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GOVERNMENT CODE - GOV

TITLE 8. THE ORGANIZATION AND GOVERNMENT OF COURTS [68070 - 77655] (Title 8 added by Stats. 1953, Ch. 206.)

CHAPTER 5.7. Superior Court Facilities [70301 - 70508] (Chapter 5.7 added by Stats. 2002, Ch. 1082, Sec. 4.)

ARTICLE 7.1. Superior Court Design-Build Projects [70398 - 70398.7] (Article 7.1 added by Stats. 2021, Ch. 79, Sec. 30.)

70398. For purposes of this article, the definitions in Section 13332.19 and the following definitions apply:

(a) "Best value" means a value determined by an evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal that meets the interests of the judicial branch and the objectives of the project, selection of the best proposal for a stipulated sum established by the Judicial Council, or a tradeoff between price 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 according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) "Design-build" means a project delivery process in which both the design and the construction of a project are procured from a single entity.

(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 design-build contract.

(e) "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 electrical, mechanical, and plumbing contractors.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.1. (a) Subject to the provisions of this article and Section 13332.19, the Judicial Council may procure design-build contracts for public works projects.

(b) The Judicial Council shall develop guidelines for a standard organizational conflict of interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the Judicial Council relating to solicitation of a design-build project to submit a proposal as a design-build entity, or to join a design-build team. This conflict of interest policy shall apply to the Judicial Council entering into a design-build contract authorized pursuant to this article.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.2. The Judicial Council shall notify the State Public Works Board regarding the method to be used for selecting the design-build entity, prior to advertising the design-build project.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.3. The procurement process for the design-build process shall progress as follows:

(a) (1) The Judicial Council shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to adequately describe the Judicial Council's needs. The performance specifications and plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for any project. The documents may include operations during a training or transition period, but shall not include long-term operations for any project.

(b) The Judicial Council shall prepare and issue a request for qualifications (RFQ) in order to prequalify or short-list the design-build entities whose proposals will be evaluated for final selection. The RFQ shall include, but need not be limited to, the following elements:

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

(2) Significant factors that the Judicial Council reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications, prepared by the Judicial Council. In preparing the standard template, the Judicial Council may consult with the construction industry, the building trades and surety industry, and other agencies with authorization to deliver projects using the design-build methodology. The template shall require all of the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time the statement of qualifications is submitted who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity; that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project; and a financial statement that ensures that the design-build entity has the capacity to complete the project.

(C) The licenses, registrations, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of a 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 organization documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer'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 proposer is a party to an alternative dispute resolution system, as provided in Section 3201.5 of the Labor Code.

(H) A declaration certifying that applying members of the design-build entity have not had a surety company finish work on a project within the preceding five years.

(I) A declaration providing detail concerning all of the following:

(i) A construction or design claim or litigation totaling more than five hundred thousand dollars (\$500,000) or 5 percent of the annual value of work performed, whichever is less, settled against a member of the design-build entity in the preceding five years.

(ii) Serious violations of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) settled against a member of the design-build entity. Notwithstanding subparagraph (G), the Judicial Council may find a proposer's safety record unacceptable based on serious violations of the California Occupational Safety and Health Act of 1973.

(iii) Violations of federal or state law, including, but not limited to, those laws governing the payment of wages, benefits, or personal income tax withholding, or the Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements, settled against a member of the design-build entity in the preceding five years. For purposes of this subclause, only violations by a design-build entity member as an employer are applicable, unless it is shown that the design-build entity member, in the capacity of an employer, had knowledge of the subcontractor's violations or failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(iv) Information required by Section 10162 of the Public Contract Code.

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

(vi) Conviction of a member of the design-build entity for submitting a false or fraudulent claim to a public agency in the preceding five years.

(vii) Provision of a declaration that the design-build entity will comply with all laws 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.

(4) (A) A declaration required under paragraph (3) 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. The information required under this subdivision shall be certified as true by the design-build entity and its general partners or joint venture members. A person or entity who certifies as true a material matter that the person or entity 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.

(B) Information required under this subdivision that is not otherwise subject to disclosure under Section 68106.2 and Rule 10.500 of the California Rules of Court shall not be open to public inspection.

(c) (1) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the Judicial Council that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The Judicial Council has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the Judicial Council prior to January 1, 2022.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(d) Based on the documents prepared as described in subdivision (a), the Judicial Council shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the Judicial Council. The request for proposals shall include, but need not be limited to, all of the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the Judicial Council to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the Judicial Council to inform interested parties of the contracting opportunity.

(2) Significant factors that the Judicial Council reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

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

(4) When a best value selection method is used, the Judicial Council may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers. The Judicial Council shall specify this reservation in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the Judicial Council to ensure that any discussions or negotiations are conducted in good faith.

(e) For projects using low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(f) For projects using best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the Judicial Council:

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

(C) Life-cycle costs over 15 or more years.

(2) The Judicial Council may hold discussions or negotiations with responsive proposers using the process articulated in paragraph (4) of subdivision (c).

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided. The Judicial Council is not required to rank more than three proposers.

(4) The contract shall be awarded to the responsible design-build entity whose proposal is determined by the Judicial Council to have offered the best value to the public.

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the Judicial Council 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.

(6) The statement regarding the Judicial Council's contract award described in paragraph (5) and the contract file shall provide sufficient information to satisfy an external audit.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.4. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the Judicial Council, and 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 project.

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

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.5. (a) The Judicial Council, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(b) Following award of the design-build contract, the design-build entity shall award construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work as follows:

(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 Judicial Council, including a fixed date and time on which qualifications 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. The process specified in this subdivision does not apply to construction subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.6. (a) If the Judicial Council elects to award a project pursuant to this article, retention proceeds withheld by the Judicial Council from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(b) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and a subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the Judicial Council and the design-build entity. If the design-build entity provides written notice to a subcontractor that is not a member of the design-build entity, prior to or at the time 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 Judicial Council and the design-build entity from any payment made by the design-build entity to the subcontractor.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)

70398.7. This article does not affect, expand, alter, or limit rights or remedies otherwise available at law.

(Added by Stats. 2021, Ch. 79, Sec. 30. (AB 143) Effective July 16, 2021.)