

**MINUTES OF THE MEETING OF THE
NEW YORK CITY WATER BOARD
MARCH 23, 2021**

A meeting of the New York City Water Board (the “Board”) was held on Tuesday, March 23, 2021 starting at approximately 8:30 a.m. via teleconference in accordance with the Governor’s Emergency Order regarding the Covid-19 pandemic. Approximately 26 members of the public dialed into the teleconference. The following members of the Board attended the meeting:

Alfonso Carney,
Dr. Demetrius Carolina, Sr.,
Evelyn Fernandez-Ketcham,
Adam Freed,
Jonathan Goldin,
Jukay Hsu, and
Arlene Shaw

constituting a quorum. Mr. Carney chaired the meeting, and Albert Rodriguez served as Secretary of the meeting.

Approval of the Minutes of November 19, 2020

The first item on the agenda was approval of the minutes of the Board’s meeting held on November 19, 2020. There being no further discussion, upon motion duly made and seconded, the minutes of the meeting held on November 19, 2020 were unanimously adopted.

Presentation on proposed deployment of design-build

Executive Director Joe Murin opened with a brief overview of the presentation and introduction of the speakers from DEP. He explained that design-build is a known means of contracting and delivering capital projects that has been working throughout the country for many years. However, it has not been widely implemented in New York City due to restrictive legislation. Recent State law has lifted these restrictions on a pilot basis and established a deadline of December 31, 2022 to deliver projects under the design-build method.

Design-build has proven effective throughout the country as a means to deliver large capital projects at a quicker pace and lower cost. DEP would like to implement this method on a pilot basis by the expiration of the legislative deadline, but lacks the experience and expertise necessary. Due to the expectation that the design-build model will be a cost-effective tool for more timely delivery of capital projects, DEP is requesting that the Board fund a consultant contract to implement a design-build process at DEP.

Deputy Commissioner Ana Barrio of the Bureau of Engineering Design and Construction spoke next by comparing the current standard of design-bid-build with the proposed design-build. She said the former is a linear process performed by multiple parties and because there is not a lot of overlap between the processes, it can create a rift in the schedule and increased costs. Meanwhile, with design-build, DEP will hire a single design-build team that will manage a holistic process since DEP would be working with one firm as opposed to working with multiple firms. The benefits of this approach include: (1) faster construction due to one procurement instead of two or more; (2) cost-savings of at least 5% due to the integration of the design and build team; (3) cost certainty earlier in the project lifecycle, lowering the likelihood of cost

overruns and change orders; (4) the allocation of individual project risk is apparent and agreed to upfront, enabling DEP to negotiate the risk allocation at the outset; (5) there is accountability of risks borne by outside vendors because it is concentrated within a single vendor group, and (6) there is room for innovation due to increased project control and accountability.

Member Shaw asked about the impact of this new approach on DEP's ability to procure MWBE contractors, as traditionally DEP has had a hard time finding MWBEs due to project scale. DC Barrio deferred the answer to the upcoming presentation of DEP's Agency Chief Contracting Officer (ACCO). Chair Carney asked where the bid portion is on the design-bid-build. DC Barrio explained the process. First, DEP issues a request for proposal (RFP) to hire a designer. After the design is completed, then DEP will then issue a bid for a general contractor to build the project, while also issuing an RFP for the construction manager. Chair Carney questioned whether there was any loss of transparency with the loss of some of the bidding processes. DC Barrio responded that under design-build the solicitation is also through two steps. The first solicitation is a request for qualifications (RFQ), which is utilized to shortlist qualified firms before issuing an RFP.

Next, member Goldin asked what the bid looked like in the design-build. DC Barrio answered that with design-build, the firms are provided with clear performance metrics and a clear scope of what is expected for the firm to deliver within the project. Chair Carney asked again about the MWBE question posed by member Shaw and how that changed between the traditional and design-build methods. Agency Chief Contracting Officer (ACCO) Elisa Velazquez said that even though there may have been MWBE challenges in the past with regards to availability of vendors for large scale projects, DEP has improved on that and has done well over the last four or five years using both state and city programs for MWBEs. For example, in

the city program, there were signed contracts of over \$75 million and subcontracts of over \$60 million in fiscal year 2019. On the state program, there was over \$100 million awarded to MWBE subcontractors over the last two years for large projects. For smaller scale projects (under \$20 million per project), there was about a 65% utilization rate for MWBEs. The ACCO said that DEP is doing well and the goal is to continue that success when DEP pursues design-build projects. She added that she cannot represent what the process looks like or how we will arrive at those goals because we have not done a design-build process yet, and that this is part of the need for hiring a consultant to develop a plan for making MWBE goals.

Executive Director Murin interjected that design-build will enhance the ability to secure MWBE services because those goals will be negotiated at the outset. He added that there is perhaps more space within the design-build framework to be more rigorous about enforcing and encouraging and bringing on board MWBE either as the prime or as the subcontractors because there is more flexibility in how to choose the vendor. The ACCO added that with design-build, the team could help expand the availability of services performed by MWBEs.

Member Shaw asked if other agencies are utilizing the design-build model, and if so, what their experience was with MWBE utilization under design-build. Executive Director Murin answered that other NYC agencies have completed projects using a design-build model. DC Barrio affirmed that both the NYC Department of Design and Construction and the Department of Transportation have implemented design-build projects already, as they received authorizations prior to DEP. She said that DEP is in a fact-finding mode attending seminars and coordinating with city and state agencies and other municipalities with more design-build experience to gauge best practices and lessons learned.

Member Freed asked about the risk mitigation methods in place but was asked by Executive Director Murin to defer the question to later in the presentation. Chair Carney followed up with the question of whether there is data that can be provided to the Board to analyze the impact on MWBEs by other design-build projects. Executive Director Murin agreed to provide that information to the Board. Member Fernandez-Ketcham also requested a list of MWBE businesses, and how the performance metrics in a design-build contract align with MWBE areas of expertise. Chair Carney requested a follow-up report on the 65% utilization rate that was noted by the ACCO earlier in the presentation.

The next to present was Kim Cipriano, Chief of Staff to the Commissioner who explained that design-build is a proven, well-utilized model for large construction projects throughout the country. In the region, the New York State DOT has been building roads and bridges using design-build since 2011, while starting in 2019, some NYC agencies, including DEP, were given the authority to implement design-build projects for projects greater than \$10 million. That legislation requires that DEP release an RFQ, the first step in the design-build process, by the end of 2022. DEP's goal is to release at least one RFQ but was hoping to release more RFQs in order to build a record of accomplishment if legislative considerations will be expanded. She noted that two prominent design-build projects in NYC are the Kosciuszko Bridge and the Moynihan Train Station.

The next speaker was Lindsay Degueldre, Chief of Staff to DC Barrio. She stated that DEP hired a civil engineering firm to evaluate DEP's existing project organization and to assist in the preparation of an implementation plan to set up a successful framework to deliver design-build projects. From this effort, there were several recommendations: (1) create and build champions in key strategic areas – legal, procurement, engineering, budgeting, planning and the

permitting side; (2) evaluate the capital program to identify strong pilot projects (3) draft new contracts that will be the design-build expectations, (4) engage the industry for interest in this program; (5) reach out to other organizations around the country and in the region by attending seminars, targeting water and wastewater seminars, and asking the city DOT and DDC, as well as the Port Authority and state DOT to share their knowledge with DEP; (6) develop new procurement processes and the documents needed to support the program.

Member Goldin asked if work has been done to identify how to determine the best value for DEP in a design-build model. Degueldre answered that there are different ways to implement design-build and that the best value type procurement is most promising. Additional work is needed to define what best value means to the agency and the impact on the evaluation of design-build proposals. Member Goldin followed up with whether the decision will be made by one person or by a team, and Degueldre answered it will be made by a team composed of technical, procurement and operations, with help from a professional practitioner from the design-build community. The ACCO added that the ideal consultant DEP is looking for would help develop a new evaluation committee and process.

Member Carolina asked how time is an element of overall savings. The ACCO responded that in a design-bid-build, the designers design without speaking to the construction vendor. If there had there been collaboration upfront, the construction manager could have intervened and worked with the designer to reach an optimal solution, rather than processing redesigns during the construction phase. Chair Carney requested clarification that the projects to be considered are only watershed and wastewater projects. DC Barrio confirmed. Meanwhile, member Freed also confirmed that the question he asked earlier was addressed sufficiently.

The ACCO was the last to present and she noted that the procurement office in DEP processes 120 to 130 RFPs and bids every fiscal year, amounting to \$1.5 billion in FY 19 and \$900 million in FY 20. In addition, 270 to 300 change orders are processed each fiscal year, along with all the renewals and small and micro purchases that are handled by 45 personnel. To streamline some of these processes into a design-build model, they are looking to get approval on a contract that would be up to one million dollars to hire a consultant that has significant experience with design-build projects to design the optimal administrative infrastructure needed to support this new approach. The key activities that the hired consultant will do are (1) develop a work plan and schedule to achieve a definite RFQ by June 30, 2022 (2) create internal process forms and training manuals and (3) assist in the development of procurement related forms and communication materials. Deputy ACCO Joe Vaicels added that the expert would help bring in the design-build knowledge to help incorporate our own rules and processes unique to NYC and help us with pilot projects, with the goal that after June 2022, the Agency would have built enough expertise to continue design-build on their own if the legislation is expanded.

Member Goldin asked if it is more economical to hire a design-build expert rather than to contract for up to a million dollars to retain one from the outside. Murin answered that he does not think that it is the intent to have one person but rather a firm with knowledge of the suite of responsibilities that the ACCO just mentioned. We are looking at this as just a transition phase only to get the parameters established and the backbone of how a design-build is going to work, but we might move to hire particular staff in the future once this pilot phase is completed. The immediate goal is to implement a successful RFQ process by the end of next calendar year and then be able to build on that so that we can demonstrate that this is an effective tool and attain long-term reauthorization from the legislature. Member Goldin asked if the fee will be hourly or

fixed, and the terms. Vaicels answered that the cost structure is still being discussed and they would revert once a determination is made.

Chair Carney inquired as to which firms are being considered and whether they are from New York. The ACCO answered that there are many design-build firms with expertise within and outside New York, and even some large universities. She added that DEP would evaluate proposals based on prior expertise and qualifications.

There being no further discussion, upon motion duly made and seconded, the following resolution was adopted by the all of the Board members except for Member Freed who had left the meeting prior to the vote, and with a reservation from Member Shaw subject to a request for data to show the impact on procurement from other agencies:

WHEREAS, pursuant to Section 1045-g(8) of the New York City Municipal Water Finance Authority Act (the "Act"), the New York City Water Board (the "Board") is authorized to enter into contracts and to retain private consultants on a contract basis for the purpose of obtaining professional or technical services to assist the Board in carrying out its responsibilities; and,

WHEREAS, the Board's primary duty under the Act is to establish and collect water and wastewater rates and charges in an amount sufficient to place the water supply and wastewater systems of the City of New York ("the System") on a self-sustaining basis; and

WHEREAS, the Board's ability to obtain revenues for the provision of water and wastewater service presumes the operability, safety, and integrity of the System,

without which it is not possible to maintain the System's self-sustaining status; and

WHEREAS, the System's operator, and the Board's billing agent, the New York City Department of Environmental Protection ("DEP"), is authorized under the New York City Public Works Investment Act (the "Act"), as signed into law by the Governor of New York on December 31, 2019, to authorize water and wastewater capital construction projects using a design-build project methodology; and

WHEREAS, the Act extends design-build construction authority to DEP on a provisional basis, that ends on December 31, 2022; and

WHEREAS, in order to determine and then demonstrate whether a design-build construction approach is suitable for DEP, the agency has set a goal of issuing one design-build request for qualifications before June 30, 2022, and up to four additional requests for qualification before December 31, 2022; and

WHEREAS, in accordance with the Water Board's Policy on the Procurement of Goods and Services, in particular, Section 4 (selection based on the best combination of technical merit and price) and Section 5.i (prior approval of contracts where the cumulative value exceeds \$100,000), the Board's professional staff is informing the Board of DEP's request to conduct a

competitive bidding and solicitation process, available to any and all respondents, and offering its opinion that such a procurement would be consistent with the scope of the Board's authority, and in the interest of the Board, the System, and DEP's utility service customers; it is therefore

RESOLVED, that the Executive Director is hereby authorized and directed to instruct the Board's professional staff to post a detailed request for proposals, assemble a bid evaluation committee, and to negotiate and enter into an agreement with a selected vendor to provide design-build consulting services to the Board, for an initial one-year term with two additional one-year extensions at the Board's option, upon such terms and conditions as the Executive Director may deem reasonable and appropriate; and be it further

RESOLVED, that the total compensation for services performed for the initial one-year term shall not exceed \$1,000,000 of Board funds.

Financial and water consumption update

Treasurer Omar Nazem provided information on operating revenues through March 19, 2021, stating that revenues are better than budgeted but nonetheless down from last year's actual results. In terms of water consumption, it is a similar story to what was reported throughout the fiscal year. There is an overall uptick or almost flat consumption on the residential side that is offset by fairly large declines on the commercial and industrial side. Overall, citywide water

consumption by metered customers through the end of February was down about five percent compared to last year.

Chair Carney asked about any information on delinquencies. Nazem reported that it is similar to what was reported at the previous meeting of the Board, that delinquencies are elevated mostly due to the pandemic. There are growing delinquencies across the board, but most pronounced on the commercial industrial side with the smallest increase on the small residential side and the large multifamily is in the middle between the two.

Investment reports for FY 2021 Q1 and Q2

Treasurer Nazem provided a quick update on the investment reports. The first quarter ended with \$132.7 million of investment assets. The entire balance was invested in United States Government Treasury bills. The typical rate of interest on these during the first quarter is one tenth of one percent. The second quarter ended with \$258.9 million of assets at fair market value. Again, same asset composition entirely, U.S. Government Treasury bills. He will update the Board on the third and fourth quarter reports when those become available. The balances will be larger but consistent with the Board's investment guidelines, the portfolio of assets will be principally treasury bills.

Board vendor contract update

Treasurer Nazem stated that there is nothing major to report because the spending to date is in line with what was set out in the Board's operating expense budget.

Adjournment

Chair Carney thanked the DEP staff for their excellent presentations.

There being no further business to come before the Board, upon motion duly made and seconded, the meeting was duly adjourned.

SECRETARY