

AMENDED IN SENATE MARCH 21, 2023

SENATE BILL

No. 706

Introduced by Senator Caballero

February 16, 2023

An act to amend Sections ~~22170, 22171, 22170~~ and 22172.5 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 706, as amended, Caballero. Public contracts: progressive design-build: local agencies.

Existing law authorizes the Director of General Services to use the progressive design-build procurement process for the construction of up to 3 capital outlay projects, as jointly determined by the Department of General Services and the Department of Finance, and prescribes that process. Existing law defines "progressive design-build" as a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project.

Existing law, until January 1, 2029, authorizes local agencies, defined as any city, county, city and county, or special district authorized by law to provide for the production, storage, supply, treatment, or distribution of any water from any source, to use the progressive design-build process for up to 15 public works projects in excess of \$5,000,000 for each project, similar to the progressive design-build process authorized for use by the Director of General Services.

Existing law requires a local agency that uses the progressive design-build process to submit, no later than January 1, 2028, to the appropriate policy and fiscal committees of the Legislature a report on the use of the progressive design-build process containing specified

information, including a description of the projects awarded using the progressive design-build process. Existing law requires the design-build entity and its general partners or joint venture members to verify specified information under penalty of perjury.

This bill would remove the 15 project maximum and would authorize all cities, counties, city and counties, or special districts to use the progressive design-build process for other projects in addition to water-related projects. The bill would change the required reporting date to no later than December 31, 2028.

By expanding the projects that may use the progressive design-build process and thus expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 22170 of the Public Contract Code, as
 2 ~~added by Section 1 of Chapter 243 of the Statutes of 2022~~, is
 3 amended to read:
 4 22170. For purposes of this chapter, the following definitions
 5 apply:
 6 (a) (1) “Best value” means a value determined by evaluation
 7 of objective criteria that may include, but are not limited to, price,
 8 features, function, life-cycle costs, experience, and past
 9 performance.
 10 (2) A best value determination may involve the selection of the
 11 lowest cost proposal meeting the interests of the local agency and
 12 the objectives of the project.
 13 (b) “Construction subcontract” means each subcontract awarded
 14 by the design-build entity to a subcontractor that will perform work
 15 or labor or render service to the design-build entity in or about the
 16 construction of the work or improvement, or a subcontractor
 17 licensed by the State of California that, under subcontract to the
 18 design-build entity, specially fabricates and installs a portion of

1 the work or improvement according to detailed drawings contained
2 in the plans and specifications produced by the design-build team.

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

8 (d) “Design-build project” means any project using the
9 progressive design-build construction procurement process
10 described in this chapter.

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

16 (f) “Guaranteed maximum price” means the maximum payment
17 amount agreed upon by the local agency and the design-build entity
18 for the design-build entity to finish all remaining design,
19 preconstruction, and construction activities sufficient to complete
20 and close out the project.

21 (g) “Local agency” means a city, county, city and county, or
22 special district.

23 (h) “Progressive design-build” means a project delivery process
24 in which both the design and construction of a project are procured
25 from a single entity that is selected through a qualifications-based
26 selection at the earliest feasible stage of the project.

27 (i) “Qualifications-based selection” means the process by which
28 the local agency solicits for services from the design-build entities
29 and that price is not the sole factor as the basis of award.

30 ~~SEC. 2.— Section 22171 of the Public Contract Code, as added
31 by Section 1 of Chapter 243 of the Statutes of 2022, is amended
32 to read:~~

33 ~~22171. A local agency may procure progressive design-build
34 contracts and use the progressive design-build contracting process
35 described in this chapter for public works projects in excess of
36 five million dollars (\$5,000,000) for each project.~~

37 ~~SEC. 3.~~

38 ~~SEC. 2. Section 22172.5 of the Public Contract Code, as added
39 by Section 1 of Chapter 243 of the Statutes of 2022, is amended
40 to read:~~

1 22172.5. (a) Notwithstanding Section 10231.5 of the
2 Government Code, no later than December 31, 2028, a local agency
3 that uses the progressive design-build process pursuant to this
4 chapter shall submit to the appropriate policy and fiscal committees
5 of the Legislature a report on the use of the progressive
6 design-build process.

7 (b) The report shall include, but is not limited to, the following
8 information:

9 (1) A description of the project or projects awarded using the
10 progressive design-build process.

11 (2) The contract award amounts.

12 (3) The design-build entities awarded the project or projects.

13 (4) A description of any written protests concerning any aspect
14 of the solicitation, bid, or award of the contracts, including the
15 resolution of the protests.

16 (5) A description of the prequalification process.

17 (6) The number of specialty subcontractors listed by construction
18 trade type, on each project, that provided design services, but did
19 not meet the target price for their scope of work, and therefore did
20 not perform construction services on that project.

21 (7) Whether or not any portion of a design prepared by the
22 specialty subcontractor that did not perform the construction work
23 for that design was used by the local agency.

24 (8) The number of specialty subcontractors listed by construction
25 trade type, on each project, that meet the definition of a small
26 business, as specified in paragraph (1) of subdivision (d) of Section
27 14837 of the Government Code.

28 (9) The number of specialty subcontractors listed by construction
29 trade type, on each project, that meet the definition of a
30 microbusiness, as specified in paragraph (2) of subdivision (d) of
31 Section 14837 of the Government Code.

32 (10) If a project awarded under this chapter has been completed,
33 an assessment of the project performance, including, but not limited
34 to, a summary of any delays or cost increases.

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

38 ~~SEC. 4.~~

39 *SEC. 3.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O