

## Assembly Bill No. 372

### CHAPTER 262

An act to amend Sections 20209.5, 20209.7, and 20209.14 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 14, 2006. Filed with  
Secretary of State September 14, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 372, Nation. Public contracts: transit design-build contracts.

Existing law authorizes transit operators to enter into a design-build contract, as defined, according to specified procedures. Existing law repeals these provisions on January 1, 2007. Existing law requires a transit operator, which includes any transit district, included transit district, municipal operator, included municipal operator, or transit development board, as specified, to prepare a set of documents to describe a project that will be let to a design-build entity, but does not identify any specifically required document. Existing law requires a transit operator that undertakes a design-build project to establish a labor compliance program, as defined. Existing law requires a transit operator to select the design-build entity based on either the lowest responsible bidder or best value, as provided. Existing law prohibits a transit operator from utilizing the design-build method of procurement for a rail project, unless that project costs more than \$50,000,000.

This bill would extend the duration of these provisions until January 1, 2011. This bill would expand the definition of a transit operator to include a consolidated agency, as specified. This bill would specify that a transit operator is required to establish a labor compliance program only for a design-build contract and only if the transit operator does not already have a labor compliance program, as specified. This bill would require a transit operator to select the design-build entity, for nonrail transit projects that exceed \$2,500,000, based on either the lowest responsible bidder or best value. This bill would authorize the design-build method of procurement for a capital maintenance or capacity-enhancing rail project with project costs of \$25,000,000, or more. This bill would also require a transit operator to prepare specific documents regarding a project that will be let to a design-build entity.

*The people of the State of California do enact as follows:*

SECTION 1. Section 20209.5 of the Public Contract Code is amended to read:

20209.5. As used in this article, the following terms have the following meanings:

(a) “Best value” means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the transit district.

(b) “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) “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 pursuant to a design-build contract.

(d) “RFP” means request for proposal.

(e) “Transit operator” means any transit district, included transit district, municipal operator, included municipal operator, or transit development board, as defined in Section 99210 of the Public Utilities Code, or a consolidated agency as defined in Section 132353.1 of the Public Utilities Code, or any joint powers authority formed to provide transit service.

SEC. 2. Section 20209.7 of the Public Contract Code is amended to read:

20209.7. Design-build projects shall progress in a three-step process, as follows:

(a) The transit operator shall prepare a set of documents setting forth the scope of the project. The documents shall include, but are not limited to, the size, type, and desired design character of the buildings, transit facilities, and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the transit operator’s needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in California.

(b) Any architectural or engineering firm or individual retained by the transit operator to assist in the development criteria or preparation of the request for proposal (RFP) is not eligible to participate in the competition for the design-build entity.

(c) If the transit operator does not already have a labor compliance program, as defined in Section 1771.5 of the Labor Code, the transit operator shall establish and enforce a labor compliance program for the design-build contract containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate this labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement applies only to the design-build contract and does not apply to projects where the transit operator or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project, or to any other project of the transit operator that is not design-build.

(d) (1) Each RFP shall identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

(2) Each RFP shall invite interested parties to submit competitive sealed proposals in the manner prescribed by the contracting agency.

(3) Each RFP shall include a section identifying and describing:

(A) All significant factors that the agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

(B) The methodology and rating or weighting process that will be used by the agency in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(C) The relative importance or weight assigned to each of the factors identified in the RFP. If a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(D) If the contracting agency wishes to reserve the right to hold discussions or negotiations with offerors, it shall specify the same in the RFP and shall publish separately or incorporate into the RFP applicable rules and procedures to be observed by the agency to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(e) (1) The transit operator shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of Industrial Relations. The standardized questionnaire may not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if the violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations and the bidder complied with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code. In preparing the questionnaire, the director shall consult with the construction industry, transit operators, and other affected parties. This questionnaire shall require information relevant to the architecture or engineering firm that will be the lead on the design-build project. The questionnaire shall include, but is not limited to, all of the following:

(A) A listing of all the contractors that are part of the design-build entity.

(B) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, 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) The licenses, registrations, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes 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 that assures the transit operator that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(G) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(H) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law, including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.

(I) Information concerning the bankruptcy or receivership of any member of the entity, and information concerning all legal claims, disputes, or lawsuits arising from any construction project of any member of the entity during the past three years, including information concerning any work completed by a surety.

(J) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract.

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period immediately preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association and

specifying that all partners or association members agree to be liable for full performance under the design-build contract.

(2) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(f) The transit operator shall establish a procedure for final selection of the design-build entity. Selection shall be subject to the following conditions:

(1) In no case shall the transit operator award a contract to a design-build entity pursuant to this article for a capital maintenance or capacity-enhancing rail project unless that project exceeds twenty-five million dollars (\$25,000,000) in cost.

(2) For nonrail transit projects that exceed two million five hundred thousand dollars (\$2,500,000), the transit operator may award the project to the lowest responsible bidder or by using the best value method.

SEC. 3. Section 20209.14 of the Public Contract Code is amended to read:

20209.14. This article shall remain in effect only until January 1, 2011, and as of that date is repealed.

SEC. 4. This act shall only apply to transit projects as specified in Section 20209.13 of the Public Contract Code.