

ORDINANCE NO. _____

An ordinance authorizing the Los Angeles Board of Harbor Commissioners to use alternative project delivery systems and the competitive sealed proposal method for capital improvement projects related to the Pier 500 Marine Container Terminal Project at the Port of Los Angeles (Port).

WHEREAS, Section 371(b) of the City Charter permits the letting of contracts pursuant to a competitive sealed proposal method, in accordance with criteria established by ordinance adopted by at least two-thirds of the Los Angeles City Council (City Council), and also allows for the use of design-build or other appropriate project delivery systems when justified by the type of project and approved by the contracting authority;

WHEREAS, the purpose of this ordinance is to establish criteria for the letting of contracts pursuant to a competitive sealed proposal method and authorize the use of alternative project delivery systems for contracts between the Los Angeles Harbor Department (Harbor Department) and the successful contractor(s) for one or more of the procurement, pre-construction services, construction, finance, operations, maintenance, and other related services for capital improvement projects related to the Pier 500 Marine Container Terminal Project at the Port including components of such projects and their integration into facilities and operations at the Port, provided that the contractor's operations obligations under any such contract would be limited to operating the underlying infrastructure (e.g., sewer, electrical, etc.) (collectively, the Projects);

WHEREAS, time is of the essence and it is in the best interest of the City of Los Angeles (City) to expedite implementation of the Projects because, without the Projects, projected cargo growth at the Port is expected to put the Port at capacity within a decade;

WHEREAS, time is of the essence to shorten the overall disruption that the Port, Port tenants, and the general public will experience during construction of the Projects;

WHEREAS, it is advisable for the Harbor Department to use the competitive sealed proposal method and the construction manager-at-risk, design-build, progressive design-build, design-build-operate and maintain, design-build-finance-operate-maintain, or other forms of public-private partnerships, including pre-development agreements that could potentially result in the use of one or more alternative project delivery systems during the implementation phase (also known as the development phase) of such agreement, pursuant to the terms of this ordinance because this type of work is highly specialized, capital intensive, and time critical, making it important that the contractors have the experience, financial capacity, and expertise to carry it out in an accurate and timely manner;

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WHEREAS, the City Council desires to authorize the Harbor Department to use the competitive sealed proposal method and alternative project delivery systems for the Projects;

WHEREAS, for purposes of this ordinance, the following definitions shall apply to the alternative delivery systems referred to herein:

Construction Manager at Risk (CMAR) - Under CMAR, the Harbor Department would select a construction manager during the design development process to provide pre-construction services as a member of the project development team. The Harbor Department would also separately contract with a design consultant to complete the project design and provide design support during construction. The selected CMAR assists in design review, facilitates constructability reviews, participates in design packaging phasing and scheduling decisions, cost estimating, other market analysis as appropriate, and then executes construction of the project as the general contractor. The construction manager is considered "at risk" to deliver the project at an agreed maximum guaranteed price. The construction manager is responsible for costs that exceed the guaranteed maximum price and takes on significant risk for the project's cost, schedule, and construction quality.

Design-Build (DB) - Under DB, the Harbor Department would select a single entity to complete the design and construction of a project. The design-builder is selected following project definition, based on qualifications, which dictate performance requirements and criteria for the finished project. In DB scenarios, the Harbor Department retains control by documenting the criteria to which the design and construction will be measured for project acceptance. Under DB, the responsibility and associated risks related to the design of the project shifts from the Harbor Department to the design-builder.

Progressive Design-Build (PDB) – PDB is a variant of DB where the Harbor Department would select a design-builder based on various criteria, including qualifications, who would then work with the Harbor Department on advancing the design and agree on a price for completing the design and construction of a project.

Design-Build-Operate-Maintain (DBOM) - DBOM is a variant to DB that requires the single contracting entity to also be responsible for the operations and maintenance of specified components of the delivered asset for an additional term of years (to be specified by the Owner). For Pier 500, such operations would be limited to operating the underlying infrastructure (e.g., sewer, electrical, etc.).

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Design-Build-Finance-Operate-Maintain (DBFOM) – DBFOM is a variant to DBOM that requires the single contracting entity to also finance some or all of the project costs. This delivery system is typically used for large infrastructure projects. Similar to DBOM, for Pier 500, operations would be limited to operating the underlying infrastructure (e.g., sewer, electrical, etc.).

Public-Private Partnerships (P3) – A P3 is a collaborative agreement between a public agency and a private sector entity. The Harbor Department would typically select a P3 developer based on various criteria, including qualifications. The P3 developer provides a public service or project and assumes substantial financial, technical, and operational risk. P3s can take multiple forms, including, but not limited to, PDA and DBFOM agreements.

Pre-Development Agreement (PDA) – Pursuant to a PDA process, the Harbor Department would select a contractor(s) based on various criteria, including qualifications, who would enter into a pre-development agreement and work with the Harbor Department to perform early-stage project development work, including planning, preliminary design and cost analysis, followed by a process to agree to the terms for the implementation phase of such agreement, which could utilize one or more of the delivery methods described in this ordinance;

WHEREAS, the City Council desires to establish the criteria for the letting of contracts by the Harbor Department pursuant to such competitive sealed proposal method;

WHEREAS, the City Council desires to authorize the Harbor Department to use the most efficient and effective procurement and contracting tools for the Projects and recognizes the need to modify otherwise applicable procurement and contract requirements, including requirements in Los Angeles Administrative Code Sections 10.14 and 10.15, to reflect the Harbor Department's use of alternative project delivery systems; and

WHEREAS, the City Council desires to authorize the Harbor Department to apply a uniform rate of interest to payments due and owing but not yet made on contracts related to the Projects.

NOW THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The Harbor Department may enter into a contract or contracts utilizing one or more alternate project delivery systems that the Harbor Department lets pursuant to a competitive sealed proposal method, as provided herein, for the Projects. Such

alternative project delivery systems may include, but are not limited to, construction manager-at-risk, design-build, progressive design-build, design-build-operate and maintain, design-build-finance-operate-maintain, or other forms of public-private partnerships, including pre-development agreements that could potentially result in the use of one or more alternative project delivery systems during the implementation phase of such Projects, or any combination thereof. Such contracts shall be awarded by the Board of Harbor Commissioners, on behalf of the Harbor Department, subject to the City Council's right of review under City Charter Section 245 or, if applicable, the City Council's right of approval under City Charter Section 373. Consistent with City Charter Section 371, no award may be made to a proposer whose final proposal is higher as to ultimate cost to the City than any other responsive proposal submitted. In order to utilize these methods, the Board of Harbor Commissioners shall make a written finding supported by a written statement of facts that award to the lowest responsive and responsible bidder is not practicable or advantageous, and shall also state in writing the reason for the particular award.

Sec. 2. The Harbor Department may engage in contract negotiations after proposals have been opened to allow clarification and changes in the proposal. The Harbor Department shall take adequate precaution to treat each proposer fairly.

Sec. 3. Proposals shall be solicited by issuing a request for proposal (RFP). Unless the RFP is preceded by a prequalification or shortlisting process, public notice of the RFP shall be given in writing or electronically to prospective contractors. The RFP shall state the time and place at which the proposals will be received by the Harbor Department. Proposals received after the time and date specified shall not be considered.

Sec. 4. At a minimum, the RFP shall include: (a) description of the services and items desired or the scope of work to be performed; (b) a statement of the evaluation criteria that will be used in evaluating proposals; and (c) a statement as to when and in what form costs or prices are to be submitted. In addition, the RFP shall require that proposers submit, at a minimum: (i) relevant experience; (ii) a listing of subcontractors or a selection plan for subcontractors that meets specified requirements and which is sufficient to ensure that fair practices are used in such selection; (iii) updated financial and other relevant information sufficient to provide evidence of financial ability to complete the work; and (iv) such other information as the Harbor Department deems relevant and appropriate.

Sec. 5. The evaluation criteria shall be described in the RFP in a plan of evaluation that identifies evaluation factors and their relative importance to the proposed work or project. The criteria shall include, but not be limited to, a means to measure how well a proposal meets desired performance requirements and how the lowest ultimate cost will be determined.

Sec. 6. Proposals shall be opened and their contents secured to prevent disclosure during the process of negotiating with competing proposers. Adequate precautions shall be taken to treat each proposer fairly and to ensure that information

gleaned from competing proposals is not disclosed to other proposers. Except for the names of the proposers, information contained in the proposals, including price, shall not be disclosed until a recommendation for award is made to the Board of Harbor Commissioners.

Sec. 7. Award shall only be made to the responsible and responsive proposer whose final proposal is most advantageous to the City, except that the Board of Harbor Commissioners may reject any or all offers if rejection is in the best interest of the City. No award may be made to a proposer whose final proposal is higher as to the ultimate cost to the City (as defined in City Charter Section 371) than any responsive proposal submitted. The Board of Harbor Commissioners shall document its findings regarding this determination

Sec. 8. Pursuant to Subsection 7 of Section 10.14 of the Los Angeles Administrative Code, the requirements of Subsections 2 and 5 of Section 10.14 shall be waived for any procurement and contract under this ordinance. The following requirements shall be established for the Projects in place of the sections waived

"2. Listing of Subcontractors. The Harbor Department shall provide in the bid documents prepared for such work or improvement that every person making a bid or offering to perform the work shall state therein:

(a) To the extent known at the time of submission of the bid or offering to perform the work, the name and address of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement in an amount in excess of one-half of one percent (1/2%) of the prime contractor's total bid or \$10,000, whichever is greater.

(b) That portion of the work which will be done by each subcontractor identified in the bid or offering.

The prime contractor shall list only the subcontractor for each portion as is defined by the prime contractor in its bid."

"5. Assignment. No contractor shall permit any subcontractor listed in the original bid to voluntarily assign or transfer its subcontract without the prior consent of the awarding authority or its duly authorized officer."

Sec. 9. Pursuant to Section 10.15(a) of the Los Angeles Administrative Code, the requirements of the first paragraph of Subsection(d) of Section 10.15 shall be waived for any procurement and contract under this ordinance. For purposes of the process authorized by this ordinance for the Projects, the following requirements shall be established in their place:

"(d) Except as provided in Subsections (j) and (k), every proposal or bid shall be accompanied by a check certified by a responsible bank in the City of

Los Angeles or a cashier's check issued by a responsible bank, payable to the order of the City of Los Angeles, for an amount specified by the contracting authority in the applicable procurement documents, or, in lieu thereof, may be accompanied by a satisfactory surety bond or letter of credit, in like amount, guaranteeing that the bidder or proposer will enter into the proposed contract if the same be awarded to it. In lieu of the foregoing, an annual bid bond sufficient to cover any one proposal or bid may be filed."

Sec. 10. Pursuant to Section 10.15(a) of the Los Angeles Administrative Code, the requirements of Subsection (g) of Section 10.15 shall be waived for any procurement and contract under this ordinance. For purposes of the process authorized by this ordinance for the Projects, the following requirements shall be established in place of the subsection waived:

"(g) Except as provided in Subsection (i), by the deadlines and upon the terms and conditions specified by the contracting authority, the successful bidder shall execute the contract and post the faithful payment and performance bonds for construction work in the amounts and in the form specified by the contracting authority. The contracting authority will set the amounts of the bonds based on its determination of what is required to adequately ensure payment of subcontractors and protect the City's interests. The contracting authority may determine which entity or entities may provide the required bonds and the contracting authority may forego requiring any such bonds for contracts or contract phases that do not include construction work."

Sec. 11. Pursuant to City Charter Section 1022, the services advertised for pursuant to any RFP issued pursuant to this ordinance are for expert services which require knowledge and skills that are not available within the Harbor Department and can therefore be performed more economically and feasibly by independent contractors.

Sec. 12. Notwithstanding any statute, code, City ordinance, or policy requiring earlier compliance, contractors identified in a bid or proposal for a contract that the Harbor Department procures under this ordinance are not required to comply with applicable licensing requirements until contract execution or financial close, as determined by the Harbor Department in its sole discretion.

Sec. 13. Notwithstanding any statute, code, City ordinance, or policy requiring a different rate of interest, interest accrues at the rate of seven percent per annum on payments due and owing but not yet made on contracts procured under this ordinance.

Sec. 14. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

HYDEE FELDSTEIN SOTO, City Attorney

By 
JANET KARKANEN
Assistant City Attorney

Date 8/6/2026

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____