



CEAC Infrastructure and Development Policy Committee

17TH Annual Policy Conference

Wednesday, August 18, 2022 | 1:45 pm - 3:00 pm

CSAC Wall/Peterson Conference Room

1100 K Street, 1st Floor

Sacramento, California

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AGENDA

Chair, Trisha Tillotson, Nevada County

Vice Chair, Rebecca Taber, Placer County

Vice Chair, Warren Lai, Contra Costa County

- | | | |
|-----------|------|---|
| 1:45 p.m. | I. | Welcome and Opening Remarks
<i>Trisha Tillotson, Chair, Nevada County</i> |
| 1:50 p.m. | II. | Legislative Update
<i>Mark Neuburger, CSAC, Legislative Representative</i> |
| 2:00 p.m. | III. | Legislative & Policy Proposals
1. Progressive Design-Build Legislative Proposal (Los Angeles County)
2. Extend existing Design-Build Authority Policy Proposal |
| 2:40 p.m. | IV. | Updates on Past Agenda Items |
| 2:50 p.m. | V. | Future Agenda Items
Road Damage & Repair |
| 3:00 p.m. | VI. | Adjournment |

LIST OF ATTACHMENTS

Attachment One.....Progressive Design-Build Legislative Proposal
(Los Angeles County)

Attachment TwoExtend existing Design-Build Authority Policy
Proposal (Orange County)

Attachment One

Progressive Design-Build Legislative Proposal (Los Angeles County)



County Engineers Association of California LEGISLATIVE PROPOSAL ACTION REQUEST FORM

Please return this form by COB Wednesday, August 3, 2022

For your proposal to be considered, please respond to **all** questions included in this form. Proposals must be submitted to CEAC through your Public Works Director or Department Head. Please submit this form to Ada Waelder at awaelder@counties.org

Proposals will be referred to the appropriate policy committees and considered during the 2022 CEAC Policy Conference, August 18-19, 2022.

Contact Name: Vincent Yu

County: Los Angeles County Public Works

Position: Deputy Director

Phone: (626) 458-4010

Email: vyu@pw.lacounty.gov

Brief Description of Legislative Proposal:

This legislative proposal intends to amend Public Contract Code Sections §22160 and 22164 relating to public contracts to allow the use of progressive Design-Build.

I. BACKGROUND INFORMATION

A. Problem

- (1) What problem does the proposal address? Please share specific facts and examples to illustrate the problem.

Public Contract Code (PCC) Sections §22160 (a) and 22160 (b) (1) currently only provides local agencies, including counties, the ability to use "conventional" Design-Build (D-B).

PCC Section §22164 (f) (1) (a) mandates that counties may only use the D-B project delivery method if its selection criteria includes a set price for the entire project.

This "conventional" D-B method requires that the contract be awarded on a lump sum or stipulated sum basis.

However, PCC Sections §20928 – 20928.4 authorizes local agencies to use alternative D-B project delivery methods, including "progressive" D-B for specified CALFED¹ surface storage projects (reservoirs) that receive funding from Proposition 1 (2014).

Specifically, PCC Section §20928.1 (a) (2) defines D-B to include "conventional," "progressive," and "target price" methods.

- (2) **Does the proposal address a problem of statewide significance? Give specific facts and examples, which demonstrate a statewide need for the proposal.**

Yes. The proposal would modify the intent of the Legislature to specify that D-B includes conventional, progressive, and target price. The proposal would also modify the selection criteria for best value selection to indicate that the prescribed minimum factor of price be included only if applicable to the delivery method. This would allow for the selection of a D-B entity based on qualifications only for "progressive" and "target price" methods.

- (3) **Have counties been involved in any litigation regarding this problem? If so, cite the case.**

No.

- (4) **What other source materials, case law, or data, document the existence of the problem (e.g., periodicals, government agency reports, private studies, law review articles, newspaper articles)?**

Not applicable.

¹ CALFED Bay-Delta Program was created in 1994 by California, Federal, and local agencies and made construction of new dams upstream of the Delta a cornerstone of CALFED. In 2000, CALFED identified numerous reservoirs that could potentially be built by local agencies.

B. Interested Parties

(1) What counties, organizations, or individuals are interested in the problem?

This proposal would grant all counties the ability to use progressive D-B for the delivery of projects with a value of \$1 million or more. Other counties and local agencies, such as San Diego, Orange, and Placer Counties, are expected to support this proposal.

Construction industry organizations, such as Design Build Institute of America (DBIA), Associated General Contractors of America (AGC), American Institute of Architects (AIA), California Community College Facility Coalition (CACCFC), California Coalition for Adequate School Housing (CASH), and Construction Management Association of America (CMAA), are interested.

The proposal would be supported by construction trades as it does not change PCC Section §22164 (c) (1) that requires that a D-B entity only be prequalified or shortlisted to submit a cost proposal for a D-B contract, if it provides an enforceable commitment to the local agency that the D-B entity, in its entirety, including subcontractors at every tier, will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeshipable occupation in the building and construction trades.

(2) What counties, organizations or individuals would be sources of information about the problem?

All counties and other local agencies in the State of California and construction industry organizations, such as DBIA, AGC, AIA, and CMAA.

(3) Who would be likely to support/oppose the proposal? Why?

Support from counties and other local agencies is expected as the proposal would grant all counties and other local agencies the ability to use progressive D-B for the delivery of projects with a value of \$1 million or more.

Support from construction industry including the construction trades is expected as the proposal would not change PCC §22164 (c) (1) and improve efficiency in project delivery.

There is no known opposition for the proposal at this time.

(4) Identify groups or other governmental agencies that could be affected by the proposal, either favorably or adversely? Please discuss.

This proposal would favorably impact all counties and other local agencies in the State of California by granting the ability to use progressive D-B for the delivery of projects with a value of \$1 million or more.

The construction industry and construction trades would be favorably impacted by the proposal due to improved project delivery efficiency.

II. PROPOSAL

A. Existing Law

(1) What are the statutory provisions currently applicable to the proposal?

PCC Sections §22160 and 22164

(2) What case law is relevant to this issue? Please summarize and cite.

Not applicable.

(3) Why is existing law inadequate to deal with the problem?

The PCC currently does not allow local agencies, including counties, to use progressive D-B for the delivery of projects. The proposal intends to amend PCC Sections §22160 and 22164, relating to public contracts, to allow the use of progressive D-B.

B. Suggested Legislation

(1) Describe the specific bill proposal.

Please see proposed bill, which was previously introduced by Senator Robert Hertzberg in February 2020, as Senate Bill 1205.

(2) Do similar provisions exist in other California laws?

PCC Sections §20928 – 20928.4 authorize local agencies to use progressive D-B for construction of specified CALFED surface storage projects reservoirs that receive funding from Proposition 1 (2014).

The proposal would align PCC Sections §22160 and 22164 with §20928 to allow progressive D-B to be used for projects other than CALFED surface storage projects with a value in excess of \$1 million

(3) Describe a hypothetical application of the proposal.

Some local agencies, including charter cities and community colleges, are given different legislative authority than counties and have been able to successfully use the progressive D-B method to deliver a variety of projects, including bond-funded projects on [community college campuses](#), a [senior and community center](#), and a multilevel and Leadership in Energy and Environmental Design [terminal at an airport](#). Counties and other local agencies could similarly use progressive D-B to deliver construction projects with improved efficiency .

C. Fiscal Impact

(1) Would there be any potential fiscal impact on counties under the proposal? If so, describe.

Progressive D-B is expected to lead to lower project costs, expedited project delivery, and higher quality design.

(2) Would there be any potential financial impact on other persons or organizations public or private?

There is positive fiscal impact to the State, local governments, organizations, or constituent groups as a result of this proposal due to improved project delivery efficiency.

D. History

(1) Has this proposal ever been introduced in the Legislature? If so, what was the bill number and why did it fail?

Yes. Senate Bill 1205 was introduced by Senator Hertzberg in February 2020. The bill did not advance due to a short legislative session as a result of the COVID-19 pandemic.

(2) Is judicial or executive branch resolution of the problem possible? Explain.

Legislative action is required to align PCC Sections §22160 and 22164 with §2098 to allow progressive D-B to be used for projects other than CALFED surface storage projects with a value in excess of \$1 million

E. Public Policy

(1) What are the public policy reasons in support of this proposal? Against?

The proposal will lead to operational effectiveness and a reduction in project costs by giving counties the authority to use progressive D-B for projects with a value in excess of \$1 million.

(2) Would this proposal affect any related public policy? If so, describe.

This proposal would support Los Angeles County Policy 12.3.2 – Utilities and Infrastructure, Construction Contracts, of the County's State Legislative Agenda, which reads:

"Support legislation that authorizes counties to use the D-B contract method for projects to construct buildings and directly related improvements and support or sponsor legislation that would delete the existing sunset date on D-B authority granted to counties and that would eliminate the current project cost threshold required for the use of the design-build method."



March 30, 2020

The Honorable Robert Hertzberg
Member, California State Senate
State Capitol, Room 313
Sacramento, CA 95814

**Re: SB 1205 (Hertzberg): Local Agency Design-Build Projects
As Amended on March 9, 2020 – Notice of Support**

Dear Senator Hertzberg:

The Urban Counties of California (UCC) and the California State Association of Counties (CSAC) are pleased to support your SB 1205, which would modify the Local Agency Design-Build Projects procurement process to expressly allow for conventional, progressive, and target price design-build for construction contracts.

The design-build method is an approach to delivering public works projects that counties find beneficial. Under existing law which authorizes the “conventional” design build (CDB) procurement process, DB teams propose both a design, and a lump sum price – unless a stipulated sum is specified – to complete that design and construct the project. The winning proposer is selected either based on low-bid (like a traditional county construction contract) or through a best value process, which gives a specified weight to each of the proposed design and the lump sum amount.

Alternatively some local agencies, including charter cities and community colleges, are given different legislative authority than counties and have been able to successfully use the “progressive” design build (PDB) method for a variety of projects, including bond-funded projects on community college campuses, a senior and community center, and a multi-level LEED-designed terminal at an airport. PDB allows design build teams to compete on their qualifications only. After a design build team has been selected and under contract, they work with the owner to “progress” the design up to the point where a lump sum price can be agreed

The Honorable Phil Ting
Assembly Bill 1486
August 8, 2019
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upon. Then, a second contract (or contract amendment) is negotiated and executed, where the design build team agrees to construct that design for a negotiated lump sum price.

The Design build procurement process provides many advantages for public agencies, but current law restricts local agencies to the relatively more costly and time consuming CDB method. By expanding existing local design-build authority to include progressive and target-priced design-build, SB 1205 allows local agencies to evaluate only factors that are applicable to the delivery method.

For these reasons, we support SB 1205. Please contact Jean Kinney Hurst representing UCC (916.272.0010 or jkh@hbeadvocacy.com) or Chris Lee representing CSAC (916.650.8180 or clee@counties.org) should you have any questions about our position on this measure.

Sincerely,



Jean Kinney Hurst
Legislative Representative
Urban Counties of California



Chris Lee
Legislative Representative
California State Association of Counties

AMENDED IN SENATE MARCH 25, 2020

SENATE BILL

No. 1205

Introduced by Senator Hertzberg

February 20, 2020

An act to amend ~~Section~~ *Sections 22160 and 22164* of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Hertzberg. Local agency design-build projects.

Existing law, until January 1, 2025, authorizes local agencies, as defined, to use the design-build procurement process for specified public works projects with prescribed cost thresholds. Existing law states that it is the intent of the Legislature that existing law provides general authorization for local agencies to use design-build for certain projects. Existing law establishes procedures for a contract awarded under these provisions on the basis of best value, including a requirement that competitive proposals be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. Existing law further requires that prescribed minimum factors be weighted as the local agency deems appropriate.

This bill would modify the intent of the Legislature to specify that design-build for these purposes includes conventional, progressive, and target price. The bill, with regard to best value evaluation, would require the prescribed minimum factors be included only if applicable to the delivery method.

~~Existing law states that the Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from those projects, including reduced project costs,~~

expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

~~This bill would make a nonsubstantive change to that provision.~~

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

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

1 *SECTION 1. Section 22160 of the Public Contract Code is*
2 *amended to read:*

3 22160. (a) The Legislature finds and declares that the
4 design-build method of project delivery, using a best value
5 procurement methodology, has been authorized for various
6 agencies that have reported benefits from ~~such projects~~ *those*
7 *projects*, including reduced project costs, expedited project
8 completion, and design features that are not achievable through
9 the traditional design-bid-build method.

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

11 (1) This chapter provides general authorization for local agencies
12 to use ~~design-build~~ *design-build, including conventional,*
13 *progressive, and target price*, for projects, excluding projects on
14 the state highway system.

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

17 *SEC. 2. Section 22164 of the Public Contract Code is amended*
18 *to read:*

19 22164. The procurement process for the design-build projects
20 shall progress as follows:

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

31 (2) The documents shall not include a design-build-operate
32 contract for any project. The documents, however, may include

1 operations during a training or transition period but shall not
2 include long-term operations for any project.

3 (b) The local agency shall prepare and issue a request for
4 qualifications in order to prequalify or short-list the design-build
5 entities whose proposals shall be evaluated for final selection. The
6 request for qualifications shall include, but need not be limited to,
7 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 local agency to evaluate proposals, the procedure for
11 final selection of the design-build entity, and any other information
12 deemed necessary by the local agency to inform interested parties
13 of the contracting opportunity.

14 (2) Significant factors that the local agency reasonably expects
15 to consider in evaluating qualifications, including technical design
16 and construction expertise, acceptable safety record, and all other
17 nonprice-related factors.

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

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

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

37 (C) The licenses, registration, and credentials required to design
38 and construct the project, including, but not limited to, information
39 on the revocation or suspension of any license, credential, or
40 registration.

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

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

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

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

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

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

26 (c) (1) A design-build entity shall not be prequalified or
27 shortlisted unless the entity provides an enforceable commitment
28 to the local agency that the entity and its subcontractors at every
29 tier will use a skilled and trained workforce to perform all work
30 on the project or contract that falls within an apprenticeable
31 occupation in the building and construction trades, in accordance
32 with Chapter 2.9 (commencing with Section 2600) of Part 1.

33 (2) This subdivision shall not apply if any of the following
34 requirements are met:

35 (A) The local agency has entered into a project labor agreement
36 that will bind all contractors and subcontractors performing work
37 on the project or contract to use a skilled and trained workforce,
38 and the entity agrees to be bound by that project labor agreement.

1 (B) The project or contract is being performed under the
2 extension or renewal of a project labor agreement that was entered
3 into by the local agency prior to January 1, 2017.

4 (C) The entity has entered into a project labor agreement that
5 will bind the entity and all its subcontractors at every tier
6 performing the project or contract to use a skilled and trained
7 workforce.

8 (3) For purposes of this subdivision, “project labor agreement”
9 has the same meaning as in paragraph (1) of subdivision (b) of
10 Section 2500.

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

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

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

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

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

36 (e) For those projects utilizing low bid as the final selection
37 method, the competitive bidding process shall result in lump-sum
38 bids by the prequalified or short-listed design-build entities, and
39 awards shall be made to the design-build entity that is the lowest
40 responsible bidder.

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

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be *included, if applicable to the delivery method, and* weighted as deemed appropriate by the local agency:

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

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

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

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

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

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the local agency shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

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

~~SECTION 1. Section 22160 of the Public Contract Code is amended to read:~~

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

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

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

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

O

Attachment Two

Extend existing Design-Build Authority Policy Proposal (Orange County)

2022 CEAC Policy and Legislative Priority Proposal

BACKGROUND:

Unlike the traditional, low bid Design-Bid-Build method, Design-Build is a project delivery method where the designer and builder are unified as a single-source contractual entity to provide design and construction services to the local agency, which can alleviate agency risk throughout the project. Under this method, change orders are virtually eliminated as the designer is contracted with the builder, not the local agency, and the designer and builder collaborate to provide effective solutions.

SB 786 (Wolk, 2014)

SB 786 enacted more uniform provisions authorizing the Department of General Services, California Department of Corrections, and most local agencies, counties included, to use the Design Build procurement process for specified public works projects within Public Contract Codes Sections 22160-22169. The bill was co-sponsored by the Associated General Contractors of California and the Design Build Institute of America.

It has an existing sunset date of January 1, 2025.

Subsequent to its passage, there have been several pieces of legislation passed allowing additional uses of this authority to deliver projects, including the ability for the County of Orange to use it for specified public works infrastructure projects, among them allowing the Orange County Flood Control District to use it for flood protection improvements within specified limitations. All these additional pieces of legislation, housed within PCC Sections 22160-22169, likewise have a sunset date of January 1, 2025.

NEED:

To continue using this existing statutory authority, legislation is needed to extend the sunset date.

REQUEST:

As the original legislation that granted this authority to counties was a cosponsored bill between the Associated General Contractors of California and the Design Build Institute of America, we are requesting that CEAC adopt the following legislative priority to support any potential legislation these groups may put forward, if they do so, to extend the sunset date for the authority as it exists:

2021-22 CEAC Policy and Legislative Priorities

STATE PRIORITIES

Flood Control & Water Resources

5. Project Delivery. Support legislation that extends existing statutory authority for local governments and agencies to use alternative project delivery methods.

If no such bill is brought forward, OCPW would then make a request for CEAC sponsored legislation for 2024.

CONTACT:

If there are any questions, please contact: Francisco Barajas, Legislative Manager, OC Public Works, at francisco.barajas@ocpw.ocgov.com or (714) 647-3917.

Legislative Proposal to extend the Design-Build procurement process past its sunset date of January 1, 2025. The Orange County Public Works Department has submitted a proposal for CEAC to amend its Policy and Legislative priorities to support the extension of existing statutory authority for local governments and agencies to use the design-build procurement process within PCC Sections 22160-22169.

SB 785 (Wolk) *Chapter 931, Statutes of 2014*, enacted more uniform provisions authorizing the Department of General Services, California Department of Corrections, and most local agencies, counties included, to use the Design Build procurement process for specified public works projects within Public Contract Codes Sections 22160-22169. The bill was co-sponsored by the Associated General Contractors of California and the Design Build Institute of America. The proposal seeks to support any potential legislation these groups may put forward. If no such bill is brought forward, OCPW would then make a request for CEAC sponsored legislation for 2024. Sponsor(s): Francisco Barajas, Legislative Manager, Orange County Public Works.

CSAC Staff Comments: The design-build method is an approach to delivering public works projects that counties find beneficial. SB 785 (Wolk) *Chapter 931, Statutes of 2014*, eliminated inconsistencies in then-existing law and provided agencies with a general authorization to develop projects using the design-build method. The design-build project delivery process provides many advantages for public agencies. CSAC supports local control and recognizes that local governments should have flexibility to cooperatively develop systems by which services are provided and problems resolved.

Relevant CSAC County Platform Priority:

Chapter 10: Housing, Land Use and Transportation:

Section 2: System Policy and Transportation Principles Goal #3

Section 2 Management Policy Goal #1

Staff Recommendation: Support the amendment of CEAC's Policy and Legislative Priorities as outlined below.

Suggested Language

Protect State Transportation Funding and Promote Streamlining. CSAC staff will continue to monitor the allocation of state transportation revenues to counties and oppose any effort to use transportation revenues outside their intended purposes. Moreover, CSAC staff will continue to proactively seek additional flexibility for counties and extend existing streamlined project delivery authority as well as environmental review processes.

Senate Bill No. 785

CHAPTER 931

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend, repeal, and add Section 32132.5 of the Health and Safety Code, to amend Section 20209.14 of, to add and repeal Article 6 (commencing with Section 10187) of Chapter 1 of Part 2 of Division 2 of, to add and repeal Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 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, to add Section 37.2 to the San Diego Unified Port District Act (Chapter 67 of the First Extraordinary Session of the Statutes of 1962), and to repeal Section 6 of Chapter 2 of the Second Extraordinary Session of the Statutes of 2009, relating to design-build.

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 785, 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. Existing law also authorizes the formation of special districts, including the Marin Healthcare District and the San Diego Unified Port District.

This bill would repeal those authorizations, and enact provisions that would authorize, until January 1, 2025, 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, until January 1, 2025, 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, and would authorize the San Diego Unified Port District to use the design-build procurement process for the construction of a building or buildings and improvements directly related to the construction of a building or buildings that exceed \$1,000,000. 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 and for the San Diego Unified Port 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.

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

SECTION 1. It is the intent of the Legislature to consolidate existing design-build statutes and eliminate inconsistencies in statutory language by adopting authority of general application to identified agencies and repealing superseded sections.

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

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

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

32132.5. (a) Notwithstanding Section 32132 or any other law, upon approval by the board of directors of the Sonoma Valley Health Care District or the Marin Healthcare District, as applicable, the design-build procedure described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code may be used to assign contracts for the construction of a building or improvements directly related to construction of a hospital or health facility building at the Sonoma Valley Hospital or the Marin General Hospital.

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

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

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 5. Section 32132.5 is added to the Health and Safety Code, to read:

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

(b) For purposes of this section, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to

“county” and “local agency” shall mean the Sonoma Valley Health Care District and its board of directors.

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

(d) This section shall become operative January 1, 2025.

SEC. 6. Article 6 (commencing with Section 10187) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 6. State Agency Design-Build Projects

10187. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

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

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

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

10187.5. For purposes of this article, the following definitions and the definitions in subdivision (a) of Section 13332.19 of the Government Code shall apply:

(a) “Best value” means a value determined by evaluation of objective criteria that may include, but not be limited, to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

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

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

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

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

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

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

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

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

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

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

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

(2) The documents shall not include a design-build-operate contract for any project. The documents, however, may include operations during a training or transition period but shall not include long-term operations for any project.

(b) The director shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

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

(2) Significant factors that the department reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, and all other nonprice-related factors.

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

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

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

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

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

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

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

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

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

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the director that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(1) For purposes of this subdivision:

(A) “Apprenticeable occupation” means an occupation for which the chief had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

(B) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(i) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(ii) (I) As of January 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(II) As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(III) As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(IV) As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved

for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(V) As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iii) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements of clause (ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(C) "Skilled journeyperson" means a worker who either:

(i) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(ii) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(2) An entity's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(A) The entity's agreement with the director that the entity and its subcontractors at every tier will comply with the requirements of this subdivision and that the entity will provide the director with evidence, on a monthly basis while the project or contract is being performed, that the entity and its subcontractors are complying with the requirements of this subdivision.

(B) If the director has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this subdivision, the entity's agreement that it will become a party to that project labor agreement.

(C) Evidence that the entity has entered into a project labor agreement that includes the requirements of this subdivision and that will bind the entity and all its subcontractors at every tier performing the project or contract.

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

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

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

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

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

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

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

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

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

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

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

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

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

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the director shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

(6) The statement regarding the director's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

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

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

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

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

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

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

(2) Establish reasonable qualification criteria and standards.

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

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

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

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

10196. This article shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 7. Section 20133 of the Public Contract Code is repealed.

SEC. 8. Section 20175.2 of the Public Contract Code is repealed.

SEC. 9. Section 20193 of the Public Contract Code is repealed.

SEC. 10. Section 20209.14 of the Public Contract Code is amended to read:

20209.14. (a) This article shall remain in effect only until January 1, 2017, and as of that date is repealed.

(b) This article shall only apply to transit operators that begin a project solicitation before January 1, 2015. A transit operator that begins a project solicitation on or after January 1, 2015, is subject to Chapter 4 (commencing with Section 22610).

SEC. 11. Section 20301.5 of the Public Contract Code is repealed.

SEC. 12. Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code is repealed.

SEC. 13. Section 20688.6 of the Public Contract Code is repealed.

SEC. 14. Chapter 4 (commencing with Section 22160) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS

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

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

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

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

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria that may include, but not be limited to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and

installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

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

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

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

(f) “Local agency” means the following:

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

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

(3) Any transit district, included transit district, municipal operator, included municipal operator, any consolidated agency, as described in Section 132353.1 of the Public Utilities Code, any joint powers authority formed to provide transit service, any county transportation commission created pursuant to Section 130050 of the Public Utilities Code, or any other local or regional agency, responsible for the construction of transit projects.

(g) (1) For a local agency defined in paragraph (1) of subdivision (f), “project” means the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a local agency defined in paragraph (1) of subdivision (f) that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

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

(3) For a local agency defined in paragraph (3) of subdivision (f), “project” means a transit capital project that begins a project solicitation on or after January 1, 2015. A “project,” as defined by this paragraph, that begins the solicitation process before January 1, 2015, is subject to Article 6.8 (commencing with Section 20209.5) of Chapter 1. “Project,” as defined by this paragraph, does not include state highway construction or local street and road projects.

22162. (a) Except as provided in subdivision (b), and notwithstanding any other law, a local agency, with approval of its governing body, may

procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000), awarding the contract either the low bid or the best value, provided that this article shall not apply to any projects on the state highway system.

(b) When a local agency described in paragraph (3) of subdivision (f) of Section 22161 awards a contract for the acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness, and homeland security efforts, there shall be no cost threshold and the contract may be awarded to the lowest responsible bidder or by using the best value method.

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

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

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

(2) The documents shall not include a design-build-operate contract for any project. The documents, however, may include operations during a training or transition period but shall not include long-term operations for any project.

(b) The local agency shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

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

(2) Significant factors that the local agency reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications prepared by the local agency. In preparing the standard template, the local agency may consult with the construction industry, the building trades and surety

industry, and other local agencies interested in using the authorization provided by this article. The template shall require the following information:

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

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

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

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

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

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

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

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

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

(c) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the local agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(1) For purposes of this subdivision:

(A) "Apprenticeable occupation" means an occupation for which the chief had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

(B) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(i) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(ii) (I) As of January 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(II) As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(III) As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(IV) As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(V) As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iii) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief prior to January 1, 1995, up to one-half of

the graduation percentage requirements of clause (ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(C) "Skilled journeyperson" means a worker who either:

(i) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(ii) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(2) An entity's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(A) The entity's agreement with the local agency that the entity and its subcontractors at every tier will comply with the requirements of this subdivision and that the entity will provide the local agency with evidence, on a monthly basis while the project or contract is being performed, that the entity and its subcontractors are complying with the requirements of this subdivision.

(B) If the local agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this subdivision, the entity's agreement that it will become a party to that project labor agreement.

(C) Evidence that the entity has entered into a project labor agreement that includes the requirements of this subdivision and that will bind the entity and all its subcontractors at every tier performing the project or contract.

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

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

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

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

(4) Where a best value selection method is used, the local agency may reserve the right to request proposal revisions and hold discussions and

negotiations with responsive proposers, in which case the local agency shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the local agency to ensure that any discussions or negotiations are conducted in good faith.

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

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

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

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

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

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

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

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

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the local agency shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

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

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

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

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

22166. (a) The local agency, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction

subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

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

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

(2) Establish reasonable qualification criteria and standards.

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

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

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

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

22169. This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 15. Section 37.2 is added to the San Diego Unified Port District Act (Chapter 67 of the First Extraordinary Session of the Statutes of 1962), to read:

Sec. 37.2. (a) Notwithstanding subdivision (a) of Section 37 of this act or any other law, the district, with approval of the board of commissioners, may procure design-build contracts for the construction of a building or buildings and improvements directly related to the construction of a building or buildings that exceed one million dollars (\$1,000,000) using the design-build procurement process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code.

(b) For the purposes of this section, except where the context otherwise requires, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to “local agency” shall mean the San Diego Unified Port District.

SEC. 16. Section 6 of Chapter 2 of the Second Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 17. (a) Due to the unique circumstances of the Marin Healthcare District, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 4 of this act is applicable only to the Marin Healthcare District.

(b) Due to the unique circumstances of, and the potential costs faced by, the San Diego Unified Port District, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 15 of this act is applicable only to the San Diego Unified Port District.

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