

# MAP-21 FACT SHEET

**PREPARED BY:** RAYMOND TRITT, Office of Special Projects  
Division of Design  
Phone: (916) 653-3348; Fax: (916) 654-5881; e-mail: rtritt@dot.ca.gov

**DATE:** October 12, 2012

**SUBJECT:** MAP-21: Innovative Contracting

---

## **PROBLEM STATEMENT:**

MAP-21 authorizes the use of Construction Manager/General Contractor (CMGC) contracting method for delivering federal aid projects. MAP-21 also authorizes awarding of the CMGC contract and beginning of preliminary design prior to completion of the environmental review process required under section 102 of the National 18 Environmental Policy Act of 1969 (4219 U.S.C. 4332). The Department recently received statutory authority to use CMGC on up to six projects when the Governor signed Assembly Bill 2498 on September 29, 2012. At this time, the Department does not have procedures in place to utilize this new delivery method.

## **RECOMMENDATION:**

It is recommended that the Department develop CMGC procedures and implement a CMGC program to utilize the new authority provided by MAP-21 and new state legislation.

## **BACKGROUND:**

Traditionally, the Department has delivered projects using a design-bid-build process. The California Public Contract Code establishes the requirement for the Department to use design-bid-build, stating: "before entering into any contract for a project, the department shall prepare full, complete and accurate plans and specifications and estimates of cost, giving such directions as will enable any competent mechanic or other builder to carry them out" (Public Contract Code 10120). The Code includes additional requirements for advertising the project and for receipt of sealed bids. The Department then awards a contract to the lowest responsible bidder. While this process works well for the vast majority of projects, it has distinct disadvantages such as lengthy delivery time, uncertain final project costs, claims exposure, and adversarial relationships between the Department and its contractor. In 2007, the Department developed a report which identified innovative contracting methods which could provide faster and more efficient delivery for properly selected projects. One of the methods identified was CMGC.

CMGC is a project delivery method through which a Contractor (Construction Manager) consults for the Department during the design phase and acts as the General Contractor during the construction phase. During the design phase, the Construction Manager (CM) acts in an advisory role, providing constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations. At a point at or before 100% design, the CM and Department reach agreement on a Guaranteed Maximum Price (GMP). After the GMP is established, the CM begins construction, allowing for an overlap of the design and construction phases. Once construction starts, the CM assumes the role of General Contractor (GC) for the duration of the construction phase.

On September 29, Governor Brown signed Assembly Bill 2498 which establishes a pilot program for the Department to utilize CMGC on up to six projects.

The Federal Highway Administration (FHWA) has allowed state and local transportation agencies to use innovative project delivery methods since 1991. These methods required special permission because, at the

---

---

**SUBJECT: MAP-21: Innovative Contracting**

---

---

time, federal law required design contracts to be procured using a qualifications-based selection process and construction contracts to be procured through competitive bidding. FHWA had authority to allow use of innovative methodologies using Special Experimental Project No. 14 (SEP-14).

The passage of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) in 1996 moved design-build into the mainstream, authorizing its use for qualified federal-aid projects. Passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in August 2005 further expanded the ability of transportation agencies to use design-build for federal-aid projects. The Act also required the Secretary of Transportation to revise regulations to not preclude a state transportation department or local transportation agency from taking preliminary actions prior to compliance with the National Environmental Policy Act (NEPA).

In the meantime, other innovative delivery methods continued to be allowed under SEP-14. In 2010, FHWA initiated the Every Day Counts (EDC) program which sought to shorten project delivery. One of the EDC initiatives was CMGC.

MAP-21 now moves CMGC into the mainstream of project delivery methods, authorizing its use for federal-aid projects. SEP-14 approval is no longer required to use this method. Similar to the design-build, award of the CMGC contract and preliminary design may occur prior to completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (4219 U.S.C. 4332). MAP-21 also provides financial incentives to utilize CMGC (and design-build) in that the Federal share payable may be increased by up to 5 percent of the total project cost, not to exceed 100 percent, for projects determined to meet the requirements specified in 23 U.S.C. 120(c)(3).

MAP-21 requires FHWA to promulgate regulations to implement CMGC. However, direction from FHWA is that the Department can work with the FHWA California Division to implement its CMGC program while the rulemaking process is underway.

The Department has been involved in a National Cooperative Highway Research Program project to develop and CMGC Guidebook. The Department was recently identified as one of two states to assist in vetting the guidebook.

**ALTERNATIVES:**

Alternative 1: Implement a CMGC program.

Pros: Department will obtain experience in the CMGC method of delivery and can report its findings to the Legislature, possibly obtaining general authority for this project delivery method. Department can obtain the benefits of the CMGC method resulting in faster delivery and lower costs. Department can also take advantage of the incentives provided by MAP-21 by using innovative project delivery methods.

Cons: Department does not currently have procedures in place to utilize this method of project delivery.

Alternative 2: Continue to use design-bid-build to deliver projects.

Pros: Department has a great deal of experience utilizing the existing design-bid-build method of project delivery. Department will not need to develop new procedures to implement CMGC.

---

---

**SUBJECT: MAP-21: Innovative Contracting**

---

---

Cons: Department will not achieve the benefits of this new project delivery method. Department will not benefit from the incentives provided by MAP-21.

**PROPOSED IMPLEMENTATION SCHEDULE:**

Implementation is underway and the Department anticipates beginning CMGC procurements in the spring of 2013.