

AMENDED IN ASSEMBLY JUNE 17, 2014
AMENDED IN SENATE JANUARY 14, 2014
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
(Principal coauthor: Assembly Member Levine)

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 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 authorize the Marin Healthcare District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Marin General Hospital. 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.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Marin Healthcare District.

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 or the Marin Healthcare District, as applicable,
- 12 the design-build procedure described in Chapter 4 (commencing
- 13 with Section 22160) of Part 3 of Division 2 of the Public Contract
- 14 Code may be used to assign contracts for the construction of a
- 15 building or improvements directly related to construction of a
- 16 hospital or health facility building at the Sonoma Valley Hospital
- 17 or the Marin General Hospital.

1 (b) For purposes of this section, all references in Chapter 4
2 (commencing with Section 22160) of Part 3 of Division 2 of the
3 Public Contract Code to “local agency” shall mean the Sonoma
4 Valley Health Care District and the Marin Healthcare District.

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

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

13

14 Article 6. State Agency Design-Build Projects

15

16 10186. (a) The Legislature finds and declares that the
17 design-build method of project delivery, using a best value
18 procurement methodology, has been authorized for various
19 agencies that have reported benefits from such projects including
20 reduced project costs, expedited project completion, and design
21 features that are not achievable through the traditional
22 design-bid-build method.

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

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

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

29 10187. For purposes of this article, the following definitions
30 apply:

31 (a) “Best value” means a value determined by evaluation of
32 objective criteria related to price, features, functions, life-cycle
33 costs, experience, and past performance. A best value determination
34 may entail selection of the lowest priced technically acceptable
35 proposals or selection of the best proposal for a fixed price
36 established by the procuring agency, or it may consist of a tradeoff
37 between price and other specified factors.

38 (b) “Construction subcontract” means each subcontract awarded
39 by the design-build entity to a subcontractor that will perform work
40 or labor or render service to the design-build entity in or about the

1 construction of the work or improvement, or a subcontractor
2 licensed by the State of California that, under subcontract to the
3 design-build entity, specially fabricates and installs a portion of
4 the work or improvement according to detailed drawings contained
5 in the plans and specifications produced by the design-build team.

6 (c) “Department” means the Department of General Services
7 and the Department of Corrections and Rehabilitation.

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

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

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

21 (g) “Director” means, with respect to procurements undertaken
22 by the Department of General Services, the Director of General
23 Services or, with respect to procurements undertaken by the
24 Department of Corrections and Rehabilitation, the secretary of that
25 department.

26 10188. (a) Notwithstanding any other law, the director,
27 following notification to the State Public Works Board, may
28 procure design-build contracts for public works projects in excess
29 of one million dollars (\$1,000,000), awarding the contract using
30 either the low bid or best value, provided that this article shall not
31 apply to any projects on the state highway system.

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

1 ~~10189. (a) For contracts for public works projects awarded on~~
2 ~~or after the effective date of the regulations adopted by the~~
3 ~~Department of Industrial Relations pursuant to subdivision (g) of~~
4 ~~Section 1771.5 of the Labor Code, the department shall reimburse~~
5 ~~the Department of Industrial Relations for its reasonable and~~
6 ~~directly related costs of performing prevailing wage monitoring~~
7 ~~and enforcement on public works projects pursuant to rates~~
8 ~~established by the department as set forth in subdivision (h) of~~
9 ~~Section 1771.5 of the Labor Code. All moneys collected pursuant~~
10 ~~to this subdivision shall be deposited in the State Public Works~~
11 ~~Enforcement Fund, created by Section 1771.3 of the Labor Code,~~
12 ~~and shall, subject to appropriation by the Legislature, be used only~~
13 ~~for enforcement of prevailing wage requirements on those projects.~~

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

26 10190. The director shall notify the State Public Works Board
27 regarding the method to be used for selecting the design-build
28 entity, prior to advertising the design-build project.

29 10191. The procurement process for the design-build projects
30 shall progress as follows:

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

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

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

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

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

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

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

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

39 (B) Evidence that the members of the design-build team have
40 completed, or demonstrated the experience, competency, capability,

1 and capacity to complete projects of similar size, scope, or
2 complexity, and that proposed key personnel have sufficient
3 experience and training to competently manage and complete the
4 design and construction of the project, and a financial statement
5 that ensures that the design-build entity has the capacity to
6 complete the project.

7 (C) The licenses, registration, and credentials required to design
8 and construct the project, including, but not limited to, information
9 on the revocation or suspension of any license, credential, or
10 registration.

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

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

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

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

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

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

36 (c) Based on the documents prepared as described in subdivision
37 (a), the director shall prepare a request for proposals that invites
38 prequalified or short-listed entities to submit competitive sealed
39 proposals in the manner prescribed by the department. The request

1 for proposals shall include, but need not be limited to, the following
2 elements:

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

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

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

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

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

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

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

33 (A) *Price.*

34 (B) *Technical design and construction expertise.*

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

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

39 (3) When the evaluation is complete, the responsive proposers
40 shall be ranked based on a determination of value provided,

1 provided that no more than three proposers are required to be
2 ranked.

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

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

11 (6) The written decision supporting the director's contract award,
12 described in paragraph (5), and the contract file shall provide
13 sufficient information to satisfy an external audit.

14 10192. (a) The design-build entity shall provide payment and
15 performance bonds for the project in the form and in the amount
16 required by the director, and issued by a California admitted surety.
17 The amount of the payment bond shall not be less than the amount
18 of the performance bond.

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

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

23 10193. (a) The department, in each design-build request for
24 proposals, may identify specific types of subcontractors that must
25 be included in the design-build entity statement of qualifications
26 and proposal. All construction subcontractors that are identified
27 in the proposal shall be afforded all the protections of Chapter 4
28 (commencing with Section 4100) of Part 1.

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

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

38 (2) Establish reasonable qualification criteria and standards.

39 (3) Award the subcontract either on a best value basis or to the
40 lowest responsible bidder. The process may include prequalification

1 or short-listing. The foregoing process does not apply to
2 construction subcontractors listed in the original proposal.
3 Subcontractors awarded construction subcontracts under this
4 subdivision shall be afforded all the protections of Chapter 4
5 (commencing with Section 4100) of Part 1.

6 10194. (a) If the department elects to award a project pursuant
7 to this article, retention proceeds withheld by the department from
8 the design-build entity shall not exceed 5 percent if a performance
9 and payment bond, issued by an admitted surety insurer, is required
10 in the solicitation of bids.

11 (b) In a contract between the design-build entity and a
12 subcontractor, and in a contract between a subcontractor and any
13 subcontractor thereunder, the percentage of the retention proceeds
14 withheld may not exceed the percentage specified in the contract
15 between the department and the design-build entity. If the
16 design-build entity provides written notice to any subcontractor
17 that is not a member of the design-build entity, prior to or at the
18 time the bid is requested, that a bond may be required and the
19 subcontractor subsequently is unable or refuses to furnish a bond
20 to the design-build entity, then the design-build entity may withhold
21 retention proceeds in excess of the percentage specified in the
22 contract between the department and the design-build entity from
23 any payment made by the design-build entity to the subcontractor.

24 10195. Nothing in this article affects, expands, alters, or limits
25 any rights or remedies otherwise available at law.

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

27 SEC. 7. Section 20175.2 of the Public Contract Code is
28 repealed.

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

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

31 ~~SEC. 10.~~

32 SEC. 9. Section 20301.5 of the Public Contract Code is
33 repealed.

34 ~~SEC. 11.~~

35 SEC. 10. Article 22 (commencing with Section 20360) of
36 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
37 repealed.

38 ~~SEC. 12.~~

39 SEC. 11. Section 20688.6 of the Public Contract Code is
40 repealed.

1 ~~SEC. 13.~~

2 *SEC. 12.* Chapter 4 (commencing with Section 22160) is added
3 to Part 3 of Division 2 of the Public Contract Code, to read:

4
5 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS
6

7 22160. (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 chapter provides general authorization for local agencies
16 to use design-build for projects, excluding projects on the state
17 highway system.

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

20 22161. For purposes of this chapter, 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 proposal 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) “Design-build” means a project delivery process in which
38 both the design and construction of a project are procured from a
39 single entity.

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

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

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

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

13 (2) A special district that operates wastewater facilities, solid
 14 waste management facilities, ~~or~~ water recycling facilities, *or fire*
 15 *protection facilities.*

16 (3) Any transit district, included transit district, municipal
 17 operator, included municipal operator, ~~or transit development~~
 18 ~~board, as defined in Section 99210 of the Public Utilities Code, or~~
 19 ~~a~~ *any* consolidated agency, as ~~defined~~ *described* in Section
 20 132353.1 of the Public Utilities Code, ~~or~~ any joint powers authority
 21 formed to provide transit service, *any county transportation*
 22 *commission created pursuant to Section 130050 of the Public*
 23 *Utilities Code, or any other local or regional agency, responsible*
 24 *for the construction of transit projects.*

25 (g) (1) For a local agency defined in paragraph (1) of
 26 subdivision (f), “project” means the construction of a building *or*
 27 *buildings* and improvements directly related to the construction
 28 of a ~~building~~, *and building or buildings*, county sanitation
 29 wastewater treatment facilities, *and park recreational facilities*,
 30 but does not include the construction of other infrastructure,
 31 including, but not limited to, streets and highways, public rail
 32 transit, or water resources facilities and infrastructure. For a local
 33 agency defined in paragraph (1) of subdivision (f) that operates
 34 wastewater facilities, solid waste management facilities, or water
 35 recycling facilities, “project” also means the construction of
 36 regional and local wastewater treatment facilities, regional and
 37 local solid waste facilities, or regional and local water recycling
 38 facilities.

39 (2) For a local agency defined in paragraph (2) of subdivision
 40 (f), “project” means the construction of regional and local

1 wastewater treatment facilities, regional and local solid waste
2 facilities, ~~or~~ regional and local water recycling facilities, *or fire*
3 *protection facilities.*

4 (3) For a local agency defined in paragraph (3) of subdivision
5 (f), “project” means a transit capital project, *but does not include*
6 *state highway construction or local street and road projects.*

7 22162. (a) Notwithstanding any other law, a local agency,
8 with approval of its governing body, may procure design-build
9 contracts for public works projects in excess of one million dollars
10 (\$1,000,000), awarding the contract either the low bid or the best
11 value, provided that this article shall not apply to any projects on
12 the state highway system.

13 (b) The local agency shall develop guidelines for a standard
14 organizational conflict-of-interest policy, consistent with applicable
15 law, regarding the ability of a person or entity, that performs
16 services for the local agency relating to the solicitation of a
17 design-build project, to submit a proposal as a design-build entity,
18 or to join a design-build team. This conflict-of-interest policy shall
19 apply to each local agency entering into design-build contracts
20 authorized under this article.

21 ~~22163. (a) For contracts for public works projects awarded on~~
22 ~~or after the effective date of the regulations adopted by the~~
23 ~~Department of Industrial Relations pursuant to subdivision (g) of~~
24 ~~Section 1771.5 of the Labor Code, the local agency shall reimburse~~
25 ~~the department for its reasonable and directly related costs of~~
26 ~~performing prevailing wage monitoring and enforcement on public~~
27 ~~works projects pursuant to rates established by the department as~~
28 ~~set forth in subdivision (h) of Section 1771.5 of the Labor Code.~~
29 ~~All moneys collected pursuant to this subdivision shall be deposited~~
30 ~~in the State Public Works Enforcement Fund, created by Section~~
31 ~~1771.3 of the Labor Code, and shall, subject to appropriation by~~
32 ~~the Legislature, be used only for enforcement of prevailing wage~~
33 ~~requirements on those projects.~~

34 ~~(b) In lieu of reimbursing the Department of Industrial Relations~~
35 ~~for its reasonable and directly related costs of performing~~
36 ~~monitoring and enforcement on public works projects, the local~~
37 ~~agency may elect to continue operating an existing previously~~
38 ~~approved labor compliance program to monitor and enforce~~
39 ~~prevailing wage requirements on the project if it has either not~~
40 ~~contracted with a third party to conduct its labor compliance~~

1 ~~program and requests and receives approval from the department~~
2 ~~to continue its existing program or it enters into a collective~~
3 ~~bargaining agreement that binds all of the contractors performing~~
4 ~~work on the project and that includes a mechanism for resolving~~
5 ~~disputes about the payment of wages.~~

6 22164. The procurement process for the design-build projects
7 shall progress as follows:

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

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

20 (b) Based on the documents prepared under subdivision (a), the
21 local agency shall prepare and issue a request for qualifications in
22 order to prequalify or short-list the design-build entities whose
23 proposals shall be evaluated for final selection. The request for
24 qualifications shall include, but need not be limited to, the
25 following elements:

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

32 (2) (A) Significant factors that the local agency reasonably
33 expects to consider in evaluating qualifications, including technical
34 design and construction expertise, skilled labor force availability,
35 *acceptable safety record*, and all other nonprice-related factors.

36 (B) For purposes of subparagraph (A), skilled labor force
37 availability shall be deemed satisfied by the existence of an
38 agreement with a registered apprenticeship program, approved by
39 the California Apprenticeship Council, that has graduated at least
40 one apprentice in each of the preceding five years. This graduation

1 requirement shall not apply to programs providing apprenticeship
2 training for any craft that was first deemed by the federal
3 Department of Labor and the Department of Industrial Relations
4 to be an apprenticeable craft within the five years prior to the
5 effective date of this article.

6 (3) A standard template request for statements of qualifications
7 prepared by the local agency. In preparing the standard template,
8 the local agency may consult with the construction industry, the
9 building trades and surety industry, and other local agencies
10 interested in using the authorization provided by this article. The
11 template shall require the following information:

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

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

25 (C) The licenses, registration, and credentials required to design
26 and construct the project, including, but not limited to, information
27 on the revocation or suspension of any license, credential, or
28 registration.

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

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

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

38 (G) An acceptable safety record. A proposer's safety record
39 shall be deemed acceptable if its experience modification rate for
40 the most recent three-year period is an average of 1.00 or less, and

1 its average total recordable injury or illness rate and average lost
2 work rate for the most recent three-year period does not exceed
3 the applicable statistical standards for its business category or if
4 the proposer is a party to an alternative dispute resolution system
5 as provided for in Section 3201.5 of the Labor Code.

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

9 (B) Information required under this subdivision that is not
10 otherwise a public record under the California Public Records Act
11 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
12 Title 1 of the Government Code) shall not be open to public
13 inspection.

14 (c) Based on the documents prepared as described in subdivision
15 (a), the local agency shall prepare a request for proposals that
16 invites prequalified or short-listed entities to submit competitive
17 sealed proposals in the manner prescribed by the local agency.
18 The request for proposals shall include, but need not be limited
19 to, the following elements:

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

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

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

31 (4) Where a best value selection method is used, the local agency
32 may reserve the right to request proposal revisions and hold
33 discussions and negotiations with responsive proposers, in which
34 case the local agency shall so specify in the request for proposals
35 and shall publish separately or incorporate into the request for
36 proposals applicable procedures to be observed by the local agency
37 to ensure that any discussions or negotiations are conducted in
38 good faith.

39 (d) For those projects utilizing low bid as the final selection
40 method, the competitive bidding process shall result in lump-sum

1 bids by the prequalified or short-listed design-build entities, and
2 awards shall be made to the design-build entity that is the lowest
3 responsible bidder.

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

6 (1) Competitive proposals shall be evaluated by using only the
7 criteria and selection procedures specifically identified in the
8 request for proposals. *The following minimum factors, however,*
9 *shall be weighted as deemed appropriate by the local agency:*

10 (A) *Price.*

11 (B) *Technical design and construction expertise.*

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

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

16 (3) When the evaluation is complete, the responsive proposers
17 shall be ranked based on a determination of value provided,
18 provided that no more than three proposers are required to be
19 ranked.

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

23 (5) Notwithstanding any other provision of this code, upon
24 issuance of a contract award, the local agency shall publicly
25 announce its award, identifying the design-build entity to which
26 the award is made, along with a written decision supporting its
27 contract award and stating the basis of the award.

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

31 22165. (a) The design-build entity shall provide payment and
32 performance bonds for the project in the form and in the amount
33 required by the local agency, and issued by a California admitted
34 surety. The amount of the payment bond shall not be less than the
35 amount of the performance bond.

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

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

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

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

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

16 (2) Establish reasonable qualification criteria and standards.

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

24 22167. (a) If the local agency elects to award a project pursuant
25 to this article, retention proceeds withheld by the local agency
26 from the design-build entity shall not exceed 5 percent if a
27 performance and payment bond, issued by an admitted surety
28 insurer, is required in the solicitation of bids.

29 (b) In a contract between the design-build entity and a
30 subcontractor, and in a contract between a subcontractor and any
31 subcontractor thereunder, the percentage of the retention proceeds
32 withheld may not exceed the percentage specified in the contract
33 between the local agency and the design-build entity. If the
34 design-build entity provides written notice to any subcontractor
35 that is not a member of the design-build entity, prior to or at the
36 time the bid is requested, that a bond may be required and the
37 subcontractor subsequently is unable or refuses to furnish a bond
38 to the design-build entity, then the design-build entity may withhold
39 retention proceeds in excess of the percentage specified in the

1 contract between the local agency and the design-build entity from
2 any payment made by the design-build entity to the subcontractor.
3 22168. Nothing in this article affects, expands, alters, or limits
4 any rights or remedies otherwise available at law.

5 ~~SEC. 14.~~

6 *SEC. 13.* Due to the unique circumstances of the Marin
7 Healthcare District, the Legislature hereby finds and declares that
8 a general statute cannot be made applicable within the meaning
9 of Section 16 of Article IV of the California Constitution.
10 Therefore, the special legislation contained in Section 4 of this act
11 is applicable only to the Marin Healthcare District.

12 ~~SEC. 15.~~

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