AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL No. 1457

Introduced by Senator Cogdill

February 19, 2010

An act to add Section 14661.2 to the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1457, as amended, Cogdill. State facilities: alternative project delivery methods.

Existing law establishes procedures governing design-bid-build methods of procurement, but permits the Director of General Services, when authorized by the Legislature, to use the design-build procurement process for state office facilities, other buildings, structures, and related facilities. Existing law further requires the director, prior to contracting for the procurement of state office facilities and other state buildings and structures, to prepare a program setting forth the scope of the project and to establish a competitive prequalification process, as provided.

This bill would authorize the Director of General Services to undertake public works of improvement by using ~~an alternative method of procurement~~ *the job order contract*, as prescribed. The bill would authorize the director, whenever a public works appropriation is made, to determine ~~the most appropriate delivery method~~ *if a job order contract is appropriate* for that project. The bill would require the department to follow specified criteria for those contracts and would set forth the applicable labor and contracting standards, including payment procedures, delivery methods, and remedies in case of default.

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. The Legislature finds and declares all of the following:

(a) It is in the best interest of the State of California to construct state offices and other necessary program facilities in a cost-efficient manner that represents the best overall value to the taxpayers and has the greatest benefit to our state's economy.

(b) ~~Alternative project delivery methods~~ *The job order contract* can be an attractive option to departments in comparison to the existing three-step (design-bid-build) process.

(c) The State of California should be able to utilize cost-effective options for the delivery of public works projects, in accordance with the national trend, which include authorizations in California to allow public entities to utilize ~~alternative delivery methods~~ *the job order contract*.

SEC. 2. Section 14661.2 is added to the Government Code, to read:

14661.2. (a) Notwithstanding any other law, the Department of General Services may undertake public works of improvement by using the ~~method~~ *job order contract* set forth in this section. The availability of ~~this method~~ *the job order contract* shall not preclude the use of other methods of project delivery.

(b) For purposes of this section, the following definitions apply:

(1) "Department" means the Department of General Services as to any project under the jurisdiction of that department, or its successor department or agency.

(2) "Director" means the Director of General Services.

(3) "Job order contract" means a competitively bid, fixed priced, indefinite quantity procurement contract issued by a department to a job order contractor for a definite project or work, as compiled from a catalog of construction tasks to be performed pursuant to a job order contract. Each job order under a job order contract shall not exceed the total cost limit established by the Director of

Finance pursuant to subdivision (b) of Section 10105 of the Public Contract Code.

(c) Whenever an appropriation for a public works project is made, the director shall determine ~~the most appropriate delivery method~~ *if a job order contract is appropriate* for that project. The director shall consider the following criteria:

(1) The nature of the project.

(2) The project delivery schedules.

(3) Overall project cost, including life cycle costs during the operational phase following construction.

(4) The ability to achieve construction or operational features not achievable through the design-bid-build method.

(5) Minimizing change orders.

(6) Other criteria determined by the director to be critical to the project based on *a* specific facility program.

(d) Contracts entered into using ~~an alternative delivery method~~ *the job order contract* pursuant to this section are subject to all of the following:

(1) Any entity entering into such a contract shall not be exempt from the provisions of the Labor Code.

(2) Public notice of a project shall be provided in accordance with Sections 10140 and 10141 of the Public Contract Code.

(3) The contract shall provide for the filing of separate performance and payment bonds by the contractor in accordance with Sections 3247, 3248, 3249, 3250, 3251, and 3252 of the Civil Code, and Sections 7103 and 7200 of the Public Contract Code.

(4) Each bond shall be in a sum as provided in Section 3248 of the Civil Code.

(5) The payment bond shall secure the payment of the claims of laborers, mechanics, or material men employed on the work under the contract and shall contain all other provisions required by law.

(6) Any payment or performance bond written for the purpose of ~~alternative delivery methods~~ *a job order contract* shall be written using a bond form developed by the department pursuant to subdivision (g) of Section 14661.1 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used for ~~alternative delivery system~~ *job order contract* projects throughout the state. The performance bond shall guarantee the faithful performance of the contract by the contractor. In lieu

of payment and performance bonds, the director may elect to purchase separate insurance to cover the performance of the contractor.

(7) No payment shall be made upon the contract to the contractor or any assignee of the contractor until any order by the director that a sufficient surety be substituted on the bond or that a new, additional, or supplemental bond be given, is satisfied. No cancellation of or withdrawal of a surety from a bond is effective unless approved by the director.

(8) The contract shall contain a provision regarding the time when the whole or any specified portion of the work contemplated shall be completed, and shall provide that for each day completion is delayed beyond the specified time, the contractor shall forfeit and pay to the state a specified sum of money to be deducted from any payments due or to become due to the contractor. The sum so specified is valid as liquidated damages, unless manifestly unreasonable under the circumstances existing at the time the contract was made. *The contract shall have a term of two years with an option to extend that term for one additional year.*

(9) Contract payments shall be made as prescribed in Sections 10261 and 10261.5 of the Public Contract Code.

(10) Any contractor or subcontractor shall pay his or her subcontractors in accordance with Sections 10262 and 10262.5 of the Public Contract Code.

(11) (A) If the director determines that a contractor has failed to supply an adequate workforce or material of proper quality, or has failed to comply with Section 10262 of the Public Contract Code, or has failed in any other respect to complete the work with the diligence and force specified by the contract, the director may do either of the following:

(i) After written notice of at least five days to the contractor specifying the defaults to be remedied, provide any necessary labor or materials and deduct the cost from any money due or to become due to the contractor under the contract.

(ii) If the director considers that the failure is sufficient ground for termination, the director may give written notice of at least five days to the contractor and the contractor's sureties, that if the defaults are not remedied, the contractor's control over the work shall be terminated.

(B) If the defaults are not remedied within the time specified in the notice, the contractor's control shall terminate as of the expiration of that time.

(12) A contract entered into pursuant to this section shall comply with Section 10263 of the Public Contract Code with respect to the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract.

(e) Before entering into a contract for a project pursuant to this section, the director shall make arrangements for preparation of the necessary documents for the solicitation of bids for ~~the~~ *a* job order contract ~~method~~, including prequalification standards, schematic plans, and outline specifications indicating the general scope of the project and the designation of fees and other fixed costs upon which prequalified contractors shall be invited to submit bids, which shall serve as the basis for selection.

(f) Notwithstanding any provision of the Public Contract Code, Chapter 3 (commencing with Section 15815) of Part 10b of Division 3 of this code, or any other law, the department shall establish policies and procedures to implement this section.

(g) Contracts awarded pursuant to this section shall not include services defined in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1.

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