

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA
AMENDING CHULA VISTA MUNICIPAL CODE
SECTION 2.57 (DESIGN-BUILD CONTRACTS) TO
AMEND THE AUTHORIZED PROCUREMENT AND
SELECTION METHODS FOR DESIGN-BUILD
PROJECTS

WHEREAS, on October 24, 2000, the City adopted Ordinance 2827, codified at Section 2.57 of the Chula Vista Municipal Code, establishing specific procedures to solicit, qualify, evaluate, select, and award design-build contracts.

WHEREAS, the proposed amendments would add a Collaborative Design Build/Progressive Design-Build project delivery method that is intended to, among other things, expedite delivery of projects, increase owner control over design, enable an owner to tailor the scope of a project to a given budget, and minimize the risk of budget overruns; and

WHEREAS, the proposed amendments add a cooperative purchasing process for design-build projects to enhance the efficiency and flexibility of the City's design-build procurement practices and procedures; and

WHEREAS, it is desirable to amend the City's design-build ordinance to allow for additional design-build project delivery methods to improve the efficiency and flexibility of the design and construction of public works in the City of Chula Vista while providing appropriate safe guards to protect the public interest.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I.

A. Chapter 2, Section 2.57 (Design-Build Contracts) is amended to read as follows:

2.57.010 Purpose and intent.

The purpose of this chapter is to establish specific procedures to be used to solicit, qualify, evaluate, select and award design-build contracts.

2.57.020 Definitions.

For purposes of this chapter, the following definitions apply:

“Best interest of the City” means a design-build process that is projected to meet the interests of the City and objectives of the project which may include reducing the project delivery schedule and total cost of the project while maintaining a high level of quality workmanship and materials.

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

“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 or entity that provides licensed contracting, architectural, or engineering services.

“Design professional” means a professional, either City staff or an outside consultant, who develops the criteria package which may include, but is not limited to, facility program, design criteria, performance specifications and other project-specific technical material.

“Qualified list of design-build entities” means those design-build entities selected based on a competitive selection process and who are determined to be qualified to act as a design-build entity for the City of Chula Vista on any project.

“Sole source” means a commodity or service available from only one known source as the result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions.

2.57.030 Design-build procurement.

Prior to procuring a design-build public works contract, the City shall complete one of the following processes:

A. Project-Specific RFP/RFQ. Prepare a project-specific request for proposal or qualification setting forth the basic scope of the project that may include, but is not limited to the size, type, and desired design character of the project 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; or

B. Project-Specific RFP to a Qualified List of Proposers. Prepare a project-specific request for proposal setting forth the basic scope of the project that may include, but is not limited to the size, type and desired design character of the project and site, and performance specifications to be distributed exclusively to those teams selected from the qualified list of design-build entities. 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; or

C. Project-Specific RFP (Collaborative Design-Build/Progressive Design-Build) to a Qualified List of Proposers. Prepare a project-specific request for proposal

setting forth the basic scope of the project and the project budget to be distributed exclusively to teams selected from a qualified list of design-build entities. The request for proposals shall indicate that the project is to be completed in two contract phases: (i) a design and pre-construction phase and (ii) a final design and construction phase. The request for proposals shall require proposers to submit a technical proposal describing the proposer's experience, project personnel, organizational structure, project approach, and project schedule and plan. The request for proposal shall require proposers to submit a fee proposal for both phases of the project.

DE. Selection from Qualified List of Proposers. Select a design-build entity from those teams identified on the qualified list of design-build entities without preparing a formal request for proposals. Prior to an award to a design-build entity pursuant to the qualified list of design-build entities, the City Manager shall certify to the City Council in writing that the most qualified firms have been invited to interview and the selected firm is capable of providing the services and it is in the best interest of the City to proceed in this manner; or

ED. Sole Source. Select a design-build entity or team as a sole source, if, in advance of the award of the contract, the City Manager certifies in writing that the proposed provider and services meet the requirements for award as a sole source (as defined in Section 2.57.020) status of the provider; or

F. Cooperative Purchasing. Select a design-build entity or team through a competitive cooperative purchasing solicitation in accordance with 2.56.140 of the Chula Vista Municipal Code (Cooperative Purchasing) and other City rules, regulations, and procedures governing design-build procurement.

The City is authorized to cancel any design-build procurement process at any time if the City determines doing so would be in the best interest of the City. The City is not responsible or liable for any costs incurred by a proposer pursuant to any design-build procurement process.

2.57.040 Qualification and selection process.

The City may establish a qualification and selection process for design-build entities that specifies the qualification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this chapter 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.

2.57.050 Qualification criteria.

Prior to the award of a design-build contract, the design-build entity may be required to provide any or all of the following qualification criteria:

- A. Possession of all required licenses, registrations, 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 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 demonstrating to the City's satisfaction 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 this section, 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 or employee'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;

6. Any construction or design claim or litigation totaling more than \$50,000 pending or settled against any member of the design-build entity over the last five years;

7. Any debarment, disqualification or removal from a federal, state, or local government public works project.

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.

H. 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 fully liable for the performance under the design-build contract.

2.57.060 Selection method.

The City shall select one of the following methods as the process to be used for the selection, if any, 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, life-cycle costs, project features, financing, quality, total cost, past performance, business standing, 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 or qualifications.

2. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the request for proposals shall not be eligible to participate in the competition with any design-build entity.

3. The City shall make an award, if any, 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 or preliminary 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 proposal or qualification design-build entity.

2. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of request for proposals shall not be eligible to participate in the competition with any design-build entity.

3. The City shall make an award, if any, 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 a Collaborative Design-Build or Progressive Design-Build solicitation as set forth by the City in a request for proposals.

1. The City shall establish criteria and methodology, including demonstrated competence, experience, and cost, to evaluate proposals and select a design-build entity. The City shall include the established criteria and methodology in the request for proposals.

2. Any architectural firm, engineering firm, consultant, or individual retained by City to assist in the preparation of a request for proposals will not be eligible to participate in the competition with any design-build entity or team.

3. The City shall make an award, if any, based on a determination of which proposal provides the best value to meet the interests of the City and objectives of the project.

4.If the City makes an award to a design-build entity for the design and pre-construction phase, the City is not obligated to make an award to the same design-build entity for the final design and construction phase. The City is authorized to utilize any information obtained or documentation prepared during the design and pre-construction phase in any manner desired by the City, including use in separate and subsequent design-build or public works solicitation processes.

DE. 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 request for proposals shall not be eligible to participate in the competition with any design-build entity.

2. The City shall make an aAward, if any, shall be made on the basis of the lowest responsive bid.

ED. The City shall make aA“sole source” award, if any, as otherwise allowed by law and in strict accordance with the City’s rules, regulations, and procedures governing sole source awards.

F.A design-build competition based on a cooperative purchasing solicitation.

1.The Purchasing Agent shall review the criteria and methodology used to evaluate proposals and select the winning entity pursuant to the cooperative purchasing solicitation. The Purchasing Agent shall make a written determination whether such criteria and methodology substantially conforms to the City’s rules, regulations, and procedures governing design-build procurement.

2.If the Purchasing Agent determines that the criteria and methodology used to evaluate proposals and select the winning entity substantially conforms to City’s rules, regulations, and procedures governing design-build procurement, the City

shall make an award, if any, to the winning entity which has been awarded a contract pursuant to the cooperative purchasing solicitation.

The City has no obligation to select a winning entity or award a contract pursuant to any design-build procurement process. The City is authorized to reject any and all proposals at any time if the City determines doing so would be the best interest of the City. The City is not responsible or liable for any costs incurred by any proposer in the preparation or submission of a proposal, or any other costs incurred by any proposer during the selection process.

2.57.070 Work listing.

A. 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 impractical for the design-build entity to list all subcontractors at the time of the award.

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 chapter.

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 subcontracts that were not listed by the design-build entity at the time of award in accordance with subsection (B)(1) of this section shall be performed and awarded by the design-build entity in accordance with a bidding process set forth in the design-build agreement.

3. In a contract between the design-build entity and a subcontractor, and in a contract and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the City and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time that the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the City and the design-build entity from any payment made by the design-build entity to the subcontractor.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

William S. Valle
Director of Engineering and
Capital Projects

Glen R. Googins
City Attorney