

ORDINANCE NO. 2827

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CHULA VISTA AMENDING TITLE 2 OF THE CHULA VISTA  
MUNICIPAL CODE TO ADD CHAPTER 2.57, DESIGN-BUILD  
CONTRACTS, TO ESTABLISH THE PROCEDURE FOR THE  
SELECTION AND AWARD OF DESIGN-BUILD CONTRACTS

The City Council of the City of Chula Vista does hereby ordain as follows:

SECTION I: That Title 2 of the Chula Vista Municipal Code is hereby amended to add Chapter 2.57 to read as follows:

**Section 2.57.010 Purpose and Intent**

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

**Section 2.57.020 Definitions**

For purposes of this Division, 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 who 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.

**Section 2.57.030 Design-Build Procurement**

- (a) Prior to procuring a Design-Build public works contract, the City shall either
- (1) 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
  - (2) 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
  - (3) 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
  - (4) Select a Design-Build team as a sole source, if, in advance of the contract, the City Manager certifies in writing the sole source status of the provider.

**Section 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 division 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.

**Section 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, registration, 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 5 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.

**Section 2.57.060 Selection Method**

The City shall select one of the following methods as the process to be used for the selection 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) Award 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) Award 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 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) Award shall be made on the basis of the lowest responsive bid.
- (d) A “Sole Source” award as otherwise allowed by law.

**Section 2.57.070 Work Listing**

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.

- (a) All of the following requirements shall apply to subcontractors, licensed by the state that are employed on Design-Build projects undertaken pursuant to this Division.
  - (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 Section 8(b)(1) 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 contact 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: This ordinance shall take effect and be in full force on the thirtieth day from and after its second reading and adoption.

Presented by

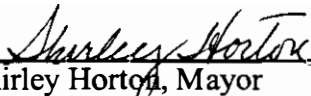
Approved as to form by

  
John E. Lippitt  
Public Works Director

  
John M. Kaheny  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 24<sup>th</sup> day of October, by the following vote:

AYES:	Councilmembers:	Davis, Moot, Padilla, Salas and Horton
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

  
\_\_\_\_\_  
Shirley Horton, Mayor

ATTEST:

  
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Susan Bigelow, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2827 had its first reading at a regular meeting held on the 17<sup>th</sup> day of October, 2000 and its second reading and adoption at a regular meeting of said City Council held on the 24<sup>th</sup> day of October, 2000.

Executed this 24<sup>th</sup> day of October, 2000

  
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Susan Bigelow, City Clerk