



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-626 Department of Water Resources: Procurement Methods. (2021-2022)

SHARE THIS:  

Date Published: 09/24/2021 02:00 PM

Senate Bill No. 626

CHAPTER 247

An act to amend Sections 10187.5 and 10190 of, and to add and repeal Article 1.1 (commencing with Section 10112) and Article 6.5 (commencing with Section 10200) of Chapter 1 of Part 2 of Division 2 of, the Public Contract Code, and to add and repeal Sections 147.1 and 148 of the Water Code, relating to water resources.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 626, Dodd. Department of Water Resources: Procurement Methods.

Existing law authorizes the Department of Transportation, regional transportation agencies, and the San Diego Association of Governments to engage in a Construction Manager/General Contractor project delivery method (CM/GC method) for specified public work projects.

This bill would, until January 1, 2033, authorize the Department of Water Resources to utilize the CM/GC method, as specified, for no more than 7 projects for elements of State Water Facilities, as defined. The bill would require the Department of Water Resources, on all projects delivered by the department, to use department employees or consultants under contract with the department to perform all project design and engineering services related to design, and construction inspection services, required for the CM/GC method consistent with specified existing law. The bill would specify that the CM/GC method authorized by these provisions does not include the authority to perform construction inspection services for water resources projects, except as provided.

This bill would prohibit the use of the CM/GC method of procurement for the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta. The bill would require specified information provided to the Department of Water Resources to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. The bill would require the Department of Water Resources to prepare and submit to the Legislature an interim report that describes each CM/GC project approved under these provisions no later than July 1, 2025, as provided, and would require the Department of Water Resources to submit a final report providing specified data by July 1, 2028.

Existing law, until January 1, 2025, authorizes the Department of General Services, the Military Department, the Department of Corrections and Rehabilitation, and specified local agencies to use the design-build procurement process for specified public works. Existing law authorizes the Department of Water Resources to use the design-build procurement process only for those projects at the Salton Sea.

This bill would revise and recast the provisions applicable to the Department of Water Resources and would remove the limitation on the Department of Water Resources' authority to use the design-build method to only those projects at the Salton Sea, and would instead allow the Department of Water Resources, until January 1, 2033, to utilize the design-build method for no more

than 7 projects, as specified. The bill would require specified information provided to the Department of Water Resources to be certified under penalty of perjury, thus imposing a state-mandated local program by expanding the scope of an existing crime.

Existing law requires agencies authorized to use the design-build method of project delivery to notify the State Public Works Board before advertising the design-build project, except that for projects at the Salton Sea, the Director of Water Resources is required to notify the California Water Commission.

This bill would revise and recast the provisions applicable to the Department of Water Resources and would exclude construction projects undertaken by the Department of Water Resources pursuant to its authority under the federal Central Valley Project from the requirement that the Director of Water Resources provide notification to another entity. The bill would specify that the design-build method authorized by these provisions does not include the authority to perform construction inspection services for water resources projects, except as provided. The bill would require the Department of Water Resources to prepare and submit to the Legislature an interim report that describes each design-build project approved under these provisions no later than July 1, 2025, as provided, and would require the Department of Water Resources to submit a final report providing specified data by July 1, 2028.

This bill would require the Department of Water Resources, through the calendar year 2033, to provide to the Legislature by August 1 of each year, and to post on the department's internet website, a detailed accounting of the public works project undertaken by the department, as prescribed. Among other things, the accounting would be required to specify the total number of state-employed staff, including engineers and related positions, utilized by the department to design, inspect, and manage the project, the total number of consultant personnel utilized to design, construct, and manage the project, and a list of department contracts issued for a project, as described.

This bill would, until January 1, 2033, require the Department of Water Resources to perform construction inspection services, as specified, for all water resources projects authorized pursuant to specified provisions. The bill would require the department to use employees or consultants under contract with the department and would require the construction inspection duties and responsibilities of the department to include a direct reporting relationship between the inspectors and senior department engineers responsible for all inspectors and construction inspection services. The bill would require the department to retain the authority to stop the contractor's operation wholly or in part and take appropriate action when public safety is jeopardized on specified water resources-related projects. The bill would require the department to ensure that public safety and convenience is maintained, to regularly inspect the job site, and to document and issue written notice if any deficiency is observed.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 1.1 (commencing with Section 10112) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 1.1. Construction Manager/General Contractor Procurement Method for the Department of Water Resources

10112. (a) This article provides for an alternative procurement procedure for certain projects performed by the Department of Water Resources.

(b) (1) It is the intent of the Legislature in enacting this article to authorize the Department of Water Resources to utilize the Construction Manager/General Contractor method as a cost-effective option for constructing water resources projects.

(2) The Construction Manager/General Contractor method allows the department to engage a construction manager during the design process to provide input on the design. During the design phase, the construction manager provides advice including, but not limited to, scheduling, pricing, and phasing to assist the department to design a more constructible project.

(c) The Legislature finds and declares that utilizing a Construction Manager/General Contractor method requires a clear understanding of the roles and responsibilities of each participant in the process. The Legislature also finds and declares that cost-effective benefits are achieved by shifting the liability and risk for cost containment and project schedule to the construction manager and by permitting the coherent phasing of projects into discrete contract increments.

10112.1. As used in this article:

(a) "Construction manager" means a partnership, corporation, or other legal entity that is a licensed contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and that is able to provide appropriately licensed contracting and engineering services as needed pursuant to a Construction Manager/General Contractor method contract.

(b) "Construction Manager/General Contractor method" means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for preconstruction services, or at a later time. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.

(c) "Department" means the Department of Water Resources.

(d) "Preconstruction services" means advice during the design phase including, but not limited to, scheduling, pricing, and phasing to assist the department to design a more constructible project.

(e) "Project" means public works necessary for the construction, maintenance, or operation of elements of State Water Facilities, as defined in Section 12934 of the Water Code.

10112.2. (a) The Construction Manager/General Contractor method provided by this article may be used by the department, but is not limited to, when it is anticipated that the method will reduce project costs or expedite project completion in a manner that is not achievable through the design-bid-build method. Notwithstanding any other law, for projects utilizing the Construction Manager/General Contractor method provided by this article, the department shall advertise, award, and administer the Construction Manager/General Contractor contract.

(b) On all projects delivered by the department utilizing the Construction Manager/General Contractor method provided by this article, the department shall use department employees or consultants under contract with the department to perform all project design and engineering services related to design required for Construction Manager/General Contractor project delivery consistent with Article XXII of the California Constitution. On all projects delivered by the department, the department shall use department employees or consultants under contract with the department to perform all construction inspection services required for Construction Manager/General Contractor project delivery consistent with Article XXII of the California Constitution.

(c) The Construction Manager/General Contractor method referenced in this article shall not include the authority to perform construction inspection services for water resources projects authorized by this article, except as provided by Section 148 of the Water Code.

(d) Notwithstanding any other provision of this article, the department shall not utilize this method of procurement for the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta.

10112.3. Construction Manager/General Contractor method projects shall progress as follows:

(a) (1) The department shall establish a procedure for the evaluation and selection of a construction manager through a request for qualifications (RFQ). The RFQ shall include, but not be limited to, the following:

(A) If the construction manager is a partnership, limited partnership, or other association, a list of all of the partners, general partners, or association members known at the time of the statement of qualifications submission who will participate in the Construction Manager/General Contractor method contract.

(B) Evidence that the members of the construction manager 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 construction of the project, as well as a financial statement that assures the department that the construction manager has the capacity to complete the project, construction expertise, and an acceptable safety record.

(C) The licenses, registration, and credentials required to construct the project, including information on the revocation or suspension of any license, registration, or credential.

(D) Evidence that establishes that the construction manager has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(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 (Public Law

91-596), settled against any member of the construction manager, and information concerning 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. Any instance in which a construction manager, 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.

(G) Any instance in which the construction manager, or its owners, officers, or managing employees, defaulted on a construction contract.

(H) Any 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 the Federal Insurance Contributions Act (26 U.S.C. Sec. 3101, et seq.) withholding requirements settled against any member of the construction manager.

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

(J) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the construction manager during the five years preceding submission of a 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.

(K) 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 and specifying that all partners or association members agree to be fully liable for the performance under the contract.

(L) For the purposes of this paragraph, a construction manager's safety record shall be deemed acceptable if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their 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.

(2) The information required pursuant to this subdivision shall be verified under oath by the construction manager 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.

(b) For each RFQ, the department shall generate a final list of qualified persons or firms that participated in the RFQ prior to entering into negotiations on the contract or contracts to which the RFQ applies.

(c) (1) For each contract included in the RFQ, the department shall enter into separate negotiations for the contract with the highest qualified person or firm on the final list for that contract. However, if the RFQ is for multiple contracts and specifies that all of the multiple contracts will be awarded to a single construction manager, there may be a single negotiation for all of the multiple contracts. The negotiations shall include consideration of compensation and other contract terms that the department determines to be fair and reasonable to the department. In making this decision, the department shall take into account the estimated value, the scope, the complexity, and the nature of the professional services or construction services to be rendered. If the department is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, regarding compensation and on other contract terms the department determines to be fair and reasonable, the department shall formally terminate negotiations with that person or firm. The department may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached, or a determination is made to reject all persons or firms on the final list.

(2) If a contract for construction services is entered into pursuant to this article and includes preconstruction services by the construction manager, the department shall enter into a written contract with the construction manager for preconstruction services under which contract the department shall pay the construction manager a fee for preconstruction services in an amount agreed upon by the department and the construction manager. The preconstruction services contract may include fees for services to be performed during the contract period provided, however, the department shall not request or obtain a fixed price or a guaranteed maximum price for the construction contract from the construction manager or enter into a construction contract with the construction manager until after the department has entered into a preconstruction services contract that shall provide for the subsequent negotiation for construction of all or any discrete phase or phases of the project.

(3) A contract for construction services shall be awarded after the plans have been sufficiently developed and either a fixed price or a guaranteed maximum price has been successfully negotiated. If a fixed price or a guaranteed maximum price is not

negotiated, the department shall not award the contract for construction services.

(4) The department is not required to award the construction services contract.

(5) Construction shall not commence on any phase, package, or element until the department and construction manager agree in writing on either a fixed price that the department will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced and construction schedule for the project. The construction manager shall perform not less than 30 percent of the work covered by the fixed price or guaranteed maximum price agreement reached. Work that is not performed directly by the construction manager shall be bid to subcontractors pursuant to Section 10112.5.

10112.4. (a) Any construction manager that is selected to construct a project pursuant to this article shall possess or obtain sufficient bonding to cover the contract amount for construction services and risk and liability insurance as the department may require.

(b) Any payment or performance bond written for the purposes of this article shall be written using a bond form developed by the department.

10112.5. All subcontractors bidding on contracts pursuant to this article shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The construction manager shall do all of the following:

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

(b) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this chapter.

(c) Comply with any subcontracting procedures adopted by the department that were included in the department's RFQ. If the department has adopted procedures to prequalify public works contractors, the construction manager may use the procedures to prequalify subcontractors.

10112.6. The department may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this article.

10112.7. A contract awarded pursuant to this article before it is repealed on January 1, 2033, shall continue in full force and effect until completion, including any subsequently executed changes to the contract, or termination.

10112.8. Nothing in this article is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

10112.9. (a) The department shall prepare and submit to the Legislature an interim report no later than July 1, 2025, that describes each Construction Manager/General Contractor project approved under this article beginning January 1, 2022, and that provides relevant data, including, but not limited to, cost, the stage of completion, and estimated time to completion.

(b) The department shall prepare and submit to the Legislature a final report, no later than July 1, 2028, that provides the relevant data referenced in subdivision (a) for projects that were approved under this article as of January 1, 2027.

(c) Both the interim and final reports shall provide a comprehensive assessment on the effectiveness of the Construction Manager/General Contractor project delivery method relative to project cost and time savings.

(d) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

10112.10. (a) The authority to perform water resources projects pursuant to this article is for no more than seven projects.

(b) This article shall remain in effect until January 1, 2033, and as of that date is repealed.

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

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

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

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

(c) "Department" means the Department of General Services, the Military Department, and the Department of Corrections and Rehabilitation.

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

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

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

(g) "Director" means, with respect to procurements undertaken by the Department of General Services, the Director of General Services; with respect to procurements undertaken by the Military Department, the Adjutant General; with respect to procurements undertaken by the Department of Corrections and Rehabilitation, the secretary of that department.

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

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

SEC. 4. Article 6.5 (commencing with Section 10200) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 6.5. Department of Water Resources Design-Build Projects

10200. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

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

(1) This article provides specific authorization to the Department of Water Resources.

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

10200.5. For purposes of this article, the following definitions and the definitions in subdivision (a) of Section 13332.19 of the Government Code shall apply:

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

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

(c) "Department" means the Department of Water Resources.

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

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

contract.

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

(g) "Director" means the Director of Water Resources.

10204. (a) (1) Notwithstanding any other law, the director, following notification made pursuant to Section 10206, may procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000) that are necessary for the construction, maintenance, or operation of elements of State Water Facilities, as defined in Section 12934 of the Water Code, and may award the contract using either the low bid or best value, provided that this article shall not apply to any projects on the state highway system.

(2) Notwithstanding paragraph (1), this article does not apply to the design or construction of through-Delta water conveyances in the Sacramento-San Joaquin Delta.

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

10206. For purposes of projects at the Salton Sea, the director shall notify the California Water Commission regarding the method to be used for selecting the design-build entry, prior to advertising the design-build project.

10208. The procurement process for the design-build projects shall progress as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Technical design and construction expertise.

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

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

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

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

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

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

10209. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the director, and issued by a California admitted surety. The amount of the payment bond shall not be less than the amount of the performance bond.

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

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

10210. (a) The department, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

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

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

(2) Establish reasonable qualification criteria and standards.

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

10211. (a) If the department elects to award a project pursuant to this article, retention proceeds withheld by the department from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

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

10212. (a) The design-build authorization in Section 10204 shall not include the authority to perform construction inspection services for water resources projects authorized by this article except as provided for in Section 148 of the Water Code.

(b) (1) The Department of Water Resources shall prepare and submit to the Legislature an interim report no later than July 1, 2025, that describes each design-build project approved under this article beginning January 1, 2022, and that provides relevant data, including, but not limited to, cost, the stage of completion, and estimated time to completion.

(2) The department shall prepare and submit to the Legislature a final report, no later than July 1, 2028, that provides the same relevant data for projects that were approved under this article as of January 1, 2027.

(c) Both the interim and final reports shall provide a comprehensive assessment on the effectiveness of the design-build project delivery method relative to project cost and time savings.

(d) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

10213. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

10214. (a) The authority to perform water resources projects pursuant to this article is for no more than seven projects.

(b) This article shall remain in effect only until January 1, 2033, and as of that date is repealed.

SEC. 5. Section 147.1 is added to the Water Code, to read:

147.1. (a) By August 1 of each year, the department shall prepare and submit to the Legislature, and post on the department's internet website, a detailed accounting for each public works project undertaken by the department using the project delivery methods authorized by Article 1.1 (commencing with Section 10112) and Article 6.5 (commencing with Section 10200) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. The accounting shall include all of the following:

(1) The total number of state-employed staff, including engineers and related positions, utilized by the department to design, inspect, and manage the project.

(2) The average annual cost per state staff position utilized to perform work related to the project in the applicable fiscal years. In calculating the total and per-state-staff cost, the department shall use staff salaries and benefits, and other direct costs that can be attributed solely to the performance of state staff services, that would otherwise be incurred by the department.

(3) The total number of consultant personnel year-equivalent consultant positions utilized by the department to design, construct, and manage the project.

(4) The average, annual, per personnel year-equivalent cost of consultant positions utilized to perform work related to the project in the applicable fiscal year. In calculating the total and per-consultant cost to the department of utilizing a personnel-year equivalent consulting position, the department shall use the cost of procuring the services under the contract, including the price of the contract, the cost to the department of negotiating and awarding the contract, and the cost to the department of supervising, monitoring, and overseeing the services to be performed under the contract.

(5) A list of all department contracts issued, for a project described in this subdivision, for the two completed fiscal years that immediately precede the year in which the report is due, along with an estimate for the fiscal year in which the report is due. This shall include all of the following:

(A) The dollar amount of the contract.

(B) A brief description of the purpose of the contract.

(C) The estimated timeline for completion of the project.

(b) The accounting to be submitted to the Legislature pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(c) This section shall remain in effect only until January 1, 2034, and as of that date is repealed.

SEC. 6. Section 148 is added to the Water Code, immediately following Section 147.5, to read:

148. (a) The department shall perform construction inspection services for all water resources projects authorized pursuant to Article 6 (commencing with Section 10187) and Article 1.1 (commencing with Section 10112) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. The department shall use department employees or consultants under contract with the department to perform the services described in this section, consistent with Article XXII of the California Constitution. Construction inspection services performed by the department for those projects include, but are not limited to, material source testing, certification testing, monitoring of environmental compliance, independent quality control testing and inspection, and quality assurance audits.

The construction inspection duties and responsibilities of the department 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.

(b) Notwithstanding any other law, 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 on a water resources-related project authorized pursuant to Article 6 (commencing with Section 10187) and Article 1.1 (commencing with Section 10112) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. The department shall ensure that public safety and convenience is maintained whenever work is performed under an encroachment permit on state property or within the state right-of-way. The department shall regularly inspect the job sites for safety compliance and any possible deficiencies. If any deficiency is observed, the department shall issue a written notice and the deficiency shall be corrected and documented.

(c) "Construction inspection services" as used in this section shall not include surveying work performed as part of a Construction Manager/General Contractor or design-build contract.

(d) If any provision or application of this section is held invalid by a court of competent jurisdiction, the department shall post on its internet website within 10 business days of the decision of invalidity that this section has been held invalid.

(e) This section is severable. If any provision of this section or the remainder of this article, 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.

(f) This section shall remain in effect only until January 1, 2033, and as of that date is repealed.

SEC. 7. 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.