

## **Capital Task Force – February strategy packet**

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## **Task Force talking points re State Legislation**

### **Overview**

- Mayor convened task force to do a top-down review of how the City builds public works.
- Taskforce is made up of city agencies, Comptroller, industry experts, labor, and M/WBE leaders.
- Recommending nine-part legislative package; Four of the nine proposals in the Gov. Exec budget
  - o Alternative Delivery Method (Progressive Design-build)
  - o Alternative Delivery Method (Construction Manager Build and CM-at-risk)
  - o Owner-Controlled Insurance Programs and Contractor-Controlled Insurance Programs (OCIP/CCIP)
  - o Increase in Small Purchase Threshold for Certified M/WBEs to \$1.5 million
- The nine proposals in this package would be transformative for the City's capital project delivery process and would be felt by your constituents who, like all of us, want to see better parks, community centers, street infrastructure, and more.
- I, along with my colleagues on the task force, strongly recommend that you support the inclusion of these proposals in your house's respective one-house budgets, and of course in the enacted budget.

### **Four Proposals in the Executive Budget**

**Proposal #1 and #2:** Allow the City to use alternative delivery methods (Progressive Design-build, CM-Build and CM at-Risk [in Exec budget])

- Want to amend the Public Works Investment Act (enacted in 2019 budget), which allows City to use two-step design-build, to also allow us to use progressive design-build, Construction Manager-Build, and Construction Manager-at-Risk
- Keeping same public and private sector labor protections as design-build (anti-displacement language, and project labor agreements)
- Would foster early collaboration among all parties and allow key steps to proceed in parallel.
- During COVID, when the city could temporarily use CM-Build, the Department of Design and Construction (DDC) delivered key health facilities in months instead of years, within budget, and with significant percentages of M/WBE participation, well above 30% goals.
- These tools would be used on appropriate projects, not all City work.
- New Yorkers—especially those who rely on public infrastructure the most—deserve to benefit from efficient construction all the time, not just during emergencies.
- Additional details
  - o *Progressive design-build* is most useful for complex renovation and infrastructure where it would not be possible to know enough ahead of time for firms to be able to put in cost-binding proposals (or if they had to, they would inflate their bids significantly to account for the unknowns).
    - Ex: Deep energy retrofit where touching the heating system impacts parts of the building that haven't been touched in a long time
    - Ex: Street redesign where we don't know exactly where utilities are under the ground and don't know the full details of the subsurface conditions
  - o *CM Build* is most useful when we know a lot about the design we want and want the designer and construction manager to work through the design documents together, increasing collaboration and opportunities to find efficiencies in constructability. CM-Build is especially helpful when we have multiple projects going on in one building.

- Ex: A cultural institution or hospital that needs a new boiler, new electrical work, and needs to be made ADA accessible - instead of having multiple small projects, we can easily consolidate with CM-Build
- *CM at risk* is similar to CM-Build in use, but is especially useful where we are able to remove sufficient amount of unknown quantities such that the CM is willing to take on the full cost of any cost overages. The awarded contract results in a guaranteed maximum price
  - Ex: Similar to examples above and will depend on market conditions and the specific project's needs.

**Proposal #3:** Allow the City to use wrap-up insurance programs.

- Want to modify State insurance law to allow OCIPs and CCIPs where a single insurance policy covers all contractors on a project in one wrap-up insurance program, retaining quality coverage
- Levels playing field—insurance costs aren't reflected in bids, so M/WBEs and small contractors can be more competitive.
- Leads to safe worksites – instead of everyone having their own policy with their own rules and expiration dates, there is one policy—and one clear responsible party—regarding safety.
- Saves money – more efficient to procure one policy than to pay for everyone to have their own; more efficient claims process that cuts time and saves money.
- Proven tool – SCA, Port Authority, MTA, NYCHA trust, and private sector all use OCIPs/CCIPs

**Proposal #4** Increase small purchase threshold from \$1M to \$1.5M

- Want to increase the M/WBE small purchase threshold for City contracts to \$1.5M, consistent with the MTA.
- Grateful for the \$1M, but MTA has \$1.5M - no reason City shouldn't.
- Would create more opportunity for M/WBEs to participate in City work.

**Remaining Five Proposals in Package, not in the Executive Budget but need to be included in the Assembly and Senate one-house budgets**

**Proposal #5:** Establish DDC as an Authority

- Create a DDC Authority – would be able to deliver projects faster, more economically with access to more varied ways to procure, design, and build projects; would not have to contend with compounding, duplicative regulations that create administrative burdens
- Would use Project Labor Agreements for alternative delivery; public employees would remain in their union and pension system
- Would remain part of City's budgeting process and report annually on operations
  - City Council, DOI, Public Advocate, Comptroller retain oversight and audit capacity

**Proposal #6: Create a New York State Insurance Fund pilot program**

- Want to amend NYS insurance law to create an additional insurance option for small contractors and M/WBEs via NYS Insurance Fund
- Small contractors and M/WBEs often struggle to find competitive insurance options that meet the standards required for public construction projects, and these contractors particularly struggle to obtain insurance options that are affordable

**Proposal #7: Allow M/WBE construction mentorship programs at all agencies**

- Want to amend the NYC Charter to give agencies the ability to create construction mentorship programs similar to SCA and DDC programs
  - Participating businesses are mentored by industry experts and have the exclusive opportunity to bid on specially designated contracts valued at up to \$1.5 million (\$3M once in graduate program)
- DDC and SCA's mentorship programs are proven successes, and this legislation would allow us to replicate these models to increase diversity in capital projects.

**Proposal #8: Allow the City to require electronic bidding**

- Want to amend the General Municipal Law to allow NYC to require electronic bids
- Paper bids are an administrative burden on all vendors and are particularly difficult for small vendors and M/WBEs that may not have the staff capacity and niche experience required to navigate New York City's complex paper bid submission process
- Fully electronic bidding would bring procurement into the 21<sup>st</sup> century and would result in faster, more economical delivery of goods and services to everyday New Yorkers

**Proposal #9: Allow the City to update the public hearing threshold and allow for public notice**

- Want to amend the charter to allow for public notice instead of a public hearing
- Also want the City's Procurement Policy Board to be able to update the threshold at which the public notice process is triggered—current threshold has not been increased since 1989
- Public hearings add ~three weeks to the procurement process; very few contracts generate public comment, public notice will provide enhanced transparency and access to information

## Calendar

### Capital TF February plan

- Early February:
  - Please leverage your existing relationships as you see fit
  - Consider targeting recommended list of electeds (see following page)
- Mid February: Mayor and Comptroller budget testimony followed by Black, Puerto Rican, Hispanic, and Asian Legislative Caucus Weekend
- February 27/28: Task Force Albany Lobby day

**For reference: Legislative calendar** (blue = session days)

FEBRUARY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

## **Recommended legislators to engage**

The members of the Legislature listed below are recommended either because of their leadership status, committee chairpersonship, or general support for the topics in the package. However, we encourage you to engage with all members of the Legislature with whom you have a relationship.

### **NYS Senate**

- NYS Senate Majority Leader Andrea Stewart-Cousins
- NYS Senate Deputy Majority Leader Michael Gianaris
- NYS Senator Leroy Comrie (Chair of Senate Corporations, Authorities and Commissions Committee)
- NYS Senator Liz Krueger (Chair of Senate Finance Committee)
- NYS Senator Andrew Gounardes (Chair of Committee on Budget and Revenue)
- NYS Senator Jessica Ramos (Chair of Senate Labor Committee)
- NYS Senator Luis Sepulveda (Chair of Senate Cities Committee)
- NYS Senator John Liu (supporter of design-build)
- NYS Senator James Sanders (supporter of design-build)
- NYS Senator Tim Kennedy

### **NYS Assembly**

- NYS Assembly Speaker Carl Heastie
- NYS Assembly Member Edward Braunstein (Chair of Assembly Cities Committee)
- NYS Assembly Member Helene Weinstein (Chair of Ways and Means Committee)
- NYS Assembly Member Jeffrey Dinowitz (Chair of Assembly Codes Committee)
- NYS Assembly Member Latoya Joyner (Chair of Assembly Labor Committee)
- NYS Assembly Member Stacey Pheffer Amato (Chair of Assembly Governmental Employees Committee)
- NYS Assembly Member Kenneth Zebrowski (Chair of Assembly Corporations, Authorities, and Commissions Committee)
- NYS Assembly Rodneyse Bichotte Hermelyn (Chair of Assembly Subcommittee on Oversight of MWBEs)
- NYS Assembly Member Michaelle Solages (Chair of the NYS Black, Puerto Rican, Hispanic and Asian Legislative Caucus)
- NYS Assembly Member Michael Benedetto (supporter of Design Build)
- NYS Assembly Member Charles Fall (supporter of design-build)
- NYS Assembly Member Linda Rosenthal (supporter of design-build)
- NYS Assembly Jennifer Rajkumar