

Regulation 3311.3: Design-Build Contracts

Status: ADOPTED

Original Adopted Date: 12/01/2016 | **Last Revised Date:** 03/01/2021 | **Last Reviewed Date:** 12/01/2016

CSBA NOTE: As an alternative to the more traditional design-bid-build process (see BP/AR 3311 - Bids) or a lease-leaseback process (see AR 3311.2 - Lease-Leaseback Contracts), the district may enter into a design-build contract for a public works project in excess of \$1 million pursuant to Education Code 17250.10-17250.55. As defined by Education Code 17250.15, "design-build" means a project delivery process in which both the design and construction of a project are procured from a single entity. Education Code 17250.15 and 17250.25 provide that such contracts may be awarded to either the low bid or best value, as defined.

The Governing Board may approve a contract with a single entity for both design and construction of any school facility in excess of \$1,000,000, awarding the contract to either the low bid or the best value as determined by evaluation of objective criteria. (Education Code 17250.20)

Design-build documents shall not include provisions for long-term project operations, but may include operations during a training or transition period. (Education Code 17250.25)

Procedures for Awarding the Contract

The procurement process for design-build projects shall be as follows: (Education Code 17250.25, 17250.35; Public Contract Code 2600)

1. **Performance Specifications:** The district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but are not limited to:
 - a. The size, type, and desired design character of the project
 - b. Performance specifications that cover the quality of materials, equipment, and workmanship
 - c. Preliminary plans or building layouts
 - d. Any other information deemed necessary to describe adequately the district's needs

The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

2. **Prequalification:** The district shall prepare and issue a request for qualifications in order to prequalify, or develop a short list of, the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but is not limited to, all of the following elements:
 - a. Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the district to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the district to inform interested parties of the contracting opportunity
 - b. Significant factors that the district reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price-related factors
 - c. A standard template request for statements of qualifications prepared by the district, which shall contain all of the information required pursuant to Education Code 17250.25

CSBA NOTE: Public Contract Code 2600, as amended by AB 2311 (Ch. 347, Statutes of 2020), adds a requirement to include in all bid documents and construction contracts, when applicable, a notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603. Pursuant to Education Code 17250.25, design-build contracts are subject to such requirements.

4. A notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603

The district also may identify specific types of subcontractors that must be included in the statement of Mesa Union School District

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qualifications and proposal.

3. Request for Proposals: The district shall prepare a request for proposals (RFP) that invites prequalified or short-listed entities to submit competitive sealed proposals in a manner prescribed by the district. The RFP shall include the information identified in items #2a, 2b, and 2d above and the relative importance or weight assigned to each of the factors. If the district uses a best value selection method for a project, the district may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the district 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 district to ensure that any discussions or negotiations are conducted in good faith.
4. Selection Based on Low Bid: For those projects utilizing low bid as the final selection method, the bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and the contract shall be awarded to the lowest responsible bidder.
5. Selection Based on Best Value: For those projects utilizing best value as a selection method, the following procedures shall be used:
 - a. Competitive proposals shall be evaluated using only the criteria and selection procedures specifically identified in the request for proposals. Criteria shall be weighted as deemed appropriate by the district and shall, at a minimum, include price, unless a stipulated sum is specified; technical design and construction experience; and life-cycle costs over 15 or more years.
 - b. Following any discussions or negotiations with responsive proposers and completion of the evaluation process, the responsive proposers shall be ranked on a determination of value provided, provided that no more than three proposers are required to be ranked.
 - c. The contract shall be awarded to the responsible entity whose proposal is determined by the district to have offered the best value to the public.
 - d. The district shall publicly announce the contract award, identifying the entity to which the award is made and the basis of the award. This statement and the contract file shall provide sufficient information to satisfy an external audit.

Skilled and Trained Workforce

CSBA NOTE: Education Code 17250.25 requires the district to obtain an enforceable commitment that the contractor will comply with the requirements to use a skilled and trained workforce, as defined, in accordance with Public Contract Code 2600-2603. Pursuant to Public Contract Code 2600.5, as added by AB 2311, failure to provide the notice described in items #2d and 3 above does not excuse the district from the requirement to obtain an enforceable commitment that a contractor or other entity will use a skilled and trained workforce to complete a contract or project.

A design-build entity shall not be prequalified or short-listed unless the entity provides an enforceable commitment to the district 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 apprenticeship occupation in the building and construction trades. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence of compliance on a monthly basis during the performance of the project or contract. (Education Code 17250.25; Public Contract Code 2602)

Skilled and trained workforce means that all the workers performing the work are either skilled journeypersons or apprentices registered in a state-approved apprenticeship program. At least 60 percent of the skilled journeypersons employed to perform the work shall be graduates of an apprenticeship program for the applicable occupation or at least 60 percent of the hours worked by skilled journeypersons shall be performed by graduates of an apprenticeship program, with the exception of certain occupations specified in Public Contract Code 2601 which are subject to a 30 percent threshold. (Public Contract Code 2601)

If the contractor fails to provide the monthly report demonstrating compliance with the skilled and trained workforce requirements or provides an incomplete report, the district shall withhold further payments until a complete report is provided. If a report does not demonstrate compliance with the skilled and trained workforce requirements, the

district shall withhold further payments until the contractor provides a sufficient plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. In addition, the district shall forward to the Labor Commissioner a copy of the monthly report, any plan to achieve compliance, and the district's response to that plan. (Public Contract Code 2602)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References	Description
Ed. Code 17250.10-17250.55	Design-build contracts
Management Resources References	Description
Website	California Department of Education, School Facilities
Website	CSBA
Website	California Association of School Business Officials
Cross References	Description
3311	Bids
3311	Bids
3312	Contracts
7000	Concepts And Roles
7110	Facilities Master Plan
7140	Architectural And Engineering Services
7140	Architectural And Engineering Services