

ASSEMBLY BILL

No. 2355

Introduced by Assembly Member Smyth

February 19, 2010

An act to amend Section 14661 of the Government Code, and to repeal Section 4 of Chapter 252 of the Statutes of 1998, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 2355, as introduced, Smyth. Public works: design-build.

Existing law authorizes the Director of General Services, when authorized by the Legislature to use the design-build procurement process for a specific project, to contract and procure state office facilities, other buildings, structures, and related facilities, as provided.

This bill would require the Department of General Services to submit to the Joint Legislative Budget Committee, by January 1, 2015, a report containing a description of each public works project procured through the design-build process that is completed after January 1, 2010, and before December 1, 2014.

Existing law establishes that specified provisions relating to state design-build projects shall only remain operative until the completion of at least 5 design-build projects, each with a value of \$10,000,000 or more, or until January 1, 2006, whichever occurs later.

This bill would repeal that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 14661 of the Government Code is amended to read:

14661. (a) For the purposes of this section, the definitions in subdivision (a) of Section 13332.19 shall apply.

(b) Notwithstanding any provision of the Public Contract Code or any other provision of law, when the Legislature authorizes the use of the design-build construction procurement process for a specific project, the Director of General Services may contract and procure state office facilities and other buildings, structures, and related facilities pursuant to this section.

(c) Prior to contracting with a design-build entity for the procurement of state office facilities and other state buildings and structures, the director shall:

(1) Prepare a program setting forth the performance criteria for the design-build project. The performance criteria shall be prepared by a design professional duly licensed and registered in the State of California.

(2) (A) Establish a competitive prequalification and selection process for design-build entities, including any subcontractors listed at the time of bid, that clearly specifies the prequalification criteria, and states the manner in which the winning design-build entity will be selected.

(B) Prequalification shall be limited to consideration of all of the following criteria:

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

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability 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.

(iii) Submission of a proposed project management plan that establishes that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.

1 (iv) Submission of evidence that establishes that the design-build
2 entity has the capacity to obtain all required payment and
3 performance bonding, liability insurance, and errors and omissions
4 insurance, as well as a financial statement that assures the
5 department that the design-build entity has the capacity to complete
6 the project.

7 (v) Provision of a declaration certifying that applying members
8 of the design-build entity have not had a surety company finish
9 work on any project within the last five years.

10 (vi) Provision of information and a declaration providing detail
11 concerning all of the following:

12 (I) Any construction or design claim or litigation totaling more
13 than five hundred thousand dollars (\$500,000) or 5 percent of the
14 annual value of work performed, whichever is less, settled against
15 any member of the design-build entity over the last five years.

16 (II) Serious violations of the Occupational Safety and Health
17 Act, as provided in Part 1 (commencing with Section 6300) of
18 Division 5 of the Labor Code, settled against any member of the
19 design-build entity.

20 (III) Violations of federal or state law, including, but not limited
21 to, those laws governing the payment of wages, benefits, or
22 personal income tax withholding, or of Federal Insurance
23 Contributions Act (FICA) withholding requirements, state disability
24 insurance withholding, or unemployment insurance payment
25 requirements, settled against any member of the design-build entity
26 over the last five years. For the purposes of this subclause, only
27 violations by a design-build member as an employer shall be
28 deemed applicable, unless it is shown that the design-build entity
29 member, in his or her capacity as an employer, had knowledge of
30 his or her subcontractor's violations or failed to comply with the
31 conditions set forth in subdivision (b) of Section 1775 of the Labor
32 Code.

33 (IV) Information required by Section 10162 of the Public
34 Contract Code.

35 (V) Violations of the Contractors' State License Law (Chapter
36 9 (commencing with Section 7000) of Division 3 of the Business
37 and Professions Code), excluding alleged violations or complaints.

38 (VI) Any conviction of any member of the design-build entity
39 of submitting a false or fraudulent claim to a public agency over
40 the last five years.

(vii) Provision of a declaration that the design-build entity will comply with all other provisions of law applicable to the project, including, but not limited to, the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(C) The director, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive.

(D) Any declaration required under subparagraph (B) 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. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(3) (A) Determine, as he or she deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. The director shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.

(B) The director shall make his or her determination by choosing one of the following methods:

(i) A design-build competition based upon performance, price, and other criteria set forth by the department in the design-build solicitation package. The department shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

(ii) A design-build competition based upon performance and other criteria set forth by the department in the design-build solicitation package. Criteria used in this evaluation of proposals may include, but need not be limited to, items such as proposed

1 design approach, life-cycle costs, project features, and functions.
2 However, any criteria and methods used to evaluate proposals shall
3 be limited to those contained in the design-build solicitation
4 package. Award shall be made to the design-build entity whose
5 proposal is judged as providing the best value, for the lowest price,
6 meeting the interests of the department and meeting the objectives
7 of the project. A project with an approved budget of ten million
8 dollars (\$10,000,000) or more may be awarded pursuant to this
9 clause.

10 (iii) A design-build competition based upon program
11 requirements and a detailed scope of work, including any
12 performance criteria and concept drawings set forth by the
13 department in the design-build solicitation package. Award shall
14 be made on the basis of the lowest responsible bid. A project with
15 an approved budget of two hundred fifty thousand dollars
16 (\$250,000) or more may be awarded pursuant to this clause.

17 (4) For the purposes of this subdivision, the following definitions
18 shall apply:

19 (A) “Best interest of the state” means a design-build process
20 that is projected by the director to reduce the project delivery
21 schedule and total cost of a project while maintaining a high level
22 of quality workmanship and materials, when compared to the
23 traditional design-bid-build process.

24 (B) “Best value” means a value determined by objective criteria
25 that may include, but is not limited to, price, features, functions,
26 life cycle costs, experience, and other criteria deemed appropriate
27 by the department.

28 (d) The Legislature recognizes that the design-build entity is
29 charged with performing both design and construction. Because
30 a design-build contract may be awarded prior to the completion
31 of the design, it is often impracticable for the design-build entity
32 to list all subcontractors at the time of the award. As a result, the
33 subcontractor listing requirements contained in Chapter 4
34 (commencing with Section 4100) of Part 1 of Division 2 of the
35 Public Contract Code can create a conflict with the implementation
36 of the design-build process by requiring all subcontractors to be
37 listed at a time when a sufficient set of plans may not be available.
38 It is the intent of the Legislature to establish a clear process for
39 the selection and award of subcontracts entered into pursuant to
40 this section in a manner that retains protection for subcontractors

1 while enabling design-build projects to be administered in an
2 efficient fashion. Therefore, all of the following requirements shall
3 apply to subcontractors, licensed pursuant to Chapter 9
4 (commencing with Section 7000) of Division 3 of the Business
5 and Professions Code, that are employed on design-build projects
6 undertaken pursuant to this section:

7 (1) The department, in each design-build solicitation package,
8 may identify types of subcontractors, by subcontractor license
9 classification, that will be listed by the design-build entity at the
10 time of the bid. In selecting the subcontractors that will be listed
11 by the design-build entity, the department shall limit the
12 identification to only those license classifications deemed essential
13 for proper completion of the project. In no event, however, may
14 the department specify more than five licensed subcontractor
15 classifications. In addition, at its discretion, the design-build entity
16 may list an additional two subcontractors, identified by
17 subcontractor license classification, that will perform design or
18 construction work, or both, on the project. In no event shall the
19 design-build entity list at the time of bid a total amount of
20 subcontractors that will perform design or construction work, or
21 both, in a total of more than seven subcontractor license
22 classifications on a project. All subcontractors that are listed at the
23 time of bid shall be afforded all of the protection contained in
24 Chapter 4 (commencing with Section 4100) of Part 1 of Division
25 2 of the Public Contract Code. All subcontracts that were not listed
26 by the design-build entity at the time of bid shall be awarded in
27 accordance with paragraph (2).

28 (2) All subcontracts that were not to be performed by the
29 design-build entity in accordance with paragraph (1) shall be
30 competitively bid and awarded by the design-build entity, in
31 accordance with the design-build process set forth by the
32 department in the design-build solicitation package. The
33 design-build entity shall do all of the following:

34 (A) Provide public notice of the availability of work to be
35 subcontracted in accordance with Section 10140 of the Public
36 Contract Code.

37 (B) Provide a fixed date and time on which the subcontracted
38 work will be awarded in accordance with Section 10141 of the
39 Public Contract Code.

1 (C) As authorized by the department, establish reasonable
2 prequalification criteria and standards, limited in scope to those
3 detailed in paragraph (2) of subdivision (c).

4 (D) Provide that the subcontracted work shall be awarded to
5 the lowest responsible bidder.

6 (e) This section shall not be construed and is not intended to
7 extend or limit the authority specified in Section 19130.

8 (f) Any design-build entity that is selected to design and
9 construct a project pursuant to this section shall possess or obtain
10 sufficient bonding consistent with applicable provisions of the
11 Public Contract Code. Nothing in this section shall prohibit a
12 general or engineering contractor from being designated the lead
13 entity on a design-build entity for the purposes of purchasing
14 necessary bonding to cover the activities of the design-build entity.

15 (g) Any payment or performance bond written for the purposes
16 of this section shall use a bond form developed by the department.
17 In developing the bond form, the department shall consult with
18 the surety industry to achieve a bond form that is consistent with
19 surety industry standards, while protecting the interests of the state.

20 (h) *The department shall submit to the Joint Legislative Budget*
21 *Committee, on or before January 1, 2015, a report containing a*
22 *description of each public works project procured through the*
23 *design-build process that is completed after January 1, 2010, and*
24 *before December 1, 2014. The report shall include, but not be*
25 *limited to, all of the following information:*

- 26 (1) *The type of project.*
27 (2) *The gross square footage of the project.*
28 (3) *The design-build entity that was awarded the project.*
29 (4) *The estimated and actual project costs.*
30 (5) *An assessment of the prequalification process and criteria.*
31 (6) *An assessment of the effect of retaining 5 percent retention*
32 *on the project.*

33 (7) *A description of the method used to award the contract. If*
34 *the best value method was used, the report shall describe the*
35 *factors used to evaluate the bid, including the weighting of each*
36 *factor and an assessment of the effectiveness of the methodology.*

37 SEC. 2. Section 4 of Chapter 252 of the Statutes of 1998 is
38 repealed.

39 ~~SEC. 4. Sections 2 and 3 of this act shall remain operative only~~
40 ~~until the completion of at least five design-build projects, each~~

- 1 with a value of ten million dollars (\$10,000,000) or more, or until
- 2 January 1, 2006, whichever occurs later.