

RESOLUTION NO. 2024-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
ADOPTING THE CITY OF MERCED
ALTERNATIVE DELIVERY PROCUREMENT
POLICY**

WHEREAS, the City of Merced ("City") is a California Charter City, chartered in 1949; and

WHEREAS, the City, as a California Charter City, pursuant to California Public Contract Code section 1100.7, possesses the authority to exempt itself from the requirements of the California Public Contract Code; and

WHEREAS, City Charter Section 200, vests in the City the power to exercise any and all rights, powers and privileges stated in the Charter, granted or prescribed by any law of the State, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution of the State of California; and

WHEREAS, City Charter Section 200 establishes the City's plenary authority in all forms of contracting and specifically exempts the City from the provisions of the California Public Contract Code and specifically reserves the right to determine the manner in which it contracts for public works; and

WHEREAS, City Charter Section 1109, requires every public works project exceeding fifty thousand dollars, adjust annually beginning in July 1, 2008, for the construction or improvement of public buildings, works, streets, sewers, utilities, and playgrounds to be let by contract to the lowest responsive and responsible bidder after notice by publication in the local newspaper ten days before the opening of bids; and

WHEREAS, City Charter Section 1109 permits the City Council to establish procedures to implement public works contracting processes through Ordinance or Resolution, and such procedures may include the use of construction manager at risk, design-build and progressive design-build delivery methods (collectively "alternative delivery methods"); and

WHEREAS, public agencies across California, including other charter cities, have experienced improved outcomes on their public works projects when utilizing alternative delivery methods, including improved quality, expedited project completion, reduced costs, and obtaining design features that were not achievable through the traditional design-bid-build method; and

WHEREAS, City Municipal Code Section 3.04.220 states that every project, not otherwise exempt by the Charter, involving an expenditure of more than fifty thousand dollars (\$50,000.00) for the construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let by written contract with the lowest responsible bidder in accordance with the procedure described in this article; and

WHEREAS, the City Council, wishes to utilize its Charter authority to provide the ability to use Design-build, Progressive design-build, and/or Construction manager at-risk, project delivery procurements for up to five (5) public works projects per Fiscal Year, a total which may be adjusted by future action of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City of Merced Alternative Delivery Procurement Policy, attached as Exhibit A, is approved pursuant to the authority granted to the City Council by City Charter Sections 1100.7 and 200.

SECTION 2. The City Council authorizes the use of the Alternative Delivery Procurement Policy on up to five (5) public works projects exceeding \$50,000 per fiscal year. This number may be adjusted by subsequent action of the City Council.

SECTION 3. In adopting the City of Merced Alternative Delivery Procurement Policy, the City Council hereby resolves that it is not bound by the requirements of Public Contract Code section 22160 *et seq.*, Public Contract Code section 22185 *et seq.*, or Public Contract Code section 22170 *et seq.*

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2024, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

 6/3/2024

City Attorney Date

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: ALTERNATIVE DELIVERY PROCUREMENT POLICY

Effective: June 17, 2024

PURPOSE

To establish a uniform procedure utilizing the City's Charter authority to provide the ability to use design-build, Progressive design-build, and /or construction manager at-risk, project delivery procurements for up to five (5) public works projects per fiscal year, a total which may be adjusted by future action of the City Council.

POLICY

This policy contains the procedures to be followed when the City determines to utilize an alternative delivery procurement method to deliver a public works project valued over \$50,000. As currently approved, the City may utilize an alternative delivery procurement method for up to five (5) public works projects per fiscal year.

PROCEDURE

Section 1. Definitions.

"Alternative Delivery Methods" means collectively construction manager at-risk, design-build, and progressive design-build methods defined below.

"Best value" means a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, function, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the City, or a tradeoff between price and other specified factors.

"Construction manager at risk" means the method of project delivery where a construction manager is contracted to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project.

“Design-build” means the method of project delivery where the design and construction of a public works project are contracted with a single “design-build” entity.

“Progressive design-build” means the method of the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project.

Section 2. Initiating Use of Alternative Delivery Methods.

To utilize any of the Alternative Delivery Methods, the City Manager or his/her designee must make a written determination that utilizing an Alternative Delivery Method for a public works project will improve at least one aspect of the outcome of a public works project (improved quality, expedited project completion, reduced costs, or obtaining design features that were not achievable through the traditional design-bid-build method), and not hinder fair competition for the project. As part of this determination, the City Manager or his/her designee must designate the Alternative Delivery Method that will be used as well as the form of the procurement, he or she has determined will provide the most beneficial outcome to deliver the project. This written determination must be reviewed and approved by the City Manager.

Section 3. Basis of Award

Alternative Delivery Method projects may be awarded on the basis of lowest bid or best value. In either case, any evaluation criteria based on price must be set forth in the initial procurement documents for the project.

Section 4. Compensation.

The compensation terms for Alternative Delivery Method projects may be structured as a lump sum included in a proposal, a stipulated sum established by the City, or a lump sum or guaranteed maximum price negotiated after contract award.

Section 4. Solicitations.

The City Manager or his/her designee, in consultation with the City Attorney, will determine the type of solicitation to be used for the Alternative Delivery Method. This may include, but not be limited to, an Invitation For Bid (IFB), a Request for

Qualifications (RFQ), and/or a Request for Proposals. All Alternative Delivery Method solicitation documents must be reviewed and approved by the City Attorney, to ensure compliance with local, state, and federal laws and regulations where applicable. All solicitations must comply with the noticing requirements in Merced Municipal Code Section 3.04.230.

Section 5. Conflict of Interest.

All selected contractors utilizing this policy will be subject to the City's adopted conflict of interest code.

Section 6. Effective Date.

This policy was adopted by the Merced City Council on June 17, 2024 and will remain in effect until amended or rescinded.

APPROVED:

City Manager