

January 27, 1999

REPORT TO THE COMMITTEE ON RULES,
FINANCE AND INTERGOVERNMENTAL
RELATIONS

DESIGN-BUILD AND JOB ORDER CONTRACTING

On November 3, 1998, City of San Diego voters overwhelmingly approved two San Diego Charter amendments authorizing design-build and job order contracting. Proposition F authorized a design-build contracting procedure which allows public works contracts to be awarded to one entity based on predetermined selection criteria. Proposition G authorized public works contracts to be awarded competitively based on set unit costs. Each proposition, however, required the City Council to establish by ordinance the guidelines for the respective award and use of these contract methods.

Since the election, this Office has worked with City staff and representatives of the construction industry to establish candidate ordinances to implement the propositions. An initial draft of the two ordinances was created and sent to industry representatives on November 4, 1998.

After the opportunity for review, a follow-up meeting was held on December 17, 1998, to receive

industry comment and suggested modifications. Thereafter, on December 23, 1998, further revisions

and clarifications were sent to industry representatives. The candidate ordinances are now presented for your review and direction with the following brief summaries.

1. Proposition F: Design-Build Contracts

The candidate ordinance relies heavily on the substantive provisions of Assembly Bill 2044, the Design-Build Procurement Act, introduced by then Assembly Member Jan Goldsmith. Although passed in the Assembly by a vote of 80-0, the bill was not reported out of the Senate Appropriations Committee.

In the review process, most comments pertained to what protections, if any, should be afforded subcontractors. In the traditional design/*bid* contracting of metropolitan projects, subcontractors must be listed and, except in limited circumstances, another subcontractor cannot be substituted in their place after the award. In the design-build procedure, the prime contractor may not know which subcontractors will be required to perform the work since the design specifications are unknown. A compromise of these two positions has been attempted by adding section 22.3309 to the Municipal Code. This section permits the City to specify the

trades deemed essential for a project and affords protection for the designated trades.

2. Proposition G: Job Order Contracting

Job Order Contracts are permitted under sections 22.3103 and 22.3104 of the Municipal Code although with significant legal restrictions to conform to the pre-election Charter. The candidate ordinance simply revises existing sections 22.3103 and 22.3104 to *increase* the term of job order contracts from two to five years; *keep* the guaranteed cumulative caps of \$50,000 and \$10,000,000; *delete* the legal restrictions imposed by *Grayden v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 361 (1980); and *add* the limitations of Administrative Regulation 25.65 sections 3.7, 3.8, 3.9, and 3.14.

CONCLUSION

The draft ordinances before you are proposals to implement Proposition F (design-build) and Proposition G (job order contracts) on the ballot of November 3, 1998. These drafts have been shared with the building industry to gain their insight and suggestions, modified in an attempt to accommodate their concerns, and are now attached for your review and direction.

Respectfully submitted,

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City Attorney

TB:mb(043.1)

Attachments:2

New Design-Build Ordinance

Revised Job Order Contract Ordinance

RC-99-01