

Hugh L. Carey Battery Park City Authority
Meeting of the Members
200 Liberty Street, 24th floor
New York, New York 10281
August 19, 2020
2:00 p.m.

AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF THE JULY 29, 2020 MINUTES
- III. PUBLIC COMMENT
- IV. M/WBE REPORT
- V. RESILIENCY UPDATE: DESIGN-BUILD PRESENTATION BY HAWKINS DELAFIELD & WOOD LLP
- VI. CORPORATE ACTION
 - A. Approval of Fiscal Year 2020 Spending Authority Increase for On-Call General Contractors.
 - B. Authorization to Enter into a Contract with Walker Diving Underwater Construction, LLC (Phase 7 Pile Remediation – Marine Construction Services).
 - C. Authorization to Extend the Term with Randolph, Carpenter & Mott Ltd., d/b/a Suzanne Randolph Fine Arts (Hurricane Maria Memorial).
- VII. MOTION TO CONDUCT EXECUTIVE SESSION TO DISCUSS THE NEGOTIATIONS RELATED TO THE LEASE OF REAL PROPERTY, THE PUBLICITY OF WHICH COULD SUBSTANTIALLY AFFECT THE VALUE OF THE RELEVANT PROPERTIES.
- VIII. FOR INFORMATION ONLY
 - A. Recent and Upcoming Procurement Activity
 - B. Selected Press Clippings
 - C. BPC Green Guidelines
 - D. BPC Sustainability Implementation Plan
- IX. MOTION TO ADJOURN

**BPCA RESILIENCY PROJECTS
PROGRESSIVE DESIGN-BUILD
APPROACH
PUBLIC BOARD PRESENTATION
AUGUST 19, 2020**



Executive Summary

1. Business Case Study Performed to Determine the Optimal Project Delivery Method for Each of the Three Resiliency Projects, Which are Each Currently Being Procured Separately on a Design-Bid-Build Basis
2. Based on this Study, the Executive Team Believes the North and West Projects Should be Pursued as a Single Progressive Design-Build Project in Order to Maximize Risk Transfer and Overall Efficiency, Including Project Administration Efficiencies
3. Based on the Advanced State of the South Project's Design and Progress to Date, the South Project Will Continue as a Separate Design-Bid-Build Project with Flexibility to Incorporate into the PDB Project at a Later Date if Warranted
4. BPCA Will Need to Procure a Consulting Engineer To Provide Technical Assistance and Oversight of the Procurement and Performance of the Design-Builder
5. This Approach Preserves the South Project's Delivery Timeline and is Expected to Result in Minimal Delays to the North Project and Possible Time Savings for the West Project

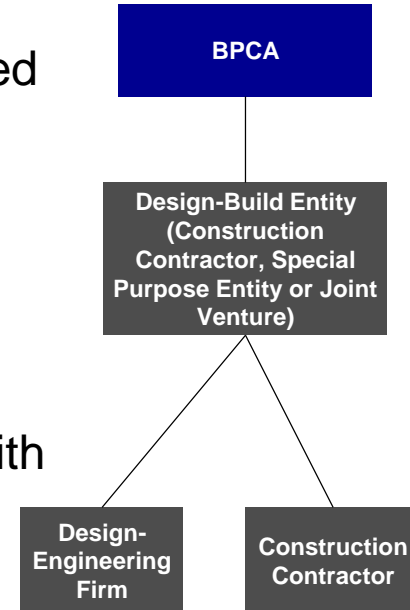
BPCA's Business Case Study

1. BPCA Conducted a Business Case Study this Summer to Determine the Best Means of Implementing the Projects in Light of a Recent Change in Law Authorizing Design-Build (DB) for BPCA
2. Key Findings of this Business Case Study are as Follows:
 - a) Private Financing and Fully Integrated O&M Solutions (i.e. DBFOM or DBOM) Not Supported by Clear Legal Authority and Fixed Price DB May Limit Capacity for Community Engagement
 - b) Combining the North and West Projects and Implementing them on a PDB Basis Likely to Provide Benefits to BPCA in Terms of Schedule and Cost Efficiencies, Risk Transfer and Project Administration
 - c) Progress on the South Project Should be Maintained Under its Current Approach, As Stakeholder Support Has Been Established and the Design of the Project has Progressed Beyond a Level Conducive to PDB
 - d) The North and West Can be Combined under a Single Project to Maximize PDB Benefits and Without Unduly Delaying Overall Project Implementation

What is Progressive Design-Build (PDB)?

PDB is a Variant of Design-Build Contracting (Single Entity Responsible for Both Design and Construction of the Project) that Provides for a Staged Approach to Finalizing Design and Establishing a Guaranteed Maximum Price (GMP), as follows:

1. Three Teams Prequalified pursuant to RFQ/Qualifications-Based Selection Process
2. Proposals Received as to Profit and Project Approach on a Competitive Basis
3. No Proposed Design or Project Price at Proposal Stage
4. Selected DB Team is Paid to Advance Design, Collaborating with BPCA and Project Stakeholders
5. GMP Submittal at 60% Design, with “Open Book Pricing” to Preserve Competition
6. Definitive GMP is Negotiated (Multiple GMPs Possible) and Definitive Amendment Executed, Authorizing Design-Builder to Proceed with Construction
7. If Parties Cannot Agree, an “Off-Ramp” is Provided so that Design is Completed and Project Proceeds on a Bid-Build Basis



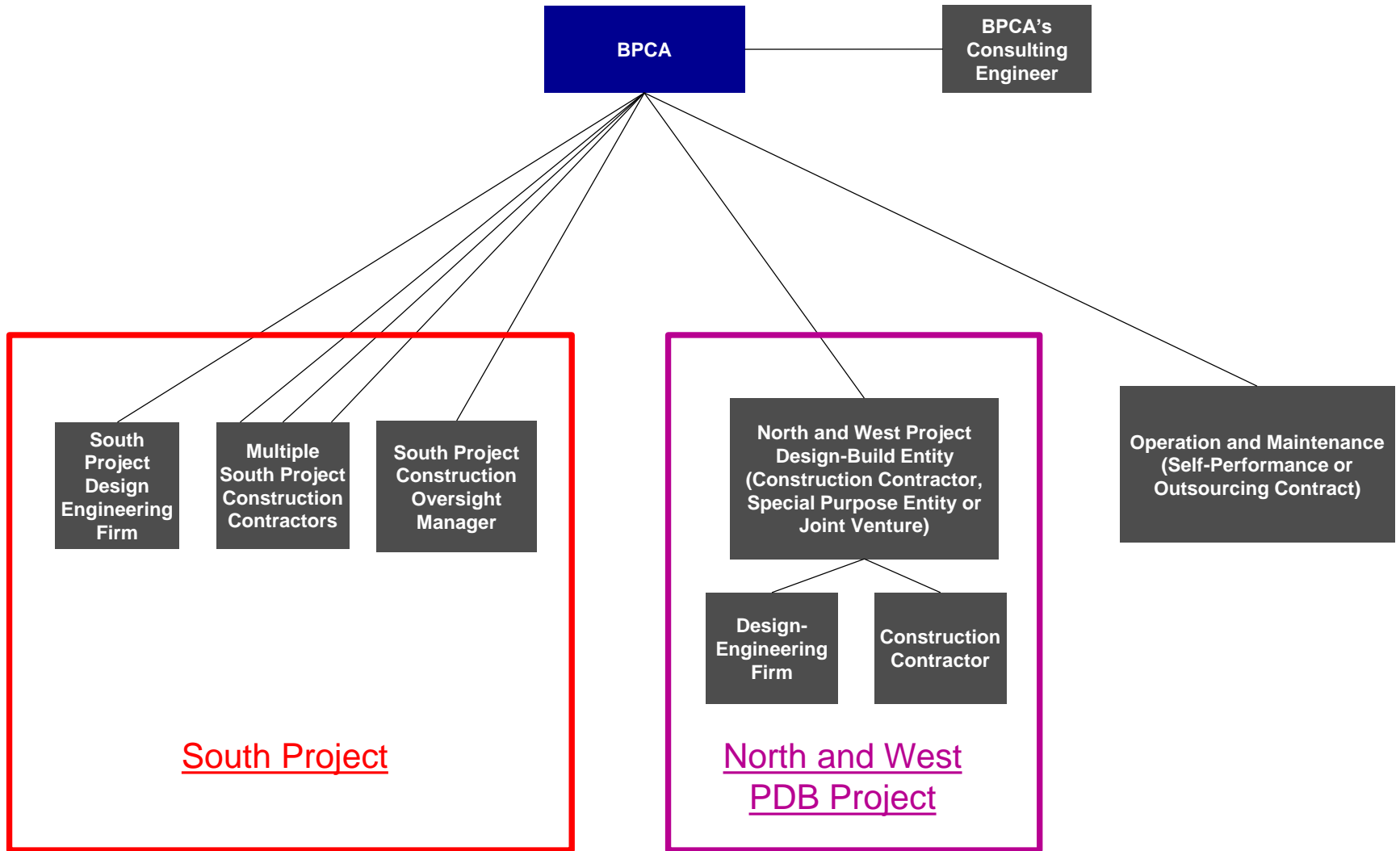
Advantages of PDB

1. One Point of Responsibility for Design, Construction and Construction Management
2. Less Contract Administration
3. Combining Design and Construction Tends to Shorten Project Delivery Time and Reduce Costs
4. Allows for More Extensive Owner and Community Engagement than Fixed-Price Design-Build
5. DB Firm has Design Liability, while Owner Collaborates in Design; Limited Bridging Documents Reduces Risk of Owner-Retained Design Liability
6. Transfers Design and Performance Risk through Acceptance Testing/Performance Guarantees
 - a) Demonstration that Project will Work, Not Just That It Has Been Built to Specifications
 - b) Absence of Negligence not a Defense
7. Minimization of Change Orders due to Aggregated Services/Responsibilities

Proposed Approach

1. Continue South Project, as Planned, on a DBB Basis to Maintain Momentum and Preserve Investment and Stakeholder Buy-In
2. Procure a Consulting Engineer for PDB Effort and Assisting with the South Project
3. Amend AECOM Contract for North Design to Focus on Establishing PDB Design Criteria and Advancement of Permitting
4. Cancel Procurements for West Design and for North Construction Manager
5. Commence Planning for PDB Procurement, which Will Require Design-Builder to Factor in the South Design as it Progresses the Design of the North and West and to Consider System-Wide Integration
6. Approach Will Preserve Flexibility to Include the South Project's Construction Under the PDB Contract, If Determined Feasible and Warranted Based on Design-Builder's Input
7. Consider Coordinated O&M Procurement Effort
8. No Change to BPCA's Bond Financing Plans for the Projects

Proposed New Contracting Structure



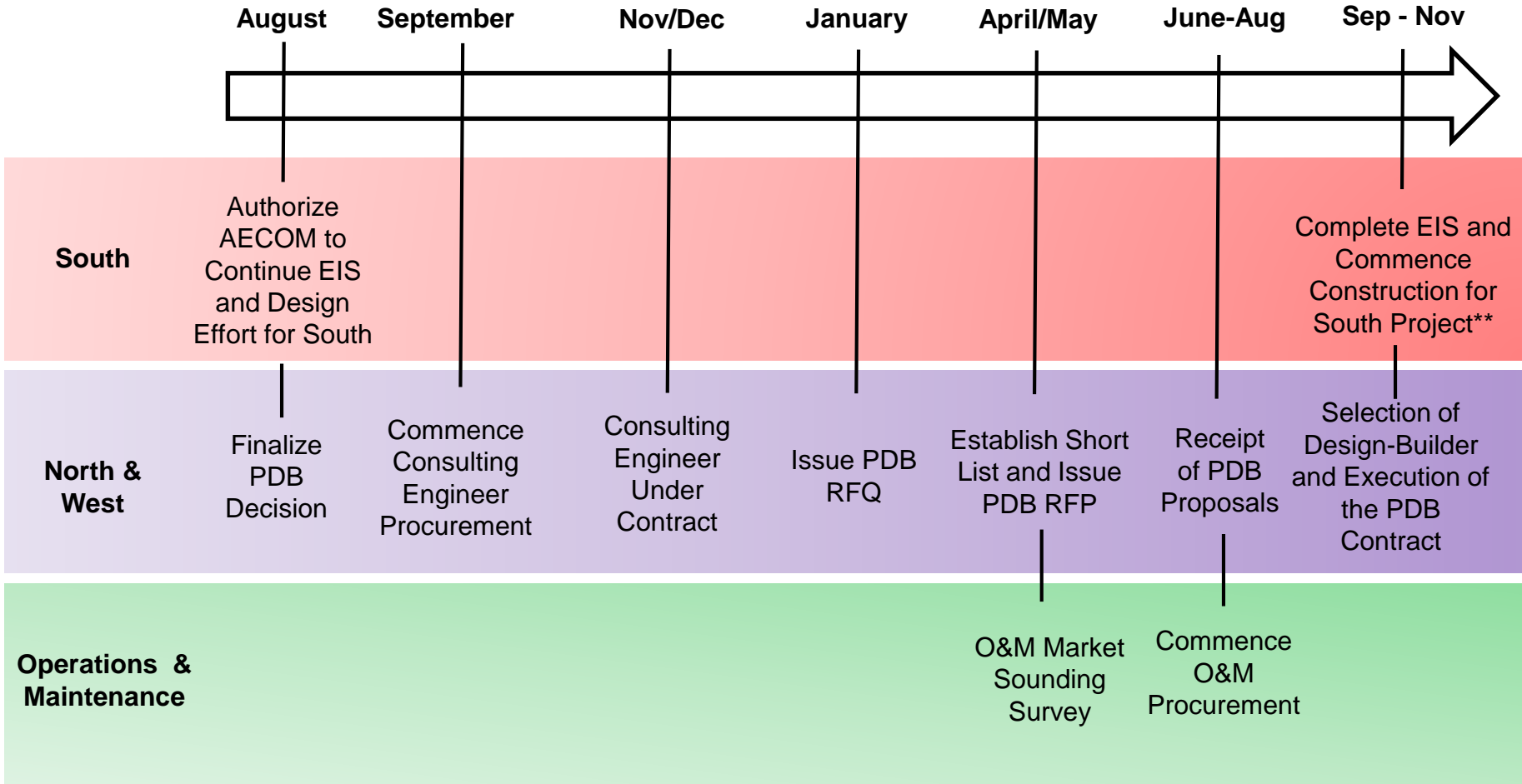
Consulting Engineer's Role

1. Serves as BPCA's Technical Advisor and Owner's Representative Throughout Procurement and Project Implementation
2. Assists in Development of Minimum Technical Requirements for PDB RFP and Contract:
 - a) Advisory Capacity in Respect of AECOM's 30% North Design
 - b) Primary Capacity in Respect of West Design
3. Advisory Role Concerning PDB Contract, Including GMP Amendments, and System-Wide Integration and Functionality Issues
4. Assists in Advancement of Permitting Prior to Selection of Design-Builder
5. Assists in Reviewing and Commenting on Design and Performance by Design-Builder, Focusing on:
 - a) Compliance with Minimum Technical Requirements and PDB Contract, with Design-Builder Retaining Design Liability
 - b) Construction Performance, with Design-Builder Responsible for Schedule Coordination and Overall Performance

O&M Considerations

1. O&M Strategy Necessary, As BPCA Has Limited Capability to Operate the Completed Projects
2. The New York Infrastructure Investment Act Limits BPCA's Ability to Include O&M as Part of a Design-Build Project, but the PDB for North and West Approach May Enable a Coordinated O&M Strategy as Follows:
 - a) Possible "Progressive" O&M Procurement
 - b) O&M Procurement Proceeds in Coordination with PDB Procurement and North and West Design Development
 - c) Selected O&M Contractor Provides Comments and Works with Design-Builder as North and West Design is Developed, while Considering South Design and Overall Operational Issues
 - d) O&M Contractor Comments Incorporated in Design to Enable Maximum Risk Transfer in O&M Contract
 - e) O&M Contract Finalized, with Amendment to Establish Final Pricing and Performance Responsibility, as PDB and South Projects are Completed

Projected Key Milestones for PDB for North and West Approach



** Commencement of Construction for the South, North and West Projects will be Subject to the Approval of the City (Mayor and Comptroller).

PDB for North and West Addresses Many Potential DBB Drawbacks

Issue Under Design-Bid-Build (DBB)

Resolution Under PDB For North and West

Continued Separate Focus on Three Individual Projects May Result in Over-Design and Unnecessary Additional Cost



Unified Approach to North and West Projects Reduces Potential for Over-Design and Unnecessary Additional Cost

Change Orders Could Accumulate Throughout Design and Construction



PDB Enhances Risk Transfer to Design-Builder and Limits Change Order Risk

Multiple Contracts for BPCA to Administer and Coordinate Across Three Projects



PDB for North and West Merges Multiple Contracts Under A Single PDB Contract, with Flexibility to Incorporate South Construction

Each Contractor Responsible Only for Its Specified Scope; Builder Does Not Take on Design Liability



Design Liability Transferred Under PDB Contract and PDB Contractor Responsible for Both Design and Construction

Limited Capacity to Facilitate Integrated O&M Solution



Phased Approach Under PDB for North and West Provides Better Opportunity for Coordinated O&M Strategy

Sequential Contracting and Other Factors Can Lead to Extended Schedule



Sequential Contracting Eliminated for North and West, with PDB Schedule Efficiencies Under PDB Contract

APPROVAL OF FISCAL YEAR 2020 ON-CALL GENERAL CONTRACTOR SPENDING AUTHORITY

RESOLVED, the Fiscal Year 2020 annual spending maximum for the On-Call General Contractor Contracts is hereby increased from \$1,500,000 to \$2,900,000;

RESOLVED, that the President of the Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute any documents, file said budgeted and related information with all parties as required pursuant to all outstanding bond resolutions, agreements and requirements of law and to take all such other and further actions as may be necessary, desirable or appropriate in connection with the transactions contemplated in the foregoing resolution, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

AUTHORIZATION TO EXECUTE A CONTRACT WITH WALKER DIVING UNDERWATER CONSTRUCTION, LLC FOR THE PHASE 7 PILE REMEDIATION MARINE CONSTRUCTION SERVICES

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the “President”) of the Battery Park City Authority (the “Authority”) or his/her designee(s) be, and each of them hereby is, authorized and empowered to enter into a eighteen (18) month contract with Walker Diving Underwater Construction, LLC in the lump-sum amount of \$10,398,600.00, to perform Marine Construction Services for Phase 7 of the Pile Remediation Project; and be it further,

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further,

RESOLVED, that the President or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

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AUTHORIZATION TO EXECUTE A TIME AMENDMENT WITH SUZANNE RANDOLPH FINE ARTS (“SRFA”) FOR HURRICANE MARIA MEMORIAL PROJECT

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the “President”) of the Battery Park City Authority (the “Authority”) or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute an amendment to extend the term of the Contract with SRFA through April 15, 2021; and, be it further

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Amendment; and be it further,

RESOLVED, that the President or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.