



January 9, 2025

Los Angeles City Council  
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John Ackerman  
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Honorable City Council Members:

On October 9, 2024, the City Council approved the Motion attached to City Council File 24-0951, which was presented by Council Member Parks. That Motion requested that Los Angeles World Airports (LAWA) and the Bureau of Engineering (BOE) report back on a process to better streamline LAWA project delivery and provide recommendations to improve contracting procedures for future Public-Private Partnership (P3) delivery methods in the City of Los Angeles. LAWA and BOE, in coordination with other City Departments, are pleased to offer the following lessons learned and recommendations in response to the Motion and look forward to future discussions on these topics.

### **Memorandum of Understanding (MOU) between agencies**

In February 2017, LAWA and the City Departments entered into a Master City MOU that established a commitment to a cooperative process for delivery of LAWA's Landside Access Modernization Program (LAMP) which included several projects including the Automated People Mover. Since that time, LAWA and the City Departments have reflected upon lessons learned from the LAMP MOU and recently incorporated those lessons into a new City MOU focused on project delivery for LAWA's entire Capital Improvement Program.

The new City MOU will improve project delivery outcomes by:

- Enhancing cooperation and coordination during the Basis of Design (BOD) development;
- Requiring agreement on Project Specific Design Parameters and permit packages for milestone design submittal development;
- Providing earlier coordination on minimum B-Permit Plan Requirements for each project;
- Providing opportunities to refine design standards and codes prior to receiving bids for each project;
- Enhanced coordination on design reviews, comment resolution, tracking, continuity of reviewers, and comment closeout;
- Requiring that betterments are identified and negotiated early in the design development before receiving bids;
- Enhanced coordination with BOE and the Bureau of Contract Administration (BCA) on expedited issuance of Approved for Construction set of plans and permits to initiate the Construction Phase;
- Enhanced cooperation and coordination with BOE and BCA during construction to expedite construction changes and identify field issues;
- Continuing the quarterly Oversight Committee for GM/AGM level coordination; and
- Establishing a timely escalation ladder and process for issue resolution up to the Executive Level.



### **Identify all off-site scope of work prior to soliciting bids**

Early comprehensive site investigations can help with more accurate pricing and better understanding of scope. A lesson learned is that delays and cost overruns may be significantly reduced by conducting comprehensive site investigations, including potholing and utility verification, prior to soliciting bids for a project. This allows for pricing that considers the information gleaned from the comprehensive site investigations. This approach identifies potential conflicts with existing utility systems early, rather than during construction. Such early discovery of existing conflicts allows more accurate pricing at the time of bid and for adjustments to be made during design and before construction commences.

### **Timelines for plan reviews**

LAWA recommends greater alignment between the Request for Proposals (RFPs), MOUs, and contract reference documents. This will allow developers to price their design level of effort appropriately and avoid delays caused by conflicts between contract documents.

Stakeholders should be engaged early to sign off on plan review milestones which should specify the number of review cycles and clearly define the scope of design packages at the 60%, 90%, 100%, and Approved for Construction (AFC) stages. To streamline the design review process, submittal schedules should be contractually enforceable and shared with the Authorities Having Jurisdiction (AHJs) to ensure adequate staffing. Concurrent submittals should be limited, and partial reviews by AHJs should not be permitted. Developers must also be held accountable for correcting their own delays in submission and errors and omissions at their cost, with schedule recovery measures included in the contract.

### **Other strategies that will ensure projects stay on time and within budget**

Enhanced organizational structure: To achieve a result where the developer and its contractors are focused on delivery of the project, a key recommendation is to require that the equity members (the Developer Special Purpose Joint Venture) be distinct from those in the Design-Build Joint Venture (DBJV) and from those in the Operations & Maintenance Joint Venture (OMJV), as each of the joint venture groups has different incentives that are not always aligned with each other. This separation of roles prioritizes the timely and successful delivery of the project rather than the financial interests of individual companies.

Improved design controls: Design coordination should be led by the Architect/Engineer of Record (AOR/EOR) who possesses the technical expertise to manage design consultants and avoid design conflicts. To strengthen the design coordination efforts by the AOR/EOR, the City should ensure that the appropriate design criteria are included in the RFP and contract to avoid costly post-award changes.

Additional contractual mechanisms: Contracts should require a resource-loaded schedule as a contractual deliverable with clear provisions to withhold payment for noncompliant schedules. This approach offers a more practical remedy rather than an extreme approach like declaring Developer Default and ensures that the Developer remains accountable for timely delivery. Setting realistic project milestones linked to liquidated damages provides additional control for managing on-time performance. Additionally, to avoid delays with the furnishing of new work or changes to the original scope of work, the contracts should include Unilateral Change Order (UCO) and Time & Materials T&M provisions, to allow work to continue while pricing is negotiated. This approach keeps forward momentum on the project and provides LAWA with additional control over the change order process.

Strengthened bid review: To reduce project risk and cost overrun, the City should also enhance its RFP evaluation process. Greater weight should be placed on the developer's project delivery approach, team qualifications, and local knowledge. Proposers with demonstrated experience in Los Angeles and a history of successfully delivering similar complex projects should be taken into consideration when scoring a proposer. This approach will mitigate the risk of underbid proposals where developers submit low-cost proposals to win contracts and later rely on change orders to recover costs. By evaluating a developer's full capabilities and local knowledge components during the procurement process, LAWA can ensure that cost proposals are realistic and achievable, reducing the likelihood of cost overruns.

### **Recommendations to revise and improve contracting procedures to more narrowly define "relief events"**

The current definitions for City breaches and City-caused events can be refined in future procurements to limit certain claims. For instance, breaches of interagency MOUs should not be an avenue for developers or contractors to claim a right to monetary or time extension relief. To further limit risk, contracts should define roles and responsibilities for interfacing with AHJs. Specifically, contracts should outline when conditions imposed by AHJs become the City's responsibility. The City should also clarify the allocation of risk for utility information, such as the accuracy of utility location data, by reviewing precedent contracts and defining specific relief criteria for such risks. In addition, turnaround times for AHJ reviews should be clearly established and have a clear path for enforcement and resolution of disputes to ensure issues are resolved timely.

### **Steps to make the claims process more efficient and less costly**

To streamline the claims process, we recommend requiring early certification of claims and establishing clear requirements for claim documentation. Claims must be accompanied by comprehensive and timely supporting records. In the event of a dispute, we propose more defined Informal Dispute Resolution (IDR) procedures which would allow for early executive management engagement and faster resolutions. Contracts should also include an administrative process for the payment of undisputed claim amounts to ensure uninterrupted cash flow to avoid finance/interest charges and contractor delays. To further support an efficient dispute resolution process, we recommend the use of force account directives, which allow work to proceed while disputes are being resolved, thereby minimizing costly work delays.

### **Revisions to assessments of risk allocation and project contingencies**

Public works projects in Los Angeles have been known to experience significant cost growth, so the City must ensure that contingency funds are properly benchmarked against similar local projects. At the time of procurement, contingency levels should be informed by project-specific risk assessments including both quantified and unquantified risks. Contingency funds should be calibrated to address identified risks and to ensure sufficient financial flexibility as projects progress. Risk allocation should also be optimized so that risks are assigned to the party best equipped to manage them. Consistent baseline terms for risk allocation should be applied across all projects with adjustments made based on the unique nature of each project.

### **Further safeguards to protect city against future P3 delivery challenges**

In addition to the lessons learned above, we recommend for large infrastructure P3 projects that a 3-person Dispute Resolution Panel (DRP) be established, possibly consisting of a construction attorney, a technical expert, and a scheduler, depending on the project. To maintain fairness and credibility, the contract should allow for the replacement of the DRP members if confidence is lost. To avoid escalating delay costs, which have been the largest claim item on the APM project, we propose focusing on proactive delay management. The City should also consider incorporating "off-ramps" in future P3 contracts, allowing the city to exit or renegotiate terms at key project milestones. This approach would allow the city to mitigate risks at key decision points and maintain greater flexibility in the face of significant challenges.

These lessons learned reflect LAWA's and the Bureau of Engineering's ongoing commitment to continuous improvement in project delivery. The recommendations outlined here will help control costs, improve accountability, and strengthen interagency collaboration. We appreciate the opportunity to share this information with City Council and look forward to future discussions on these topics.

Sincerely,



John Ackerman  
Chief Executive Officer  
Los Angeles World Airports



For Ted Allen  
City Engineer  
Bureau of Engineering