OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Implementing Ordinance for Construction Manager at Risk

OVERVIEW

On Tuesday, February 16, 2010 the City Council is being asked to approve the implementing ordinance for the Construction Manager at Risk (CMAR) construction project delivery system for use on public works projects. The CMAR delivery system allows the City to contract with both an architect/engineer and a construction manager simultaneously employing two separate contracts. During the design and development phase the construction manager acts as a consultant to the City offering advice on value engineering, cost analysis, and schedule development. During the construction phase the construction manager acts as the general contractor who is committed to delivering the project within a Guaranteed Maximum Price (GMP). In March 2004, San Diego voters approved Proposition B which allowed for the use of CMAR as a public works delivery system. The charter language approved by the voters included the following language:

> "The City Council shall establish by ordinance guidelines for the award, use, evaluation of such construction manager at risk contracts, and may set an amount below which the City Manager may award such contracts."

Staff has worked to develop implementing language. Based on the proposed implementing ordinance language, the IBA had the following questions for staff:

1. On what projects will the CMAR delivery system be used?
2. How will the CMAR delivery system impact existing City programs including the Small and Local Business Enhancement Program and the Subcontractor Outreach Program?
3. Is there a project minimum amount for the use of the CMAR delivery system?

The following section discusses staff's responses to the IBA's questions and also provides background on the City's current project delivery systems and how they are selected for projects.

FISCAL/POLICY DISCUSSION

On what projects will the CMAR delivery system be used?

Based on conversations our office has had with Engineering and Capital Projects (E&CP) staff, this question is not easily answered. Each project is unique with varying goals and may require specific approaches to address these nuances. When deciding which delivery system to use for a project, E&CP staff considers the following factors:

- Time required for project
- Cost/funding of the project
- Clarity and Consistency of Scope of project
- The flexibility of the project
- Innovation/Creativity and complexity of project
- Current Status of Design.

It is important to note that as E&CP reviews the factors for a project there are no set formulae or cut-off scores in the evaluation of which project delivery system to use. In some cases, one or two factors may override all others. In addition, the selection of a delivery system occurs in a dynamic environment and can change as more information is received concerning the project. However, E&CP staff notes that their overall goal is to complete a project in the most efficient and cost effective method possible.

Currently the City uses three different delivery systems for the execution of Capital Improvement Projects (CIP). Each system has advantages and disadvantages. The following provides an overview of the delivery systems for CIP projects:

Design-Bid-Build (D-B-B)

With this method, the plans are designed by an independent engineering professional or in-house staff, and construction is awarded to the lowest

responsible bidder. The Project is developed sequentially: feasibility studies, environmental review, design alternatives, preliminary design, design of construction documents, bidding, and construction. The processes have very little overlap, and the City Council, staff and the community maintain more flexibility for changing elements of the Project. The design is accomplished with no ties to the Contractor. The City then manages the construction contract to ensure that the Project is built in accordance with the plans and specifications. The "low-bid" D-B-B method is the preferred delivery method for projects such as sewer and storm drain replacement projects and roadway improvements.

Design-Build (D-B)

The D-B method is generally used for Projects with clearly defined criteria. With the D-B method, the City enters into a contract with a single entity for providing both design and construction services. Typically the City prepares "bridging documents" that provide a schematic design level sufficient enough to facilitate the community review and environmental processes. Upon approval, these concepts are used along with performance specifications, cost proposal and a pre-qualification process to select the D-B contractor. Upon City Council approval of the D-B contract, the design, permitting, and construction responsibilities are shifted to the D-B Contractor. This process typically offers less flexibility to make changes after the completion of the "bridging document."

Some recent projects where the City has used the D-B delivery system include the Nobel Athletic Field & Recreation Center/North University Community Branch Library, the Police Maintenance Facility, and the Northwestern Police Substation.

General Requirements Contracts (GRC)

The GRC Project delivery system is best used for projects that are smaller, rely mostly on single trades, and may be of an urgent or emergency need. GRC contracts have a fixed term that are typically two years and do not exceed $10 million. Under the GRC system, projects are accomplished by individual task orders. The GRC system is based on a set unit price books. These unit price books reflect the current value of construction and repair projects in Southern California.

The most significant difference of a GRC from other delivery systems is that plans do not need to be as fully developed because the Contractor will provide "shop drawings" and "working drawings" detailing many of the specifics of the project. GRC contracts are awarded to the lowest responsible contractor bidding a "modifier" to the unit price book. The modifier is expressed as a decimal value and is applied to all unit prices in the book for the duration of the contract. The contractor with the lowest modifier is typically awarded the contract. The award

process of a specific task order is typically shortened by ten to twelve weeks from a D-B-B method.

Staff has stated that they plan on using the CMAR delivery system for large projects that are complex in nature and include features that are unique and could be difficult to construct. While the CMAR implementing ordinance language has not been approved by the City Council, staff has moved forward with using the CMAR delivery system for the new Main Library. At the November 17, 2009 City Council meeting, the Council approved a second amendment with Turner Construction to provide Pre-construction Services that included developing a GMP and "assisting in the preparation of the Construction Manager at Risk contract that is responsive to the needs of the City as well as Turner." As with the new Main Library, the use of the CMAR delivery system enables the City to have a contractor's feedback related to the constructability of the facility while designing various options for construction and controlling costs from the start of the project.

How will CMAR impact existing City programs including the Small and Local Business Enhancement Program and the Subcontractor Outreach Program?

Under the CMAR delivery system, City programs including the Small and Local Business Enhancement Program, the Subcontractor Outreach program, and other Equal Opportunity Program requirements will continue to be enforced. In addition, under the CMAR delivery system one of the criteria that can be used for the selection of a Construction Manager is the strength of the company's Equal Opportunity and Small Business Plans.

Is there a project minimum amount for the use of the CMAR delivery system?

Staff has stated that the CMAR implementing ordinance does not include a project minimum amount. However, by nature the CMAR delivery system is designed for large and complex projects. It is also important to note that regardless of the delivery system any projects over $1.0 million will need City Council approval as established in the San Diego Municipal Code.

CONCLUSION

The IBA has reviewed the proposed implementing ordinance for the CMAR delivery system and we recommend adoption by the City Council. Adoption of the proposed implementing ordinance will enable E&CP staff to use the CMAR delivery system and also meet the requirements of the City Council as presented in the Proposition B City Charter language approved by San Diego voters in March 2004.

[SIGNED]

Jeffrey Sturak
Deputy Director

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst