

Senate Bill No. 776

CHAPTER 252

An act to add Sections 13332.19 and 14661 to the Government Code, relating to state property.

[Approved by Governor August 3, 1998. Filed with
Secretary of State August 4, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 776, Johannessen. State property: design-build.

Existing law requires the Department of General Services to perform various functions and duties with respect to state property.

This bill would authorize the Director of General Services when authorized by the Legislature to use the design-build procurement process for a specific project, notwithstanding other provisions of law, to contract and procure state office facilities, other buildings, structures, and related facilities pursuant to these provisions. This bill would require the director, prior to contracting for the procurement of state office facilities and other state buildings and structures, to prepare a program setting forth the scope of the project and to establish a competitive prequalification process and recommend to the Legislature a selection process for design-build entities. This bill would require any design-build entity that is selected to design and build a project pursuant to these provisions to possess or obtain sufficient bonding consistent with applicable provisions of law, as specified.

This bill would require a bidder participating in the prequalification process to provide written declarations subject to misdemeanor penalties. By creating a new crime, this bill would impose a state-mandated local program.

This bill, with specified exceptions, would prohibit the expenditure of funds appropriated for a design-build capital outlay project 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. This bill would revert any appropriated amounts for the design-build phase of a design-build project, where funds have been expended on the design-build phase by any state agency prior to this approval, to the fund from which the appropriation was made. The bill would also require the State Public Works Board to defer all augmentation in excess of 20% of the amount appropriated for each design-build capital outlay project until the Legislature makes additional funds available for the specific project. The bill would require the Department of Finance to certify in writing to specified

members of the Legislature that the requested action is in accordance with the legislatively approved scope and cost.

This bill would specify that these provisions shall only remain operative until the completion of at least 5 design-build projects, each with a value of \$10,000,000 or more, or January 1, 2006, whichever occurs later.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. (a) The Legislature finds and declares that it is in the best interests of the state to construct state office and other facilities in a cost-efficient manner that represents the best overall value to the taxpayers. In order for this goal to be accomplished, state agencies need to be able to use the best possible project delivery procurement systems.

(b) The Legislature finds and declares that the design-build process can be an attractive option to the Department of General Services in comparison to the existing three-step (design-bid-build) process. The design-build process can improve the project delivery process by accelerating delivery schedules and saving costs by promoting improved coordination between contractor and architect, shifting management risk from the state to the design-build team, and minimizing change orders through early collaboration between design and construction disciplines.

(c) 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, joint-venture public school projects, specified local government projects, and several state office buildings under construction in Oakland, San Francisco, and Los Angeles. The design-build procurement process has also been approved for use by public entities in other states, as well as the federal government.

(d) Therefore, it is the intent of the Legislature in enacting this act to define the design-build construction procurement process for state facilities to establish the parameters for its use when the Legislature authorizes the Director of General Services to use this process for a specific project that involves the construction of state office and other facilities.

(e) 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 or performance criteria and concept drawings.

SEC. 2. Section 13332.19 is added to the Government Code, to read:

13332.19. (a) Except as otherwise specified in paragraphs (1) and (2), no 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.

This subdivision shall not apply to either of the following:

- (1) Amounts for acquisition of land.
- (2) Amounts appropriated specifically for preliminary surveys, studies, and planning.

(b) Any appropriated amounts for the design-build phase of a design-build project, where funds have been expended on the design-build phase by any state agency prior to the approval of the performance criteria or the performance criteria and concept drawings by the State Public Works Board, and all amounts not approved by the State Public Works Board under this section shall be reverted to the fund from which the appropriation was made. If the Director of Finance or his or her authorized representative requests review of the design-build bid package, no design-build project for which an appropriation is made shall be put out to bid until the bid package has been approved by the Department of Finance. No substantial change shall be made from the performance criteria or performance criteria and concept drawings as approved by the State Public Works Board and the Department of Finance without written approval by the Department of Finance. Any proposed bid alternates shall be approved by the Department of Finance.

(c) The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each design-build capital outlay project until the Legislature makes additional funds available for the specific project.

(d) Any augmentation of the design-build phase of a design-build project shall be consistent with the intent of subdivision (e) of Section 13332.11.

(e) Prior to State Public Works Board action on any design-build capital outlay appropriation, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative members of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications.



The reports also shall include all proposed or potential augmentations in excess of 10 percent of the amount appropriated for the costs of the design-build phase of the capital outlay project.

(f) The State Public Works Board shall defer action with respect to approval of performance criteria or performance criteria and concept drawings, when it is determined that the estimated cost of the total design-build project approved by the Legislature is in excess of 20 percent of the amount appropriated.

(g) For the purposes of this section, the following definitions shall apply:

(1) “Concept drawings” means any schematic drawings or architectural renderings that are prepared, in addition to performance criteria, in such detail as the Director of General Services determines necessary to sufficiently describe the state’s needs.

(2) “Design-build bid package” means the performance criteria, any concept drawings deemed necessary by the Department of General Services, the form of contract, and all other documents and information that serve as the basis on which bids or proposals will be solicited to the design-build entities.

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

(4) “Performance criteria” means the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site, the performance specifications that describe the required quality of materials, equipment, and workmanship, and any other information deemed necessary to sufficiently describe the state’s needs.

SEC. 3. Section 14661 is added to the Government Code, to read:

14661. (a) Notwithstanding any provision of the Public Contract Code or any other provision of law, when the Legislature authorizes the use of the design-build construction procurement process for a specific project, the Director of General Services may contract and procure state office facilities and other buildings, structures, and related facilities pursuant to this section.

(b) For purposes of this section, “design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) For purposes of this section, “design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

(d) Prior to contracting for the procurement of state office facilities and other state buildings and structures, the director shall:



(1) Prepare a program 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, or any other information deemed necessary to describe adequately the state's needs. The performance specifications shall be prepared by a design professional duly licensed and registered in the State of California.

(2) (A) Establish a competitive prequalification and selection process for design-build entities, including any subcontractors listed at the time of bid, that clearly specifies the prequalification criteria, as well as recommend the manner in which the winning entity will be selected.

(B) Prequalification shall be limited to consideration of all of the following criteria:

(i) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability 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.

(iii) Submission of a proposed project management plan that establishes that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.

(iv) Submission of 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 department that the design-build entity has the capacity to complete the project.

(v) Provision of a declaration certifying that applying members of the design-build entity have not had a surety company finish work on any project within the last five years.

(vi) Provision of information and a declaration providing detail concerning all of the following:

(I) Any construction or design claim or litigation totaling more than five hundred thousand dollars (\$500,000) or 5 percent of the annual value of work performed, whichever is less, settled against any member of the design-build entity over the last five years.

(II) Serious violations of the Occupational Safety and Health Act, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.



(III) Violations of federal or state law, including, but not limited to, those laws governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements, settled against any member of the design-build entity over the last five years. For the purposes of this subclause, only violations by a design-build member as an employer shall be deemed applicable, unless it is shown that the design-build entity member, in his or her capacity as an employer, had knowledge of his or her subcontractor's violations or failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(IV) Information required by Section 10162 of the Public Contract Code.

(V) 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 or complaints.

(VI) Any conviction of any member of the design-build entity of submitting a false or fraudulent claim to a public agency over the last five years.

(vii) Provision of a declaration that the design-build entity will comply with all other provisions of law applicable to the project, including, but not limited to, the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(C) The director, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive.

(D) Any declaration required under subparagraph (B) shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(3) (A) Recommend, as he or she deems in the best interests of the state, to the Legislature one of the following methods as the process to be used for the selection of the winning entity:

(i) A design-build competition based upon performance, price, and other criteria set forth by the department in the solicitation for proposals. The department shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the request for design-build proposals. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of the department and meeting the objectives of the project. A



project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

(ii) A design-build competition based upon performance and other criteria set forth by the department in the solicitation for proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, items such as proposed design approach, life-cycle costs, project features, and functions. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for design-build proposals. Award shall be made to the design-build entity whose proposal is judged as providing the best value, for the lowest price, meeting the interests of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

(iii) A design-build competition based upon program requirements and a detailed scope of work, including any concept drawings and specifications set forth by the department in the solicitation for proposals. Award shall be made on the basis of the lowest responsible bid. A project with an approved budget of two hundred fifty thousand dollars (\$250,000) or more may be awarded pursuant to this clause.

(B) Notwithstanding any other provision of law, no project valued under two hundred fifty thousand dollars (\$250,000) shall be awarded pursuant to subparagraph (A).

(C) The legislation providing final authorization to construct a specific project using the design-build construction procurement process shall specify one of the methods described in clauses (i) to (iii), inclusive, of subparagraph (A) for the selection of the winning entity.

(e) The Legislature recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all subcontractors at the time of the award. As a result, the subcontractor listing requirements contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code can create a conflict with the implementation of the design-build process by requiring all subcontractors to be listed at a time when a sufficient set of plans may not be available. It is the intent of the Legislature to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that retains protection for subcontractors while enabling design-build projects to be administered in an efficient fashion. Therefore, all of the following requirements shall apply to subcontractors, licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, that are employed on design-build projects undertaken pursuant to this section:



(1) The department, in each design-build request for proposal, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the department shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the department specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total amount of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

(2) All subcontracts that were not to be performed by the design-build entity in accordance with paragraph (1) shall be competitively bid and awarded by the design-build entity, in accordance with the design-build process set forth by the department in the design-build package. The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted in accordance with Section 10140 of the Public Contract Code.

(B) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with Section 10141 of the Public Contract Code.

(C) As authorized by the department, establish reasonable prequalification criteria and standards, limited in scope to those detailed in paragraph (2) of subdivision (d).

(D) Provide that the subcontracted work shall be awarded to the lowest responsible bidder.

(f) For purposes of this section, “best interests of the state” shall mean a design-build process that is projected by the director to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(g) This section shall not be construed and is not intended to extend or limit the authority specified in Section 19130.

(h) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract



Code. Nothing in this section shall 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.

(i) Any payment or performance bond written for the purposes of this section shall use a bond form developed by the Department of General Services. In developing the bond form, the department shall consult with the surety industry to achieve a bond form that is consistent with surety industry standards, while protecting the interests of the state.

SEC. 4. Sections 2 and 3 of this act shall remain operative only until the completion of at least five design-build projects, each with a value of ten million dollars (\$10,000,000) or more, or until January 1, 2006, whichever occurs later.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

