# Legislation Details (With Text)

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| **Title:** | ***BILL NO. B-15 - (Intro. 6/13/2019) (For adoption) - Amending portions of the City Purchasing, Contracts and Sales Ordinance to update Chapter 4, Article 5 of the Fresno Municipal Code - Design Build Contracts to include qualification based methods of procurement. (Subject to Mayor's veto) | | | | |
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| 6/20/2019 | 1 | City Council | adopted | |

## REPORT TO THE CITY COUNCIL

**June 20, 2019**

**FROM:** KEVIN R. MEIKLE, Director of Aviation
Airports Department

## SUBJECT

***BILL NO. B-15 - (Intro. 6/13/2019) (For adoption) - Amending portions of the City Purchasing, Contracts and Sales Ordinance to update Chapter 4, Article 5 of the Fresno Municipal Code - Design Build Contracts to include qualification based methods of procurement. (Subject to Mayor's veto)

## RECOMMENDATION

Staff recommends City Council consider for introduction and adoption an Ordinance revising Section 4-502 of the Fresno Municipal Code (FMC), Chapter 4, Article 5 - Design-Build Contracts.

## EXECUTIVE SUMMARY

The revised Ordinance will update the City's available procurement methods to include design-build entity selection based on qualifications (Section 4-502 (d)).

This competitive procurement method brings together a design-build team to work collaboratively with City early in the life of the project. This allows the City to progress towards a design and

contract price with the team, which facilitates ownership and commitment by all parties involved, provides a high degree of cost and schedule certainty, and serves to maximize performance. Through this process the City defines its goals and selects the best design-build team to meet those goals through a solicitation process based on qualifications, capabilities and experience.

The selected team will then collaborate with the City to deliver the project in two distinct phases. Phase One includes budget-level design development, preconstruction services and the development of a firm contract price and schedule. Phase Two progresses through final design and construction for the agreed upon contract price and schedule.

## BACKGROUND

Over the years, Design-build project delivery methods have evolved to provide a more collaborative project execution to improve cost and schedule uncertainty and quality. These changes include, (i) involving the contractor from the inception of the design phase of the project, (ii) allocating more risk to the contractor which provides a higher degree of cost and schedule certainty, and, (iii) reducing the potential for litigation by promoting ownership and collaboration. Qualification based procurement can also provide opportunities to accelerate project schedules and to increase innovation. This progressive type of design-build method provides the flexibility to define the project based on available funds, select a contractor based on qualifications and other factors, and negotiate a contract that is structured around the project's priorities.

Core features include the following:

- The designer and builder are retained by the City early in the life of the project and, in some cases, before the design has been developed at all.
- The designer and builder are selected primarily on qualifications with the final project cost and schedule established during the design and preconstruction efforts.
- The City, designer and builder collaborate to deliver the project in two distinct phases with: (a) Phase One including budget level design development, preconstruction services and the negotiation of a firm contract price (either lump sum or guaranteed maximum price) for Phase Two; and (b) Phase Two including final design, construction and commissioning. The parties typically enter into separate contracts for each phase of work.

Once a design-build team is selected, a design and preconstruction services contract is negotiated for Phase One Services, also called Preliminary or Preconstruction Services. The design-build team first collaborates with the City and its consultants to create or confirm the project's basis of design, programming requirements and then advances that design. Design and other project decisions are based on cost, schedule, quality, operability, life cycle and other considerations, with the design-build team providing ongoing, transparent cost estimates to ensure that the City's budgetary requirements are being achieved. At the point in time where the design has been advanced to an appropriate level of definition that aligns with the owner's requirements (usually 60 to 90 percent design), the design-build team will provide a formal commercial proposal (including the overall contract price) for Phase Two services. If, for any reason, the parties cannot reach agreement on the Phase Two commercial terms, then the City may exercise an "off-ramp" option allowing the City to use the design and move forward with the project through another procurement method.

A second contract will then be executed for Phase Two Services, also called Final Design and Construction Services. When the City and design-build team agree upon commercial terms

(including the project's price and schedule), the design-build team will complete the design and construction of the facility in accordance with those commercial terms. The design-build team will also be responsible for any testing, commissioning, and other services that have been agreed upon.

The types of projects that can benefit from this type of procurement and delivery method are larger projects with multiple and/or complex systems. Examples include Terminal 2 and 3 at San Francisco International Airport; Parking Plaza at San Diego International Airport; Water and Wastewater facilities in Jacksonville, FL and Kansas City, MO; I-270 Corridor in Maryland; and Palomar, CA Junior College Maintenance and Operations Complex.

As with any design-build, the fundamental procurement objective is to select the right team that will, (i) work collaboratively with the City, (ii) offer the best chance to meet the City's project goals and required outcomes, and, (iii) is trustworthy, fair, qualified and transparent. This proposed Ordinance change will provide an additional competitive design-build project delivery method that meets these objectives.

## ENVIRONMENTAL FINDINGS

Pursuant to CEQA Guidelines Section 15378, this is not a "project" for the purposes of CEQA.

## LOCAL PREFERENCE

Local preference does not apply because the proposed Ordinance amending the FMC does not include a bid or award of a construction or services contract.

## FISCAL IMPACT

The proposed Ordinance produces no fiscal impact to the General Fund from this item. Future projects delivered using a progressive design-build approach, which is focused on achieving a desired outcome within budget, will likely see a significant reduction in cost and schedule overruns.

Attachment:

- Ordinance for Introduction