

AMENDED IN SENATE JUNE 9, 2016

AMENDED IN SENATE JUNE 11, 2015

AMENDED IN SENATE MAY 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1444

Introduced by Assembly Member Eduardo Garcia

February 27, 2015

An act to amend ~~Sections 6300, 6302, and 6304 of, and to repeal Sections 6301, 6303, and 6305 of, the Government Code, relating to state government. Section 13332.19 of the Government Code, and to amend Sections 10187.5 and 10190 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as amended, Eduardo Garcia. ~~Foreign-trade zones. Design-build projects: the Salton Sea.~~

Existing law, except as specified, prohibits any state agency from expending funds appropriated for design-build projects until the Department of Finance and the State Public Works Board have approved performance criteria for the project.

This bill would include among the exceptions to those provisions amounts appropriated for projects at the Salton Sea.

Existing law requires either the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation to notify the State Public Works Board regarding the method to be used for selecting a design-build entity, prior to advertising the design-build project.

This bill would, for purposes of projects at the Salton Sea, instead require the Director of the Department of Water Resources to notify the California Water Commission regarding the method to be used for selecting a design-build entry, prior to advertising a design-build project.

The bill would make other conforming changes.

~~Existing law authorizes any public corporation, as defined, and specified private corporations to apply for the privilege of establishing, operating, and maintaining a foreign-trade zone in accordance with federal law, and provides that any public or private corporation whose application is granted pursuant to federal law is authorized to establish, operate, and maintain a foreign-trade zone, subject to specified conditions. Existing law also authorizes a public corporation, if authorized to establish, operate, and maintain a foreign trade zone, to provide the United States with indemnity or assurance and to deposit sums of money with the United States as requested.~~

~~This bill would combine and reorganize these provisions and would repeal that indemnity and assurance provision.~~

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

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

1 SECTION 1. Section 13332.19 of the Government Code is
2 amended to read:

3 13332.19. (a) For the purposes of this section, the following
4 definitions shall apply:

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

8 (2) "Design-build project" means a capital outlay project using
9 the design-build construction procurement process.

10 (3) "Design-build entity" means a partnership, corporation, or
11 other legal entity that is able to provide appropriately licensed
12 contracting, architectural, and engineering services as needed.

13 (4) "Design-build solicitation package" means the performance
14 criteria, any concept drawings, the form of contract, and all other
15 documents and information that serve as the basis on which bids
16 or proposals will be solicited from the design-build entities.

1 (5) “Design-build phase” means the period following the award
2 of a contract to a design-build entity in which the design-build
3 entity completes the design and construction activities necessary
4 to fully complete the project in compliance with the terms of the
5 contract.

6 (6) “Performance criteria” means the information that fully
7 describes the scope of the proposed project and includes, but is
8 not limited to, the size, type, and design character of the buildings
9 and site; the required form, fit, function, operational requirements,
10 and quality of design, materials, equipment, and workmanship;
11 and any other information deemed necessary to sufficiently
12 describe the state’s needs. Performance criteria may include
13 concept drawings, which include any schematic drawings or
14 architectural renderings that are prepared in the detail necessary
15 to sufficiently describe the state’s needs.

16 (b) (1) Except as otherwise specified in subparagraphs (A) to
17 ~~(D)~~, (E), inclusive, of paragraph (2) funds appropriated for a
18 design-build project shall not be expended by any state agency,
19 including, but not limited to, the University of California, the
20 California State University, the California Community Colleges,
21 and the Judicial Council, until the Department of Finance and the
22 State Public Works Board have approved performance criteria.

23 (2) This section shall not apply to any of the following:

24 (A) Amounts for acquisition of real property, in fee or any lesser
25 interest.

26 (B) Amounts for equipment or minor capital outlay projects.

27 (C) Amounts appropriated for performance criteria.

28 (D) Amounts appropriated for preliminary plans, if the
29 appropriation was made prior to January 1, 2005.

30 (E) *Amounts appropriated for projects at the Salton Sea.*

31 (c) Any appropriated amounts for the design-build phase of a
32 design-build project, where funds have been expended on the
33 design-build phase by any state agency prior to the approval of
34 the performance criteria by the State Public Works Board, and all
35 amounts not approved by the board under this section shall be
36 reverted to the fund from which the appropriation was made. A
37 design-build project for which a capital outlay appropriation is
38 made shall not be put out to design-build solicitation until the bid
39 package has been approved by the Department of Finance. A
40 substantial change shall not be made to the performance criteria

1 as approved by the board and the Department of Finance without
2 written approval by the Department of Finance. The Department
3 of Finance shall approve any proposed bid or proposal alternates
4 set forth in the design-build solicitation package.

5 (d) The State Public Works Board may augment a design-build
6 project in an amount of up to 20 percent of the capital outlay
7 appropriations for the project, irrespective of whether any such
8 appropriation has reverted. For projects authorized through multiple
9 fund sources, including, but not limited to, general obligation bonds
10 and lease-revenue bonds, to the extent permissible, the Department
11 of Finance shall have full authority to determine which of the fund
12 sources will bear all or part of an augmentation. The board shall
13 defer all augmentations in excess of 20 percent of the amount
14 appropriated for each design-build project until the Legislature
15 makes additional funds available for the specific project.

16 (e) In addition to the powers provided by Section 15849.6, the
17 State Public Works Board may further increase the additional
18 amount in Section 15849.6 to include a reasonable construction
19 reserve within the construction fund for any capital outlay project
20 without augmenting the project. The amount of the construction
21 reserve shall be within the 20 percent augmentation limitation.
22 The board may use this amount to augment the project, when and
23 if necessary, after the lease-revenue bonds are sold to ensure
24 completion of the project.

25 (f) Any augmentation in excess of 10 percent of the amounts
26 appropriated for each design-build project shall be reported to the
27 Chairperson of the Joint Legislative Budget Committee, or his or
28 her designee, 20 days prior to board approval, or not sooner than
29 whatever lesser time the chairperson, or his or her designee, may
30 in each instance determine.

31 (g) (1) The Department of Finance may change the
32 administratively or legislatively approved scope for major
33 design-build projects.

34 (2) If the Department of Finance changes the approved scope
35 pursuant to paragraph (1), the department shall report the changes
36 and associated cost implications to the Chairperson of the Joint
37 Legislative Budget Committee, the chairpersons of the respective
38 fiscal committees, and the legislative members of the State Public
39 Works Board 20 days prior to the proposed board action to
40 recognize the scope change.

1 (h) The Department of Finance shall report to the Chairperson
2 of the Joint Legislative Budget Committee, the chairpersons of the
3 respective fiscal committees, and the legislative members of the
4 State Public Works Board 20 days prior to the proposed board
5 approval of performance criteria for any project when it is
6 determined that the estimated cost of the total design-build project
7 is in excess of 20 percent of the amount recognized by the
8 Legislature.

9 *SEC. 2. Section 10187.5 of the Public Contract Code is*
10 *amended to read:*

11 10187.5. For purposes of this article, the following definitions
12 and the definitions in subdivision (a) of Section 13332.19 of the
13 Government Code shall apply:

14 (a) “Best value” means a value determined by evaluation of
15 objective criteria that relate to price, features, functions, life-cycle
16 costs, experience, and past performance. A best value determination
17 may involve the selection of the lowest cost proposal meeting the
18 interests of the department and meeting the objectives of the
19 project, selection of the best proposal for a stipulated sum
20 established by the procuring agency, or a tradeoff between price
21 and other specified factors.

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

30 (c) (1) “Department” means the Department of General
31 Services and the Department of Corrections and Rehabilitation.

32 (2) *For the purposes of projects at the Salton Sea, “department”*
33 *means the Department of Water Resources.*

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

37 (e) “Design-build entity” means a corporation, limited liability
38 company, partnership, joint venture, or other legal entity that is
39 able to provide appropriately licensed contracting, architectural,

1 and engineering services as needed pursuant to a design-build
2 contract.

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

8 (g) (1) “Director” means, with respect to procurements
9 undertaken by the Department of General Services, the Director
10 of General Services or, with respect to procurements undertaken
11 by the Department of Corrections and Rehabilitation, the secretary
12 of that department.

13 (2) *For purposes of projects at the Salton Sea, “director” means*
14 *the Director of Water Resources.*

15 *SEC. 3. Section 10190 of the Public Contract Code is amended*
16 *to read:*

17 10190. (a) The director shall notify the State Public Works
18 Board regarding the method to be used for selecting the
19 design-build entity, prior to advertising the design-build project.

20 (b) *Notwithstanding subdivision (a), for purposes of projects*
21 *at the Salton Sea, the Director of the Department of Water*
22 *Resources shall notify the California Water Commission regarding*
23 *the method to be used for selecting the design-build entry, prior*
24 *to advertising the design-build project.*

25 ~~SECTION 1. Section 6300 of the Government Code is amended~~
26 ~~to read:~~

27 ~~6300. The following definitions govern this chapter:~~

28 (a) ~~“Act of Congress” means the act of Congress approved June~~
29 ~~18, 1934, entitled “An act to provide for the establishment,~~
30 ~~operation, and maintenance of foreign-trade zones in ports of entry~~
31 ~~of the United States, to expedite and encourage foreign commerce,~~
32 ~~and for other purposes” (Public Law 73-397; 48 Stat. 998).~~

33 (b) ~~“Public corporation” means the state, any political~~
34 ~~subdivision thereof, any incorporated municipality therein, any~~
35 ~~public agency of the state, of any political subdivision thereof, or~~
36 ~~of any municipality therein, or any corporate municipal~~
37 ~~instrumentality of this state or of this state and one or more other~~
38 ~~states.~~

39 (c) ~~“Private corporation” means an entity organized under the~~
40 ~~laws of the state subsequent to September 15, 1935, for the purpose~~

1 of establishing, operating, and maintaining a foreign-trade zone
2 in accordance with the Act of Congress.

3 ~~SEC. 2. Section 6301 of the Government Code is repealed.~~

4 ~~SEC. 3. Section 6302 of the Government Code is amended to~~
5 ~~read:~~

6 ~~6302. (a) Any public corporation may apply for the privilege~~
7 ~~of establishing, operating, and maintaining a foreign-trade zone~~
8 ~~in accordance with the act of Congress.~~

9 ~~(b) Any private corporation may apply for the privilege of~~
10 ~~establishing, operating, and maintaining a foreign-trade zone in~~
11 ~~accordance with the act of Congress.~~

12 ~~SEC. 4. Section 6303 of the Government Code is repealed.~~

13 ~~SEC. 5. Section 6304 of the Government Code is amended to~~
14 ~~read:~~

15 ~~6304. Any public or private corporation authorized by this~~
16 ~~chapter to make an application and whose application is granted~~
17 ~~pursuant to the terms of the act of Congress may establish, operate,~~
18 ~~and maintain the foreign-trade zone:~~

19 ~~(a) Subject to the conditions and restrictions of the act of~~
20 ~~Congress, and any amendments thereto:~~

21 ~~(b) Under such rules and regulations and for the period of time~~
22 ~~that may be prescribed by the board established by the act of~~
23 ~~Congress to carry out the act.~~

24 ~~SEC. 6. Section 6305 of the Government Code is repealed.~~