFQ for Project X.



## Funding for Outside Counsel

- 14 law firms responded to General Counsel RFP for APD legal services
- Hanson Bridgett (HB) selection based on extensive public agency experience
- HB work to date: drafting of PDB contract, assistance with RFQ and COI policy
- HB future work: development of documents for DB and CM/GC, advice on APD issues

## Board Options

### Option #1

- a. Approve amendments to the Administrative Code authorizing the use of alternative project delivery methods.
- b. Adopt an organizational conflict-of-interest policy governing solicitation of design-build and progressive design-build projects.
- c. Authorize \$150,000 increase to Hanson Bridgett LLP contract, for new not-to-exceed amount of \$250,000, for legal services related to implementation of alternative project delivery.

## Board Options (cont'd)

### Option #2

Do not approve recommended amendments to the Administrative Code, adoption of organizational conflict-of-interest policy, or contract increase.

# Staff Recommendation

## Option #1

