

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

SECTION 1. Article 6.7 (commencing with Section 10215) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 6.7. Progressive Design-Build Projects

10215. For purposes of this article, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria that may include, but are not limited to, cost factors, price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, or a tradeoff between cost and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Department” means any department of the State of California authorized pursuant to Section 10215.1 to utilize progressive design-build contracting.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a progressive design-build contract.

(e) “Design-build project” means a capital project using the progressive design-build construction procurement process described in this article.

(f) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all civil, geotechnical, electrical, mechanical, and plumbing contractors.

(g) “Director” means the director of any department of the State of California authorized pursuant to Section 10215.1 to utilize progressive design-build contracting, or their designee.

(h) “Guaranteed maximum price” means the maximum payment amount agreed upon by the department and the design-build entity for the design-build entity to finish all remaining design, preconstruction, and construction activities sufficient to complete and close out the project.

(i) “Progressive design-build” means a project delivery process in which the design, preconstruction services, and construction of a project are procured, in one or more stages, from a single design-build entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. However, the progressive design-build model offers flexibility to retain a different entity for the construction phase of the project, should the parties be unable to agree, after a specified portion of the design phase is complete, on a guaranteed maximum price for the construction phase.

(j) “Qualifications-based selection” means the process by which the department solicits for services from the design-build entities and that best value is the basis of the award.

10215.1. (a) (1) Notwithstanding any other law, both of the following departments may procure progressive design-build contracts for public works projects for which the estimated price, as determined pursuant to subdivision (a) of Section 10215.2, exceeds twenty five million dollars (\$25,000,000):

(A) The Department of Water Resources as established in Section 120 of the Water Code.

(B) The Department of Transportation as established under Part 5 (commencing with Section 14000) of Division 3 of Title 2 of the Government Code.

(2) This subdivision does not authorize a design-build-operate contract for any project. A contract pursuant to this article may provide for operations during a training or transitional period, but shall not include long-term operations for any design-build project.

(3) The progressive design-build authorization in this subdivision shall not include the authority to perform construction inspection services for projects on or interfacing with the state highway system, which shall be performed by the Department of Transportation consistent with Section 91.2 of the Streets and Highways Code.

(4) A department described in paragraph (1) shall be limited to utilizing progressive-design build contracts for no more than eight design-build projects.

(b) The director of each department identified in subdivision (a) shall develop guidelines for a standard departmental conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the department relating to the solicitation of a progressive design-build project, to submit a statement of qualifications, a proposal, or both as a design-build entity, or to join a design-build team.

10215.2. The procurement process for progressive design-build projects shall progress as follows:

(a) The department shall determine the scope and estimated price of the design-build project. The determination may include, but need not be limited to, the size,

type, and desired design character of the project and any other information deemed necessary to describe adequately the department's needs.

(b) The department shall prepare and issue a request for qualifications. The request for qualifications shall include, but is not limited to, all of the following elements:

(1) Identification of the basic scope and needs of the design-build project or contract, the expected cost range, the methodology that will be used by the department to evaluate qualifications, the procedure for final selection of the design-build entity, and any other information deemed necessary by the director to inform interested parties of the contracting opportunity.

(2) Significant factors that the department reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, and all other nonprice-related factors. The department may require that a cost estimate, including the detailed basis for the estimate, be included in the design-build entities' responses and consider those costs in evaluating the statements of qualifications.

(3) The relative importance or the weight assigned to each of the factors identified in the request for qualifications.

(4) A request for a statement of qualifications with a template for the statement that is prepared by the department. The department shall require all of the following information in the statement and indicate, in the template, that all of the following information is required:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the design-build entity's shareholders, partners, or members who, at the time the statement of qualification is submitted, the design-build entity knows will perform work on the design-build project if the design-build entity is selected by the department.

(B) Evidence that the members of the design-build team have completed, or have 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 design-build project, and a financial statement that ensures that the design-build entity has the capacity to complete the design-build project.

(C) The licenses, registration, and credentials required to design and construct the design-build project, including, but not limited to, 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.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A design-build entity's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the design-build entity is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) A full disclosure regarding each of the following, if applicable:

(i) Any serious or willful violation of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled or otherwise resolved against any member of the design-build team.

(ii) Any debarment, disqualification, or removal of any member of the design-build team or its owners, officers, or managing employees from a federal, state, or local government public works project.

(iii) Any instance in which a member of the design-build team, or its owners, officers, or managing employees, submitted a bid on a public works project and were found to be nonresponsive or were found by an awarding body not to be a responsible bidder.

(iv) Any instance in which any member of the design-build team, or its owners, officers, or managing employees, defaulted on a construction contract.

(v) Any violations of the Contractors State License Law, as described in Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, by a member of the design-build team or its owners, officers, or managing employees, including alleged violations of Federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or federal Insurance Contribution Act withholding requirements settled against any member of the design-build entity.

(vi) Any bankruptcy or receivership of any member of the design-build team, including, but not limited to, information concerning any work completed by a surety.

(vii) Any adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build team during the five years preceding submission of a bid under this article, in which the claim, settlement, or judgment exceeded fifty thousand dollars (\$50,000) and was settled or otherwise resolved against the design-build entity or any member of the design-build team.

Information shall also be provided concerning any work completed by a surety during this five-year period.

(viii) Any adverse claims, disputes, or lawsuits between any member of the design-build team and any employee(s) of such entity during the five years preceding submission of a bid under this article, in which the claim, settlement, or judgment exceeded fifty thousand dollars (\$50,000) and was settled or otherwise resolved against the entity.

(5) The information provided by a design-build entity in response to a request for qualifications shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(c) (1) Following the deadline for submission of a statement of qualifications, the department shall review the submissions. The department may evaluate submissions based solely upon the information provided in each design-build entity's statement of qualifications. The department may also interview some or all of the design-build entities to further evaluate their qualifications for the design-build project. The department may also hold discussions or negotiations with design-build entities using the process described in the department's request for qualifications.

(2) For each request for qualifications, the department shall generate a final list of qualified design-build entities that participated in the request for qualifications before entering into negotiations for the contract or contracts to which the request for qualifications applies.

(3) If submissions in response to a request for qualifications provide sufficient information to determine which qualified design-build entity has offered the best value to the public, the department may enter into negotiations with that entity concerning contract terms and award a contract for design and preconstruction services to that entity. Such contract shall provide for the subsequent negotiation of terms governing the construction phase of the design-build project. If the department is unable to negotiate a satisfactory contract with that entity for design and preconstruction services, the department may undertake negotiations with a separate qualified design-build entity that participated in the request for qualifications process.

(4) If additional information is necessary to determine which qualified design-build entity offers the best value to the public, the department may prepare a further request for proposals, based on the documents prepared as described in subdivision (a), that invites qualified design-build entities identified pursuant to paragraph (2) to submit competitive sealed proposals in the manner prescribed by the department.

(d) Notwithstanding any other provision of this code, upon issuance of a contract award, the director shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding

the basis of the award. The statement regarding the contract award and the contract file shall provide sufficient information to satisfy an external audit.

10215.3. (a) The design-build entity shall provide payment and performance bonds for the design-build project in the form and in the amount required by the director, which are issued by a California admitted surety. The amount of the payment bond shall not be less than the amount of the performance bond.

(b) The design-build contract shall require errors and omissions insurance coverage for the design elements of the design-build project.

(c) The department shall develop a standard form of payment and performance bond for its design-build projects.

10215.4. (a) After selecting a design-build entity for the design and preconstruction phase, the department may enter into a contract and direct the design-build entity to begin design and preconstruction activities sufficient to establish a guaranteed maximum price for the project.

(b) Subject to Section 13332.19 of the Government Code, if otherwise applicable to the department, upon agreement of the guaranteed maximum price for the design-build project, the department, at its sole and absolute discretion, may amend its contract with the design-build entity, or enter into a new contract, and direct the entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the design-build project, and may add funds not exceeding the guaranteed maximum price to the contract for these activities. Any amendment of the existing contract or a new contract with the design-build entity shall not require any additional competitive process. This section does not require the department to amend an existing contract or enter into a new contract for remaining design, preconstruction, or construction activities.

(c) If the cost for completing all remaining design, preconstruction, and construction activities sufficient to complete and close out the design-build project exceeds the guaranteed maximum price, the costs exceeding the guaranteed maximum price shall be the responsibility of the design-build entity. If the cost for these activities is less than the guaranteed maximum price, the design-build entity shall not be entitled to the difference between the cost and the guaranteed maximum price. Any savings provided to the department shall revert to the fund from which the appropriation was made.

(d) If the department and the design-build entity do not reach an agreement on a guaranteed maximum price or the department otherwise elects not to have the design-build entity complete some or all of the remaining work, the department may solicit proposals to complete some or all of the remaining work from firms that submitted a statement of qualifications pursuant to subdivision (b) of Section 10215.2. The department may also, upon written determination that it is in the best interest of the state to do so, formally solicit proposals from other entities to complete all or some of the remaining work, or complete the design-build project

using other delivery methods. Subject to Section 13332.19 of the Government Code, if otherwise applicable to the department, any contract awarded shall be made on a best value basis.

10215.5. (a) The department, in each request for qualifications or request for proposals, may identify specific types of subcontractors that are required to be included in the design-build entity's statement of qualifications. All construction subcontractors that are identified in the statement of qualifications shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

(b) Following award of the design-build contract, except for those construction subcontractors listed in the statement of qualifications or proposal, the design-build entity shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the department, including a fixed date and time on which qualification statements, bids, or proposals will be due.

(2) Establish reasonable qualification criteria and standards.

(3) Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing.

(c) Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

10215.7. (a) Any department authorized by Section 10215.1 to utilize progressive design-build contracts pursuant to this article shall prepare and submit to the Legislature a report by January 1, 2030, that describes each design-build project awarded under this article that has begun construction by January 1, 2029.

(b) The report described in subdivision (a) shall include relevant data including, but not limited to, all of the following information:

(1) The cost of the design-build project.

(2) The current status or stage of the design-build project.

(3) If complete, the completion date of the design-build project.

(4) If incomplete, the estimated completion date of the design-build project.

(c) The report described in subdivision (a) shall also provide a comprehensive assessment on the effectiveness of the progressive design-build project delivery method relative to project cost and time savings.

(d) The report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

10215.8. This article does not affect, expand, alter, or limit any rights or remedies otherwise available at law.

10215.9. This article shall remain in effect only until January 1, 2031, and as of that date is repealed. The repeal of this article shall not affect the contracts entered into by the department, or the department's authority to complete the design-build projects for which a design and preconstruction phase contract has been entered under this article, before January 1, 2031.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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