MEMORANDUM

October 22, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation on equity opportunities in construction project delivery methods

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

This staff report discusses the equity opportunities in construction project delivery methods for public works construction contracts available to the Port. Staff are presenting an overview of project delivery methods through an equity lens to share how the Port can maximize its positive impact on local communities. In this memorandum, alternative delivery methods are defined as construction procurement methods different than the traditional Design-Bid-Build – Low Bid method. This report expands on staff's previous Port Commission report on alternative project delivery methods from 2019.[1]

Alternative delivery methods allow for non-cost criteria to be considered in the contractor selection process. These non-cost criteria provide an opportunity for the selection panel to consider equity considerations such as workforce development, community benefits, education, mentoring and other equity questions added to the scoring criteria.

[1] Port Commission Item 12A, May 28, 2019

Alternative delivery methods all have Local Business Enterprise (LBE) requirements (or a waiver process), however, the likelihood of LBE participation at the Prime, subcontractor, or lower-tier contractor levels varies depending on the delivery method, project size, and project complexity.

There is no single project delivery method that is superior to all others for maximizing equity opportunities for all types of projects. Port staff will consider equity as a project-based goal for project delivery method selection alongside other considerations such as owner control, project risk, cost certainty, procurement speed, available staff resources during the procurement process, speed of delivery, safety, and staff expertise among other factors.

PORT STRATEGIC PLAN AND RACIAL EQUITY ACTION PLAN (REAP)

The use of alternative project delivery methods is consistent with the Port's stated equity goal to increase the number of local businesses competing for Port contracts by engaging teams that support the diversity of our City.

The REAP sets forth twelve areas where contracts will be used to advance equity and two areas where contract delivery methods are explicitly mentioned.[2] Appendix A lists REAP areas related to contracts.

INTRODUCTION

This staff report provides an overview for equity opportunities in the project delivery methods available to the Port for construction projects[3]. The project delivery methods discussed in this report are available to the Port through Chapter 6 of the City Administrative Code. Each project will require assessment of multiple factors and criteria to determine which delivery method is most appropriate for a particular project. Certain alternative project delivery methods, such as design-build or construction manager/general contractor, can provide advantages in terms of transferring risk to the private sector, and minimizing change orders and resulting cost and schedule implications, maximizing equity opportunities, such as community benefit programs, workforce development practices, education and mentoring programs.

Information in this staff report draws from the Alternative Project Delivery Method Report prepared for the Port by the CH2M/Arcadis Team for the Seawall Earthquake Safety and Disaster Prevention Program as well as staff conversations with staff from San Francisco Public Utilities Commission (SFPUC), San Francisco International Airport (SFO), the Water Emergency Transportation Agency (WETA), the Port, and Contract Monitoring Division.

REVIEW OF DELIVERY METHODS

[2] Port of San Francisco Racial Equity Action Plan, Published December 31, 2020

[3] Federally and grant-funded projects will have different restrictions that could impact the choice of delivery method. This report does not address the effect of fund source on project delivery method.

Relevant construction delivery methods available to the Port are summarized in Table 1. Additional detail for each project delivery method may be found in Chapter 6 of the City Administrative Code.

Table 1: Summary of Project Delivery Methods

Design-Bid-Build (DBB)	Typical Contract Size: ≥$706,000 (Method 1), ≥ $1,500,000 (Method 2) Selection Method 1: Low Bid - Most Common Method - Project designed by Port staff or consultants and bid with a complete design - Selection based on cost Selection Method 2: Best Value - Selection based on scoring criteria and cost
Design-Build (DB)	Typical Contract Size: >$5,000,000 Owner develops conceptual plan and solicits bids or proposals from design-builders to perform both design and construction. Two selection methods are authorized: Selection Method 1: Competitive Bid or Fixed Budget Limit - Requires prequalification based on criteria - Selection of design-builder may be based on competitive bid - Owner can also request proposals for fixed budget limit Selection Method 2: Best Value - Allows Owner to consider qualification or other subjective criteria, such as the quality of the design proposal, as part of the final selection process - Cost criteria must be at least 40% of overall evaluation
Construction Manager/General Contractor (CM/GC)	Typical Contract Size: >$5,000,000 - Owner retains a construction manager/general contractor (CM/GC) during design phase to review the architect or engineer's design for constructability and cost effectiveness - Owner can authorize CM/GC to self-perform work after determining the cost of the work to be fair and reasonable - Selection based on scoring criteria
Job Order Contracting (JOC)	Contract Size: ≤$5,000,000 (Individual task orders <$706,000) - Pool of contractors with indefinite quantity contracts with a predefined set of Bid items that are assigned on a periodic or task order basis for the performance of maintenance, repair and minor construction projects. - Selection based on cost - Currently 10 of 13 firms in JOC pool are LBEs

EQUITY OPPORTUNITIES IN CONTRACTING

Beyond Low Bid: Non-Cost Criteria

The low-bid model limits the contractor selection criteria to cost alone[4]. Alternatively, the contractor selection for certain alternative delivery methods are based on a set of criteria. These non-cost scoring criteria may allow for equity-based criteria to be included in the selection process (scored by a selection panel). The non-cost selection criteria can rate the contractors' responses on matters such as equity programs (such as community benefit programs, workforce development practices, education and mentoring programs), environmental stewardship, and other practices that align with the community values of the Port.

In the scoring process, the criteria could include a Qualification Point breakdown similar to the below:

Cost Criteria	100 points
Relevant Project Experience	35 points
Past Performance	20 points
Safety Record	20 points
Equity Criteria	10 points
Labor Compliance	10 points
Financial Condition of Contractor	5 points
Total	200 points

As outlined in Table 2, low cost is used for DBB - Low Bid and JOC contracts and scoring criteria are used for DBB - Best Value, Design-Build, and CM/GC contracts. DBB - Best Value project scoring divides cost by qualification point score, with lowest modified cost considered to be "Best Value", while Design-Build and CM/GC assign qualification points for cost.

Table 2: Non-Cost Criteria Selection Method and Non-Cost Criteria

	Selection Method	Non-Cost Criteria
DBB - "Low Bid"	Low Cost	No
DBB - "Best Value"	Best Value	Yes
Design-Build	Pre-qualification or Highest Scoring. Cost >40% of criteria	Yes
CM/GC	Highest Scoring	Yes
JOC	Low Cost	No

[4] Contractor is required to provide a responsive and responsible bid to be considered in selection process. The Port can also require bidders to be pre-qualified either on a specific project or an identified group of projects.

LBE Opportunities

One of the most established equity programs of the City and County of San Francisco is Chapter 14B, the Local Business Enterprise and Non-Discrimination in Contracting Ordinance. The Contract Monitoring Division (CMD) has regulatory responsibilities for Chapter 14B including the responsibility to set LBE subcontractor participation requirements based upon availability of LBE firms to complete the type of work included in the contract and applying bid discounts for Local Business Enterprise (LBE) prime contractors on projects worth between $10,000 and $2,000,000.

All contracts have an LBE subcontracting requirement (or a waiver process), but the ability for an LBE to participate as a prime or subcontractor varies based on delivery method. LBEs are more likely to be a prime on a DBB or JOC contract and highly unlikely to be a prime on a design-build or CM/GC contract due to project size and complexity factors. Table 3 provides a summary of LBE requirement and typical participation by project delivery method.

Table 3: LBE Requirement and Typical Participation by Project Delivery Method

	LBE Requirement	LBE Primes	LBE Subs
DBB	At Bid	Yes	Yes
Design-Build	Separate requirements for design and construction	No	Yes, often second tier
CMGC	Project-wide at Bid; Trade bid packages have separate LBE requirements	No	Yes, often lower tier
JOC	Legacy JOCs: At JOC level New JOCs: At Task Order Level	Yes	Yes

SAN FRANCISCO LOCAL HIRING ORDINANCE

All construction contracts, regardless of delivery method, will require contractor compliance with the mandatory participation level of the City's Local Hiring Ordinance, Chapter 82 of the San Francisco Administrative Code. The mandatory participation level currently in effect is 30% of all project hours within each trade performed by local residents, with no less than 15% of all project work hours within each trade performed by disadvantaged workers.

Prime contractors may request conditional waivers and exemptions for specialized trades such as marine related pile driving, asbestos removal and operating engineering.

PREFERRED PROJECT DELIVERY METHOD

The multitude of project delivery methods provide various benefits and drawbacks for the Port to consider when selecting a project delivery method. This report has focused on equity considerations (such as community benefit programs, workforce development practices, education and mentoring programs), but there are also other advantages and disadvantages to consider when selecting a project delivery method. These

considerations include owner control, project risk, cost certainty, procurement speed, available staff resources during the procurement process, speed of delivery, safety, and staff expertise among other factors. Appendix B outlines the advantages and disadvantages of each project delivery method.

SUMMARY

Port staff will continue to evaluate equity as a criterion when selecting a construction project delivery method. Staff will assess future projects and recommend a project delivery method for each project that will best achieve the Port's strategic goals and project-specific goals.

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Appendix A: REAP Area 8 – Contracts
Appendix B: Advantages and Disadvantages of Project Delivery Methods

Appendix A: Port of San Francisco Racial Equity Action Plan Area 8 – Contracts

8.1.1.	Advertise all contracting events to racially diverse businesses, LBE, DBE, and non-certified minority owned businesses
8.1.2.	Conduct early targeted outreach to MBE, DBE, and non-certified minority owned businesses
8.1.3.	Engage with technical service providers on common barriers to bidding and networking and providing assistance to potential Port bidders
8.2.1.	Enhance equity-based language in all pre-bids to state the Ports values of creating racially diverse contracting teams
8.2.2.	Re-package contracts into smaller projects when feasible to create opportunities for racially diverse micro-LBE firms
8.2.3.	Fund and partner with City and CBO programs that support minority contractors through investment and engagement, such as workshops to develop new LBEs and LBE business capacity
8.2.4.	Create RFQ to form pool (similar to Public Works Job Order Contracting) to increase capacity of small minority businesses.
8.3.1.	Collaborate with CityBuild, and development partners to create training programs to increase pool of qualified candidates of Black, Indigenous, and other people of color
8.3.2.	Create a community benefits program
8.3.3.	Review Trade Exemptions with OEWD for possible training program creation opportunities to help increase the pool of available workers and businesses.
8.3.4.	Determine feasibility for Pier 70 Shipyard Repurposing Concept as a Regional Maritime Trades Training Center.
8.4.1.	Fund Youth Employment Program

Appendix B: Advantages and Disadvantages of Each Project Delivery Method

DBB – Low Bid

Advantages	**Disadvantages**
Familiar process in the industry	More constructability issues because the contractor is isolated from design process
Shorter and less intensive procurement process	Often results in higher cost due to change orders and delays
Owner has more control over design	Construction cost of project are not known until design is 100% complete and bids are received
More checks and balances built into the process because the designer and contractor are separate	Cannot score certain non-cost elements (i.e community benefit programs, environmental practices)
Potential low costs because of competitive bidding	
Equity: Small businesses may be encouraged to propose because of lower pre-submittal costs and familiar procurement process.	
Equity: LBE bid discount applies.	

DBB – Best Value

Advantages	**Disadvantages**
Equity: Equity values can be expressed in selection criteria	More constructability issues because the contractor is isolated from design process
Owner has more control over design	Often results in higher cost due to change orders and delays
More checks and balances built into the process because the designer and contractor are separate	Construction cost of project are not known until design is 100% complete and bids are received
Potential low costs because of competitive bidding	Often results in delays due to change orders
Equity: Scoring includes non-cost elements (i.e. relevant project experience, past performance, financial condition of contractor, labor compliance, safety record, community benefit, workforce development, education and mentoring programs)	Small contractors may be less likely to propose based on higher pre-submittal costs (including time) to prepare written proposals, also requiring a different skill set (proposal writing) that may take longer and requires more contractor internal review than low-bid.
Equity: Rating bonus applies to LBE primes.	Longer selection process (due to increased Port staff time, bidder time, seating of qualification panel) and increased bid protest risk due to scoring of non-cost criteria

Design-Build

Advantages	**Disadvantages**
Because the contractor is also responsible for design, it usually is more cost effective and has improved constructability	More intensive and longer contractor procurement process (3-6 months) due to scoring of non-cost criteria (staff time, bidder time, qualification panel)
Cost of project is known earlier in the process through a Guaranteed Maximum Price (GMP) or lump sum bid amount	Needs to be a project with a clearly defined scope and requirements; there is higher risk of missing items in the scope of work since it is all developed at the very beginning of the project
Schedule is faster because: • Schedule risk is transferred to DB contractor team • More efficient procurement of long-lead items • Ability to start construction before entire design is complete	Potential for less innovative designs and less owner control over design, as contractor is trying to minimize risk
Transfers some liability for potential design deficiencies from the owner and owner's design consultant.to DB contractor	Reduced competition because it can exclude smaller firms unable to lead larger projects
Equity: Easier for pre-qualification scoring to include certain non-cost elements (i.e., past performance, financial condition of contractor, labor compliance, community benefit, workforce development, education and mentoring programs)	Reduces competition because of more expensive pre-submittal costs for the proposing firm.
Equity: May increase diversity of LBE subcontractor opportunities because there is a separate LBE requirement for Design (professional services) and Build (Construction).	

CM/GC

Advantages	Disadvantages
Schedule is faster: • It removes the components of the schedule that would typically be consumed by the bidding and procurement process • Efficient procurement of long-lead items • Ability to start construction before entire design is complete	Guaranteed Maximum Price (GMP) negotiation can delay project. Requires a very strong and fully engaged Owner/project manager:
Quicker contractor procurement process than DB, however longer than DBB	Owner needs to trust the CM/GC to know that the GMP is reasonable (i.e., no assurance the lowest possible price will be received)
Heavy coordination early on, can be better at limiting scope-, schedule- & budget-increases than other methods	Potential for disagreements between project architect/engineer and CM/GC
Allows for Owner selection of best-qualified independent architect/engineer and CM/GC	Requires reviewing agencies and stakeholders to expedite review of designs
Cost of project is known earlier in the process. Costs are more accurately forecast.	Less competitive environment because GMP is negotiated
Greater risk-sharing between Owner and Contractor	Owner remains responsible for addressing design omissions
Provides a single point for construction accountability	Contractor may control contingency not Owner
Owner selects a construction manager to act as the general contractor with schedule and cost risk	GMP may be negotiated before design is complete requiring cost contingency
Equity: Easier for pre-qualification scoring to include certain non-cost elements (i.e., past performance, financial condition of contractor, labor compliance, community benefit, workforce development, education and mentoring programs)	LBE opportunities typically at the subconsultant level only
LBE requirement set at the trade package level may increase diversity of LBE construction opportunities. Trade packages allow more diverse LBE opportunities because trade packages are trade-specific and have a trade package LBE requirement to meet.	

Job Order Contracting

Advantages	**Disadvantages**
Familiar process in the industry	Size of job is limited by the Threshold Amount
Shorter and less intensive procurement process	Not viable for emergency work since the typical process takes 4 - 6 weeks
Work is priced using a Construction Cost Catalog	Construction cost of project are not known until design is 100% complete and JOC bid is received
More checks and balances built into the process – Public Works provides construction management and project management services	More difficult to account for certain non-cost elements (i.e., prior experience, community benefit programs, environmental practices)
Equity: Large percentage of LBE contractors in the JOC program (10 of 13)	
LBE Bid Discount applies for LBE primes.	