

SixTen and Associates

Mandate Reimbursement Services

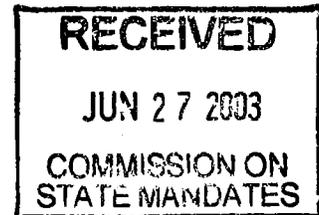
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June 25 2003

Certified Mail : 7000 1670 0000 0485 5292

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814



Re: TEST CLAIM OF Clovis Unified School District and
Santa Monica Community College District
Statutes of 2002/Chapter 664
Design-Build Contracts

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District and Santa Monica Community College District test claim for the above referenced mandate.

I have been appointed by the Districts as their representative for the test claim. The Districts request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William McGuire,
Associate Superintendent,
Business Services
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

Thomas Donner,
Executive Vice President,
Business and Administration
Santa Monica Community College
1900 Pico Boulevard
Santa Monica, CA 90405-1628

The Commission regulations provide for an informal conference of the interested parties

Paula Higashi, Executive Director,
Commission on State Mandates

June 25, 2003

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,



For

Keith B. Petersen

C: William McGuire, Associate Superintendent, Business Services
Clovis Unified School District

Thomas Donner, Executive Vice President, Business and Administration
Santa Monica Community College District

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT AND
SANTA MONICA COMMUNITY COLLEGE DISTRICT**

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

664/02 Design-Build Contracts (K-14)

Chapter 664, Statutes of 2002
Chapter 637, Statutes of 2002
Chapter 421, Statutes of 2001

| | |
|---------------------------------|--------------------------------|
| Education Code Section 17250.10 | Education Code Section 81700.5 |
| Education Code Section 17250.15 | Education Code Section 81700.7 |
| Education Code Section 17250.20 | Education Code Section 81701 |
| Education Code Section 17250.25 | Education Code Section 81702 |
| Education Code Section 17250.30 | Education Code Section 81703 |
| Education Code Section 17250.35 | Education Code Section 81704 |
| Education Code Section 17250.40 | Education Code Section 81705 |
| Education Code Section 17250.45 | Education Code Section 81706 |
| Education Code Section 17250.50 | Education Code Section 81707 |
| Education Code Section 81700 | Education Code Section 81708 |

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

William McGuire
Associate Superintendent, Business Services

Voice: (559) 327-9110
Fax: (559) 327-9129

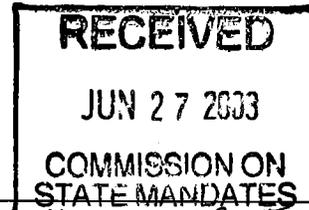
Signature of Authorized Representative

Date

June 23, 2003

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only



Claim No. 02 TC-45

TEST CLAIM FORM

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT AND
SANTA MONICA COMMUNITY COLLEGE DISTRICT**

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network Voice: 916-446-7517
c/o School Services of California Fax: 916-446-2011
1121 L Street, Suite 1060
Sacramento, CA 95814

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

664/02 Design-Build Contracts (K-14)

Chapter 664, Statutes of 2002
Chapter 637, Statutes of 2002
Chapter 421, Statutes of 2001

| | |
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| Education Code Section 17250.10 | Education Code Section 81700.5 |
| Education Code Section 17250.15 | Education Code Section 81700.7 |
| Education Code Section 17250.20 | Education Code Section 81701 |
| Education Code Section 17250.25 | Education Code Section 81702 |
| Education Code Section 17250.30 | Education Code Section 81703 |
| Education Code Section 17250.35 | Education Code Section 81704 |
| Education Code Section 17250.40 | Education Code Section 81705 |
| Education Code Section 17250.45 | Education Code Section 81706 |
| Education Code Section 17250.50 | Education Code Section 81707 |
| Education Code Section 81700 | Education Code Section 81708 |

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Thomas J. Donner
Executive Vice President of Business and Administration

Voice: (310) 434-4201
Fax: (310) 434-8200

Signature of Authorized Representative

Date

X

June 23, 2003

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14 Test Claim of:)
15) No. CSM _____
16 Clovis Unified School District)
17)
18 and) Chapter 664, Statutes of 2002
19) Chapter 637, Statutes of 2002
20 Santa Monica Community College) Chapter 421, Statutes of 2001
21 District)
22)
23 Test Claimants)
24) Education Code Sections 17250.10
25) 17250.15, 17250.20, 17250.25,
26) 17250.30, 17250.35, 17250.40,
27) 17250.45, 17250.50, 81700, 81700.5,
28) 81700.7, 81701, 81702, 81703, 81704,
29) 81705, 81706, 81707, and 81708
30)
31) Design-Build Contracts
32 _____)
33 TEST CLAIM FILING

34 PART 1. AUTHORITY FOR THE CLAIM

35 The Commission on State Mandates has the authority pursuant to Government
36 Code section 17551(a) to "...hear and decide upon a claim by a local agency or school
37 district that the local agency or school district is entitled to be reimbursed by the state
38 for costs mandated by the state as required by Section 6 of Article XIII B of the
39 California Constitution." Clovis Unified School District and Santa Monica Community

Test Claim of Clovis Unified School District
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1 College District are "school districts" as defined in Government Code section 17519.¹

2 **PART II. LEGISLATIVE HISTORY OF THE CLAIM**

3 This test claim alleges mandated costs reimbursable by the state for school
4 districts, county offices of education, and community college districts to establish and
5 implement procedures for entering into design-build contracts.

6 **SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975**

7 Prior to January 1, 1975, there were no statutes, codes, or regulations which
8 required school districts to specifically use design-build contract procedures as a cost-
9 effective alternative as set forth in this test claim.

10 **SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975**

11 **A. SCHOOL DISTRICTS**

12 Chapter 2.5, entitled "Design-Build Contracts", was added to Part 10.5, Division
13 1, Title 1 of the Education Code, by Chapter 421, Statutes of 2001, Section 1,
14 commencing with section 17250.10. Chapter 421, Statutes of 2001, Section 4,
15 provides a sunset date for the Chapter on January 1, 2007.

16 Education Code Section 17250.10², subdivision (a), states a legislative intent to

¹ Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

² Education Code Section 17250.10, as added by Chapter 421, Statutes of 2001, Section 1:

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1 enable school districts to use safe and cost-effective options for building and
2 modernizing school facilities. Subdivision (b) requires that school districts, utilizing a
3 design-build contract, have a clear understanding of the roles and responsibilities of
4 each participant in the design-build process. Subdivision (c) provides that the design-
5 build process is an optional alternative procedure for bidding and building school
6 construction projects. Subdivision (d) provides that the funding occur in a single phase.
7 Subdivision (e) provides that the chapter should not change, in any way, the legal

“(a) It is the intent of the Legislature to enable school districts to utilize safe and cost-effective options for building and modernizing school facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, and state office buildings.

(b) The Legislature also finds and declares that school districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the school district. The Legislature also finds that the cost-effective benefits to the school districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building school construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by the act adding this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.”

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1 responsibility to comply with existing laws.

2 Education Code Section 17250.15³ subdivision (a), defines "best value" as a
3 value determined by objective criteria that may include price, features, functions, and
4 life-cycle costs. Subdivision (b) defines "design-build" as a procurement process in
5 which both the design and construction of a project are procured from a single entity.
6 Subdivision (c) defines " design-build entity" as a business association able to provide
7 appropriately licensed contracting, architectural, and engineering services.

8 Education Code Section 17250.20⁴ provides authority for the governing board of

³ Education Code Section 17250.15, as added by Chapter 421, Statutes of 2001,
Section 1:

"As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract."

⁴ Education Code Section 17250.20, as added by Chapter 421, Statutes of 2001,
Section 1:

"Upon making a determination by a school district governing that it is in the best interest of the school district, the governing board may enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds(\$10,000,000) if, after evaluation of the traditional design, bid, and build process of school construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives:

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1 a school district to enter into a design-build contract for a school facility when the cost
2 will exceed ten million dollars when the design-build process is expected to reduce
3 project costs, expedite completion, or provide features unavailable through traditional
4 processes after evaluation of the traditional design, bid and build process. The
5 governing board is required review the guidelines in Section 17250.40 and is required to
6 adopt a resolution approving the use of a design-build contract prior to entering into the
7 design-build contract.

8 Education Code Section 17250.25⁵ requires that design-build projects progress

reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 17250.40 and shall adopt a resolution approving the use of a design-build contract pursuant to this article prior to entering into a design-build contract.”

⁵ Education Code Section 17250.25, as added by Chapter 421, Statutes of 2001, Section 1:

“Design-build projects shall progress as follows:

- (a) (1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.
- (2) Each request for proposal shall do all of the following:
 - (A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.
 - (B) Invite interested parties to submit competitive sealed proposals

in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.

(b) (1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades, surety industry, school districts, and other affected parties. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or

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1

other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract, including, but not limited to, electrical and mechanical subcontractors.

(B) Evidence that the members of the design-build entity 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.

(C) The licenses, registration, and credentials required to design and construct the project, including 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, as well as a financial statement that assures the school district that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) or the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state or local government public works project.

(G) Any instance where an entity, its owners, officers, or managing employees, submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(H) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(I) Any prior violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against any member of the

design-build entity.

(J) Information concerning the bankruptcy or receivership of any member of the entity, including information concerning any work completed by a surety.

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period preceding submission of the bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association.

(2) The information required pursuant to this subdivision shall be verified under oath by the design-build entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection.

(c) The school district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20110 of the Public Contract Code, a school district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the school district.

(A) Any architectural or engineering firm or individual retained by the governing body of the school district to assist in the development criteria or preparation of the request for proposal shall not be eligible to

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1 as follows: subdivision (a)(1) requires the school district to prepare a request for

participate in the competition with the design-build entity.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the school district, to be the best value to the school district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The school district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the school district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the school district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years.

This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeship craft in the two years prior to enactment of this act.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code."

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1 proposal that fully describes the scope of the project. Subdivision (a)(2) requires that
2 each request for proposal shall do all of the following:

3 A) Identify the basic scope and needs of the project of contract, the expected
4 cost range, and other information deemed necessary by the school district
5 to inform interested parties of the contracting opportunity.

6 B) Invite interested parties to submit competitive sealed proposals in the
7 manner prescribed by the school district.

8 C) Include a section identifying and describing the following:

9 (i) All significant factors and subfactors that the school district
10 reasonably expects to consider in evaluating proposals;

11 (ii) The methodology and rating or weighting scheme that will be used
12 by the school district governing board in evaluating competitive
13 proposals;

14 (iii) The relative importance or weight assigned to each of the factors
15 identified in the request for proposals;

16 (iv) As an alternative to clause (iii), the governing board of a school
17 district shall specifically disclose whether all evaluation factors
18 other than cost or price, when combined, are any of the following:

19 (I) Significantly more important than cost or price,

20 (II) Approximately equal in importance to cost or price, or

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1 (III) Significantly less important than cost or price; and

2 (v) If the school district governing board wishes to reserve the right to
3 hold discussions or negotiations with responsive bidders, it shall so
4 specify in the request for proposal and shall publish separately or
5 incorporate into the request for proposal applicable rules and
6 procedures to be observed by the school district to ensure that any
7 discussions or negotiations are conducted in a fair and impartial
8 manner.

9 Subdivision (b)(1) requires the school district to establish a procedure to prequalify
10 design-build entities, using a standard questionnaire, including information on
11 competence and past performance. Subdivision (b)(2) requires the information to be
12 verified under oath by the design-build entity and its members in the manner in which
13 civil pleadings in civil actions are verified. Subdivision (c) requires the school district to
14 establish a procedure for final selection of the design-build entity, which shall be based
15 on either:

16 (1) a competitive bidding process resulting in lump-sum bids, or

17 (2) performance and other criteria set forth by the governing board in the
18 solicitation of proposals.

19 Subparagraph (C) requires the school district to notify in writing, the bidder to whom the
20 award of the contract shall be made. Subparagraph (D) and (E) requires the school

1 district to issue a written decision stating, in detail, the basis of the award and its
2 ranking among submitted proposals.

3 Education Code Section 17250.30⁶, subdivision (a), requires any design-

⁶ Education Code Section 17250.30, as added by Chapter 421, Statutes of 2001, Section 1:

“(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract.

This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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

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1 build entity that is selected to possess or obtain bonding in an amount sufficient to
2 cover the nondesign services and errors and omissions insurance coverage to cover all
3 design and architectural services provided. Subdivision (b) requires the performance
4 bond to use the form developed by the Department of General Services to insure
5 uniformity throughout the state. Subdivision (d) requires the school district to establish
6 and enforce a labor compliance program containing the requirements outlined in
7 Section 1771.5 of the Labor Code unless the school district or design-build entity has
8 entered into a collective bargaining agreement that binds all of the contractors
9 performing work on the project.

10 Education Code Section 17250.35⁷, subdivision (a), requires the school district

withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.”

⁷ Education Code Section 17250.35, as added by Chapter 421, Statutes of 2001, Section 1:

“(a) The minimum performance criteria and design standards established

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1 governing board to retain the services of an architect or structural engineer to monitor
2 compliance with the established performance criteria and design standards.
3 Deviations are allowed only by written consent of the school district. Subdivision (b)
4 requires the school district governing board to employ an independent inspector.
5 Subdivision (c) requires the Department of General Services to approve all plans for
6 safety of design and construction before any construction begins. Subdivision (d)
7 assigns all liability for the facility to the design-build entity.

pursuant to this chapter by a school district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The school district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(c) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Sections 17267 and 17297.

(d) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.”

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1 Education Code Section 17250.40⁸ requires that the Superintendent of Public
2 Instruction adopt guidelines for design-build projects in consultation with the Secretary
3 for Education, the Department of General Services, the Energy Resources,
4 Conservation and Development Commission, the Seismic Safety Commission, school
5 district representatives, and industry representatives. To the extent that these
6 guidelines are adopted, districts would be required to comply.

7 Education Code Section 17250.45⁹ requires each school district using the

⁸ Education Code Section 17250.40, as added by Chapter 421, Statutes of 2001, Section 1:

“The Superintendent of Public Instruction shall, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, school district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed within six months of the operative date of this chapter.”

⁹ Education Code Section 17250.45, as added by Chapter 421, Statutes of 2001, Section 1:

“Each school district governing board that adopts the design-build process for a school construction project shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2004, and a final report to the Legislature by January 1, 2006. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
- (b) The gross square footage of the facility.
- (c) The company or contractor who was awarded the project.
- (d) The estimated and actual length of time to complete the project.

1 design-build process to submit a report to the Legislative Analyst within 60 days of
2 completion of the project. The report shall include, but not be limited to all of the
3 following information as to each project:

- 4 (a) The type of facility,
- 5 (b) The gross square footage of the facility,
- 6 (c) The company or contractor who was awarded the project,
- 7 (d) The estimated and actual length of time to complete the project,
- 8 (e) The estimated and actual project cost,
- 9 (f) A description of the relative merits of a project procured pursuant to this
10 chapter and similar projects procured pursuant to other provisions of this
11 code,
- 12 (g) A description of any written protest concerning any aspect of the
13 solicitation, bid, proposal, or award of the design-build project, including

(e) The estimated and actual project cost.

(f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.

(g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.

(h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.

(i) The findings established pursuant to Section 17250.20 and a post-completion evaluation as to whether the findings were achieved.

(j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.”

1 the resolution of the protest,

2 (h) Other pertinent information that may be instructive in evaluating whether
3 the design-build method of procurement should be continued, expanded,
4 or prohibited,

5 (i) The findings established pursuant to Section 17250.20 and a
6 post-completion evaluation as to whether the findings were achieved, and

7 (j) Any Labor Code violations discovered during the course of construction or
8 following completion of the project, as well as any fines or penalties
9 assessed.

10 Education Code Section 17250.50¹⁰ prohibits a school district from any further
11 design-build projects if it has not filed the project report as required by Section
12 17250.45.

13 Chapter 664, Statutes of 2002, Section 57, amended Education Code Section
14 17250.30 to make technical changes.

15 **B. COMMUNITY COLLEGES**

16 Chapter 3.5, entitled "Design-Build Contracts", was added to Part 49, Division 7,

¹⁰ Education Code Section 17250.50, as added by Chapter 421, Statutes of 2001, Section 1:

"A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 17250.45."

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1 Title 3 of the Education Code, by Chapter 637, Statutes of 2002, Section 1,
2 commencing with section 81700. Chapter 637, Statutes of 2002, Section 4, provides a
3 sunset date for the Chapter on January 1, 2008.

4 Education Code Section 81700¹¹, subdivision (a), states a legislative intent to

¹¹ Education Code Section 81700, as added by Chapter 637, Statutes of 2002,
Section 1:

“(a) It is the intent of the Legislature to enable community college districts to utilize safe and cost effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, including school districts, and state office buildings.

(b) The Legislature also finds and declares that community college districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the community college district. The Legislature also finds that the cost effective benefits to the community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity under this chapter shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(f) It is the intent of the Legislature to authorize three community college districts, and up to five community college facility construction projects selected by the Chancellor of the California Community Colleges, to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.”

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1 enable community college districts to use safe and cost-effective options for building
2 and modernization school facilities. Subdivision (b) requires that districts, utilizing a
3 design-build contract, have a clear understanding of the roles and responsibilities of
4 each participant in the design-build process. Subdivision (c) provides that the design-
5 build process is an optional alternative procedure for bidding and building community
6 college construction projects. Subdivision (d) provides that the funding occur in a single
7 phase. Subdivision (e) provides that the chapter should not change, in any way, the
8 legal responsibility to comply with existing laws. Subdivision (f) authorizes three
9 community college districts, and up to five community college facility construction
10 projects selected by the Chancellor, to use the procedures of this Chapter and to
11 deliver a report detailing the effectiveness of these procedures to the Legislature.

12 Education Code Section 81700.5¹² limits design-build contracts to the Los
13 Angeles Community College District, the San Jose-Evergreen Community College
14 District, the San Mateo Community College District and up to five other community
15 college facility construction projects selected by the Chancellor.

¹² Education Code Section 81700.5, as added by Chapter 637, Statutes of 2002,
Section 1:

“This chapter applies only with respect to all of the following:
(a) The Los Angeles Community College District.
(b) The San Jose-Evergreen Community College District.
(c) The San Mateo Community College District.
(d) Up to five community college facility construction projects selected by the
chancellor pursuant to Section 81700.7.”

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1 Education Code Section 81700.7¹³ authorizes the Chancellor to select up to five
2 community college facility construction projects from districts deemed appropriate to
3 use the procedures of the Chapter.

4 Education Code Section 81701¹⁴ defines the terms "best value" as a value
5 determined by objective criteria that may include price, features, functions, and
6 life-cycle costs. Subdivision (b) defines "design-build" as a procurement process in
7 which both the design and construction of a project are procured from a single entity.
8 Subdivision (c) defines " design-build entity" as a business association able to provide
9 appropriately licensed contracting, architectural, and engineering services.

¹³ Education Code Section 81700.7, as added by Chapter 637, Statutes of 2002,
Section 1:

"The chancellor may select up to five community college facility construction projects, from districts, other than the districts specified in Section 81700.5, that apply for this designation, that he or she deems appropriate to use the procedures of this chapter."

¹⁴ Education Code Section 81701, as added by Chapter 637, Statutes of 2002,
Section 1:

"As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the community college district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract."

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1 Education Code Section 81702¹⁵, provides authority for the governing board of a
2 community college district to enter into a design-build contract for a community college
3 facility when the cost will exceed ten million dollars when the design-build process is
4 expected to reduce project costs, expedite completion, or provide features unavailable
5 through traditional processes after evaluation of the traditional design, bid and build
6 process. The governing board is required review the guidelines in Section 81706 and is
7 required to adopt a resolution approving the use of a design-build contract prior to
8 entering into the design-build contract. Subdivision (b) prohibits state funds
9 appropriation for a design-build capital outlay project until the Department of Finance

¹⁵ Education Code Section 81702, as added by Chapter 637, Statutes of 2002,
Section 1:

“(a) Upon a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 81706 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.”

1 and the State Public Works Board have approved performance criteria, or performance
2 criteria and concept drawings.

3 Education Code Section 81703¹⁶ requires that design-build projects progress

¹⁶ Education Code Section 81703, as added by Chapter 637, Statutes of 2002,
Section 1:

“Design-build projects shall progress as follows:

(a) (1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the community college district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the community college district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the community college district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the community college district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a community college district shall specifically disclose whether all

evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the community college district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 81138.

(b) The community college district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations pursuant to subdivision (b) of Section 17250.25.

(c) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the community college district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the community college district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the immediately preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeship craft in the five years prior to enactment of the act adding

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1 as follows: subdivision (a)(1) requires the community college district to prepare a
2 request for proposal that fully describes the scope of the project. Subdivision (a)(2)
3 requires that each request for proposal shall do all of the following:

- 4 A) Identify the basic scope and needs of the project of contract, the expected
5 cost range, and other information deemed necessary by the community
6 college district to inform interested parties of the contracting opportunity.
- 7 B) Invite interested parties to submit competitive sealed proposals in the
8 manner prescribed by the community college district.
- 9 C) Include a section identifying and describing the following:
- 10 (i) All significant factors and subfactors that the community college
11 district reasonably expects to consider in evaluating proposals;
- 12 (ii) The methodology and rating or weighting scheme that will be used
13 by the community college district governing board in evaluating

this section.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For the purposes of this chapter, when a community college district determines a design-build entity's "experience," the district shall give credit only to design-build experience and to California school design and construction experience."

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1 competitive proposals;

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

4 (iv) As an alternative to clause (iii), the governing board of a community
5 college district shall specifically disclose whether all evaluation
6 factors other than cost or price, when combined, are any of the
7 following:

8 (I) Significantly more important than cost or price,

9 (II) Approximately equal in importance to cost or price, or

10 (III) Significantly less important than cost or price; and

11 (v) If the community college district governing board wishes to reserve
12 the right to hold discussions or negotiations with responsive
13 bidders, it shall so specify in the request for proposal and shall
14 publish separately or incorporate into the request for proposal
15 applicable rules and procedures to be observed by the community
16 college district to ensure that any discussions or negotiations are
17 conducted in a fair and impartial manner.

18 Subdivision (b) requires the community college district to establish a procedure to
19 prequalify design-build entities, using a standard questionnaire, pursuant to subdivision
20 (b) of Section 17250.25. Subdivision (c) requires the community college district to

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1 establish a procedure for final selection of the design-build entity, which shall be based
2 on either:

- 3 (1) a competitive bidding process resulting in lump-sum bids, or
- 4 (2) performance and other criteria set forth by the governing board in the
5 solicitation of proposals.

6 Subparagraph (C) requires the community college district to notify in writing, the bidder
7 to whom the award of the contract shall be made. Subparagraph (D) and (E) requires
8 the community college district to issue a written decision stating, in detail, the basis of
9 the award and its ranking among submitted proposals.

10 Education Code Section 81704¹⁷, subdivision (a), requires any design-

¹⁷ Education Code Section 81704, as added by Chapter 637, Statutes of 2002,
Section 1:

“(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

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1 build entity that is selected to possess or obtain bonding in an amount sufficient to
2 cover the nondesign services and errors and omissions insurance coverage to cover all
3 design and architectural services provided. Subdivision (b) requires the performance
4 bond to use the form developed by the Department of General Services to insure

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.”

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1 uniformity throughout the state. Subdivision (d) requires the community college district
2 to establish and enforce a labor compliance program containing the requirements
3 outlined in Section 1771.5 of the Labor Code unless the community college district or
4 design-build entity has entered into a collective bargaining agreement that binds all of
5 the contractors performing work on the project.

6 Education Code Section 81705¹⁸, subdivision (a), requires the community college

¹⁸ Education Code Section 81705, as added by Chapter 637, Statutes of 2002,
Section 1:

“(a) The minimum performance criteria and design standards established pursuant to this chapter by a community college district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the community college district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the community college district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The community college district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 81703, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 81703.

(c) The project inspector shall act under the direction of either the Director of General Services or a competent, qualified agent of the community college district.

(d) Each contract with a design-build entity shall provide that no construction or alteration of any community college facility pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Section 81133.

(e) The design-build entity shall be liable for building the facility to specifications

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1 district governing board to retain the services of an architect or structural engineer to
2 monitor compliance with the established performance criteria and design standards.
3 Deviations are allowed only by written consent of the community college district.
4 Subdivision (b) requires the community college district governing board to employ an
5 independent inspector. Subdivision (c) requires that the project inspector act under the
6 direction of either the Director of General Services or a competent, qualified agent of
7 the district. Subdivision (d) requires the Department of General Services to approve all
8 plans for safety of design and construction before any construction begins. Subdivision
9 (e) assigns all liability for the facility to the design-build entity.

10 Education Code Section 81706¹⁹ requires that the Board of Governors develop
11 and adopt guidelines for design-build projects in collaboration with the Secretary for
12 Education, the Department of General Services, the Energy Resources, Conservation
13 and Development Commission, Seismic Safety Commission, community college district

set forth in the design-build contract in the absence of contractual language to the contrary.”

¹⁹ Education Code Section 81706, as added by Chapter 637, Statutes of 2002, Section 1:

“The Board of Governors of the California Community Colleges, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, community college district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed no later than June 30, 2003.”

1 representatives, and industry representatives. To the extent these guidelines are
2 adopted, districts would be required to comply.

3 Education Code Section 81707²⁰ requires each community college district
4 governing board using the design-build process to submit a report to the Legislative
5 Analyst within 60 days of completion of the project. The report shall include, but not be
6 limited to, all of the following information as to each project:

²⁰ Education Code Section 81707, as added by Chapter 637, Statutes of 2002,
Section 1:

“Each community college district governing board that adopts the design-build process for a project pursuant to this chapter shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2005, and a final report to the Legislature by January 1, 2007. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
- (b) The gross square footage of the facility.
- (c) The company or contractor who was awarded the project.
- (d) The estimated and actual length of time to complete the project.
- (e) The estimated and actual project cost.
- (f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.
- (g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.
- (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
- (i) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved.
- (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.”

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- 1 (a) The type of facility,
- 2 (b) The gross square footage of the facility,
- 3 (c) The company or contractor who was awarded the project,
- 4 (d) The estimated and actual length of time to complete the project,
- 5 (e) The estimated and actual project cost,
- 6 (f) A description of the relative merits of a project procured pursuant to
7 this chapter and similar projects procured pursuant to other
8 provisions of this code,
- 9 (g) A description of any written protest concerning any aspect of the
10 solicitation, bid, proposal, or award of the design-build project,
11 including the resolution of the protest,
- 12 (h) Other pertinent information that may be instructive in evaluating
13 whether the design-build method of procurement should be
14 continued, expanded, or prohibited,
- 15 (i) The findings established pursuant to Section 81702 and a
16 postcompletion evaluation as to whether the findings were
17 achieved, and
- 18 (j) Any Labor Code violations discovered during the course of
19 construction or following completion of the project, as well as any
20 fines or penalties assessed.

1 Education Code Section 81708²¹ prohibits a community college district from
2 commencing any additional design-build projects if 60 days has elapsed after
3 completion of a design-build project without having filed the project report as required
4 by Section 81707.

5 PART III. STATEMENT OF THE CLAIM

6 SECTION 1. COSTS MANDATED BY THE STATE

7 The Statutes, Education Code Sections, and Guidelines referenced in this test
8 claim result in school districts incurring costs mandated by the state, as defined in
9 Government Code section 17514²², by creating new state-mandated duties related to
10 the uniquely governmental function of providing public services and these statutes
11 apply to school districts and do not apply generally to all residents and entities in the

²¹ Education Code Section 81708, as added by Chapter 637, Statutes of 2002,
Section 1:

"A community college district shall not commence any additional design-build
projects if 60 days has elapsed after completion of a design-build project without having
filed the report to the Legislative Analyst's Office required pursuant to Section 81707."

²² Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or
school district is required to incur after July 1, 1980, as a result of any statute enacted
on or after January 1, 1975, or any executive order implementing any statute enacted
on or after January 1, 1975, which mandates a new program or higher level of service
of an existing program within the meaning of Section 6 of Article XIII B of the California
Constitution.

Test Claim of Clovis Unified School District
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1 state.²³

2 The new duties mandated by the state upon school districts, county offices of
3 education and community colleges require state reimbursement of the direct and
4 indirect costs of labor, materials and supplies, data processing services and software,
5 contracted services and consultants, equipment and capital assets, staff and student
6 training and travel to implement the following activities:

7 A) Pursuant to Education Code Section 17250.10 and 81700, developing
8 and implementing and periodically updating policies and procedures
9 necessary to enter into design-build contracts with design-build entities for
10 the building and modernization of school facilities.

11 SCHOOL DISTRICTS

12 B) Pursuant to Education Code Section 17250.10, subdivision (b), taking the
13 necessary steps to understand the roles and responsibilities of each
14 participant in the design-build process.

15 C) Pursuant to Education Code Section 17250.20, prior to entering into a

²³ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

Test Claim of Clovis Unified School District
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1 design-build contract, evaluating the traditional design, bid and build
2 process and reviewing guidelines developed pursuant to section
3 17250.40. Adopting a resolution approving the use of a design-build
4 contract.

5 D) Pursuant to Education Code Section 17250.25, subdivision (a), and pages
6 14-21 of the 2002 edition of "Design-Build Projects Guidelines", which are
7 attached hereto in their entirety as Exhibit 4, preparing a request for
8 proposal which shall do all of the following:

9 1) Pursuant to Education Code Section 17250.25, subdivision
10 (a)(2)(A), identifying the basic scope and needs of the project or
11 contract, the expected cost range, and other information deemed
12 necessary;

13 2) Pursuant to Education Code Section 17250.25, subdivision
14 (a)(2)(B), inviting interested parties to submit competitive
15 proposals; and

16 3) Pursuant to Education Code Section 17250.25, subdivision
17 (a)(2)(C), including a section identifying and describing the factors,
18 methodology and importance of each factor which is to be
19 evaluated.

20 E) Pursuant to Education Code Section 17250.25, subdivision (b)(1),

1 establishing and implementing a procedure to prequalify design-build
2 entities using a standard questionnaire developed by the Director of the
3 Department of Industrial Relations.

4 F) Pursuant to Education Code Section 17250.25, subdivision (c), and
5 "Design-Build Projects Guidelines" 2002, pages 23-29, establishing and
6 implementing a procedure for final selection of the design-build entity
7 based on either of the following criteria:

8 1) A competitive bidding process resulting in lump-sum bids by the
9 prequalified design-build entities, and the award shall be made on
10 the basis of the lowest responsible bid; or

11 2) Performance and other criteria set forth by the governing board in
12 the solicitation of proposals.

13 3) Pursuant to Education Code Section 17250.25 (c)(2)(B), (D) and
14 (E), notifying in writing, the bidder to whom the award for the
15 contract is given, and issuing a written decision supporting its
16 contract award and stating in detail the basis of the award,
17 including the agency's ranking in relation to all other responsive
18 bidders, their respective price proposals and a summary of the
19 school districts's rationale for the contract award.

20 G) Pursuant to Education Code Section 17250.30, subdivision (a), verifying

1 that the design-build entity selected possesses or obtains sufficient
2 bonding for nondesign services and errors and omission insurance
3 sufficient to cover all design and architectural services.

4 H) Pursuant to Education Code Section 17250.30, subdivision (d), and
5 “Design-Build Projects Guidelines” 2002, page 34, establishing and
6 enforcing a labor compliance program containing the requirements
7 outlined in Section 1771.5 of the Labor Code or contracting with a third
8 party to operate a labor compliance program. The labor compliance
9 program shall include, but not be limited to:

- 10 1) All bid invitations and public works contracts shall contain
11 appropriate language concerning the requirements of this chapter,
- 12 2) A prejob conference shall be conducted with the contractor and
13 subcontractors to discuss federal and state labor law requirements
14 applicable to the contract,
- 15 3) Project contractors and subcontractors shall maintain and furnish,
16 at a designated time, a certified copy of each weekly payroll
17 containing a statement of compliance signed under penalty of
18 perjury,
- 19 4) The awarding body shall review, and, if appropriate, audit payroll
20 records to verify compliance with this chapter,

Test Claim of Clovis Unified School District
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- 1 5) The awarding body shall withhold contract payments when payroll
2 records are delinquent or inadequate, and
- 3 6) The awarding body shall withhold contract payments equal to the
4 amount of underpayment and applicable penalties when, after
5 investigation, it is established that underpayment has occurred.
- 6 I) Pursuant to Education Code Section 17250.35, retaining the services of
7 an architect or structural engineer to monitor compliance with
8 performance criteria and design standards who shall be an independent
9 project inspector.
- 10 J) Pursuant to Education Code Section 17250.40, and "Design-Build Project
11 Guidelines" 2002, complying with any adopted guidelines for design-build
12 projects.
- 13 K) Pursuant to Education Code Section 17250.45, and "Design-Build Project
14 Guidelines" 2002, pages 34 and 38-39, submitting a project report to the
15 Legislative Analyst within 60 days of completing the project which shall
16 include:
- 17 1) The type of facility,
18 2) The gross square footage of the facility,
19 3) The company or contractor who was awarded the project,
20 4) The estimated and actual length of time to complete the project,

Test Claim of Clovis Unified School District
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- 1 5) The estimated and actual project cost,
- 2 6) A description of the relative merits of a project,
- 3 7) Other pertinent information that may be instructive in evaluating
- 4 whether the design-build method of procurement should be
- 5 continued, expanded, or prohibited,
- 6 8) The findings established pursuant to Section 17250.20 and a post-
- 7 completion evaluation as to whether the findings were achieved,
- 8 and
- 9 9) Any Labor Code violations discovered during the course of
- 10 construction or following completion of the project, as well as any
- 11 fines or penalties assessed.

12 COMMUNITY COLLEGES

- 13 A) Pursuant to Education Code Section 81700, subdivision (b), taking steps
- 14 to understand the roles and responsibilities of each participant in the
- 15 design-build process.
- 16 B) Pursuant to Education Code Section 81702, prior to entering into a
- 17 design-build contract, evaluating the traditional design, bid and build
- 18 process and reviewing guidelines developed pursuant to section 81706.
- 19 Adopting a resolution approving the use of a design-build contract.
- 20 C) Pursuant to Education Code Section 81703, subdivision (a), preparing a

Test Claim of Clovis Unified School District
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1 request for proposal which shall do all of the following:

- 2 1) Pursuant to Education Code Section 81703, subdivision (a)(2)(A),
3 identifying the basic scope and needs of the project or contract, the
4 expected cost range, and other information deemed necessary;
- 5 2) Pursuant to Education Code Section 81703, subdivision (a)(2)(B),
6 inviting interested parties to submit competitive proposals; and
- 7 3) Pursuant to Education Code Section 81703, subdivision (a)(2)(C),
8 including a section identifying and describing the factors,
9 methodology and importance of each factor which is to be
10 evaluated.

11 D) Pursuant to Education Code Section 81703, subdivision (b), establishing
12 and implementing a procedure to prequalify design-build entities using a
13 standard questionnaire developed by the Director of the Department of
14 Industrial Relations.

15 E) Pursuant to Education Code Section 81703, subdivision (c), establishing
16 and implementing a procedure for final selection of the design-build entity
17 based on either of the following criteria:

- 18 1) A competitive bidding process resulting in lump-sum bids by the
19 prequalified design-build entities, and the award shall be made on
20 the basis of the lowest responsible bid; or

Test Claim of Clovis Unified School District
and Santa Monica Community College District
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- 1 2) Performance and other criteria set forth by the governing board in
2 the solicitation of proposals.
- 3 3) Pursuant to Education Code Section 81703, subdivisions (c)(2)(B),
4 (D) and (E), notifying in writing, the bidder to whom the award for
5 the contract is given, and issuing a written decision supporting its
6 contract award and stating in detail the basis of the award,
7 including the agency's ranking in relation to all other responsive
8 bidders, their respective price proposals and a summary of the
9 school districts's rationale for the contract award.
- 10 F) Pursuant to Education Code Section 81704, subdivision (a), verifying that
11 the design-build entity selected possesses or obtains sufficient bonding
12 for nondesign services and errors and omissions insurance sufficient to
13 cover all design architectural services.
- 14 G) Pursuant to Education Code 81704 (d), establishing and enforcing a labor
15 compliance program containing the requirements outlined in Section
16 1771.5 of the Labor Code or contracting with a third party to operate a
17 labor compliance program. The labor compliance program shall include,
18 but not be limited to:
- 19 1) All bid invitations and public works contracts shall contain
20 appropriate language concerning the requirements of this chapter,

Test Claim of Clovis Unified School District
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Chapter 664/02 Design-Build Contracts

- 1 2) A prejob conference shall be conducted with the contractor and
2 subcontractors to discuss federal and state labor law requirements
3 applicable to the contract,
4 3) Project contractors and subcontractors shall maintain and furnish,
5 at a designated time, a certified copy of each weekly payroll
6 containing a statement of compliance signed under penalty of
7 perjury,
8 4) The awarding body shall review, and, if appropriate, audit payroll
9 records to verify compliance with this chapter,
10 5) The awarding body shall withhold contract payments when payroll
11 records are delinquent or inadequate, and
12 6) The awarding body shall withhold contract payments equal to the
13 amount of underpayment and applicable penalties when, after
14 investigation, it is established that underpayment has occurred.
- 15 H) Pursuant to Education Code Section 81705 (b), retaining the services of
16 an architect or structural engineer to monitor compliance with
17 performance criteria and design standards who shall be an independent
18 project inspector.
- 19 I) Pursuant to Education Code Section 81705 (d), obtaining written approval
20 of the plans as to safety of design and construction from the Department

Test Claim of Clovis Unified School District
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Chapter 664/02 Design-Build Contracts

1 of General Services before commencement of any construction or
2 alteration of a college facility.

3 J) Pursuant to Education Code Section 81706, complying with any adopted
4 guidelines for design-build projects.

5 K) Pursuant to Education Code Section 81707, submitting a project report to
6 the Legislative Analyst within 60 days of completing the project which shall
7 include:

8 1) The type of facility,

9 2) The gross square footage of the facility,

10 3) The company or contractor who was awarded the project,

11 4) The estimated and actual length of time to complete the project,

12 5) The estimated and actual project cost,

13 6) A description of the relative merits of a project procured pursuant to
14 this chapter and similar projects procured pursuant to other
15 provisions of this code,

16 7) A description of any written protest concerning any aspect of the
17 solicitation, bid, proposal, or award of the design-build project,
18 including the resolution of the protest,

19 8) Other pertinent information that may be instructive in evaluating
20 whether the design-build method of procurement should be

1 continued, expanded, or prohibited,

2 9) The findings established pursuant to Section 81702 and a
3 postcompletion evaluation as to whether the findings were
4 achieved, and

5 10) Any Labor Code violations discovered during the course of
6 construction or following completion of the project, as well as any
7 fines or penalties assessed.

8 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

9 None of the Government Code Section 17556²⁴ statutory exceptions to a finding

²⁴ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.²⁵

6 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

7 No funds are appropriated by the state for reimbursement of these costs
8 mandated by the state and there is no other provision of law for recovery of costs from
9 any other source.

10 PART IV. ADDITIONAL CLAIM REQUIREMENTS

11 The following elements of this claim are provided pursuant to Section 1183, Title

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

²⁵ Government Code section 17565, added by Chapter 879, Statutes of 1986:

“If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Test Claim of Clovis Unified School District
and Santa Monica Community College District
Chapter 664/02 Design-Build Contracts

1 2, California Code of Regulations:

2 Exhibit 1: Declaration of William McGuire
3 Associate Superintendent
4 Clovis Unified School District

5
6 Declaration of Thomas J. Donner
7 Executive Vice President of Business and Administration
8 Santa Monica Community College District
9

10 Exhibit 2: Copies of Statutes Cited

11 Chapter 664, Statutes of 2002

12 Chapter 637, Statutes of 2002

13 Chapter 421, Statutes of 2001

14 Exhibit 3: Copies of Code Sections Cited

15 Education Code Section 17250.10

16 Education Code Section 17250.15

17 Education Code Section 17250.20

18 Education Code Section 17250.25

19 Education Code Section 17250.30

20 Education Code Section 17250.35

21 Education Code Section 17250.40

22 Education Code Section 17250.45

23 Education Code Section 17250.50

24 Education Code Section 81700

Test Claim of Clovis Unified School District
and Santa Monica Community College District
Chapter 664/02 Design-Build Contracts

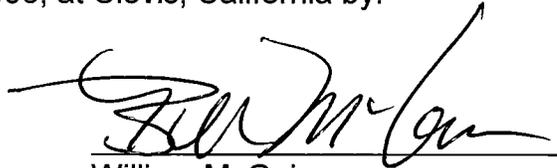
| | | |
|----|-------------------|---|
| 1 | | Education Code Section 81700.5 |
| 2 | | Education Code Section 81700.7 |
| 3 | | Education Code Section 81701 |
| 4 | | Education Code Section 81702 |
| 5 | | Education Code Section 81703 |
| 6 | | Education Code Section 81704 |
| 7 | | Education Code Section 81705 |
| 8 | | Education Code Section 81706 |
| 9 | | Education Code Section 81707 |
| 10 | | Education Code Section 81708 |
| 11 | <u>Exhibit 4:</u> | "Design-Build Projects Guidelines" 2002 Edition |
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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Clovis, California by:



William McGuire
Associate Superintendent

Voice: (559) 327-9110
Fax: (559)327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William McGuire
Associate Superintendent

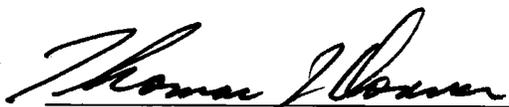
6/23/2003
Date

Test Claim of Clovis Unified School District
and Santa Monica Community College District
Chapter 664/02 Design-Build Contracts

1 PART V. CERTIFICATION

2 I certify by my signature below, under penalty of perjury, that the statements
3 made in this document are true and complete of my own knowledge or information and
4 belief.

5 Executed on June 23, 2003, at Santa Monica, California by:

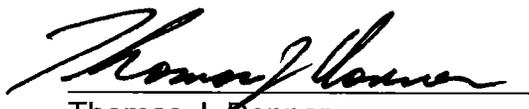
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8 Thomas J. Donner
9 Executive Vice President of Business and
10 Administration
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12 Voice: (310) 434-4201
13 Fax: (310) 434-8200
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16 PART VI. APPOINTMENT OF REPRESENTATIVE

17 Santa Monica Community College District appoints Keith B. Petersen, SixTen and
18 Associates, as its representative for this test claim.

19
20 

21 Thomas J. Donner
22 Executive Vice President of Business
23 and Administration

6-23-03

Date

Exhibit 1
Declaration of William McGuire
Declaration of Thomas J. Donner

DECLARATION OF William McGuire
Clovis Unified School District

Test Claim of Clovis Unified School District
and Santa Monica Community College District

COSM No. _____

Chapter 664, Statutes of 2002
Chapter 421, Statutes of 2001

Education Code Section 17250.10
Education Code Section 17250.15
Education Code Section 17250.20
Education Code Section 17250.25
Education Code Section 17250.30
Education Code Section 17250.35
Education Code Section 17250.40
Education Code Section 17250.45
Education Code Section 17250.50

“Design-Build Project Guidelines” 2002 Edition

Design-Build Contracts

I, William McGuire, Associate Superintendent, Clovis Unified School District,
make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for establishing
and implementing procedures for entering into design-build contracts. I am familiar with
the provisions and requirements of the Statutes, Education Code Sections, and
Executive Order enumerated above.

- A) Pursuant to Education Code Section 17250.10, developing and
implementing and periodically updating policies and procedures

1 necessary to enter into design-build contracts with design-build entities for
2 the building and modernization of school facilities.

3 B) Pursuant to Education Code Section 17250.10, subdivision (b), taking the
4 necessary steps to understand the roles and responsibilities of each
5 participant in the design-build process.

6 C) Pursuant to Education Code Section 17250.20, prior to entering into a
7 design-build contract, evaluating the traditional design, bid and build
8 process and reviewing guidelines developed pursuant to section
9 17250.40. Adopting a resolution approving the use of a design-build
10 contract.

11 D) Pursuant to Education Code Section 17250.25, subdivision (a), and pages
12 14-21 of the 2002 edition of "Design-Build Projects Guidelines", which are
13 attached hereto in their entirety as Exhibit 4, preparing a request for
14 proposal which shall do all of the following:

15 1) Pursuant to Education Code Section 17250.25, subdivision
16 (a)(2)(A), identifying the basic scope and needs of the project or
17 contract, the expected cost range, and other information deemed
18 necessary;

19 2) Pursuant to Education Code Section 17250.25, subdivision
20 (a)(2)(B), inviting interested parties to submit competitive
21 proposals; and

- 1 3) Pursuant to Education Code Section 17250.25, subdivision
2 (a)(2)(C), including a section identifying and describing the factors,
3 methodology and importance of each factor which is to be
4 evaluated.
- 5 E) Pursuant to Education Code Section 17250.25, subdivision (b)(1),
6 establishing and implementing a procedure to prequalify design-build
7 entities using a standard questionnaire developed by the Director of the
8 Department of Industrial Relations.
- 9 F) Pursuant to Education Code Section 17250.25, subdivision (c), and
10 “Design-Build Projects Guidelines” 2002, pages 23-29, establishing and
11 implementing a procedure for final selection of the design-build entity
12 based on either of the following criteria:
- 13 1) A competitive bidding process resulting in lump-sum bids by the
14 prequalified design-build entities, and the award shall be made on
15 the basis of the lowest responsible bid; or
- 16 2) Performance and other criteria set forth by the governing board in
17 the solicitation of proposals.
- 18 3) Pursuant to Education Code Section 17250.25 (c)(2)(B), (D) and
19 (E), notifying in writing, the bidder to whom the award for the
20 contract is given, and issuing a written decision supporting its
21 contract award and stating in detail the basis of the award,

1 including the agency's ranking in relation to all other responsive
2 bidders, their respective price proposals and a summary of the
3 school districts's rationale for the contract award.

4 G) Pursuant to Education Code Section 17250.30, subdivision (a), verifying
5 that the design-build entity selected possesses or obtains sufficient
6 bonding for nondesign services and errors and omission insurance
7 sufficient to cover all design and architectural services.

8 H) Pursuant to Education Code Section 17250.30, subdivision (d), and
9 "Design-Build Projects Guidelines" 2002, page 34, establishing and
10 enforcing a labor compliance program containing the requirements
11 outlined in Section 1771.5 of the Labor Code or contracting with a third
12 party to operate a labor compliance program. The labor compliance
13 program shall include, but not be limited to:

- 14 1) All bid invitations and public works contracts shall contain
15 appropriate language concerning the requirements of this chapter,
- 16 2) A prejob conference shall be conducted with the contractor and
17 subcontractors to discuss federal and state labor law requirements
18 applicable to the contract,
- 19 3) Project contractors and subcontractors shall maintain and furnish,
20 at a designated time, a certified copy of each weekly payroll
21 containing a statement of compliance signed under penalty of

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perjury,

4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter,

5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate, and

6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

I) Pursuant to Education Code Section 17250.35, retaining the services of an architect or structural engineer to monitor compliance with performance criteria and design standards who shall be an independent project inspector.

J) Pursuant to Education Code Section 17250.40, and "Design-Build Project Guidelines" 2002, complying with any adopted guidelines for design-build projects.

K) Pursuant to Education Code Section 17250.45, and "Design-Build Project Guidelines" 2002, pages 34 and 38-39, submitting a project report to the Legislative Analyst within 60 days of completing the project which shall include:

1) The type of facility,

2) The gross square footage of the facility,

Declaration of William McGuire
Clovis Unified School District

1 where so stated I declare that I believe them to be true.

2 EXECUTED this 23 day of June, 2003, at Clovis, California

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William McGuire
Associate Superintendent
Clovis Unified School District

1 and periodically updating policies and procedures necessary to enter into
2 design-build contracts with design-build entities for the building and
3 modernization of school facilities.

4 B) Pursuant to Education Code Section 81700, subdivision (b), taking steps
5 to understand the roles and responsibilities of each participant in the
6 design-build process.

7 C) Pursuant to Education Code Section 81702, prior to entering into a
8 design-build contract, evaluating the traditional design, bid and build
9 process and reviewing guidelines developed pursuant to section 81706.
10 Adopting a resolution approving the use of a design-build contract.

11 D) Pursuant to Education Code Section 81703, subdivision (a), preparing a
12 request for proposal which shall do all of the following:

13 1) Pursuant to Education Code Section 81703, subdivision (a)(2)(A),
14 identifying the basic scope and needs of the project or contract, the
15 expected cost range, and other information deemed necessary;

16 2) Pursuant to Education Code Section 81703, subdivision (a)(2)(B),
17 inviting interested parties to submit competitive proposals; and

18 3) Pursuant to Education Code Section 81703, subdivision (a)(2)(C),
19 including a section identifying and describing the factors,
20 methodology and importance of each factor which is to be
21 evaluated.

- 1 E) Pursuant to Education Code Section 81703, subdivision (b), establishing
2 and implementing a procedure to prequalify design-build entities using a
3 standard questionnaire developed by the Director of the Department of
4 Industrial Relations.
- 5 F) Pursuant to Education Code Section 81703, subdivision (c), establishing
6 and implementing a procedure for final selection of the design-build entity
7 based on either of the following criteria:
- 8 1) A competitive bidding process resulting in lump-sum bids by the
9 prequalified design-build entities, and the award shall be made on
10 the basis of the lowest responsible bid; or
- 11 2) Performance and other criteria set forth by the governing board in
12 the solicitation of proposals.
- 13 3) Pursuant to Education Code Section 81703, subdivisions (c)(2)(B),
14 (D) and (E), notifying in writing, the bidder to whom the award for
15 the contract is given, and issuing a written decision supporting its
16 contract award and stating in detail the basis of the award,
17 including the agency's ranking in relation to all other responsive
18 bidders, their respective price proposals and a summary of the
19 school districts's rationale for the contract award.
- 20 G) Pursuant to Education Code Section 81704, subdivision (a), verifying that
21 the design-build entity selected possesses or obtains sufficient bonding

1 for nondesign services and errors and omissions insurance sufficient to
2 cover all design architectural services.

3 H) Pursuant to Education Code 81704 (d), establishing and enforcing a labor
4 compliance program containing the requirements outlined in Section
5 1771.5 of the Labor Code or contracting with a third party to operate a
6 labor compliance program. The labor compliance program shall include,
7 but not be limited to:

- 8 1) All bid invitations and public works contracts shall contain
9 appropriate language concerning the requirements of this chapter,
- 10 2) A prejob conference shall be conducted with the contractor and
11 subcontractors to discuss federal and state labor law requirements
12 applicable to the contract,
- 13 3) Project contractors and subcontractors shall maintain and furnish,
14 at a designated time, a certified copy of each weekly payroll
15 containing a statement of compliance signed under penalty of
16 perjury,
- 17 4) The awarding body shall review, and, if appropriate, audit payroll
18 records to verify compliance with this chapter,
- 19 5) The awarding body shall withhold contract payments when payroll
20 records are delinquent or inadequate, and
- 21 6) The awarding body shall withhold contract payments equal to the

1 amount of underpayment and applicable penalties when, after
2 investigation, it is established that underpayment has occurred.

- 3 I) Pursuant to Education Code Section 81705 (b), retaining the services of
4 an architect or structural engineer to monitor compliance with
5 performance criteria and design standards who shall be an independent
6 project inspector.
- 7 J) Pursuant to Education Code Section 81705 (d), obtaining written approval
8 of the plans as to safety of design and construction from the Department
9 of General Services before commencement of any construction or
10 alteration of a college facility.
- 11 K) Pursuant to Education Code Section 81706, complying with any adopted
12 guidelines for design-build projects.
- 13 L) Pursuant to Education Code Section 81707, submitting a project report to
14 the Legislative Analyst within 60 days of completing the project which shall
15 include:
- 16 1) The type of facility,
 - 17 2) The gross square footage of the facility,
 - 18 3) The company or contractor who was awarded the project,
 - 19 4) The estimated and actual length of time to complete the project,
 - 20 5) The estimated and actual project cost,
 - 21 6) A description of the relative merits of a project procured pursuant to

Declaration of Thomas J. Donner
Santa Monica Community College District

1 foregoing is true and correct except where stated upon information and belief and
2 where so stated I declare that I believe them to be true.

3 EXECUTED this 23 day of June, 2003, at Santa Monica, California

4 

5 Thomas J. Donner
6 Executive Vice President of Business and
7 Administration
8 Santa Monica Community College District
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Exhibit 2
Copies of Statutes Cited

SCHOOLS AND SCHOOL DISTRICTS—CONTRACTS—FACILITIES

CHAPTER 421

A.B. No. 1402

AN ACT to add and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code, relating to public works.

[Filed with Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, Simitian. Public works: design-build contracts.

Under existing law, a school district governing board is required to let any contract for a public project that costs \$15,000 or more to the lowest responsible bidder.

Existing law also requires school districts constructing school facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, use of factory-built school buildings, and the acquisition of proposed schoolsites.

This bill would authorize school district governing boards to enter into a design-build contract, as defined, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a school facility that exceeds \$10,000,000. The bill would require the Superintendent of Public Instruction to develop guidelines for design-build projects within 6 months after the operative date of the bill. The bill would require each contract to prohibit construction or alteration of any school building without the prior written approval of the plans by the Department of General Services, and would prescribe related matters. The bill would require a school district that elects to use the design-build process to submit its report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim report to the Legislature by January 1, 2004, and a final report by January 1, 2006. The provisions of the bill would be repealed on January 1, 2007.

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

SECTION 1. Chapter 2.5 (commencing with Section 17250.10) is added to Part 10.5 of the Education Code, to read:

Chapter 2.5. Design-Build Contracts

17250.10. (a) It is the intent of the Legislature to enable school districts to utilize safe and cost-effective options for building and modernizing school facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, and state office buildings.

(b) The Legislature also finds and declares that school districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in

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the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the school district. The Legislature also finds that the cost-effective benefits to the school districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building school construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by the act adding this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

17250.15. As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

17250.20. Upon making a determination by a school district governing that it is in the best interest of the school district, the governing board may enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of school construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 17250.40 and shall adopt a resolution approving the use of a design-build contract pursuant to this article prior to entering into a design-build contract.

17250.25. Design-build projects shall progress as follows:

(a)(1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.

(b)(1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades, surety industry, school districts, and other affected parties. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract, including, but not limited to, electrical and mechanical subcontractors.

(B) Evidence that the members of the design-build entity 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.

(C) The licenses, registration, and credentials required to design and construct the project, including 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, as well as a financial statement that assures the school district that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) or the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state or local government public works project.

(G) Any instance where an entity, its owners, officers, or managing employees, submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(H) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(I) Any prior violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged

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violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against any member of the design-build entity.

(J) Information concerning the bankruptcy or receivership of any member of the entity, including information concerning any work completed by a surety.

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period preceding submission of the bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association.

(2) The information required pursuant to this subdivision shall be verified under oath by the design-build entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to 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) The school district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20110 of the Public Contract Code, a school district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the school district.

(A) Any architectural or engineering firm or individual retained by the governing body of the school district to assist in the development criteria or preparation of the request for proposal shall not be eligible to participate in the competition with the design-build entity.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the school district, to be the best value to the school district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The school district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the school district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the school district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of

Industrial Relations to be an apprenticable craft in the two years prior to enactment of this act.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

17250.30. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

17250.35. (a) The minimum performance criteria and design standards established pursuant to this chapter by a school district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The school district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(c) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Sections 17267 and 17297.

(d) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

17250.40. The Superintendent of Public Instruction shall, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, school district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed within six months of the operative date of this chapter.

17250.45. Each school district governing board that adopts the design-build process for a school construction project shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2004, and a final report to the Legislature by January 1, 2006. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
- (b) The gross square footage of the facility.
- (c) The company or contractor who was awarded the project.
- (d) The estimated and actual length of time to complete the project.
- (e) The estimated and actual project cost.
- (f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.
- (g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.
- (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
- (i) The findings established pursuant to Section 17250.20 and a post-completion evaluation as to whether the findings were achieved.
- (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

17250.50. A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 17250.45.

SEC. 2. This act does not exempt design-build contracts from otherwise applicable provisions of the Public Contract Code unless the exemption is granted expressly, or by necessary implication.

SEC. 3. Unless expressly authorized in this act, no otherwise applicable provision of the Field Act (Article 3 (commencing with Section 17365) of Chapter 3 of Part 10.5 of, and Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of, the Education Code) may be waived, amended, or ignored by the school district or the design-build entity.

Additions or changes indicated by underline; deletions by asterisks * * *

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Ch. 421, § 4

STATUTES OF 2001

SEC. 4. This act shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.

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Additions or changes indicated by underline; deletions by asterisks * * *

**CONTRACTS—COLLEGES AND UNIVERSITIES—
AWARDING OF DESIGN-BUILD CONTRACTS**

CHAPTER 637

A.B. No. 1000

AN ACT to add and repeal Chapter 3.5 (commencing with Section 81700) of Part 49 of the Education Code, relating to public works.

[Filed with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1000, Simitian. Public works: design-build contracts.

Under existing law, a community college district governing board is required to award any contract for a public project that costs \$15,000 or more to the lowest responsible bidder.

Existing law also requires community college districts constructing community college facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, and the acquisition of proposed school sites.

This bill would authorize the governing boards of 3 specified community college districts and 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2008. The bill would authorize factors in addition to price and cost to be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$10,000,000. The bill would require the Board of Governors of the California Community Colleges to develop guidelines for design-build projects no later than June 30, 2003. The bill, among other things, would require each contract to prohibit construction or alteration of any community college facility without the prior written approval of the plans by the Department of General Services. The bill would require a community college district that elects to use the design-build process to submit a report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim report and a final report to the Legislature.

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

SECTION 1. Chapter 3.5 (commencing with Section 81700) is added to Part 49 of the Education Code, to read:

Chapter 3.5. Design-Build Contracts

81700. (a) It is the intent of the Legislature to enable community college districts to utilize safe and cost effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, including school districts, and state office buildings.

(b) The Legislature also finds and declares that community college districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each

Additions or changes indicated by underline; deletions by asterisks * * *

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participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the community college district. The Legislature also finds that the cost effective benefits to the community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity under this chapter shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(f) It is the intent of the Legislature to authorize three community college districts, and up to five community college facility construction projects selected by the Chancellor of the California Community Colleges, to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.

81700.5. This chapter applies only with respect to all of the following:

- (a) The Los Angeles Community College District.
- (b) The San Jose–Evergreen Community College District.
- (c) The San Mateo Community College District.

(d) Up to five community college facility construction projects selected by the chancellor pursuant to Section 81700.7.

81700.7. The chancellor may select up to five community college facility construction projects, from districts, other than the districts specified in Section 81700.5, that apply for this designation, that he or she deems appropriate to use the procedures of this chapter.

81701. As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the community college district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

81702. (a) Upon a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 81706 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.

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Additions or changes indicated by underline; deletions by asterisks * * *

81703. Design-build projects shall progress as follows:

(a)(1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the community college district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the community college district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the community college district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the community college district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a community college district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the community college district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 81138.

(b) The community college district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations pursuant to subdivision (b) of Section 17250.25.

(c) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least

advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the community college district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the community college district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the immediately preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeship craft in the five years prior to enactment of the act adding this section.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For the purposes of this chapter, when a community college district determines a design-build entity's "experience," the district shall give credit only to design-build experience and to California school design and construction experience.

81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

81705. (a) The minimum performance criteria and design standards established pursuant to this chapter by a community college district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the community college district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the community college district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The community college district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 81703, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 81703.

(c) The project inspector shall act under the direction of either the Director of General Services or a competent, qualified agent of the community college district.

(d) Each contract with a design-build entity shall provide that no construction or alteration of any community college facility pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Section 81133.

(e) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

81706. The Board of Governors of the California Community Colleges, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, community college

district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed no later than June 30, 2003.

81707. Each community college district governing board that adopts the design-build process for a project pursuant to this chapter shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2005, and a final report to the Legislature by January 1, 2007. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
- (b) The gross square footage of the facility.
- (c) The company or contractor who was awarded the project.
- (d) The estimated and actual length of time to complete the project.
- (e) The estimated and actual project cost.
- (f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.
- (g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.
- (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
- (i) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved.
- (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

81708. A community college district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 81707.

SEC. 2. This act does not exempt design-build contracts from otherwise applicable provisions of the Public Contract Code unless the exemption is granted expressly, or by necessary implication.

SEC. 3. Unless expressly authorized in this act, no otherwise applicable provision of the Field Act (Article 3 (commencing with Section 17365) of Chapter 3 of Part 10.5 of, and Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of, the Education Code) may be waived, amended, or ignored by the community college district or the design-build entity.

SEC. 4. This act shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 5. This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.

MAINTENANCE OF CODES

CHAPTER 664

A.B. No. 3034

AN ACT to amend Sections 805.2, 1680, 2028, 2249, 2313, 2401, 3508, 4052, 4982.05, 5081.1, 5093, 6060, 6062, 6072, 6450, 7685, 8008, 8020, 8027, 8538, 8560, 10153.6, 10176.1, 13405, 19455, 19549.14, 20007, and 23987 of the Business and Professions Code, to amend Sections 43.8, 789, 827, 1102.6, 1375, 1375.05, 1632, 1708, 1748.13, 1785.11, 1785.11.2, 1798.85, 1936, 1940.7.5, and 3110.5 of the Civil Code, to amend Sections 116.950, 488.455, 700.140, 912, 1162, 1174.3, 1206, and 1299.3 of the Code of Civil Procedure, to amend Sections 25607 and 31011 of the Corporations Code, to amend Sections 8277.6, 8278.3, 17250.30, 19325.1, 24209.3, 44303, 44468, 47634.2, 48431.6, 49431, 49433.9, 51727, 56404, 64001, 89005.5, 94945, and 99226 of, and to amend and renumber Section 92665.1 of, the Education Code, to amend Sections 1405, 2185, 3017, 3201, and 13102 of, and to add a heading to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code, to amend Section 8814.5 of the Family Code, to amend Section 21200.1 of the Financial Code, to amend Sections 1103, 6047.7, 8769, 8770, 20437, 21052, and 75090.5 of the Food and Agricultural Code, to amend Sections 1091.3, 9353.5, 9353.6, 9353.7, 9355, 9355.1, 9355.16, 9355.2, 9355.4, 9355.45, 9355.5, 9355.7, 9355.8, 9356, 9356.1, 9356.15, 9356.2, 9356.3, 9356.5, 9357, 9357.05, 9357.1, 9357.2, 9357.4, 9357.45, 9357.46, 9357.5, 9359.15, 9359.16, 9359.17, 9359.4, 9359.85, 9359.95, 9360.3, 9360.4, 9360.5, 9360.6, 9360.7, 9360.11, 9361.1, 9361.2, 9361.3, 9361.4, 9371, 9374, 9375, 9378, 9509, 11126, 11550, 12800, 12940, 12965, 13964, 13965, 14672.99, 14684, 19574, 20423.5, 20429, 20683.2, 20816, 21327, 21354.3, 21354.4, 21354.5, 21363, 21423, 21661, 30071, 31461.45, 31491.1, 31491.2, 31676.17, 31676.19, 31966, 32271, 53601, 56334, 65892.13, 67940, 68110, 71639.1, 75028.5, 75029, 75030.9, 75031, 75033, 75060.1, 75077, 75083, 75095.5, 75104, 75104.4, 75104.5, and 75106 of, and to add the heading of Article 2.11 (commencing with Section 65892.13) to Chapter 4 of Division 1 of Title 7 of the Government Code, to repeal Section 71.7 of the Harbors and Navigation Code, to amend Sections 1276.65, 11054, 11377, 11382, 25395.20, 26148, 32121, 33334.2, 33334.22, 33368, 33430, 41705, 42801.1, 42840, 44265, 51452, 104324.2, 114090, and 130140.1 of, to amend the heading of Chapter 5 (commencing with Section 127630) of Part 2 of Division 107 of, to amend and renumber the heading of Chapter 2.5 (commencing with Section 1399.900) of Division 2 of, and to repeal Section 33331.5 of, the Health and Safety Code, to amend Sections 1874.85, 10139.5, 10145.4, and 12699.56 of the Insurance Code, to amend Sections 98.7, 230.1, 1161, 1776, 2695.1, 2695.2, 3212, 3212.10, 9102, and 9103 of the Labor Code, to amend Section 1011 of the Military and Veterans Code, to amend Sections 68, 86, 290, 299.5, 637.5, 1370, 11174.4, 12035, 12071, and 12078 of, and to amend the heading of Title 10.2 (commencing with Section 14125) of Part 4 of, the Penal Code, to amend Sections 2620.2 and 6122 of the Probate Code, to amend Sections 615, 5095.2, 21158.6, 21167.7, 25403.5, 31007, 42645, and 71040 of, and to amend and renumber the heading of Article 5 (commencing with Section 5096.652) of Chapter 1.696 of Division 2 of, the Public Resources Code, to amend Sections 331, 332.1, 332.2, 399.6, 2774.5, 3350, 170016, and 170018 of the Public Utilities Code, to amend Sections 62.1, 756, 11273, 12209, 17053.57, 17073, 17942, 18836, 19551.1, 20543, 21015.6, 23684, and 32402 of the Revenue and Taxation Code, to amend Section 730.5 of the Streets and Highways Code, to amend Section 15076.5 of the Unemployment Insurance Code, to amend Sections 286, 672, 5017, 5068, 9250.7, 12517.5, 12811, 14602.6, 14602.7, 15302, 15620, and 23580 of the Vehicle Code, to amend Sections 10013, 10610.2, 10631, 11912, and 13627.4 of the Water Code, to amend Sections 213.5, 727.4, 903.5, 9320, 9681, 11203, 14087.961, 14103.5, 14132.99, 15657, and 19000 of the Welfare and Institutions Code, and to amend Section 5 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), relating to maintenance of the codes.

[Filed with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3034, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as legislation necessary to maintain the codes.

Additions or changes indicated by underline; deletions by asterisks * * *

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(A) Making loans available from the Child Care and Development Facilities Direct Loan Fund to local microenterprise loan funds and other lenders who may relend the funds in appropriate amounts to eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(B) Authorizing a specified amount of guarantees of small loans by local microenterprise loan funds and other lenders serving eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(2) Notwithstanding anything to the contrary in this section or Section 8277.5, a loan made pursuant to this subdivision shall not be made for less than five thousand dollars (\$5,000) or for more than fifty thousand dollars (\$50,000) and shall not be subject to the 75-percent investment restriction contained in paragraph (2) of subdivision (e) of Section 8277.5.

(i) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 56. Section 8278.3 of the Education Code is amended to read:

8278.3. (a)(1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

SEC. 57. Section 17250.30 of the Education Code is amended to read:

17250.30. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract

amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

SEC. 58. Section 19325.1 of the Education Code is amended to read:

19325.1. (a) The State Librarian may operate a telephonic reading system, fund the operation of telephonic reading systems operated by qualifying entities, or both.

(b) As used in this section, the following terms have the following meanings, unless otherwise indicated:

(1) "Telephonic reading system" means a system operated by the State Librarian or a qualifying entity, whereby a caller can hear the reading of material such as newspapers, magazines, newsletters, broadcast media schedules, transit route and schedule information, and other reference or time-sensitive materials, as determined by the operator of the system.

(2) "Qualifying entity" means any agency, instrumentality, or political subdivision of the state or any nonprofit organization whose primary mission is to provide services to people who are blind or visually impaired.

(c) Qualifying entities that were eligible, as of January 1, 2001, to receive funds from the State Librarian relating to the operation of a telephonic reading system may continue to receive funding from the State Librarian.

(d) The State Librarian, in cooperation with qualifying entities, may expand the type and scope of materials available on telephonic reading systems in order to meet the local, regional,

Additions or changes indicated by underline; deletions by asterisks * * *

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struction, maintenance, and operation of the flood control or storm drainage facilities of the * * * zone, to reduce the principal or interest of any bonded indebtedness thereof, or to replace funds expended on behalf of that zone derived from the fund created pursuant to subdivision 1 of Section 13.

10. To incur indebtedness, and to issue bonds in accordance with this act.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof, by this act.

13. To have the power and right to disseminate information concerning the rights, properties, activities, plans, and proposals of the district; provided, however, that expenditures during any fiscal year for those purposes shall not exceed one-half cent (\$.005) for each one hundred dollars (\$100) of assessed valuation of the district.

14. To pay to any city, public agency, district, or educational institution recognized under Chapter 3 (commencing with Section 94301) of Part 59 of the Education Code, a portion of the cost of water imported by that city, public agency, district, or educational institution into, for use within, and of benefit to the Santa Clara Valley Water District.

15. To establish designated floodways in accordance with the Cobey-Alquist Flood Plain Management Act (Chapter 4 (commencing with Section 8400) of Part 2 of Division 5 of the Water Code).

16. To acquire, construct, maintain, operate, and install landscaping or recreational facilities in connection with any dam, reservoir, or other works owned or controlled by the district.

17. To acquire, construct, maintain, operate and install, lease, and control facilities for the generation, transmission, distribution, sale, exchange, and lease of electric power.

18. To require the sealing of abandoned or unused wells according to standards adopted by the board by ordinance and designed to protect the groundwater resources of the district from contamination. Upon and following the effective date of the ordinance, the County of Santa Clara or any incorporated city therein shall require all persons applying for any land development permit or approval to show the existence and location of any water well upon a map of the property the subject of the application. When a well is shown, the map shall be referred to the district immediately upon receipt for review and investigation. If upon review and investigation the district determines that the well or wells are to be sealed by the applicant pursuant to the ordinance, the determination shall be transmitted promptly to the applicant by the district as a requirement in writing.

SEC. 240. The amendment and renumbering of the heading of Article 5 (commencing with Section 5096.652) of Chapter 1.696 of Division 2 of the Public Resources Code proposed by Section 182 of this act shall only become operative if Proposition 40 is approved by the voters at the March 5, 2002, statewide direct primary election.

SEC. 241. Any section of any act enacted by the Legislature during the 2002 calendar year that takes effect on or before January 1, 2003, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2002 calendar year and takes effect on or before January 1, 2003, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Exhibit 3
Copies of Education Code Cited

§ 17250.10. Legislative intent

(a) It is the intent of the Legislature to enable school districts to utilize safe and cost-effective options for building and modernizing school facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, and state office buildings.

(b) The Legislature also finds and declares that school districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the school district. The Legislature also finds that the cost-effective benefits to the school districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building school construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by the act adding this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.15. Definitions

As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.20. Authorization to contract

Upon making a determination by a school district governing that it is in the best interest of the school district, the governing board may enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of school construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 17250.40 and shall adopt a resolution approving the use of a design-build contract pursuant to this article prior to entering into a design-build contract.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.25. Procedures for progression of design-build projects

Design-build projects shall progress as follows:

(a)(1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.

§ 17250.25

(b)(1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades, surety industry, school districts, and other affected parties. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract, including, but not limited to, electrical and mechanical subcontractors.

(B) Evidence that the members of the design-build entity 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.

(C) The licenses, registration, and credentials required to design and construct the project, including 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, as well as a financial statement that assures the school district that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) or the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596),¹ settled against any member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state or local government public works project.

(G) Any instance where an entity, its owners, officers, or managing employees, submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(H) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(I) Any prior violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against any member of the design-build entity.

(J) Information concerning the bankruptcy or receivership of any member of the entity, including information concerning any work completed by a surety.

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(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period preceding submission of the bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association.

(2) The information required pursuant to this subdivision shall be verified under oath by the design-build entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection.

(c) The school district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20110 of the Public Contract Code, a school district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the school district.

(A) Any architectural or engineering firm or individual retained by the governing body of the school district to assist in the development criteria or preparation of the request for proposal shall not be eligible to participate in the competition with the design-build entity.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the school district, to be the best value to the school district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The school district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the school district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the school district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticable craft in the two years prior to enactment of this act.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.30. Bond requirements

(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(Amended by Stats.2002, c. 664 (A.B.3034), § 57.)

§ 17250.35. Performance criteria and design standards

(a) The minimum performance criteria and design standards established pursuant to this chapter by a school district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The school district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(c) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Sections 17267 and 17297.

(d) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.40. Guidelines for design-build projects

The Superintendent of Public Instruction shall, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, school district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed within six months of the operative date of this chapter.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.45. Project report

Each school district governing board that adopts the design-build process for a school construction project shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2004, and a final report to the Legislature by January 1, 2006. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
 - (b) The gross square footage of the facility.
 - (c) The company or contractor who was awarded the project.
 - (d) The estimated and actual length of time to complete the project.
 - (e) The estimated and actual project cost.
 - (f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.
 - (g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.
 - (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
 - (i) The findings established pursuant to Section 17250.20 and a post-completion evaluation as to whether the findings were achieved.
 - (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.
- (Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 17250.50. Additional design-build projects; requirements

A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 17250.45.

(Added by Stats.2001, c. 421 (A.B.1402), § 1.)

§ 81700. Legislative intent, findings and declarations

(a) It is the intent of the Legislature to enable community college districts to utilize safe and cost effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, including school districts, and state office buildings.

(b) The Legislature also finds and declares that community college districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the community college district. The Legislature also finds that the cost effective benefits to the community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity under this chapter shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(f) It is the intent of the Legislature to authorize three community college districts, and up to five community college facility construction projects selected by the Chancellor of the California Community Colleges, to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81700.5. Application of chapter

This chapter applies only with respect to all of the following:

(a) The Los Angeles Community College District.

(b) The San Jose–Evergreen Community College District.

(c) The San Mateo Community College District.

(d) Up to five community college facility construction projects selected by the chancellor pursuant to Section 81700.7.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81700.7. Eligibility of additional projects

The chancellor may select up to five community college facility construction projects, from districts, other than the districts specified in Section 81700.5, that apply for this designation, that he or she deems appropriate to use the procedures of this chapter.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81701. Definitions

As used in this chapter, the following terms have the following meanings:

(a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the community college district.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81702. Authority of board to enter into design-build contracts; findings; expenditure of funds

(a) Upon a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 81706 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81703. Progression of design-build projects

Design-build projects shall progress as follows:

(a)(1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the community college district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the community college district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the community college district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the community college district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

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

(iv) As an alternative to clause (iii), the governing board of a community college district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

Additions or changes indicated by underline; deletions by asterisks * * *

(III) Significantly less important than cost or price.

(v) If the community college district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 81138.

(b) The community college district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations pursuant to subdivision (b) of Section 17250.25.

(c) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the community college district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the community college district's rationale for the contract award.

(F) For the purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the immediately preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeshipable craft in the five years prior to enactment of the act adding this section.

(G) For the purposes of this chapter, a bidder'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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For the purposes of this chapter, when a community college district determines a design-build entity's "experience," the district shall give credit only to design-build experience and to California school design and construction experience.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81704. Bonds; awards of additional subcontracts; labor compliance program

(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) 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 community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81705. Performance criteria and design standards

(a) The minimum performance criteria and design standards established pursuant to this chapter by a community college district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the community college district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the community college district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The community college district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 81703, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 81703.

(c) The project inspector shall act under the direction of either the Director of General Services or a competent, qualified agent of the community college district.

(d) Each contract with a design-build entity shall provide that no construction or alteration of any community college facility pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Section 81133.

(e) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81706. Guidelines

The Board of Governors of the California Community Colleges, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, community college district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed no later than June 30, 2003.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

§ 81707. Report on the project at the completion of the project; contents

Each community college district governing board that adopts the design-build process for a project pursuant to this chapter shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2005, and a final report to the Legislature by January 1, 2007. The reports shall include, but not be limited to, all of the following information as to each project:

- (a) The type of facility.
- (b) The gross square footage of the facility.
- (c) The company or contractor who was awarded the project.
- (d) The estimated and actual length of time to complete the project.
- (e) The estimated and actual project cost.
- (f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.
- (g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.
- (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
- (i) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved.
- (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

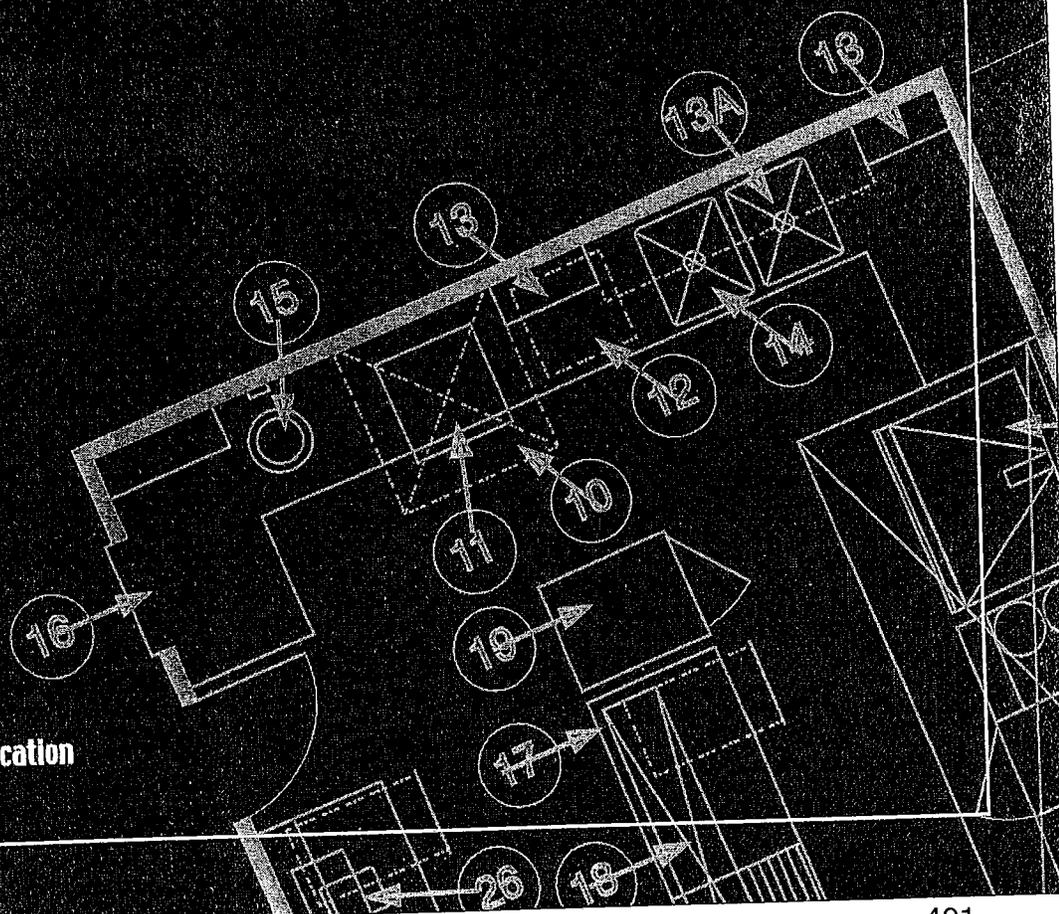
§ 81708. Failure to file required report; restrictions on commencement of additional design-build projects

A community college district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 81707.

(Added by Stats.2002, c. 637 (A.B.1000), § 1.)

Exhibit 4
“Design-Build Projects Guidelines”
2002 Edition

AB 1402 Design-Build Projects Guidelines 2002 Edition



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**Design-Build
Project
Guidelines**

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Prepared for publication
by CSEA members.



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Introduction

Assembly Bill (AB) 1402 (which has been codified as *Education Code* Section 17250.10 et seq.), effective January 1, 2002, authorizes school districts to enter into design-build contracts for projects with design and construction costs exceeding \$10 million. AB 1402 also required the California Department of Education (CDE) to develop guidelines for implementing design-build projects in consultation with the Office of the Secretary for Education; Department of General Services; Energy Resources, Conservation, and Development Commission; Seismic Safety Commission; school district representatives; and industry representatives. CDE brought together more than 30 participants and held ten meetings over a seven-month period to develop the guidelines. This document represents the contributions of the committee members as well as others involved in school facility design and construction throughout the state.

These guidelines are intended to accomplish the following purposes: (1) inform school districts of the design-build process under AB 1402; (2) help school districts to determine whether the design-build process is right for their project; and (3) help school districts comply with the statutory requirements of AB 1402 while avoiding potential problems that may occur during the project.

These guidelines are not regulations and are not mandatory. They merely offer suggestions and recommendations that school districts may choose to follow. Regulations are mandates that must be followed and are subject to the formal adoption process under the Administrative Procedures Act. These guidelines, however, are not a legal interpretation of any aspect of AB 1402 or any other regulation. They should not be considered a legal opinion or a substitute for experienced legal counsel. School districts now have a tool available to address the prospect of using the design-build process and some potential problems that may occur in completing a design-build project. Although the committee that developed the guidelines has attempted to be inclusive and comprehensive in its approach, school districts will

undoubtedly have additional or different ideas and approaches to implementing design-build projects. The committee encourages creativity and analysis and acknowledges that there are many solutions, methods, and approaches to implementing a design-build project under AB 1402.

All parties involved in deciding whether the design-build method is appropriate for a specific project and who will play a role during the process are encouraged to read these guidelines. It is recommended that the school board members, superintendent, project managers, facility managers, and anyone assisting in the preparation of the Request for Proposal become familiar with the provisions of AB 1402 and these guidelines.

The guidelines are designed to be read in their entirety. Individual chapters often refer to other chapters; therefore, a greater understanding can be achieved by reading the guidelines as a whole. A glossary of terms used in these guidelines is provided in the back of this book.

Overview of Delivery Methods

On January 1, 2002, the enactment of Assembly Bill 1402 authorized school districts in the State of California to use a new method to deliver a school construction project. Until the passage of AB 1402, school districts were allowed to construct projects by using the traditional processes of design-bid-build (DBB) and lease-lease back (LLB). AB 1402 broadened the existing methods of project delivery to include design-build for projects with design and construction costs exceeding \$10 million.

Traditional DBB is the most widely used method of project delivery in the California public school system. Under DBB the school district hires a design professional (typically an architect) to create documents from which general contractors will bid. The contractor selected to build the project is the responsible bidder who submits the lowest bid.

The LLB process (*Education Code* Section 17406) establishes a contract by which the district owns a piece of property and leases it for what is usually a nominal amount to an entity that is obligated to construct a school on that site. That entity then leases the completed school and site back to the district for a specified period of time at a specified rental amount. At the end of the lease, the school and site then become the property of the school district. The district's adoption of completed plans and specifications is a prerequisite for entering into the lease agreement. Procurement under the terms of *Education Code* Section 17406 does not require the selection of the lowest responsible bidder, allowing flexibility in contracting ranging from DBB to design-build.

Design-build is a method of project delivery that combines the design and construction functions and vests the responsibility for such functions with one entity: the design-builder. Under AB 1402 the school district defines its needs, issues a Request for Proposal (RFP) to prequalified design-build entities, and selects one of the proposing entities to design and build the project on district-owned property.

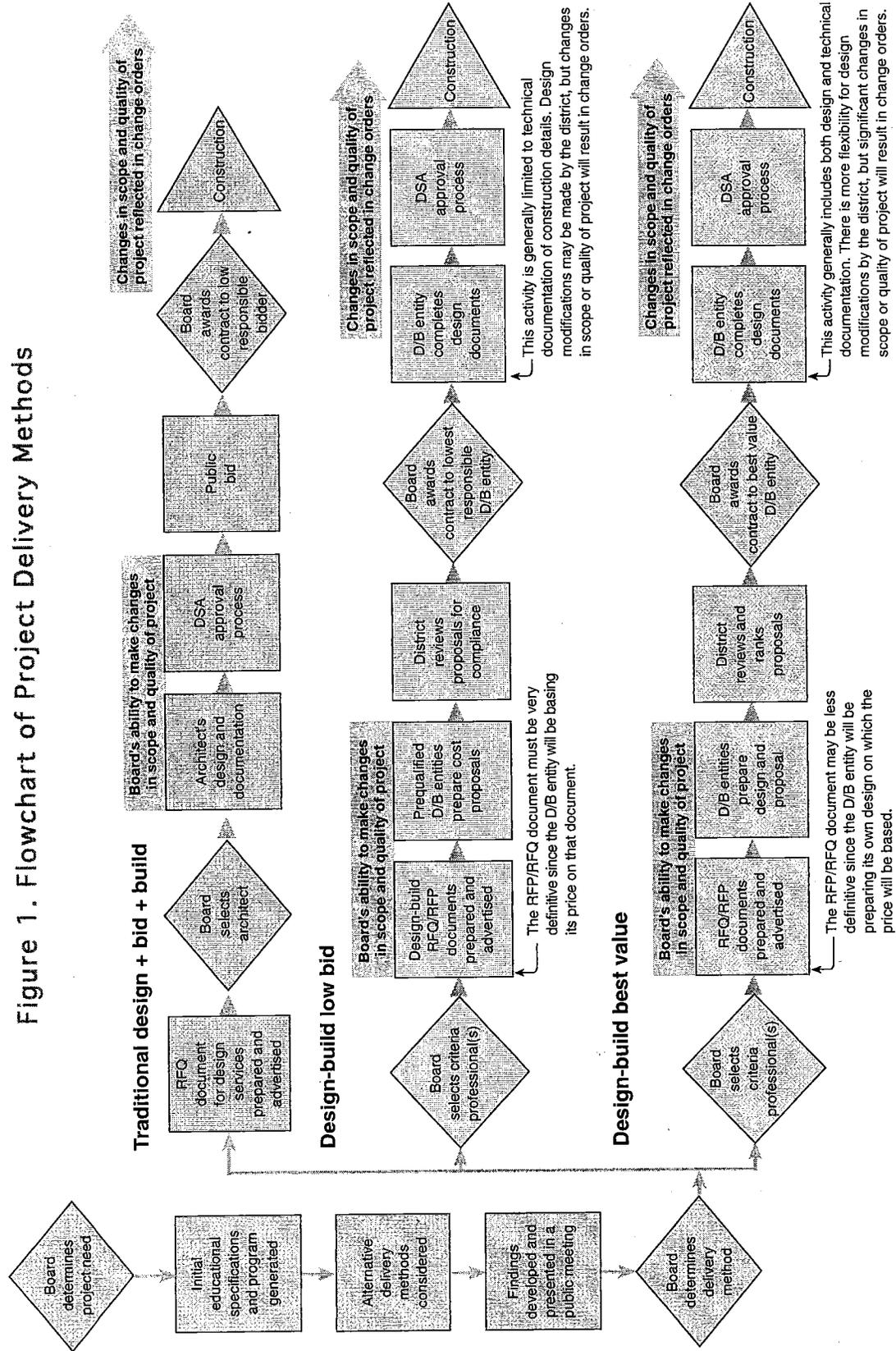
One of the many distinctions between design-build and DBB is the level of design undertaken by the school district prior to award of the construction contract and the level of specific, or prescriptive, criteria in the bid documents. Typically, under the DBB process there is an ongoing interaction between the district and the architect during the development of the design, thereby allowing school districts to define and select many of the products and systems to be specified in the contract documents. Once the architect completes the design, contractors bid on the project.

With design-build, school districts typically communicate their desires clearly in the RFP, specifying performance criteria in lieu of brand names and model numbers, leaving some of the decision making to the design-build entity. Although certain project components may be specified as district standards, such as keyed locksets or heating and cooling equipment, design-build entities will be required to provide a completed project that performs at or above the minimum performance specifications set forth in the design-build contract. The selected design-build entity will complete the design documents to a level necessary to obtain required agency approvals and construct the project.

The design-build process changes some fundamental relationships between the school district and the designers and builders. With the traditional DBB method, the district has two separate contracts: one with its architect and one with its contractor. A design-build entity includes an architect and contractor, so only one contract is needed between the district and the design-build entity. A DBB construction contract includes completed design documents approved by the Division of the State Architect (DSA). A design-build contract will include performance criteria and possibly some design documents from which the design-build entity will create completed and DSA-approved documents. This basic difference in contract components broadly identifies the roles of the school district and the design-build entity: In a design-build contract the district clearly defines its needs and the expected level of performance, and the design-build entity designs and constructs a completed project that conforms with those requirements.

A flowchart illustrating the DBB and design-build processes is provided in Figure 1 for comparison purposes.

Figure 1. Flowchart of Project Delivery Methods



Notes

1. The flowchart indicates the major activities. Numerous subactivities will be required, but there is no attempt to identify time frames.
2. The two design-build sequences appear to be identical, but there are significant differences that are noted on the diagram.
3. The law does not require that the criteria professional(s) needs to be selected in the same manner as the architect, but the board may elect to do so.

Design-Build Under Assembly Bill 1402

Design-build is:

- An alternate project delivery method in which school districts select a design-build entity to provide design and construction services under one contract
- A procedure for school districts to communicate performance criteria for the completed project rather than prescribe products and methods
- A means to prequalify and select a design-build team based on factors other than price alone
- An opportunity for school districts to allocate risks to those parties most capable of handling those risks
- A different method for completing a project that requires a different approach and level of involvement by school districts in order to realize the possible benefits of the design-build process

On the other hand design-build is *not*:

- A “cure-all” for problems that school districts may have experienced during traditional DBB projects
- A method to reduce or eliminate the amount of preparation required by a school district to complete a project
- The same process as design-build in the private sector (AB 1402 and California codes concerning school design and construction make the design-build process unique for schools in this state.)
- For school districts that are uncomfortable with the responsibilities and requirements necessary to successfully complete a design-build project
- A method to eliminate change orders or risks not properly allocated in the contract

Advantages and Disadvantages

Now that another method of project delivery is available to school districts, deciding which is the best method for a particular project becomes very important. The design-build method under AB 1402 is intended to offer several advantages over DBB for appropriate projects; however, school districts should understand all the options for a specific project to make the best decision. The following information is a generalization of the advantages and disadvantages of design-build and may not apply to all projects.

Possible Advantages

The possible advantages of design-build under AB 1402 are as follows:

- **Simplified contracting and contract administration:** There is one contract with the design-build entity instead of separate contracts with an architect and a contractor.
- **Cost containment:** The design-build entity is under a contract to complete the project meeting the school district's stated requirements within the contract price.
- **Reduced number of change orders and disputes:** Errors and omissions in the design are the responsibility of the design-build entity. Proper allocation of risks under the design-build contract reduces the potential for change orders.
- **Reduction in adversarial relationships:** Designer and builder are teamed together, working under a single contract. This teaming can significantly reduce traditional conflicts and finger-pointing between designer and contractor.
- **Cost savings:** Innovative, cost-effective solutions meeting performance criteria can be achieved.
- **Time savings:** The design-build entity is allowed the freedom to explore time-saving construction methods or systems while meeting the district's stated criteria. Early communication between designer and builder can help prevent construction delays.
- **Early cost definition:** Project costs are determined much sooner than with the traditional DBB process.
- **Greater risk shifting and more efficient risk allocation:** A design-build contract can be written to assign appropriate risks to the parties most capable of managing them. The vesting of design and construction functions in one entity allows for a much greater allocation of risk to the design-builder than in a traditional DBB contract.
- **Alternative selection process:** Design-build entities may be selected on the basis of factors other than price alone; therefore, design-build entities seeking to do future work with a district have an incentive to perform well. Design-build also provides school districts with the flexibility to develop an evaluation and scoring process that reflects the goals and needs of a specific project.

Possible Disadvantages

The possible disadvantages of a design-build contract are as follows:

- **Misconception:** School districts unfamiliar with the design-build process may have a preconceived idea that this method automatically eliminates change orders, expedites project completion, and saves money. As with any delivery system, the benefits that can be achieved, if any, are largely dependent on many things, including a high-quality RFP, an informed district staff, and a well-qualified design-build entity.
- **Inexperience:** Most school districts are familiar with their role under the traditional DBB method. Design-build requires different contracting and decision-making processes for school districts. School districts lacking expert legal and design assistance may face significant problems unless they are already familiar with the design-build process.
- **Less control:** The design-build entity is included in the process *before* plans are finalized. School districts entering into a design-build contract must allow the design-build entity to make certain decisions that may have been made by the district on previous DBB projects. Failure to include in the contract specific requirements desired by a district may result in decisions made by the design-build entity that do not meet the district's educational needs.
- **Potentially higher costs:** Whether design-build will be less expensive than DBB on a given project is unclear. Although design-build efficiencies, design flexibility, and the ability to innovate that are afforded the design-builder are frequently reflected in reduced cost, increased risk allocation may result in a higher contract price that includes contingencies. Any savings realized by the design-build entity may not be passed along to the district. Additionally, a design-build entity that agrees to a guaranteed maximum price before receiving bids on the work may propose substituting less costly materials to offset bids that may be higher than anticipated.
- **Increased public involvement and administrative tasks:** Under AB 1402 school districts are responsible for (1) holding a public meeting to determine whether design-build is appropriate for a particular project; (2) preparing a qualification process; (3) establishing a labor compliance program or entering into a collective bargaining agreement; (4) reporting to the Legislative Analyst's

Office at project completion as well as complying with other duties outlined in AB 1402.

- **RFP preparation:** A significant amount of time, effort, and expertise is needed to produce the RFP. Translating the district's needs into clear performance criteria that provide sufficient specificity and appropriate flexibility is a difficult task and, if done improperly, may adversely affect any potential benefits of the design-build process. This point cannot be overstated.
- **Potential for disagreement:** Because the design-build contract is based on performance criteria and preliminary design documents, the interpretation of these documents may be the subject of potential disagreement between the district and design-build entity. Additionally, the district architect's interpretation of the RFP plans and specifications may mean something completely different to the design-build entity's architect.
- **Potential disagreement on the project inspector:** By regulation, the district's choice of an inspector must be approved by the architect and structural engineer of record. Because the architect and engineer are a part of a team with the contractor, their opinions may be influenced by the contractor's opinion.
- **Expedited decisions:** After the design-build entity is selected, decisions required of the district must be made more quickly than may be anticipated. Because the design-build entity has a fixed schedule for design and construction, there may be little time for consultation with the district. Delays in making decisions may be costly.

There are some key characteristics of design-build with a properly prepared RFP. They are as follows:

Risk Shifting

The design-build method allows for greater shifting of risk to the design-builder, particularly in the areas of design defects, efficacy, and warranties. For example, errors and omissions in design documents are the responsibility of the design-build entity. In developing the RFP and the design-build contract, school districts should carefully assess project risks and determine whether they or the design-builder are best able to manage those risks efficiently and cost effectively. Shifting of inappropriate risks to the design-build entity that should be borne by the school district in a given instance will increase the design-build contract amount accordingly.

Team Selection

Factors other than price alone may be considered in selecting a design-build team. School districts should ensure that the evaluation process and criteria are adequately described in the RFP in order to minimize the potential for protests.

Schedule

Construction schedules may be shortened because of innovative systems and methods proposed by the design-build team.

Cost Certainty

The cost of the project may be determined early in the process. The design-build team bears the responsibility for delivering the project for the contract amount.

Decision Making

Much of the decision making during the completion of design development and contract documents and construction may be shifted from the district and its designers to the design-build team.

Creativity, Innovation, and Efficiency

As the designer works with the builder and collaborates with the district, all parties may find creative solutions, innovative approaches, and efficient methods and systems.

Role of the School District

School districts must develop complete and clear RFPs and respond in a timely manner to issues raised during the design and construction phases. They must have the ability to communicate their needs in a manner that defines performance minimums while allowing for creative solutions to those requirements.

Performance Criteria Compliance

Because the designer and builder constitute a team that will produce a completed project based on performance criteria established by the school district, verifying compliance with the criteria is an important but difficult task. Complete RFP documentation can reduce the burden.

Learning Curve

The design-build method is a new experience for public school districts. Creating a qualification process, selection method, RFP, and contract is a responsibility that requires a great deal of time and expertise on the part of the district and its consultants to realize the benefits of the design-build method. A school district undertaking more than one design-build project may need to develop different approaches to these processes and documents on a project-by-project basis.

Section 1

Request for Proposal and Prequalification of Design-Build Entities

Communicating facility requirements thoroughly enough to ensure compliance without limiting the design-builder's creativity is a significant task. Using performance-based requirements and quality standards rooted in current construction practices establishes the design-builder's responsibilities while accommodating flexible solutions and innovation. Because the design-build entity's cost proposal is not based on completed design documents, the RFP and design-build contract should clearly set forth the requirements, specifications, and allocation of project risks in order to avoid disagreements with the school district that may arise over what was implied in the RFP. The design-build process does not eliminate the possibility of change orders created by incomplete or inaccurate information in the RFP package. Inclusion of all relevant and necessary information is a good prerequisite for effective and optimal risk allocation.

By the time an RFP is drafted, much information should be in place. The most critical part of the design-build process is the information describing the school district's needs and requirements, as well as the results of site surveys and geological investigations of the project site. The success of the project will be a direct result of the amount of preparation and information conveyed by the district. A school district cannot expect specific elements or performance requirements to be included in the project unless they are made a part of the contract.

As required by AB 1402, an RFP shall be prepared. Section 2, "Selection of Design-Build Entities," contains information regarding the two methods of selection and the way in which each method affects the preparation of the RFP.

Performance specifications and any plans to be included in the RFP must "... be prepared by a design professional duly licensed or registered in this state." School districts should hire a licensed design team

to prepare the RFP, including those with mechanical and electrical engineering expertise in school facility design. Optimally, the design team should know the school district's specific needs and desires. Once retained, the licensed design team (also referred to as the criteria professional[s]) may assist with evaluation of the design-build team's proposals as well as take a role on the school district's behalf in providing oversight throughout project development. The licensed design team is ineligible to participate on a design-build team.

The educational specifications should be comprehensive, complete, and up-to-date prior to the drafting of the RFP. A school district that needs assistance in preparing some or all of the educational specifications should consider hiring a competent, experienced consultant. The school district may elect to use the same design team that helped to create the educational specifications to draft the RFP. In 1997, CDE published a document on preparing educational specifications titled *Educational Specifications: Linking Design of School Facilities to Educational Program*. This resource for school districts may be downloaded from the Internet <<http://www.cde.ca.gov/facilities/field/publications.htm>> or may be purchased from CDE Press by calling the sales office (800-995-4099).

Qualification Process

The school district shall establish a procedure to qualify candidates prior to the issuance of the RFP. The procedure must include the following components:

- A standard questionnaire developed by the director of the Department of Industrial Relations (DIR) <<http://www.dir.ca.gov>>.
- Inclusion of the qualification criteria stated in AB 1402. The DIR questionnaire includes many of the requirements listed in the statute. School districts should compare the DIR questionnaire with the requirements in the statute to avoid repeating information.
- Additional qualification criteria desired by the school district. The DIR questionnaire is general and does not address project-specific questions; therefore, school districts may want to add their own questions. They may include the geographic location of the design-build entity, list of previous projects the members of the design-build entity have worked on together (as a design-build entity or not), list of previous projects similar to this project, specific personnel assigned to the project, recent client list, and so forth.

School districts should consider submitting their additional criteria for review by legal counsel.

Evaluation of Submitted Qualifications

School districts should determine whether qualifying design-build entities will allow them to submit proposals or whether the entities' qualifications will be ranked, allowing only a specified number to submit proposals (short listing). This decision will likely have a significant impact on the level of information sought and how the proposal is evaluated. If all qualified teams are allowed to submit proposals, the prequalification may simply seek information showing that the teams are qualified. If, however, a short listing is used, the district will need to solicit information that may be of a more comparative nature with other teams. In either case the qualification process should be described in the Request for Qualifications (RFQ) document in much the same manner as the selection process is described in the RFP.

Project Description

The RFP should include:

1. Educational specifications

California Code of Regulations, Title 5, Section 14030, requires that school districts submit to CDE educational specifications for new school facilities. Thorough, comprehensive educational specifications are a valuable part of the design-build contract.

2. Project program

- Administrative obligations of the design-build entity:
 - A. Compliance with applicable *California Building Code* regulations, *Title 5* regulations, and CDE requirements for project approval.
 - B. Compliance with regulations of the Office of Public School Construction (OPSC) if state funds are used <<http://www.opsc.dgs.ca.gov/>>. Submittal requirements include site diagrams, summary of school site and classroom inventory for determination of funding eligibility, DSA approval of plans and specifications, a cost estimate for site development, and approval of the site and plans by CDE for funding requests.

- C. Compliance with DSA regulations. This includes approval of the plans and specifications by DSA as well as certain requirements during construction by the design-build entity (e.g., change order approval, final verified report submission, etc.) <<http://www.dsa.dgs.ca.gov>>.
 - D. If desired by the school district, compliance with selected guidelines from the Collaborative for High Performance Schools (CHPS) <<http://www.chps.net/>>. Following the CHPS guidelines may result in facilities that “. . . provide better learning environments for our children, cost less to operate, and help protect the environment.”
 - E. Identification of who is responsible for obtaining state and local approvals. This point is important because any ambiguity may result in additional time and money spent to resolve the issue. Often both parties assume the other is responsible, only to realize nothing has been done. The entire project may be delayed if the responsibility is not clearly identified early in the process. It is critical to obtain approvals from the state or local health department, utility companies, and the local fire department. Early contact with them is recommended. School districts may also want to list their contacts at the city, county, fire department, health department, and others so proposers may know what is required for their approval, if applicable.
- Project description including:
 - A. Building(s) type and size.
 - B. Site element types and sizes (playground equipment, ball courts, playfields, running track, etc.). In 2000, CDE published a document for site planning titled *Guide to School Site Analysis and Development*. The guide may be downloaded from the Internet <<http://www.cde.ca.gov/facilities/field/publications.htm>>.
 - C. Parking and site access requirements. The guide noted above includes parking criteria for schools.
 - D. Description of physical relationships between building spaces and between buildings and other site elements.
 - E. Specific architectural style or concept (if desired).

- F. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs, environmental issues, and so on.
- G. Educational requirements as they relate to facilities.
- H. Drawings.

3. School district standards and special requirements

- Accommodation for future expansion. Planning for future expansion by sizing equipment; electrical panels; data, water, gas, and sewer lines can reduce future costs and problems.
- Possible joint-use. Will any part of the project require joint-use by the community (parks, library, playfields, etc.)? It is critical to know how this is accomplished and what contractual requirements are included. Legal counsel should be considered. Participating community organizations (e.g., park districts) should be involved very early in the design-build process.
- Technology standards. These include computer networking, telephone communication, security, mechanical, and electrical systems.
- Possible reuse of a design. Does the school district want to reuse an existing school facility design? Reuse of an existing design must be carefully handled in the design-build contract to effectively allocate design risk to the design-build entity.
- Project quality. In the design-build method, the owner generally has less direct control over product selection than in traditional methods of project delivery; therefore, school districts should specify in the RFP the expected quality and technical requirements through the use of performance specifications. Because the price submitted by a design-build entity may be based on early design documents, there may be a discrepancy between the school district's expected quality level and that perceived by the design-build entity. The requirements for quality and performance in the RFP package should be clearly stated. Quality can also be improved in design-build through the school district's design review process, which should also be delineated in the RFP and contract.
- School district ownership of design documents. Design documents provided by the design-build entity should indicate school district ownership (*Education Code* Section 17316).

- Mitigation measures. Any mitigation measures required by the California Environmental Quality Act (CEQA) to be implemented during construction should be included.

4. Geotechnical reports, boundary and topographic surveys, locations and sizes of utilities, environmental issues, and geology hazards

- Failure to provide this information may affect the ability of the school district to shift risks to the design-build entity. Where risk is shifted to the design-build entity, contract costs will reflect the increased risk and contingencies. Omission of such items may also limit the school district's ability to find qualified design-build teams that are willing to accept the allocation of risk desired by the school district.
- The necessary geotechnical information and site survey results should be made available to the design-build teams. Information gaps can lead to procurement delays and higher costs to allow for contingencies.
- School districts should be aware of the risks involved in proceeding with the RFP prior to obtaining site approval by CDE, Department of Toxic Substances Control (DTSC), and local planning authorities and complying with CEQA. Significant costs and time may be expended because of litigation if approval is not subsequently obtained from CDE and DTSC.

5. Budget parameters

- AB 1402 requires an expected cost range to be a part of the RFP. The school district may want to list the source of funds and include contract language to mitigate the possibility of unguaranteed state funds when the design-build contract is signed. Significant costs and time may be expended, including the potential for litigation, if funding is not obtained in a timely manner.
- Provisions for changes in the work, including eligibility, supervision, labor costs, and allowable markup, as well as changes to the schedule, must be included. What are the implications for exceeding the schedule?
- A contingency allowance for scope changes and unknown site conditions should be identified. This information need not be made available to design-build entities, but it is important in

planning for possible additional project costs. In some instances, use of allowances in the contract for specific risk areas (e.g., hazardous materials) may be an effective and a mutually acceptable method to reduce or share risk and maintain competitive pricing.

6. Schedule requirements

- At a minimum, the date of site availability and the date of desired occupancy should be indicated.
- The schedule should also include the time needed for installing fixtures, furnishings, and equipment and commissioning.
- Establishing milestones may be helpful, such as:
 - A. Issuance of Notice to Proceed date
 - B. Dates for design submittals to the school district
 - C. DSA submittal and/or approval dates
 - D. OPSC submittal and/or approval dates
 - E. CDE plan submittal and/or approval dates
 - F. Start and completion of construction dates
 - G. Date of occupancy
 - H. Final project closeout and acceptance dates
 - I. Other
- Enforcement of the schedule through liquidated damages or other means may be considered.

Who takes the responsibility and risk for DSA approval time? An aggressive schedule might constrain the design or type of construction. Requiring the design-build entity to submit a milestone schedule with its proposal should also be considered and may be necessary if a completion deadline is desired by the school district.

7. Selection process (See also Section 2, “Selection of Design-Build Entities.”)

- The school district must use one of the evaluation processes described in AB 1402 (*Education Code* Section 17250.25[c]), which allows for a numeric or qualitative rating of proposals. The RFP shall identify all the factors the school district will consider in evaluating proposals, including price and nonprice factors. The school district must decide whether to use a “lowest

responsible bid” selection process or a “best value” selection process.

- A “lowest responsible bid” selection process would determine the successful, prequalified design-build entity based solely on price. Benefits of a lowest responsible bid selection include the ease and speed of the evaluation, a decreased likelihood of proposer protest, and a determination that is based primarily, if not solely, on purely objective factors. The disadvantages of this method include its inflexibility, exclusion of important and relevant nonprice factors, the possibility that the least expensive proposal may not result in the best project (in terms of quality, utility, or appearance), and lack of reward for innovation and creativity by design-build teams unless such innovation and creativity result in price savings. Because design-build entities will be submitting bids based solely on documents provided by the school district and the only criterion for selection will be price, the RFP should include drawings and specifications completed to a level that the educational program and other criteria will be met. Less complete documents may result in an award to a low bidder with an unacceptable design approach, thereby resulting in an unsatisfactory project or expensive and time-consuming change orders to achieve the desired result.

School districts should keep in mind the importance of maintaining a balance between providing necessary information to meet their needs and allowing design-build entities to remain “flexible” in the areas less important to the function of the facility (from the district’s perspective) so as to achieve the desired cost savings.

- The “best value” selection process allows school districts to include nonprice factors as a part of the evaluation criteria and process. This criterion can allow school districts to prioritize the importance of features to be provided by the successful design-build entity. AB 1402 allows school districts to establish a process that evaluates proposals based on such factors as design approach, life cycle costs, project features, and project functions. The Design-Build Institute of America’s *The Design-Build Process Utilizing Competitive Selection* is a helpful resource for school districts considering this method <<http://www.dbia.org>>.

- AB 1402 requires that at least 50 percent of the total weight of selection criteria shall be based on price, technical expertise, life cycle costs over 15 years or more, the availability of a skilled labor force, and an acceptable safety record. School districts should review the requirements of AB 1402 closely and seek legal counsel experienced in design-build to establish selection criteria.
- Other possible criteria may include ease of operations and maintenance, adherence and commitment to CHPS guidelines, schedule, quality, durability, innovation, experience of the design-build entity, the design-build entity's approach to design management, quality control, traffic management, and safety. School districts may wish to identify the items they will evaluate and set a maximum page limit for responses.
- Benefits of a "best value" selection process include the ability of the school district to use relevant and important factors other than price to select the successful design-build team, thereby enhancing the development and ultimate use of the project. The "best value" approach is a recognition that price is not the only important factor in a successful project. The disadvantages of "best value" include increased time and administrative resources required for the evaluation process, unfamiliarity by school districts with a nonprice evaluation, possible infusion of subjectivity into the evaluation process (e.g., quality to one person may not be quality to another), and possibly increased potential for protest due to the nature of nonprice evaluation. Development of, and compliance with, fair criteria and a fair evaluation process can significantly reduce the potential for protests.
- AB 1402 requires that school districts disclose their selection criteria. The system established shall be objective and quantifiable. Purely subjective criteria should, where possible, be avoided in order to reduce challenges of the results by unsuccessful firms. Necessary information regarding the selection process and what the school district is looking for in terms of proposals and evaluation criteria should be included in the RFP and given to all proposers.
- School districts should also include a provision in the event of a tie.

8. Industry review

- If the procurement schedule permits, the school district may consider conducting an industry review process prior to issuing the final RFP. With an industry review process, drafts of the RFP and contract are circulated to interested parties (or prequalified design-build teams) to get their individual and/or collective opinion and comment prior to final issuance. This method can assist in properly allocating risk between the school district and the design-build team.

Request for Proposal Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Before Preparation of the RFP

- CDE/DTSC approve site.
- CDE approves educational specifications.
- School board issues written findings warranting design-build in accordance with AB 1402.
- School board adopts resolution approving design-build.
- Review AB 1402 design-build guidelines.
- Identify funding source and begin process through the Office of Public School Construction (OPSC) if state funds are to be used.
- Retain design team to assist in preparing any plans and specifications.
- Consider legal counsel for preparation of RFP.
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Preparation of RFP

- Review RFP requirements noted in AB 1402.
- Review/update educational specifications.
- Prepare RFP to address AB 1402 requirements and review AB 1402 design-build guidelines.
- Establish ranking system in compliance with AB 1402.
- Establish a selection process in compliance with AB 1402.
- Review RFP for completeness and coordination with AB 1402 design-build guidelines.
- Consider legal counsel to review RFP and supporting documents.
- Invite interested design-build entities to submit standard prequalification questionnaire prepared by the Department of Industrial Relations and other qualification-related information desired by the school district.
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Section 2

Selection of Design-Build Entities

Under AB 1402, *Education Code* Section 17250.25(c) allows two options for selection: lowest responsible bid or best value selection of prequalified candidates based on a weighted scoring method. Although the lowest responsible bid method is fairly well defined, best value selection may include anything from submission and ranking of proposal documents to a design competition requiring drawings, specifications, and additional information for review and ranking. School districts should determine what is most important for a successful project and choose a selection process that will help ensure the best results while complying with the statute.

The best value selection process must include consideration of price as one factor, but other factors must be considered as well.

Lowest Responsible Bid Method

Prequalified design-build entities submit price proposals based on the RFP, and the contract is awarded to the lowest responsible bidder.

School districts asking contractors or design-build entities to give them a price for products and services may already know the pitfalls of providing vague or incomplete documents. The end result is usually adversarial and leads to schedule delays and expensive change orders. As discussed in Section 1, the more that specific, detailed information is given, the more accurately the price will reflect what is desired. For example, materials that incur a lower initial cost may be proposed that could be inappropriate for schools subject to heavy use. Comprehensive drawings, details, and performance specifications requiring products with good life cycle costs can help protect school districts.

If the school district is interested in providing a prescribed design, then the traditional method of DBB may be considered. Why consider

a lump sum design-build method over the traditional DBB on a particular project? In addition to possible time savings, another intended benefit of the design-build process is to establish one point of responsibility for the completed project. For example, if the district hires a design-build entity to provide a school with compressed air in the science classroom, the school district should not have to pay for a change order for a compressor that was overlooked by the design team.

As stated above, some responsibility for errors and omissions may be shifted from the district to the design-build entity, but this occurs only if responsibilities are clearly defined. In the example cited above, if the RFP package calls for compressed air in the science classroom, the district should expect one compressed air outlet in the room. If what was really wanted was compressed air at each desk, that expectation should have been clearly stated in the performance specifications.

Performance or “Best Value” Method

Another method for selection of a design-build entity is the “best value” method. This method gives the school district flexibility in awarding a project based on factors other than price. The factors determined by the district, as well as price and other criteria listed in the statute, will determine the best value to the district. Price, technical expertise, life cycle costs over 15 years or more; skilled labor force availability, and acceptable safety record must represent at least 50 percent of the total weight given to all criteria in AB 1402. This requirement does not prevent a district from assigning more than 50 percent to those factors or assigning the remaining 50 percent of the selection criteria weight to other specific factors (e.g., energy efficiency, use of recycled materials, flexibility of building spaces, appropriateness of architectural features, construction schedule, technology).

Although the lowest responsible bid method focuses on the cost of the final product, the best value method can focus on cost, design, the process, and the ability of the design-build entity to implement the project. Placing emphasis on certain criteria can alter the composition of the proposing design-build entities. For example, requiring that a school have highly sophisticated data systems might cause some proposers to include a technology consultant as a part of their design-build entity. AB 1402 stipulates that a subcontractor not listed

by the design-build entity shall be awarded through a bidding process. School districts should be aware of what tasks will be bid in contrast to what tasks will be performed by the design-build entity. Who the design-build entity includes as a part of its team should be a major factor during selection as some of the best value selection criteria may be performance- or qualifications-based. AB 1402 states that a design-build entity must be “. . . able to provide appropriately licensed contracting, architectural and engineering services as needed pursuant to a design-build contract.”

The required selection criteria are as follows:

1. Price

There are three ways in which a school district may use price as a criterion. A school district may consider the price proposed by the design-build entity simply as confirmation that the requirements of the RFP are met within the budget. Or the district may evaluate the design-build entity's total lump sum cost of design and construction of the project. Alternatively, the district may consider the cost of developing plans and specifications and product information that will allow the district the ability to prioritize elements of the project while staying within the overall budget. This last alternative would create a process over several months where the district would work closely with the selected design-build entity to refine the project's components while constantly verifying these decisions with actual costs.

2. Technical Expertise

The school district should clearly define the expertise sought and what that expertise should include. Résumés of the architect, engineers, construction project manager(s), and primary project manager are only the beginning. Specific experience in one or more of the selection criteria may be required. What are the qualifications of the mechanical engineer if the school district requires the proposer to provide a school complying with the CHPS guidelines? What experience does the contractor have in building projects similar to this one?

To avoid being challenged by unsuccessful proposers, school districts should attempt to establish an objective method of rating technical expertise. Care should be taken to avoid rigid and inflexible rating systems as the school district will certainly be unable to think of all possible issues that may arise relating to expertise. Information on the rating system should be made available in the RFP package to design-build entities.

3. Life-Cycle Costs over 15 Years or More

School districts will need to become familiar with techniques and standards for determining life-cycle costs or seek such expertise to assist in developing the RFP and evaluation of responses. Providing clear, quantifiable methods for presenting and determining costs will help to ensure that design-build entities present information that can be compared with other competitors.

School districts should consider total life-cycle costs for major components of their projects. This criterion includes both the initial cost and all future costs over a 15-year period or longer (operating costs, repair, maintenance, and replacement). For example, energy costs may vary over time, so school districts may elect to establish an escalation rate or a basis to be used for energy costs (which should be included in the RFP). Other factors related to energy are comfort level (indoor temperature) and lighting levels, which should be stated so that one proposal can be compared with another.

Analysis of life-cycle costs may be extensive and detailed. School districts should decide in advance which project elements will be used to evaluate proposals. An independent consultant should be considered for analyzing this area of the proposals.

Two Web sites offer helpful information on building design and energy efficiency. The Collaborative for High Performance Schools (CHPS) <<http://www.chps.net>> has information on operating costs, energy-efficient programs, incentives, and technical assistance. The U.S. Green Building Council <<http://www.usgbc.org/>> has additional information on the LEED Program (Leadership in Energy and Environmental Design).

4. Skilled Labor Force

Education Code Section 17250.25(c)(2)(F) defines the meaning of skilled labor force availability: “. . . an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years.” School districts should be careful to verify that an agreement exists with the design-build entity when contributing labor on the project and that agreements exist for all listed trade contractors and their subcontractors. For trade contractors or subcontractors not identified at the time the proposal is submitted, school districts should require certification of future confirmation of agreements for these subcontractors and any lower-tier subcontractors.

5. Safety Record

Contractors may satisfy the requirement to show their safety record in two ways as allowed in *Education Code* Section 17250.25 (c)(2)(G): An “. . . 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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.” Some design-build entities may not directly employ workers who perform the labor, so it is recommended that an analysis include trade contractor safety records as well.

Optional Criteria

The following criteria are not required under AB 1402 but should be considered by school districts when evaluating design-build entities:

1. Design Approach

The architecture of a school as well as the pride students and staff feel for their facility may be very important to a community’s identity. If a school district decides to evaluate design-build teams on their design approach, it will need to determine and delineate how this factor can be quantified. This criterion is probably the most subjective one to be evaluated; therefore, school districts should define and prioritize their design objectives. This information should be available to design-build entities in the RFP package. The American Institute of Architects <<http://www.aia.org/>> has additional information, including data on the best value selection process.

2. Project Approach

How a design-build entity plans to manage a project is very important. Proposers may be asked to present their approach to budget control, quality control and quality assurance, value engineering, safety, staging and sequencing, interface between design team members and construction team members, strength of the team, team organization, local business involvement, project document control, and team management.

3. Project Features

One of the possible reasons mentioned in AB 1402 for selecting the design-build method over the traditional DBB method is the ability to obtain project features that would not be possible with DBB. The

intent is to allow designers and contractors to work as a team and create innovative solutions.

During the selection process how does a district establish an environment that encourages creativity? One method is to present known problems to the proposing teams and allow them to submit solutions as a part of their proposal. Examples of known problems may include:

- **Specified project components rather than performance criteria.** What methods will the design-build entity implement to meet specified performance criteria without proposing something requiring unusual knowledge? For example, how can a design-build entity propose an energy-efficient HVAC (heating, ventilation, and air conditioning) system to a district in order to reduce operating costs when the district's maintenance staff lacks proficiency in maintaining that type of equipment? Would the energy savings over a period of time offset the cost of a maintenance contract or training of maintenance staff?
- **Architectural design rather than construction techniques.** Often what an architect draws can be constructed at a reduced cost or more quickly by using a different method or component without sacrificing aesthetics or quality. What procedures will the design-build entity implement to create an attractive campus at a reasonable cost in a short period of time? Design-build entities should be asked to provide a format for integrating design and construction that best benefits the district.
- **Control of subcontractors.** With design-build, some trades may be bid. How will the design-build entity ensure that the district's interests are protected? What role will the district have in dealing with members of the design-build team, whether they are listed or awarded by the design-build entity? Control of subcontractors is a two-edged sword and touches upon one of the potential benefits of design-build: shifting risk.
- **Substituted materials.** Materials that incur a lower initial cost may be proposed that could be inferior for schools subject to heavy use. Good performance specifications balanced by a thorough life-cycle cost analysis can help protect school districts.

4. Schedule

School districts should provide competing design-build entities with schedules illustrating significant funding, local and state approval, site availability, and occupancy milestones. Design-build entities

should include these milestones in a master schedule that indicates design and construction time. Schedules should be reviewed to determine whether the durations of activities are realistic.

What methods can the design-build entity propose to expedite the completion of construction documents and approval by the Division of the State Architect? Is the reuse of existing plans viable? Could a site development package be developed and approved by DSA to expedite construction once final plans are approved?

What methods and materials can the design-build entity propose that will expedite construction? Teams should be asked to provide itemized schedules illustrating the ways in which project delivery can be expedited.

5. Value Engineering

Although the design-build process provides for value engineering opportunities, school districts may want to allow competing design-build entities to include value engineering suggestions as a part of their proposals. Objective ranking could be structured around both initial cost savings and maintenance and life cycle costs.

6. Warranty

California law requires that a contractor provide a warranty on all work performed; however, school districts may want to request extended warranties on some major elements of the project, such as roofing, waterproofing, deck coatings, prefinished metals, hardware, and doors. Design-build entities should also allow school districts to obtain manufacturers' extended warranties. Other warranty-related considerations may include organizational processes, standard response and completion times, and document control. What level of response will be provided by the design-build entity rather than only the manufacturer?

Selection Process Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Before Selection of a Design-Build Entity

- Review AB 1402 design-build guidelines.
- Thoroughly review prequalification submittals.
- Notify proposing design-build entities that fail to meet the prequalification requirements.
- Establish a review committee with a diverse group of stakeholders if the “best value” method is used.
- Consider legal counsel for review of selection-method criteria and prequalification submittals.
- Ensure that all proposing design-build entities are informed of selection criteria according to AB 1402 (*Education Code* Section 17250.25[a][2][C]).
- Hold a preproposal conference to answer questions and provide clarification.
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Selection of Design-Build Entity

- Compile design-build entities’ scores, ensuring objectivity and accuracy if using “best value” method.
- Confirm that the legal entity that will sign the contract for construction is a part of the proposing entity and holds a general contractor’s license in conformance with the contractor license law.
- School board issues written decision supporting the contract award, stating in detail the basis for the award.
- School board issues public notification announcing the award, the name of the successful candidate, the price, and the candidate’s score.
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Section 3

Implementation of the Design-Build Contract

Because the contractual arrangement between the school district and design-builder is dramatically different from that under DBB, school districts should seek legal counsel experienced in the design-build process to help prepare the design-build contract. The American Institute of Architects, Associated General Contractors of California, and Design-Build Institute of America have drafted sample design-build contracts with various differences among them. School districts should review available options and use a contract that best serves their project needs.

Once a design-build team is selected, the school district will continue to play a key role in the development of the project. Review, suggestions, and critical decision making by the district are vital to ensuring success. Verification of decisions—whether they are supported by the education specifications and the project program—should occur regularly.

AB 1402 does not specify requirements of the contract between the school district and the design-build entity. As stated above, several professional associations have developed model design-build contracts, although most of them are for private-sector projects. Modifying a DBB owner-contractor agreement to fit design-build should be avoided because of the significant changes required and the potential risk of inappropriate language. Other than the inherent changes in the contract created by AB 1402, the agreement between the school district and design-build entity must conform to applicable codes, including the *Public Contract Code* and contractor license law <<http://www.cslb.ca.gov>>. Experienced legal counsel can assist in developing a suitable design-build contract and in ensuring compliance with AB 1402 and other relevant California codes. The contract should also reference the RFP because that is the basis of the design-build entity's proposal.

The following resources may help in developing a contract:

- The Design-Build Institute of America's *Design-Build Manual of Practice* (Order Number 303) <<http://www.dbia.org>>
- The American Institute of Architects' *Handbook on Project Delivery* and documents A191 and A491 <<http://www.aia.org>>
- The Associated General Contractors of America's *AGC Contract Documents at a Glance* and 400 Series Documents <<http://www.agc.org>>

Appendixes A and B contains lists of publications and professional associations that may prove helpful.

The School District's Role

As with the traditional DBB method, the school district must be involved in decision making during the design phase of the project. One significant difference between the design-build and DBB method, however, is the increased importance of making decisions on time. A design-build entity will be under contract to deliver a complete and operational project by a predetermined date. Every delay that is caused by the school district has the potential to delay the completion and increase the cost of the project. By providing timely, concise direction to the design-build entity, the school district will play a key role in meeting the schedule and controlling costs. School districts should seek to avoid district-directed changes. Although the design-build method generally reduces the eligibility and incidence of change orders, school districts that frequently change or make significant changes to the design-build entity's scope of work, the project definition, or both can disrupt the design and construction process, resulting in increased cost and delays.

As design documents develop, the school district will have the opportunity to play a part in the selection and review of the project's components while being informed by the design-build entity of cost impacts, if any. As situations arise that require decisions to be made, constant testing and verification of the decisions should be made. Testing should come in the form of questioning whether a decision conforms to the educational specifications and project program. An RFP package containing performance-based criteria rooted in sound school construction practice may allow many component selections to be made by the design-builder with little or no direction from the

school district. School districts, however, should always retain the right of design review and approval.

In addition to making decisions, school districts will need to carefully monitor the work of the design-build entity to determine whether it complies with the RFP and project schedule. According to AB 1402 (*Education Code* Section 17250.35[a]), "Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter." This person should be experienced in California school building projects and be able to effectively advise the school district.

The architect or structural engineer advising the school district may be assigned the following responsibilities:

1. Review the design-build entity's proposed schedule throughout the project.
2. Review the design-build entity's design documents for compliance with the school district's requirements.
3. Oversee the design-build entity's quality control program.
4. Advise the school district during the selection of the project inspector.
5. Review payment applications from the design-build entity.
6. Review construction progress and adherence to the schedule (and any recovery schedules).
7. Assist the school district in resolving any disagreements.
8. Advise the school district when negotiating substitutions or changes to the work.
9. Report periodically to the school board on the progress of the work.
10. Assist the school district in creating the report to the Legislative Analyst within 60 days of project completion.
11. Ensure the final project closeout documentation is complete.

During the design phase, changes may prompt negotiated modifications to the schedule, scope, or cost of the project. During the construction phase, changes in the work should be discouraged, if possible.

Retention Options

Retention of a portion of each payment to a contractor is a practice similar to current practices under California law. Design-build entities are allowed to substitute securities in lieu of retention from progress payments. Additionally, AB 1402 states (*Education Code* Section 17250.30[c])[4], “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 school district and the design-build entity.”

Labor Compliance

AB 1402 (*Education Code* Section 17250.30[d]) provides three options for ensuring labor compliance:

- “The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.50 of the *Labor Code*.”
- The school district “. . . shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.50 of the *Labor Code*.”
- The “. . . school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.”

Project Closeout

In addition to the project closeout procedures required by the Office of Public School Construction and the Division of the State Architect for state-funded projects, AB 1402 requires that the school district governing board shall submit a report to the Legislative Analyst’s Office (LAO) within 60 days. A list of the minimum information to be included in the report is in *Education Code* Section 17250.45. A reporting form developed by the LAO is provided in the back of this document.

Education Code Section 17250.50 states: “A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst’s Office required pursuant to Section 17250.45.”

Implementation Process Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

School District/Design-Build Entity Contract

- Review AB 1402 design-build guidelines.
- Consider legal counsel in developing a design-build contract.
- Verify that the contract follows AB 1402 for retention and labor compliance.
- Include or refer to the RFP in the design-build contract.
- Retain an architect or structural engineer to represent the district during the project.
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Design and Construction Phases

- Verify and update the project schedule regularly.
- Respond to issues quickly and concisely to ensure project progress.
- Verify all decisions with the project program.
- Comply with requirements of the Division of the State Architect and Office of Public School Construction for project closeout.
- Submit a report to the Legislative Analyst's Office within 60 days of project completion.
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Design-Build Project Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Investigation of Design-Build Under AB 1402

- Determine whether the design and construction costs are greater than \$10 million.
- Review AB 1402 design-build guidelines to determine whether the design-build method is suited for the project.
- Review *Education Code* sections 17250.10 through 17250.50, which define the design-build method.
- Hold a public meeting to evaluate whether the design-build or traditional design-bid-build method is suited to the project.

Proceeding with Design-Build Under AB 1402

- School board makes a determination in writing that design-build delivery will reduce project costs, expedite the project's completion, or provide features not achievable through the design-bid-build process.
- School board reviews AB 1402 design-build guidelines and adopts a resolution approving design-build.

Preparation of the Request for Qualifications (RFQ)

- Establish the procedure to prequalify design-build entities, including the questionnaire provided by the Department of Industrial Relations <<http://www.dir.ca.gov/>>.
- Verify that the prequalification procedure includes requirements stated in *Education Code* Section 17250.25(b).

Preparation of the Request for Proposal (RFP)

- Use a qualified professional design team to assist in preparing the RFP.
- Verify that the RFP satisfies *Education Code* sections 17250.25(a) and (c), which identify requirements for the project description, evaluation criteria, and selection process.

Award of the Design-Build Contract

- Verify all bonding, errors, omissions, general liability insurance coverage, and other specified requirements are satisfied or provided by the selected team.

- School board issues written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.
- School board makes a public announcement of its decision in accordance with *Education Code* Section 17250.25(c)(2)(E).

Design and Construction Phases

- Retain a California-licensed architect and/or structural engineer to ensure compliance with the contract documents.
- Verify that deviations from the contract “. . . may only be allowed by written consent of the school district.”
- Establish and enforce a labor compliance program or other options as specified by *Education Code* Section 17250.30(d).
- Obtain plan approval from the Division of the State Architect (DSA) prior to any building construction.
- Hire a DSA-certified inspector acceptable to the architect of record and structural engineer of record.

Post-Construction Phase

- School board submits report to Legislative Analyst’s Office in accordance with *Education Code* Section 17250.45.
- Verify that the school district cannot pursue additional design-build projects without submitting a report within 60 days of project completion according to *Education Code* Section 17250.50.

Reporting Requirements of the Legislative Analyst's Office

The Legislative Analyst's Office (LAO) has been directed to prepare an analysis of the design-build program authorized by AB 1402 for public schools. To perform the analysis of the design-build program for schools from kindergarten through grade twelve proposed under this legislation, the LAO is asking school districts to report the following information:

Design-Build Project Information

1. The type of facility constructed
2. Number of students and grades served at the facility
3. Gross square feet of this project (if project is adding square footage)
4. Name of the design-build entity awarded the contract
5. School district's estimated project cost and schedule
6. Actual project schedule
7. Design-build contract amount at contract signing
8. Design-build contract amount at project completion
9. Description of any protests, lawsuits, arbitrations, or court settlements

School District Information

1. Total enrollment and grade range
2. Number and type of school sites in district

| <i>Project name</i> | <i>Type of project</i> | <i>Number of students served</i> | <i>Total cost (excluding land)</i> |
|---------------------|------------------------|----------------------------------|------------------------------------|
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3. List of construction projects over last five years

General Questions

1. Please provide a description of the relative merits of a project procured through AB 1402.
2. How did the district ensure a fair selection of the design-build company?
3. Did the cost, schedule, and quality of the project meet the school board's expectations?
Please attach a copy of the findings.
4. Would you consider using design-build again? Why or why not?
5. What would you do differently?

Glossary

Architect of record

The architect whose stamp is affixed to the construction documents approved by the Division of the State Architect. This person will be the architect on the design-build team.

Best value*

A value determined by objective criteria that may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

Cost or price

The agreed-upon contract amount between the design-build entity and the school district.

Design-bid-build (DBB)

A procurement process in which the school district provides construction documents, prepared by an architect or engineer, from which contractors submit bids for completing the work described in the documents. Typically, the responsible bidder submitting the lowest price is selected to perform the work.

Design-build (D-B)*

A procurement process in which both the design and construction of a project are procured from a single entity.

Design-build entity*

A corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

Design professional duly licensed or registered in this state

A California-licensed architect or engineer.

*As defined in *Education Code* Section 17250.15.

Educational specifications

Educational specifications are interrelated statements that communicate (or specify) to the architect, the public, and other interested parties what educators believe is required of a proposed educational facility to support a specific educational program. Educational specifications serve as the link between the educational program and the school facilities. They translate the physical requirements of the educational program into words and enable the architect to visualize the educational activity to be conducted so that the architectural concepts and solutions support the stated educational program.

Labor compliance program

A means of ensuring payment of the general prevailing rate of per diem wages for public works construction projects. The school district shall be responsible for establishing and enforcing this program by following the requirements in Section 1771.50 of the *Labor Code*.

Performance specifications

Written specifications identifying minimum performance requirements of components, systems, or buildings without identifying product brands or models. This method does not disqualify any product that meets the criteria identified. The *Education Code* states, "The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state."

Prequalification

A process of determining whether a design-build entity is eligible to submit a proposal on a particular project. According to AB 1402 (*Education Code* Section 17250.25[b][1]), school districts "... shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations." The statute names additional criteria, which must be included in the qualification process.

Prescriptive specifications

Written specifications that identify acceptable methods or manufacturers of project elements, often including model numbers. This method may eliminate an unlisted product or process that may be comparable to those listed.

Project delivery

The procurement method by which a school district completes a construction project (e.g., design-bid-build, lease-lease back, design-build).

Project inspector

The project inspector is certified and approved by the Division of the State Architect. The school district hires the inspector typically on a per-project basis. The architect of record and structural engineer of record must approve the district's choice of an inspector.

Request for Proposal (RFP)*

As defined in the statute (*Education Code* Section 17250.25[a][1]), the RFP shall be prepared,

... setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs.

The RFP shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity. (B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district. (C) Include a section identifying and describing the following: (i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors. (ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values. (iii) The relative importance or weight assigned to each of the factors identified in the request for proposal. (iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following: (I) Significantly more important than cost or price. (II) Approximately equal in importance to cost or price. (III) Significantly less important than cost or price. (v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

*As defined in *Education Code* Section 17250.25(a)(1).

Safety record*

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 bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the *Labor Code*.

Skilled labor force availability*

An agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the two years prior to enactment of this act.

*As defined in *Education Code* Section 17250.25(g) and (f).

Appendix A

Resources

American Institute of Architects, California Council

1303 J Street, Suite 200
Sacramento, CA 95814
<http://www.aia.org/>

Associated General Contractors of California

3095 Beacon Boulevard
West Sacramento, CA 95691
<http://www.agc-ca.org>

California Department of Education School Facilities Planning Division

660 J Street, Suite 350
Sacramento, CA 95814
<http://www.cde.ca.gov/facilities>

California Energy Commission

1516 Ninth Street
Sacramento, CA 95814-5512
<http://www.energy.ca.gov/>

Coalition for Adequate School Housing

1130 K Street, Suite 210
Sacramento, CA 95814
<http://www.cashnet.org/>

Collaborative for High Performance Schools

c/o Eley Associates
142 Minna Street
San Francisco, CA 94105
<http://www.chps.net/>

Construction Employers' Association

3800 Watt Avenue, Suite 215
Sacramento, CA 95821
<http://www.cea-ca.org/>

Department of Industrial Relations

770 L Street, Suite 1160
Sacramento, CA 95814
<http://www.dir.ca.gov/>

Design-Build Institute of America

1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
<http://www.dbia.org/>

Division of the State Architect

1130 K Street, Suite 101
Sacramento, CA 95814
<http://www.dsa.ca.gov>

Legislative Analyst's Office

925 L Street, Suite 1000
Sacramento, CA 95814
<http://www.lao.ca.gov/>

Office of Public School Construction

1130 K Street, Suite 400
Sacramento, CA 95814
<http://www.opsc.dgs.ca.gov/>

Appendix B

References

CHPS Best Practices Manual

The Collaborative for High Performance
Schools
c/o Eley Associates
142 Minna Street
San Francisco, CA 94105
<http://www.chps.net/>

Design-Build Contracting Handbook

Robert F. Cushman and Michael C. Loulakis
Aspen Publishers, Inc.
ISBN: 0735521824
<http://www.aspenpublishers.com/>

Design-Build for the Design Professional

G. William Quatman
Aspen Publishers, Inc.
ISBN 0735517274
<http://www.aspenpublishers.com/>

Design-Build Manual of Practice, Volumes I and II

Design-Build Institute of America
1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
<http://www.dbia.org/>

Design-Build: Planning Through Development

Jeffrey L. Beard, Michael Loulakis, and
Edward Wundram
Design-Build Institute of America
1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
<http://www.dbia.org/>

Handbook on Project Delivery

The American Institute of Architects,
California Council
1303 J Street, Suite 200
Sacramento, CA 95814
<http://www.aia.org/>