

AMENDED IN SENATE MAY 2, 2013
AMENDED IN SENATE APRIL 23, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 785

Introduced by Senator Wolk

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2 of Division 2 of, to add Chapter 4 (commencing with Section 22160) to Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section ~~20360~~) of 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. The bill would require specified

information to be verified under penalty of perjury. By 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. It is the intent of the Legislature to consolidate
2 existing design-build statutes and eliminate inconsistencies in
3 statutory language by adopting authority of general application to
4 identified agencies and repealing superseded sections.

5 SEC. 2. Section 14661 of the Government Code is repealed.

6 SEC. 3. Section 14661.1 of the Government Code is repealed.

7 SEC. 4. Section 32132.5 of the Health and Safety Code is
8 amended to read:

9 32132.5. (a) Notwithstanding Section 32132 or any other law,
10 upon approval by the board of directors of the Sonoma Valley
11 Health Care District, the design-build procedure described in
12 ~~Article 6 (commencing with Section 10186) of Chapter 1 of Part~~
13 ~~2 Chapter 4 (commencing with Section 22160) of Part 3~~ of Division
14 2 of the Public Contract Code may be used to assign contracts for
15 the construction of a building or improvements directly related to
16 construction of a hospital or health facility building at the Sonoma
17 Valley Hospital.

18 (b) For purposes of this section, all references in ~~Article 6~~
19 ~~(commencing with Section 10186) of Chapter 1 of Part 2 Chapter~~
20 ~~4 (commencing with Section 22160) of Part 3~~ of Division 2 of the
21 Public Contract Code to “county” and “governing body” shall
22 mean the Sonoma Valley Health Care District.

23 (c) A hospital building project utilizing the design-build process
24 authorized by subdivision (a) shall be reviewed and inspected in
25 accordance with the standards and requirements of the Alfred E.
26 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
27 (commencing with Section 129675) of Part 7 of Division 107).

1 SEC. 5. Article 6 (commencing with Section 10186) is added
2 to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,
3 to read:

4
5 Article 6. State Agency Design-Build Projects
6

7 10186. (a) The Legislature finds and declares that the
8 design-build method of project delivery, using a best value
9 procurement methodology, has been authorized for various
10 agencies that have reported benefits from such projects including
11 reduced project costs, expedited project completion, and design
12 features that are not achievable through the traditional
13 design-bid-build method.

14 (b) It is the intent of the Legislature that the following occur:

15 (1) This article provides general authorization for certain state
16 agencies to use design-build for projects, excluding projects on
17 the state highway system.

18 (2) This article shall not be deemed to provide a preference for
19 the design-build method over other procurement methodologies.

20 10187. For purposes of this article, the following definitions
21 apply:

22 (a) “Best value” means a value determined by evaluation of
23 objective criteria related to price, features, functions, life cycle
24 costs, experience, and past performance. A best value determination
25 may entail selection of the lowest priced technically acceptable
26 proposals or selection of the best proposal for a fixed price
27 established by the procuring agency, or it may consist of a tradeoff
28 between price and other specified factors.

29 (b) “Construction subcontract” means each subcontract awarded
30 by the design-build entity to a subcontractor that will perform work
31 or labor or render service to the design-build entity in or about the
32 construction of the work or improvement, or a subcontractor
33 licensed by the State of California that, under subcontract to the
34 design-build entity, specially fabricates and installs a portion of
35 the work or improvement according to detailed drawings contained
36 in the plans and specifications produced by the design-build team.

37 (c) “Department” means the Department of General Services
38 and the Department of Corrections and Rehabilitation.

1 (d) “Design-build” means a project delivery process in which
2 both the design and construction of a project are procured from a
3 single entity.

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

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

14 (g) “Director” means, with respect to procurements undertaken
15 by the Department of General Services, the Director of General
16 Services or, with respect to procurements undertaken by the
17 Department of Corrections and Rehabilitation, the secretary of that
18 department.

19 10188. (a) Notwithstanding any other law, the director,
20 following notification to the State Public Works Board, may
21 procure design-build contracts for public works projects in excess
22 of one million dollars (\$1,000,000), awarding the contract using
23 either the low bid or best value, provided that this article shall not
24 apply to any projects on the state highway system.

25 (b) The director shall develop guidelines for a standard
26 organizational conflict-of-interest policy, consistent with applicable
27 law, regarding the ability of a person or entity, that performs
28 services for the department relating to the solicitation of a
29 design-build project, to submit a proposal as a design-build entity,
30 or to join a design-build team. This conflict-of-interest policy shall
31 apply to each department entering into design-build contracts
32 authorized under this article.

33 10189. (a) For contracts for public works projects awarded on
34 or after the effective date of the regulations adopted by the
35 Department of Industrial Relations pursuant to subdivision (g) of
36 Section 1771.5 of the Labor Code, the department shall reimburse
37 the Department of Industrial Relations for its reasonable and
38 directly related costs of performing prevailing wage monitoring
39 and enforcement on public works projects pursuant to rates
40 established by the department as set forth in subdivision (h) of

1 Section 1771.5 of the Labor Code. All moneys collected pursuant
2 to this subdivision shall be deposited in the State Public Works
3 Enforcement Fund, created by Section 1771.3 of the Labor Code,
4 and shall, subject to appropriation by the Legislature, be used only
5 for enforcement of prevailing wage requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations
7 for its reasonable and directly related costs of performing
8 monitoring and enforcement on public works projects, the
9 department may elect to continue operating an existing previously
10 approved labor compliance program to monitor and enforce
11 prevailing wage requirements on the project if it has either not
12 contracted with a third party to conduct its labor compliance
13 program and requests and receives approval from the department
14 to continue its existing program or it enters into a collective
15 bargaining agreement that binds all of the contractors performing
16 work on the project and that includes a mechanism for resolving
17 disputes about the payment of wages.

18 10190. The director shall notify the State Public Works Board
19 regarding the method to be used for selecting the design-build
20 entity, prior to advertising the design-build project.

21 10191. The procurement process for the design-build projects
22 shall progress as follows:

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

33 (2) The documents shall not include a design-build-operate
34 contract for any project.

35 (b) Based on the documents prepared under subdivision (a), the
36 director shall prepare and issue a request for qualifications in order
37 to prequalify or short-list the design-build entities whose proposals
38 shall be evaluated for final selection. The request for qualifications
39 shall include, but need not be limited to, the following elements:

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

7 (2) (A) Significant factors that the department reasonably
8 expects to consider in evaluating qualifications, including technical
9 design and construction expertise, skilled labor force availability,
10 and all other nonprice-related factors.

11 (B) For purposes of subparagraph (A), skilled labor force
12 availability shall be deemed satisfied by the existence of an
13 agreement with a registered apprenticeship program, approved by
14 the California Apprenticeship Council, that has graduated at least
15 one apprentice in each of the preceding five years. This graduation
16 requirement shall not apply to programs providing apprenticeship
17 training for any craft that was first deemed by the federal
18 Department of Labor and the Department of Industrial Relations
19 to be an apprenticeable craft within the five years prior to the
20 effective date of this article.

21 (3) A standard template request for statements of qualifications
22 prepared by the department. In preparing the standard template,
23 the department may consult with the construction industry, the
24 building trades and surety industry, and other agencies interested
25 in using the authorization provided by this article. The template
26 shall require the following information:

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

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

1 (C) The licenses, registration, and credentials required to design
2 and construct the project, including, but not limited to, information
3 on the revocation or suspension of any license, credential, or
4 registration.

5 (D) Evidence that establishes that the design-build entity has
6 the capacity to obtain all required payment and performance
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited
11 liability company, partnership, joint venture, or other legal entity,
12 a copy of the organizational documents or agreement committing
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record
15 shall be deemed acceptable if its experience modification rate for
16 the most recent three-year period is an average of 1.00 or less, and
17 its average total recordable injury or illness rate and average lost
18 work rate for the most recent three-year period does not exceed
19 the applicable statistical standards for its business category or if
20 the proposer is a party to an alternative dispute resolution system
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall
23 be certified under penalty of perjury by the design-build entity and
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not
26 otherwise a public record under the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code) shall not be open to public
29 inspection.

30 (c) Based on the documents prepared as described in subdivision
31 (a), the director shall prepare a request for proposals that invites
32 prequalified or short-listed entities to submit competitive sealed
33 proposals in the manner prescribed by the department. The request
34 for proposals shall include, but need not be limited to, the following
35 elements:

36 (1) Identification of the basic scope and needs of the project or
37 contract, the estimated cost of the project, the methodology that
38 will be used by the department to evaluate proposals, whether the
39 contract will be awarded on the basis of low bid or best value, and

1 any other information deemed necessary by the department to
2 inform interested parties of the contracting opportunity.

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

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

8 (4) Where a best value selection method is used, the department
9 may reserve the right to request proposal revisions and hold
10 discussions and negotiations with responsive proposers, in which
11 case the department shall so specify in the request for proposals
12 and shall publish separately or incorporate into the request for
13 proposals applicable procedures to be observed by the department
14 to ensure that any discussions or negotiations are conducted in
15 good faith.

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

21 (e) For those projects utilizing best value as a selection method,
22 the design-build competition shall progress as follows:

23 (1) Competitive proposals shall be evaluated by using only the
24 criteria and selection procedures specifically identified in the
25 request for proposals.

26 (2) Pursuant to subdivision (c), the department may hold
27 discussions or negotiations with responsive proposers using the
28 process articulated in the department's request for proposals.

29 (3) When the evaluation is complete, the responsive proposers
30 shall be ranked based on a determination of value provided,
31 provided that no more than three proposers are required to be
32 ranked.

33 (4) The award of the contract shall be made to the responsible
34 design-build entity whose proposal is determined by the director
35 to have offered the best value to the public.

36 (5) Notwithstanding any other provision of this code, upon
37 issuance of a contract award, the director shall publicly announce
38 its award, identifying the design-build entity to which the award
39 is made, along with a written decision supporting its contract award
40 and stating the basis of the award.

1 (6) The written decision supporting the director’s contract award,
2 described in paragraph (5), and the contract file shall provide
3 sufficient information to satisfy an external audit.

4 10192. (a) The design-build entity shall provide payment and
5 performance bonds for the project in the form and in the amount
6 required by the director, and issued by a California admitted surety.
7 The amount of the payment bond shall not be less than the amount
8 of the performance bond.

9 (b) The design-build contract shall require errors and omissions
10 insurance coverage for the design elements of the project.

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

13 10193. (a) The department, in each design-build request for
14 proposals, may identify specific types of subcontractors that must
15 be included in the design-build entity statement of qualifications
16 and proposal. All construction subcontractors that are identified
17 in the proposal shall be afforded all the protections of Chapter 4
18 (commencing with Section 4100) of Part 1.

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

23 (1) Provide public notice of availability of work to be
24 subcontracted in accordance with the publication requirements
25 applicable to the competitive bidding process of the department,
26 including a fixed date and time on which qualifications statements,
27 bids, or proposals will be due.

28 (2) Establish reasonable qualification criteria and standards.

29 (3) Award the subcontract either on a best value basis or to the
30 lowest responsible bidder. The process may include prequalification
31 or short-listing. The foregoing process does not apply to
32 construction subcontractors listed in the original proposal.
33 Subcontractors awarded construction subcontracts under this
34 subdivision shall be afforded all the protections of Chapter 4
35 (commencing with Section 4100) of Part 1.

36 10194. (a) If the department elects to award a project pursuant
37 to this article, retention proceeds withheld by the department from
38 the design-build entity shall not exceed 5 percent if a performance
39 and payment bond, issued by an admitted surety insurer, is required
40 in the solicitation of bids.

1 (b) In a contract between the design-build entity and a
 2 subcontractor, and in a contract between a subcontractor and any
 3 subcontractor thereunder, the percentage of the retention proceeds
 4 withheld may not exceed the percentage specified in the contract
 5 between the department and the design-build entity. If the
 6 design-build entity provides written notice to any subcontractor
 7 that is not a member of the design-build entity, prior to or at the
 8 time the bid is requested, that a bond may be required and the
 9 subcontractor subsequently is unable or refuses to furnish a bond
 10 to the design-build entity, then the design build entity may withhold
 11 retention proceeds in excess of the percentage specified in the
 12 contract between the department and the design-build entity from
 13 any payment made by the design-build entity to the subcontractor.

14 10195. Nothing in this article affects, expands, alters, or limits
 15 any rights or remedies otherwise available at law.

16 SEC. 6. Section 20133 of the Public Contract Code is repealed.

17 SEC. 7. Section 20175.2 of the Public Contract Code is
 18 repealed.

19 SEC. 8. Section 20193 of the Public Contract Code is repealed.

20 SEC. 9. Section 20209 of the Public Contract Code is repealed.

21 SEC. 10. Section 20301.5 of the Public Contract Code is
 22 repealed.

23 SEC. 11. Article 22 (commencing with Section 20360) of
 24 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
 25 repealed.

26 SEC. 12. Section 20688.6 of the Public Contract Code is
 27 repealed.

28 SEC. 13. Chapter 4 (commencing with Section 22160) is added
 29 to Part 3 of Division 2 of the Public Contract Code, to read:

30

31 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS

32

33 22160. (a) The Legislature finds and declares that the
 34 design-build method of project delivery, using a best value
 35 procurement methodology, has been authorized for various
 36 agencies that have reported benefits from such projects including
 37 reduced project costs, expedited project completion, and design
 38 features that are not achievable through the traditional
 39 design-bid-build method.

40 (b) It is the intent of the Legislature that the following occur:

1 (1) This ~~article~~ *chapter* provides general authorization for local
2 agencies to use design-build for projects, excluding projects on
3 the state highway system.

4 (2) This ~~article~~ *chapter* shall not be deemed to provide a
5 preference for the design-build method over other procurement
6 methodologies.

7 22161. For purposes of this ~~article~~ *chapter*, the following
8 definitions apply:

9 (a) “Best value” means a value determined by evaluation of
10 objective criteria related to price, features, functions, life cycle
11 costs, experience, and past performance. A best value determination
12 may entail selection of the lowest priced technically acceptable
13 proposal or selection of the best proposal for a fixed price
14 established by the procuring agency, or it may consist of a tradeoff
15 between price and other specified factors.

16 (b) “Construction subcontract” means each subcontract awarded
17 by the design-build entity to a subcontractor that will perform work
18 or labor or render service to the design-build entity in or about the
19 construction of the work or improvement, or a subcontractor
20 licensed by the State of California that, under subcontract to the
21 design-build entity, specially fabricates and installs a portion of
22 the work or improvement according to detailed drawings contained
23 in the plans and specifications produced by the design-build team.

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

27 (d) “Design-build entity” means a corporation, limited liability
28 company, partnership, joint venture, or other legal entity that is
29 able to provide appropriately licensed contracting, architectural,
30 and engineering services as needed pursuant to a design-build
31 contract.

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

37 (f) “Local agency” means the following:

38 (1) A city, county, or city and county.

39 (2) A special district that operates wastewater facilities, solid
40 waste management facilities, or water recycling facilities.

1 (3) Any transit district, included transit district, municipal
 2 operator, included municipal operator, or transit development
 3 board, as defined in Section 99210 of the Public Utilities Code, or
 4 a consolidated agency, as defined in Section 132353.1 of the Public
 5 Utilities Code, or any joint powers authority formed to provide
 6 transit service.

7 (g) (1) For a local agency defined in paragraph (1) of
 8 subdivision (f), “project” means the construction of a building and
 9 improvements directly related to the construction of a building,
 10 and county sanitation wastewater treatment facilities, but does not
 11 include the construction of other infrastructure, including, but not
 12 limited to, streets and highways, public rail transit, or water
 13 resources facilities and infrastructure. For a local agency defined
 14 in paragraph (1) of subdivision (f) that operates wastewater
 15 facilities, solid waste management facilities, or water recycling
 16 facilities, “project” also means the construction of regional and
 17 local wastewater treatment facilities, regional and local solid waste
 18 facilities, or regional and local water recycling facilities.

19 (2) For a local agency defined in paragraph (2) of subdivision
 20 (f), “project” means the construction of regional and local
 21 wastewater treatment facilities, regional and local solid waste
 22 facilities, or regional and local water recycling facilities.

23 (3) For a local agency defined in paragraph (3) of subdivision
 24 (f), “project” means a transit capital project.

25 22162. (a) Notwithstanding any other law, a local agency,
 26 with approval of its governing body, may procure design-build
 27 contracts for public works projects in excess of one million dollars
 28 (\$1,000,000), awarding the contract either the low bid or the best
 29 value, provided that this article shall not apply to any projects on
 30 the state highway system.

31 (b) The local agency shall develop guidelines for a standard
 32 organizational conflict-of-interest policy, consistent with applicable
 33 law, regarding the ability of a person or entity, that performs
 34 services for the local agency relating to the solicitation of a
 35 design-build project, to submit a proposal as a design-build entity,
 36 or to join a design-build team. This conflict-of-interest policy shall
 37 apply to each local agency entering into design-build contracts
 38 authorized under this article.

39 22163. (a) For contracts for public works projects awarded on
 40 or after the effective date of the regulations adopted by the

1 Department of Industrial Relations pursuant to subdivision (g) of
2 Section 1771.5 of the Labor Code, the local agency shall reimburse
3 the department for its reasonable and directly related costs of
4 performing prevailing wage monitoring and enforcement on public
5 works projects pursuant to rates established by the department as
6 set forth in subdivision (h) of Section 1771.5 of the Labor Code.
7 All moneys collected pursuant to this subdivision shall be deposited
8 in the State Public Works Enforcement Fund, created by Section
9 1771.3 of the Labor Code, and shall, subject to appropriation by
10 the Legislature, be used only for enforcement of prevailing wage
11 requirements on those projects.

12 (b) In lieu of reimbursing the Department of Industrial Relations
13 for its reasonable and directly related costs of performing
14 monitoring and enforcement on public works projects, the local
15 agency may elect to continue operating an existing previously
16 approved labor compliance program to monitor and enforce
17 prevailing wage requirements on the project if it has either not
18 contracted with a third party to conduct its labor compliance
19 program and requests and receives approval from the department
20 to continue its existing program or it enters into a collective
21 bargaining agreement that binds all of the contractors performing
22 work on the project and that includes a mechanism for resolving
23 disputes about the payment of wages.

24 22164. The procurement process for the design-build projects
25 shall progress as follows:

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

36 (2) The documents shall not include a design-build-operate
37 contract for any project.

38 (b) Based on the documents prepared under subdivision (a), the
39 local agency shall prepare and issue a request for qualifications in
40 order to prequalify or short-list the design-build entities whose

1 proposals shall be evaluated for final selection. The request for
2 qualifications shall include, but need not be limited to, the
3 following elements:

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

10 (2) (A) Significant factors that the local agency reasonably
11 expects to consider in evaluating qualifications, including technical
12 design and construction expertise, skilled labor force availability,
13 and all other nonprice-related factors.

14 (B) For purposes of subparagraph (A), skilled labor force
15 availability shall be deemed satisfied by the existence of an
16 agreement with a registered apprenticeship program, approved by
17 the California Apprenticeship Council, that has graduated at least
18 one apprentice in each of the preceding five years. This graduation
19 requirement shall not apply to programs providing apprenticeship
20 training for any craft that was first deemed by the federal
21 Department of Labor and the Department of Industrial Relations
22 to be an apprenticeable craft within the five years prior to the
23 effective date of this article.

24 (3) A standard template request for statements of qualifications
25 prepared by the local agency. In preparing the standard template,
26 the local agency may consult with the construction industry, the
27 building trades and surety industry, and other local agencies
28 interested in using the authorization provided by this article. The
29 template shall require the following information:

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

35 (B) Evidence that the members of the design-build team have
36 completed, or demonstrated the experience, competency, capability,
37 and capacity to complete projects of similar size, scope, or
38 complexity, and that proposed key personnel have sufficient
39 experience and training to competently manage and complete the
40 design and construction of the project, and a financial statement

1 that ensures that the design-build entity has the capacity to
2 complete the project.

3 (C) The licenses, registration, and credentials required to design
4 and construct the project, including, but not limited to, information
5 on the revocation or suspension of any license, credential, or
6 registration.

7 (D) Evidence that establishes that the design-build entity has
8 the capacity to obtain all required payment and performance
9 bonding, liability insurance, and errors and omissions insurance.

10 (E) Information concerning workers' compensation experience
11 history and a worker safety program.

12 (F) If the proposed design-build entity is a corporation, limited
13 liability company, partnership, joint venture, or other legal entity,
14 a copy of the organizational documents or agreement committing
15 to form the organization.

16 (G) An acceptable safety record. A proposer's safety record
17 shall be deemed acceptable if its experience modification rate for
18 the most recent three-year period is an average of 1.00 or less, and
19 its average total recordable injury or illness rate and average lost
20 work rate for the most recent three-year period does not exceed
21 the applicable statistical standards for its business category or if
22 the proposer is a party to an alternative dispute resolution system
23 as provided for in Section 3201.5 of the Labor Code.

24 (4) (A) The information required under this subdivision shall
25 be certified under penalty of perjury by the design-build entity and
26 its general partners or joint venture members.

27 (B) Information required under this subdivision that is not
28 otherwise a public record under the California Public Records Act
29 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
30 Title 1 of the Government Code) shall not be open to public
31 inspection.

32 (c) Based on the documents prepared as described in subdivision
33 (a), the local agency shall prepare a request for proposals that
34 invites prequalified or short-listed entities to submit competitive
35 sealed proposals in the manner prescribed by the local agency.
36 The request for proposals shall include, but need not be limited
37 to, the following elements:

38 (1) Identification of the basic scope and needs of the project or
39 contract, the estimated cost of the project, the methodology that
40 will be used by the local agency to evaluate proposals, whether

1 the contract will be awarded on the basis of low bid or best value,
2 and any other information deemed necessary by the local agency
3 to inform interested parties of the contracting opportunity.

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

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

9 (4) Where a best value selection method is used, the local agency
10 may reserve the right to request proposal revisions and hold
11 discussions and negotiations with responsive proposers, in which
12 case the local agency shall so specify in the request for proposals
13 and shall publish separately or incorporate into the request for
14 proposals applicable procedures to be observed by the local agency
15 to ensure that any discussions or negotiations are conducted in
16 good faith.

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

22 (e) For those projects utilizing best value as a selection method,
23 the design-build competition shall progress as follows:

24 (1) Competitive proposals shall be evaluated by using only the
25 criteria and selection procedures specifically identified in the
26 request for proposals.

27 (2) Pursuant to subdivision (c), the local agency may hold
28 discussions or negotiations with responsive proposers using the
29 process articulated in the local agency's request for proposals.

30 (3) When the evaluation is complete, the responsive proposers
31 shall be ranked based on a determination of value provided,
32 provided that no more than three proposers are required to be
33 ranked.

34 (4) The award of the contract shall be made to the responsible
35 design-build entity whose proposal is determined by the local
36 agency to have offered the best value to the public.

37 (5) Notwithstanding any other provision of this code, upon
38 issuance of a contract award, the local agency shall publicly
39 announce its award, identifying the design-build entity to which

1 the award is made, along with a written decision supporting its
2 contract award and stating the basis of the award.

3 (6) The written decision supporting the local agency's contract
4 award, described in paragraph (5), and the contract file shall
5 provide sufficient information to satisfy an external audit.

6 22165. (a) The design-build entity shall provide payment and
7 performance bonds for the project in the form and in the amount
8 required by the local agency, and issued by a California admitted
9 surety. The amount of the payment bond shall not be less than the
10 amount of the performance bond.

11 (b) The design-build contract shall require errors and omissions
12 insurance coverage for the design elements of the project.

13 (c) The local agency shall develop a standard form of payment
14 and performance bond for its design-build projects.

15 22166. (a) The local agency, in each design-build request for
16 proposals, may identify specific types of subcontractors that must
17 be included in the design-build entity statement of qualifications
18 and proposal. All construction subcontractors that are identified
19 in the proposal shall be afforded all the protections of Chapter 4
20 (commencing with Section 4100) of Part 1.

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

25 (1) Provide public notice of availability of work to be
26 subcontracted in accordance with the publication requirements
27 applicable to the competitive bidding process of the local agency,
28 including a fixed date and time on which qualifications statements,
29 bids, or proposals will be due.

30 (2) Establish reasonable qualification criteria and standards.

31 (3) Award the subcontract either on a best value basis or to the
32 lowest responsible bidder. The process may include prequalification
33 or short-listing. The foregoing process does not apply to
34 construction subcontractors listed in the original proposal.
35 Subcontractors awarded construction subcontracts under this
36 subdivision shall be afforded all the protections of Chapter 4
37 (commencing with Section 4100) of Part 1.

38 22167. (a) If the local agency elects to award a project pursuant
39 to this article, retention proceeds withheld by the local agency
40 from the design-build entity shall not exceed 5 percent if a

1 performance and payment bond, issued by an admitted surety
2 insurer, is required in the solicitation of bids.

3 (b) In a contract between the design-build entity and a
4 subcontractor, and in a contract between a subcontractor and any
5 subcontractor thereunder, the percentage of the retention proceeds
6 withheld may not exceed the percentage specified in the contract
7 between the local agency and the design-build entity. If the
8 design-build entity provides written notice to any subcontractor
9 that is not a member of the design-build entity, prior to or at the
10 time the bid is requested, that a bond may be required and the
11 subcontractor subsequently is unable or refuses to furnish a bond
12 to the design-build entity, then the design-build entity may withhold
13 retention proceeds in excess of the percentage specified in the
14 contract between the local agency and the design-build entity from
15 any payment made by the design-build entity to the subcontractor.

16 22168. Nothing in this article affects, expands, alters, or limits
17 any rights or remedies otherwise available at law.

18 SEC. 14. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.