

# Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: June 27-28, 2012

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Information Item

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: Terry L. Abbott  
Division Chief  
Design

Subject: **DESIGN-BUILD DEMONSTRATION PROGRAM – AWARDING AGENCY PROGRESS REPORT**

Attached, per Public Contract Code, Section 6800, is the California Department of Transportation's Annual Progress Report for the Design-Build Demonstration Program.

Attachment

**Annual Progress Report to the Legislature  
Senate Bill (X2) 4  
Design-Build Demonstration Program**

**I. Purpose**

This report fulfils the requirement of the annual report and the midterm report and reflects activities through March 31, 2012. The report is prepared in accordance with Public Contract Code Section 6811 (see Exhibit A) and Chapter 2 of the Statutes of 2009 2<sup>nd</sup> Extraordinary Session, which states in pertinent part:

SEC. 6. (a) Notwithstanding any other provision of law, the peer review committee established pursuant to subdivision (d) of Section 6803 of the Public Contract Code shall continue to operate until it has fulfilled the reporting requirements of this section.

(b) The committee shall conduct an evaluation of all transportation projects using the design-build method of construction procurement authorized under Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code.

(c) The evaluation pursuant to subdivision (b) shall examine the procurement method, comparing those projects using low bid and best value, and shall consider whether the projects were on time and on budget. The evaluation shall also compare the design-build projects to similar transportation projects that used the design-bid-build method of construction procurement.

(d) (1) The California Transportation Commission shall submit a midterm report of its findings to the Legislature no later than June 30, 2012.

**II. Background**

The Design-Build Demonstration Program was established in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, as added by Chapter 2 of the Statutes of 2009 2<sup>nd</sup> Extraordinary Session (Senate Bill (X2) 4). The Design-Build Demonstration Program authorizes use of the design-build method of procurement by local transportation entities for up to five projects and by the Department of Transportation for up to ten projects, subject to authorization by the California Transportation Commission (CTC). Local transportation entities are defined as a transportation authority designated pursuant to Division 19 (commencing with Section 180000) of the Public Utilities Code, any consolidated agency created pursuant to Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code, the Santa Clara Valley Transportation Authority established under Part 12 (commencing with Section 100000) of Division 10 of the Public Utilities Code, and any other local or regional transportation entity that is designated by statute as a regional transportation agency.

In 2010, Assembly Bill 2098 was signed in to law, Chapter 250 of the Statutes of 2010, adding one additional project to the Demonstration Program. The project was

specifically allocated to the Riverside County Transportation Commission, if authorized by the CTC, for the State Route 91 Corridor Improvements Project on the state highway system.

Eligibility for the Demonstration Program is limited to projects that the CTC has programmed for funding from the State Transportation Improvement Program (STIP), from the State Highway Operation and Protection Program (SHOPP), from the Traffic Congestion Relief Program (TCRP), or from one of the programs designated under Proposition 1B of 2006.

Under traditional means of contracting for the construction of highway improvement projects, construction of any portion of the project cannot begin until the Department or local transportation agency has developed complete plans and specifications for the entire project, placed the contract out for bid, and awarded the contract.

Design-build is a project delivery method that combines the design and construction into one contract where the design firm and the construction contractor are a team, working together to design and construct phases of a project concurrently. The contracting agency identifies the end result parameters and establishes the design criteria.

The Design-Build Demonstration Program sunsets on and all project authorized by this statute must be awarded by January 1, 2014.

### **III. Program Objectives and Guidelines**

The goal of the Demonstration Program is described in Section 6800 of the Public Contract Code: “The design-build method of procurement authorized under this chapter should be evaluated for the purposes of exploring whether the potential exists for reduced project costs, expedited project completion, or design features that are not achievable through the traditional design-bid-build method. A demonstration program will allow for a careful examination of the benefits and challenges of design-build contracting on a limited number of projects.”

The CTC adopted policy guidance for the Demonstration Program on September 9, 2009 (Resolution G-09-09) setting forth the Commission’s expectations for the selection of projects for the Demonstration Program. The Commission’s expectations for project balance include the following:

**Transportation Entity.** There will be a maximum of 5 projects authorized for local transportation entities and 10 projects authorized for the Department.

**Selection Method.** The Commission expects to authorize 7-8 projects for selection by low bid and 7-8 projects for selection by best value.

**Location.** The Commission expects to authorize 8-10 projects in the South and 5-7 projects in the North with South and North defined as for the STIP.

**Project Size.** The Commission expects to authorize 2-3 projects with a design-build contract cost under \$20 million and 2-3 projects with a design-build contract cost over \$200 million.

The Commission's expectations for geographical location and project size are subject to change in order to assure that up to 15 projects will be authorized and awarded by the expiration date of the Demonstration Program.

#### **IV. Project Information**

Eight of the ten state projects have been authorized by the California Transportation Commission. Table 1 lists the authorized projects and their current status. The Department will be identifying and seeking authorization of the final two projects this summer.

The Department is required to report on the following each year for projects that have been awarded:

- (1) A description of the project.
- (2) The design-build entity that was awarded the project.
- (3) The estimated and actual costs of the project.
- (4) The estimated and actual schedule for project completion.
- (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including, but not limited to, the resolution of the protests.
- (6) An assessment of the prequalification process and criteria utilized under this chapter.
- (7) A description of the labor compliance program required under Section 6804 and an assessment of the impact of this requirement on a project.
- (8) A description of the method used to evaluate the bid, including the weighting of each factor and an assessment of the impact of this requirement on a project.
- (9) A description of any challenges or unexpected problems that arose during the construction of the project and a description of the solutions that were considered and ultimately implemented to address those challenges and problems.
- (10) Recommendations to improve the design-build process of construction procurement authorized under this chapter.

Items (1) through (4) are shown in Table 1. The estimated and actual costs for the purposes of this report are the estimated cost at time of authorization and the actual cost at time of award of the project. Once the Peer Review Committee has determined the proper evaluation criteria for the Demonstration Program, the Department will provide additional cost information.

The estimated and actual schedules for project award for the purposes of this report are the estimated award at the time of authorization and actual award of the contract. Future

reports will compare estimated construction complete dates and actual construction complete dates. Once the Peer Review Committee has determined the proper evaluation criteria for the Demonstration Program, the Department can provide additional schedule information.

The remaining items (5) through (10) are discussed in the following sections.

## **V. Protests**

The Department has developed a procurement process which allows participants multiple opportunities to protest at various decision points. During the prequalification process, participants are allowed to protest the Request for Qualifications (RFQ) documents up to seven days prior to the Statement of Qualifications (SOQ) due date. If necessary to address the issues raised in the protest, the Department may make appropriate revisions to the RFQ documents by issuing an addendum. After the prequalification decision and notification of the prequalification decision, participants have five days to protest the results of the prequalification decision.

During the proposal process, prequalified participants are allowed to protest the Request for Proposals (RFP) documents up to seven days prior to the price proposal due date. If necessary to address the issues raised in the protest, the Department may make appropriate revisions to the RFP documents by issuing an addendum. Participants are allowed to protest the award decision within seven days of the Department's posting of its Notice of Intent to Award.

No hearings are held on the protest, but are decided, on the basis of the written submissions, by Department's Director or designee, whose decision is final and conclusive and not subject to legal challenge unless wholly arbitrary. Department's Director or designee issues a written decision regarding any protest to each participant.

The Department has not received any protest on its RFQ and RFP documents on those projects that have been awarded to date. The Department has received two protests regarding its prequalification decision. Both protests were on the Los Angeles 10/605 Connector project. The protests were resolved utilizing the Department's protest process and the prequalification decision was upheld. The Department has received one protest on its award decision. The protest was regarding the technical scoring of a proposal on the Los Angeles 10/605 Connector project which was a best value award. The protest was resolved utilizing the Department's protest process and the award decision was upheld.

## **V. Prequalification Process and Criteria**

The design-build authorizing statute requires that the Department prequalify proposers on its design-build projects. Those teams that meet the qualification requirements determined by the Department are eligible to participate in the procurement of the project. Most states have the ability to shortlist teams. On the projects awarded to date, the Department has prequalified between four and eight proposer teams based on the process and criteria provided in Public Contract Code

section 6805. All but one project had five or more proposer teams prequalified. This has led to limitations on the number of meetings that can be held with proposer teams, the number of alternative technical concepts that can be allowed on projects and the amount of the stipends being offered. In two of the project procurements, teams dropped out of the procurement due to the large number of prequalified teams competing. The ideal number of proposers on a design-build project is between three and five based on input from industry and based on the best practices of other state departments of transportation. The Department recommends that this be considered as a critical element in future design-build legislation.

## **V. Labor Compliance Program**

The Department is utilizing its labor compliance program which has been approved through the Department of Industrial Relations for both its design-bid-build projects and design-build projects. Under this approved plan, the Department is responsible for enforcing prevailing wage laws found in California Labor Code Sections 1720-1815 and the related regulations found in California Code of Regulations, Title 8, Sections 16000-16439. The Department reviews, confirms, and audits certified payroll records received from all prime contractors, subcontractors, and owner operators on all contracts that require prevailing wages.

On the LA 10/110 Express Lanes project being administered by the Los Angeles County Metropolitan Transportation Authority (Metro), Metro is monitoring prevailing wage requirements in accordance with State and Federal regulatory requirements and with Metro's Labor Compliance Manual.

To date there have been no impacts identified with this requirement.

## **V. Proposal Evaluation**

The Department has awarded three best value contracts and three low bid contracts. The low bid contracts were awarded based on price alone. The best value contracts were awarded based on price plus other factors. Below is a brief description of the criteria and their relative weights used to award the best value contracts.

Los Angeles 10/110 – 25 percent price and 75 percent technical

Technical Factors:

- General Experience (27 percent of technical score) including: qualifications of project manager, performance and experience of project team members (design, construction of comparable projects), team's past performance for quality and client satisfaction.
- Project Approach (33 percent of technical score) including technical feasibility of proposal, project understanding, and feasibility of integration approach.
- Safety (13 percent of technical score) including evidence of a safety program plan that meets Department requirements and Metro's Safety First Philosophy and the contract requirements.

- Operations and Maintenance (27 percent of technical score) including: approach to overall toll operations, proposer’s ability to provide reliable and daily operations, and proposed implementation and operations of the Toll Operation Service Center.

San Mateo 101 – 75 percent price and 25 percent technical

Technical Factors:

- Management/Administration (40 percent of technical score) including: project management, quality management, design approach, transportation management, environmental compliance management, risk management, and utility coordination.
- Project Schedule and Construction Phasing (60 percent of technical score) including project schedule, construction staging plan, minimization of traffic impacts (closures), and safety.

Los Angeles 10/605 – 70 percent price and 30 percent technical

Technical Factors:

- Management/Administration (40 percent of technical score) including: project management, quality approach, environmental compliance plan, project schedule, risk management, and utility coordination.
- Master Design Submittal, Transportation Management Plan and Safety (60 percent of technical score) including design approach, transportation management plan, and safety approach.

Either method of award can work well for an appropriately selected project. Low bid works well for those projects with less flexibility in the project approach and less opportunity for innovation. Best value provides more opportunities for improved performance and achieving other project specific goals.

## **V. Challenges**

A major challenge faced when implementing a new delivery method is the need to develop new processes and contract documents. The Department developed its design-build processes and contract documents based on best practices from other state departments of transportations with mature design-build programs. The Department solicited industry comments on the contract documents. The Department experienced a seven to nine month delay in procuring the initial design-build projects due to the time required to get approval of the contract document templates.

Another major challenge identified to date is the need to modify existing processes to accommodate the fast pace of design-build delivery. Most existing processes are designed for the traditional delivery method and are iterative and deliberative. The design-build process requires faster decision-making and response times.

## **V. Recommendations**

The Department recommends that future design-build legislation allow for shortlisting of proposers during the qualification phase of the procurement. Allowing more than three to

five proposers to participate in a design-build procurement is costly in both time and money. The cost in time is due to the interactions that the Department has with participants through one-on-one meetings, answering clarification questions, reviewing alternative technical concepts and reviewing proposals. In addition, the participants spend a great deal of time and money in participating in these activities and in submitting a proposal package. The Department frequently provides a stipend to unsuccessful participants in exchange for ownership and the use of their ideas. However, the stipend is typically a small fraction of the cost the participant spend to submit a proposal. The ideal number of proposers on a design-build project is between three and five based on input from industry and based on the best practices of other state departments of transportation. Most states have the ability to shortlist and the Department recommends that this be considered as a critical element in future design-build legislation.

#### **V. Peer Review Committee**

Public Contract Code 6803 (d) requires that the CTC establish a peer review committee to conduct an evaluation of the projects selected to utilize the design-build method of procurement. The evaluation shall examine the procurement method, comparing those projects using low bid and best value, and shall consider whether the projects were on time and on budget. The evaluation must also compare the design-build projects to similar projects that used the design-bid-build method of procurement. The CTC is to submit a midterm report of its findings no later than June 30, 2012 and a final report of its findings no later than July 1, 2015. The peer review committee has not yet been established because the design-build projects have not reached a point where an evaluation could provide meaningful findings. CTC staff is currently in the process of establishing the peer review committee.

**TABLE 1**  
**DESIGN-BUILD DEMONSTRATION PROGRAM**  
**AUTHORIZED PROJECTS**  
**(as of 3/31/12)**

**Awarded Projects:**

Project Description	Location (North/South)	Design-Build Entity	Estimated Cost (\$1,000)	Actual Cost at Award (\$1,000)	Estimated Award	Actual Award
	Award Method					
San Mateo 101 – Install Ramp Metering System	North	Republic ITS, Inc.	\$9,526	\$10,552	12/2010	12/22/2011
	Best Value					
Madera 99 – Rehabilitation Roadway	North	Granite Construction, Inc.	\$33,504	\$22,582	8/2010	6/28/2011
	Low Bid					
Fresno 180 – Construct Braided Ramps	North	R&L Brosamer, Inc.	\$61,000	\$40,677	5/2011	1/1/2012
	Low Bid					
LA 10/110 – HOV to HOT Lanes	South	Atkinson Contractors, LP	\$69,300	\$72,364	11/2010	12/16/2010
	Best Value					
LA 10/605 – Construction Connector	South	MCM Construction, Inc.	\$55,500	\$46,190	3/2011	2/15/2012
	Best Value					
San Diego 805 – HOV/BRT (North)	South	Skanska-Coffman a Joint Venture	\$124,250	\$71,885	1/2012	3/16/2012
	Low Bid					

**Projects Under Procurement:**

Project Description	Location (North/South)	Status	Estimated Cost (\$1,000)	Estimated Award
	Award Method			
LA 710 – Replace Gerald Desmond Bridge	South	Proposal Evaluation	\$811,589	1/2012
	Best Value			
San Bernardino 15/215 – Devore Interchange Improvements	South	RFP	\$244,500	6/2012
	Best Value			

## **Exhibit A: Design-Build Demonstration Program Statute**

### **PUBLIC CONTRACT CODE SECTION 6800-6813**

6800. The Legislature hereby finds and declares all of the following:

The design-build method of procurement authorized under this chapter should be evaluated for the purposes of exploring whether the potential exists for reduced project costs, expedited project completion, or design features that are not achievable through the traditional design-bid-build method. A demonstration program will allow for a careful examination of the benefits and challenges of design-build contracting on a limited number of projects. This chapter shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

6801. For purposes of this chapter, the following definitions apply:

(a) "Best value" means a value determined by objective criteria, including, but not limited to, price, features, functions, life cycle costs, and other criteria deemed appropriate by the transportation entity.

(b) "Commission" means the California Transportation Commission.

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

(d) "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 pursuant to a design-build contract.

(e) "Design-build team" means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team.

(f) "Department" means the Department of Transportation as established under Part 5 (commencing with Section 14000) of Division 3 of the Government Code.

(g) "Local transportation entity" means a transportation authority designated pursuant to Division 19 (commencing with Section 180000) of the Public Utilities Code, any consolidated agency created pursuant to Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code, the Santa Clara Valley Transportation Authority established under Part 12 (commencing with Section 100000) of Division 10 of the Public Utilities Code, and any other local or regional transportation entity that is designated by statute as a regional transportation agency.

(h) "Transportation entity" means the department or a local transportation entity.

6802. (a) Subject to the limitations of this chapter, a local transportation entity, if authorized by the commission, may utilize the design-build method of procurement for up to five projects that may be for local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the entity.

(b) Subject to the limitations of this chapter, the department, if authorized by the commission, may utilize the design-build method of procurement for up to 10 state highway, bridge, or tunnel projects.

(c) (1) In addition to the projects authorized pursuant to subdivisions (a) and (b), and subject to the limitations of this chapter, the Riverside County Transportation Commission, if authorized by the commission, may utilize design-build procurement for the State Route 91 Corridor Improvements Project on the state highway system.

(2) Notwithstanding any other provision of this chapter, the department shall be the agency responsible for the performance of construction inspection services for the project authorized pursuant to this subdivision. Construction inspection services for the project authorized pursuant to this subdivision include, but are not limited to, surveying, testing the materials, verification testing, monitoring of environmental compliance, quality control inspection, and quality assurance audits. The construction inspection duties and responsibilities shall include a direct reporting relationship between the inspectors and senior department engineers responsible for all inspectors and construction inspection services. The senior department engineer responsible for construction inspection services shall be responsible for the acceptance or rejection of the work.

(3) Notwithstanding any other provision of law, for the project authorized pursuant to this subdivision, the department shall retain the authority to stop the contractor's operation wholly or in part and take appropriate action when public safety is jeopardized. The department shall ensure that public safety and

convenience are maintained whenever work is performed under an encroachment permit within the state highway right-of-way, including, but not limited to, work performed that includes lane closures, signing, work performed at night, detours, dust control, temporary pavement quality, crash cushions, temporary railings, pavement transitions, falsework, shoring, and delineation. The department shall regularly inspect the job sites for safety compliance and any possible deficiencies. If any deficiency is observed, a written notice shall be sent to the resident engineer to correct the deficiency. Once the deficiency is corrected, a written notice describing the resolution of the deficiency shall be sent to the department and documented.

(4) The department may use department employees or consultants to perform the services described in this subdivision, consistent with Article XXII of the California Constitution. Department resources necessary for the performance of those services, including personnel requirements, shall be included in the department's capital outlay support program for workload purposes in the annual Budget Act.

(5) Not later than the first day of July that occurs two years after a design-build contract is awarded, and each July 1 thereafter until the project is completed, the Riverside County Transportation Commission shall submit a report on the progress of the project and compliance with this section to the legislative policy committees having jurisdiction over transportation matters.

6803. (a) Only 15 design-build projects shall be authorized under this chapter. The projects selected shall vary in size, type, and geographical location.

(b) The commission shall determine whether a transportation entity may award a design-build contract based on lowest responsible bid or best value. The commission shall balance the number of transportation entities that may use the low bid and best value selection methods in order to ensure that the number of design-build contracts awarded will enable the commission to determine the costs and benefits of using each method.

(c) In order to be eligible for consideration as one of the 15 design-build projects authorized under this chapter, the proposed project shall be subject to the existing process under the state transportation improvement program (Chapter 2 (commencing with Section 14520) of Part 5.3 of Division 3 of Title 2 of the Government Code), the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code), the traffic congestion relief program (Chapter 4.5 (commencing with Section 14556) of Part 5.3 of Division 3 of Title 2 of the Government Code), or the state highway operations and protection program established pursuant to Section 14526.5 of the Government Code.

(d) The commission shall establish a peer review committee to conduct an evaluation of the 15 projects selected to utilize the design-build method of procurement.

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

6804. (a) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, a transportation entity authorized to use the design-build method of procurement 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 transportation entity or design-build entity has entered into any collective bargaining agreement that binds all of the contractors performing work on the projects.

(b) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the transportation entity shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works

Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

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

6805. The procurement process for the design-build projects shall progress as follows:

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

(b) Based on the documents prepared as described in subdivision (a), the transportation entity shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the transportation entity. The request for proposals shall include, but need not be limited to, the following elements:

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

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

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

(4) For transportation entities authorized to utilize best value as a selection method, the transportation entity reserves the right to request proposal revisions and hold discussions and negotiations with responsive bidders and shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable rules and procedures to be observed by the transportation entity to ensure that any discussions or negotiations are conducted in good faith.

(c) Based on the documents prepared under subdivision (a), the transportation entity shall prepare and issue a request for qualifications in order to prequalify the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

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

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

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

(3) A standard form request for statements of qualifications prepared by the transportation entity. In preparing the standard form, the transportation entity may consult with the construction industry, the building trades and surety industry, and other public agencies interested in using the authorization provided by this chapter. The standard form shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, joint venture, or other association, a listing of all of the partners, general partners, or association members known at the time of statement of qualification submission who will participate in the design-build contract.

(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, and a financial statement that assures the transportation entity that the design-build entity has the capacity to complete the project.

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

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

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

(F) A full disclosure regarding all of the following that are applicable:

(i) Any serious or willful violation of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity.

(ii) Any debarment, disqualification, or removal from a federal, state, or local government public works project.

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

(iv) Any instance where the design-build entity, or its owners, officers, or managing employees defaulted on a construction contract.

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

(vi) Any bankruptcy or receivership of any member of the design-build entity, including, but not limited to, information concerning any work completed by a surety.

(vii) Any 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 years preceding submission of a bid under this article, 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 five-year period.

(G) If the proposed design-build entity is a partnership, limited partnership, joint-venture, or other association, a copy of the organizational documents or agreement committing to form the organization, and a statement that all general partners, joint venture members, or other association members agree to be fully liable for the performance under the design-build contract.

(H) An acceptable safety record. 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/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.

(4) The information required under 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 required under this subdivision that is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall not be open to public inspection.

(d) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

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

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

(A) Price.

(B) Technical design and construction expertise.

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

(2) Pursuant to subdivision (b), the transportation entity may hold discussions or negotiations with responsive bidders using the process articulated in the transportation entity's request for proposals.

(3) When the evaluation is complete, the top three responsive bidders shall be ranked sequentially based on a determination of value provided.

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

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the transportation entity shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the transportation entity's second- and third-ranked design-build entities.

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

6806. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the transportation entity, and issued by a California admitted surety. In no case shall the amount of the payment bond be less than the amount of the performance bond.

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

(c) The commission shall develop a standard form of payment and performance bond. In developing the bond form, the commission shall consult with entities authorized to use the design-build procurement method under this chapter and with representatives of the surety industry to achieve a bond form that is consistent with surety industry standards and practices, while protecting the public interest.

6807. (a) The transportation entity, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of Division 2.

(b) In awarding subcontracts not listed in the request for proposals, the design-build entity shall do all of the following:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the transportation entity.

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

(3) Establish reasonable qualification criteria and standards.

(4) Provide that the subcontracted construction work shall be awarded either on a best value basis or to the lowest responsible bidder. For construction work awarded on a best value basis, the design-build entity shall evaluate all bids utilizing the factors described in paragraph (1) of subdivision (e) of Section 6805, and shall award the contract to the bidder determined by the design-build entity to have offered the best value.

(c) Subcontractors awarded subcontracts under this chapter shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of Division 2.

6808. (a) Notwithstanding any other provision of this chapter, for a project authorized under subdivision (b) of Section 6802, the department is the responsible agency for the performance of project development services, including performance specifications, preliminary engineering, prebid services, the preparation of project reports and environmental documents, and construction inspection services. The department is also the responsible agency for the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the transportation entity.

(b) The department may use department employees or consultants to perform the services described in subdivision (a), consistent with Article XXII of the California Constitution. Department resources, including personnel requirements, necessary for the performance of those services shall be included in the department's capital outlay support program for workload purposes in the annual Budget Act.

6809. Nothing in this chapter affects, expands, alters, or limits any rights or remedies otherwise available at law.

6811. (a) Not later than June 30 of each year after the design-build contract is awarded, the awarding transportation entity shall submit a progress report to the commission. The progress report shall include, but shall not be limited to, all of the following information:

- (1) A description of the project.
- (2) The design-build entity that was awarded the project.
- (3) The estimated and actual costs of the project.
- (4) The estimated and actual schedule for project completion.
- (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including, but not limited to, the resolution of the protests.
- (6) An assessment of the prequalification process and criteria utilized under this chapter.
- (7) A description of the labor compliance program required under Section 6804 and an assessment of the impact of this requirement on a project.
- (8) A description of the method used to evaluate the bid, including the weighting of each factor and an assessment of the impact of this requirement on a project.
- (9) A description of any challenges or unexpected problems that arose during the construction of the project and a description of the solutions that were considered and ultimately implemented to address those challenges and problems.
- (10) Recommendations to improve the design-build process of construction procurement authorized under this chapter.

(b) The commission shall submit an annual report to the Legislature that includes the information provided pursuant to subdivision (a).

6812. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

6813. This chapter shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.