

ORDINANCE NUMBER O-18631 (NEW SERIES)

ADOPTED ON APRIL 12, 1999

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY CREATING A NEW DIVISION 33, TITLED DESIGN-BUILD CONTRACTS, AND ADDING TO IT SECTION 22.3301, SECTION 22.3302, SECTION 22.3303, SECTION 22.3304, SECTION 22.3305, SECTION 22.3306, SECTION 22.3307, SECTION 22.3308, AND SECTION 22.3309, RELATING TO DESIGN-BUILD CONTRACTS.

WHEREAS, the voters of The City of San Diego passed Proposition F on the ballot of November 3, 1998, adding Charter section 94.2, regarding design-build construction contracts; and

WHEREAS, Charter section 94.2 requires the City Council to establish by ordinance guidelines for the award, use, and evaluation of such design-build contracts; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 2, of the San Diego Municipal Code is hereby amended by creating a new Division 33, titled Design-Build Contracts, and adding to it Section 22.3301, Section 22.3302, Section 22.3303, Section 22.3304, Section 22.3305, Section 22.3306, Section 22.3307, Section 22.3308, and Section 22.3309, to read as follows:

**DIVISION 33**

**DESIGN-BUILD CONTRACTS**

**SEC. 22.3301 Purpose and Intent**

The purpose of this Division is to provide definitions and guidelines for the award, use, and evaluation of design-build contracts.

## **SEC. 22.3302 Definitions**

All defined terms in this Division appear in italics. For purposes of this Division, the following definitions apply:

“*Design-Build*” means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

“*Design-Build Entity*” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

“*Design-Build Entity Member*” includes any person who provides licensed contracting, architectural, or engineering services.

## **SEC. 22.3303 Design-Build Procurement**

For purposes of this Division only, prior to procuring a *Design-Build* public works contract, the City shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City.

## **SEC. 22.3304 Competitive Prequalification and Selection Process**

The City may establish a competitive prequalification and selection process for *Design-Build Entities* that specifies the prequalification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this Division precludes a *Design-Build* contract from being awarded to a Sole

Source, if, in advance of the contract, the City Manager certifies in writing the Sole Source status of the provider.

**SEC. 22.3305 Prequalification Criteria**

Prequalification may be limited to consideration of all or any of the following criteria supplied by a *Design-Build Entity*:

(a) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

(b) Submission of documentation establishing that the *Design-Build Entity* members have completed, or demonstrated the capability to complete, projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(c) Submission of a proposed project management plan establishing that the *Design-Build Entity* has the experience, competence, and capacity needed to effectively complete the project.

(d) Submission of evidence establishing that the *Design-Build Entity* has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the *Design-Build Entity* has the capacity to complete the project.

(e) Provision of a declaration that the applying members of the *Design-Build Entity* have not had a surety company finish work on any project within the past five years.

(f) Provision of a declaration providing detail for the past five years concerning all of the following:

(1) Civil or criminal violations of the Occupational Safety and Health Act against any member of the *Design-Build Entity*.

(2) Civil or criminal violations of the Contractors' State License Law against any member of the *Design-Build Entity*.

(3) Any conviction of any member of the *Design-Build Entity* of submitting a false or fraudulent claim to a public agency.

(4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the *Design-Build Entity*. For purposes of Section 22.3305(f)(4), only violations by a *Design-Build Entity Member* as an employer shall be deemed applicable, unless it is shown that the *Design-Build Entity Member*, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed to comply with the conditions set forth in Section 1775(b) of the State Labor Code.

(5) Civil or criminal violations of federal or state law against any *Design-Build Entity Member* governing equal opportunity employment, contracting or subcontracting.

(g) Provision of a declaration that the *Design-Build Entity* will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

**SEC. 22.3306 Documentation of Outreach Programs**

The *Design-Build Entity* shall provide documentation of its subcontractor and employment outreach program to all subcontractors in the required disciplines of the project.

**SEC. 22.3307 False Declaration Unlawful**

It is unlawful to submit any declaration under this Division containing any material matter that is false.

**SEC. 22.3308 Selection Method**

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

(a) A *Design-Build* competition based on performance, specifications, and criteria set forth by the City in the request for proposals.

(1) Criteria used in this form of evaluation of proposals may include, but not be limited to, items such as proposed design approach, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for *Design-Build* proposals.

(2) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any *Design-Build Entity*.

(3) Award shall be made to the *Design-Build Entity* whose proposal is judged as providing best value meeting the interests of the City and meeting the objectives of the project.

(b) A *Design-Build* competition based on program requirements, performance specifications, and a preliminary design or combination thereof set forth by the City in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals.

(1) The City shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for *Design-Build* proposals.

(2) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any *Design-Build Entity*.

(3) Award shall be made to the *Design-Build Entity* on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the City and meeting the objectives of the project.

(c) A *Design-Build* competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the City in the request for proposals.

(1) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any *Design-Build Entity*.

(2) Award shall be made on the basis of the lowest responsible and reliable bid.

(d) A "Sole Source" award as otherwise allowed by law.

**SEC. 22.3309 Work Listing**

The City recognizes that the *Design-Build Entity* is charged with performing both design and construction. Because a *Design-Build* contract may be awarded prior to the completion of the design, it is often impracticable for the *Design-Build Entity* to list all subcontractors at the time of the award.

(a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Division in a manner that retains protection for subcontractors while enabling *Design-Build* projects to be administered in an efficient fashion.

(b) All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on *Design-Build* projects undertaken pursuant to this Division.

(1) The *Design-Build Entity* in each *Design-Build* proposal shall specify the construction trades or types of subcontractors that may be named as members of the *Design-Build Entity* at the time of award. In selecting the trades that may be identified as members of the *Design-Build Entity*, the *Design-Build Entity* shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.

(2) All subcontractors that were not listed by the *Design-Build Entity* at the time of award in accordance with Section 22.3309(b)(1) shall be performed and awarded by the *Design-Build Entity*, in accordance with a bidding process set forth in the *Design-Build* package.

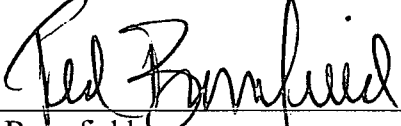
Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That the City Manager shall report to the Rules Committee on the implementation of this ordinance after one year from its passage and thereafter as directed.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By

  
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Ted Bromfield  
Deputy City Attorney

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