

CALIFORNIA DEPARTMENT OF TRANSPORTATION



Public-Private Partnerships

PROGRAM GUIDE

California Department of Transportation

Revised January 1, 2013

Table of Contents

1. INTRODUCTION/OVERVIEW	4
1.1. California Department of Transportation Mission.....	4
1.2. Purpose.....	4
1.3. Definition	4
1.4. Elements of Public-Private Partnerships.....	5
1.5. Program Objectives.....	5
1.6. General Public-Private Partnership (P3) Process Overview.....	6
2. INTRODUCTION/OVERVIEW	7
2.1. Statutory Authority	7
2.2. California Transportation Commission (CTC) Resolution G-09-13	7
3. PROJECT SELECTION.....	8
3.1. Project Attributes	8
3.2. Screening and Selection Process.....	10
3.2.1. Project Suitability.....	11
3.2.2. Project Selection.....	13
3.2.3. Project Nomination	13
3.2.4. Project Approval	13
3.2.5. Project Pipeline	13
4. Project Procurement.....	13
4.1. Delivery Mechanisms	14
4.2. P3 Procurement Components.....	14
4.3. P3 Procurement Process.....	15
4.3.1. Industry Review Meetings	15
5. UNSOLICITED PROPOSALS	16
5.1. Authority.....	16
5.2. Costs Incurred.....	16
5.3. Preliminary Meetings to Discuss Unsolicited Proposals	17
5.4. Proposal Review (Administration) Fees and Other Fees.....	17
5.4.1. Administration Fees	17
5.4.2. Cost of Public Input Process	18

5.4.3.	Other Costs of Department Services	18
5.4.4.	Required Contents	18
5.4.5.	Executive Summary	18
5.4.6.	Qualifications	19
5.4.7.	Project Description.....	19
5.4.8.	Schedule	19
5.4.9.	Operating Plan.....	19
5.4.10.	Finance Plan	19
5.4.11.	Financial Feasibility	20
5.4.12.	Legal Basis for the Project.....	20
5.4.13.	Bonds, Letters of Credit, Guarantees, Insurance	20
5.4.14.	No Previous Breach of Contract or Disqualification.....	20
5.4.15.	Licenses and Certifications.....	20
5.4.16.	Project Value	20
5.4.17.	Added Value of the P3 Approach.....	20
5.4.18.	Protection Against Disclosures.....	20
6.	PROJECT EVALUATION PROCESS	21
6.1.	“Pass/Fail” Evaluation Factors	21
6.1.1.	Administrative Pass/Fail Requirements	21
6.1.2.	Technical Pass/Fail Requirements	21
6.1.3.	Financial Pass/Fail Requirements	21
6.2.	Proposal Evaluation Criteria	21
6.3.	Technical Proposal Criteria.....	22
6.3.1.	Management / Administration Evaluation Criteria	22
6.3.2.	Preliminary Master Plan Submittal Evaluation Criteria.....	22
6.3.3.	Operation and Maintenance Evaluation Criteria.....	23
6.4.	Financial and Commercial Proposal Criteria.....	23
6.4.1.	Maximum Annual Availability Payment (If considered).....	24
6.4.2.	Feasibility of Financial and Commercial Proposal	24
6.5.	Adjectival Scoring System.....	24
6.6.	Technical Proposal Score*.....	25
6.7.	Financial Proposal Score.....	25
6.8.	Procedure	25

7. BASIC ELEMENTS OF A P3 AGREEMENT	26
7.1. Agreement Assignments	26
7.2. Agreement Conditions	27
8. FINANCING INSTRUMENTS.....	28
8.1. Transportation Infrastructure Finance and Innovation Act.....	28
8.2. Private Activity Bonds	28
8.3. Availability Payments.....	29
8.4. Tolls	29

Appendices

- Appendix A: Definitions
- Appendix B: CTC Resolution G-09-13
- Appendix C: Project Data Request Form
- Appendix D: Project Suitability Criteria Chart
- Appendix E: California P3 Legislation (S&H 143)

Public – Private Partnership [P3] PROGRAM GUIDE

1. INTRODUCTION/OVERVIEW

The California Department of Transportation (Department) recognizes the benefits of attracting private sector capital and expertise to the building of transportation infrastructure through the Public-Private Partnerships (P3) program. As such, the Department intends to partner with the private sector as necessary to develop, construct, operate and maintain additional transportation projects to accelerate goods movement, improve air quality, and facilitate California's economic development. The policy and program intent is to develop a P3 program (P3 Program) that helps the Department accomplish its mission and strategic goals.

1.1. California Department of Transportation Mission

The mission of the Department is to improve mobility across California. This is achieved by meeting the following strategic goals:

- Provide the safest transportation system in the nation for users and workers.
- Maximize transportation system performance and accessibility.
- Efficiently deliver quality transportation projects and services.
- Preserve and enhance California's resources and assets.
- Promote goods movement.
- Promote quality service through an excellent workforce.

1.2. Purpose

The purpose of this Program Guide is to provide a tool for Department staff in the transparent stewardship and oversight of P3 projects throughout a project's lifecycle. To ensure a healthy P3 Program, it is important for staff to know how to pick the right project for P3 delivery and understand the logical process for the procurement and implementation of P3 projects. This Program Guide is not intended, however, to provide a comprehensive, detailed, procedures manual for implementing P3 projects.

This Program Guide will be available to the public and to private and other governmental entities on the Department's P3 website which is can be found at the following website address: <http://www.dot.ca.gov/p3/>

1.3. Definition

A *public-private partnership* (P3) is a comprehensive development lease agreement formed between public and private sector partners that allows for more private sector participation than is seen in the conventional or traditional project delivery method, like design bid build, that is typically used by the Department to deliver a project. The California P3 authority also allows for two public entities to also enter into comprehensive development lease agreements. The agreements usually involve a government agency contracting with a private company to design,

develop, finance, renovate, construct, reconstruct, rehabilitate, improve, operate, maintain and/or manage a facility or system. Through this comprehensive development lease agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed. In addition to the sharing of resources, each party shares in the potential risks and rewards in the delivery of the service and/or facility.

1.4. Elements of Public-Private Partnerships

P3s have been in use in the United States for many years, and thousands are operating today. These contractual arrangements between government entities and private companies for the delivery of services or facilities are used for many applications, including transportation, water/wastewater, urban development and delivery of social services and infrastructure. The resources, risks and rewards of both the public agency and private company are combined to provide greater efficiency, better access to capital, and improved compliance with a range of government regulations regarding the environment and workplace. The public's interests are assured through provisions in the contracts that provide for ongoing monitoring and oversight of operations of services or development of the facilities. The use of P3s is increasing because they provide an effective tool in meeting growing public needs, maintain a high level of public control, improve the quality of services, and can be more cost-effective than traditional delivery methods when implemented appropriately.

According to the National Council for Public-Private Partnerships, the following basic components of a P3 are necessary and should be considered for measuring the certainty of a successful P3 project:

- Statutory and Political Environment – The most senior public officials must be willing to be actively involved in supporting P3s and taking a leadership role in their development.
- Public Sector's Organized Structure – Once a partnership is established, the public-sector must remain actively involved in the project or program.
- Detailed Business Plan (Contract) – A carefully developed contract or Concession agreement will substantially increase the probability of the partnership's success.
- Guaranteed Revenue Stream – While the Private Partner may provide the initial funding for capital improvements, there must be a means of repayment of this investment over the long term of the partnership.
- Stakeholder Support – Various interest groups will be affected by a partnership than just the public officials and the private-sector partner.
- Careful Partner Selection – The "lowest bid" is not always the best choice for selecting a partner. The "best value" is critical in a long-term relationship and successful partnership.

1.5. Program Objectives

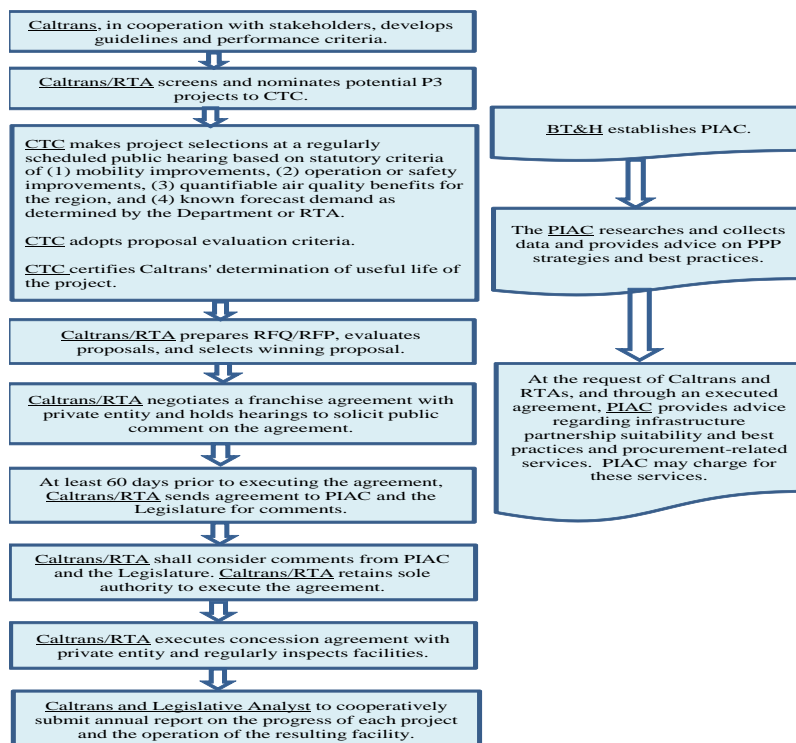
The Department's goals and objectives in implementing a P3 Program are to accelerate and enhance the delivery of transportation projects benefiting the State and its citizens by utilizing additional available project delivery methods. For those projects selected, the Department shall

determine which utilization of innovative project delivery methods can provide some or all of the following:

- Leverage existing funding
- Accelerate project delivery
- Greater cost certainty
- Transfer prudent risks to private sector
- Capture private sector innovation
- Promote life cycle efficiencies
- Create competition to increase value
- Spur economic growth

A P3 Program steering committee will be maintained to guide the development and implementation of program activities. The membership of the committee will include the Department’s key stakeholders.

1.6. General Public-Private Partnership (P3) Process Overview



2. INTRODUCTION/OVERVIEW

2.1. Statutory Authority

On February 20, 2009, Governor Schwarzenegger signed Senate Bill Second Extraordinary Session 4 (SBX2 4) Chapter 2, Statutes of 2009 (Cogdill), which established the legislative authority for the Department and regional transportation agencies (RTAs) to enter into an unlimited number of P3s and deleted the restrictions on the number and type of projects that may be undertaken. Among other things, for transportation, the law:

- Establishes the Public Infrastructure Advisory Commission (PIAC), within the California Transportation Agency, to advise the Department and RTAs in developing P3 transportation projects.
- Vests responsibility with the California Transportation Commission (CTC) to oversee the process of approving projects for P3s.
- Requires the Department or a regional transportation entity to submit a proposed Agreement to the Legislature and the PIAC at least 60 days in advance of executing the final Agreement, and to hold at least one public hearing for purposes of receiving public comment.
- Provides the Legislature with an opportunity to submit written comments about a proposed Agreement to the Department or a RTA prior to the end of the 60-day review period.
- Provides that the leased facility must at all times be owned by the Department or the RTA, as appropriate, and must revert to the Department or the RTA at the expiration of the lease, without charge.

The P3 authority will sunset on January 1, 2017.

2.2. California Transportation Commission (CTC) Resolution G-09-13

The California Transportation Commission (CTC) passed Resolution G-09-13 on October 14, 2009. SBX2 4 authorizes the CTC to select and approve each P3 transportation project through the adoption of a resolution at a regularly scheduled CTC meeting. Before approving a project, the CTC will conduct a public hearing on the project as a scheduled meeting agenda item. The CTC's P3 project approval will include, but not be limited to, the project description and scope; the project location; the project financial plan, including financial risks; the determination of useful life; and the criteria used for evaluation, if based on qualifications and Best Value in selecting contracting entity.

The CTC will approve a P3 project only if it determines specific findings, as identified in Resolution G-09-13. The CTC will consider approval of a P3 project only when the Department or RTA has prepared and submitted a Project Proposal Report (PPR). The PPR and request for P3 project approval will include or make reference to the description and location of the project; the project financial plan including, but not limited to, tolls and User Fee revenue forecasts and commitments of state or local funds; the basis of the Department or RTA for finding that it would be in the public interest to implement the project through a P3 Agreement; the Department or RTA's estimate of the extent to which the project will be designed to achieve each of the performance objectives identified in Resolution G-09-13; forecast of travel demand; the terms of

the draft Agreement associated with the project; the criteria used for evaluation, if based on qualifications and Best Value in selecting contracting entity.

The CTC does not approve or execute the final Agreement. However, the CTC's expectation is that the final Agreement executed by the Department or RTA will implement the project as approved by the CTC. After the CTC has approved a project, it will have no further role in reviewing or approving changes to the project or the Agreement except at the request of the Department or RTA.

Guidance: Specific requirements and conditions of the CTC can be found in CTC Resolution G-09-13, which is attached as Appendix B.

3. PROJECT SELECTION

The selection process for P3 projects has to reflect the objectives of the P3 Program in meeting the Department's strategic goals and mission. Project selection should lead to opportunities for innovation in design, construction, operation, maintenance, or financing of the transportation infrastructure. It should allow staff to rationally identify projects for which private investment would fulfill a critical financial need to complete a project; and among other things, the selection process should call out projects for which a business case demonstrates that a P3 can deliver the Best Value to the traveling public. In project selection, analysis of potential projects will be performed to identify the following attributes.

3.1. Project Attributes

Consistency with Statewide Transportation Plan

The Department will consider whether or not a project is included in an adopted statewide transportation plan or program.

Network Continuity Considerations

Network continuity considerations for a project will include its potential to function as an integral element of an overall network, including its potential to enhance multimodal aspects of a transportation network

Constructability

Constructability will be evaluated based on a number of factors such as potential conflicts with existing facilities or developments, constraints due to topographic features or environmental issues, problematic geotechnical conditions, the ease of facility maintenance, the likelihood of multiple construction phases that would significantly increase the project costs and schedule, the presence of sufficient construction access, and maintenance of traffic during construction.

Congestion Relief Potential

This assessment will consider a project's potential to increase or decrease congestion on an adjacent vicinity, either by providing additional capacity or expanding the modal options.

Potential Safety Impacts

This assessment will be based on general observations of existing conditions within the vicinity of the proposed project and on the general nature of the proposed improvements.

Social Impacts

This evaluation will consider the general magnitude of right-of-way required, potential relocation of residences and/or business, noise, disruption during construction, aesthetic impacts on adjacent property and environmental justice, the social impacts of tolling, and other similar issues.

Environmental Impacts and Status

This evaluation is to determine if any previous environmental studies have been conducted for a project and, if so, the status of these assessments; to identify any potential environmental impacts of a project; and to determine the ease of providing for mitigation of these impacts.

Project Revenue Potential

The revenue screening for a project will consider revenue amounts projected over the anticipated project term. Only revenue amounts projected based on credible revenue studies will be considered.

Toll Operations Viability	<i>This assessment will consider the practicality of implementing tolls on a project.</i>
Project Costs	<i>This information will be used to help assess the project's financial feasibility. Project cost considerations will include facility construction costs, toll system construction costs if applicable, facility operations and maintenance costs for the term of the project.</i>
Financial Feasibility	<i>The financial feasibility screening will be based on a credible financial study utilizing typical financial structures. Considerations will include the levels of debt and equity financing that can be supported by a project's revenue stream.</i>
Stakeholder and Public Acceptability	<i>The Department will consider the existing levels of support, the issues raised by any project opposition, and potential means to mitigate any opposition.</i>
Attractiveness to the Private Sector	<i>For any project moving forward, it will be critical to package a project in such a way that maximizes competition from the private sector while achieving the Department's goals and objectives for the project.</i>

3.2. Screening and Selection Process

The following is a methodology for identifying projects suitable for P3 delivery and the type of P3 most suitable for each project. The P3 project screening methodology involves a four-step evaluation process, as described in the sections below.

The initial step of the project selection process would involve the "Project Sponsor's" (Department or RTA, or a combination thereof, collectively referred to as Sponsor) submission of a project data request form. The information provided in the project data request form should be sufficient for the Sponsor to evaluate a project in accordance with the process screening described below.

Guidance: A copy of a draft project data request form can be found in Appendix C.

3.2.1. Project Suitability

The first step of the project screening process consists of evaluating each project in terms of project suitability screening criteria. These criteria would be largely objective and would be standardized across the P3 Program. This first step would require analysis of the factual characteristics of each project and would facilitate a critical evaluation regarding whether a project is generally suitable for P3 project delivery. Accordingly, completion of the suitability assessment could eliminate from consideration any projects with obvious fatal flaws that would make them incompatible for delivery under the P3 Program. The construction cost for identified projects should begin at \$250 million and higher. Projects should have environmental documents (Project Approval & Environmental Document) completed or within 18 months of completion.

Some of the attributes to consider in determining project suitability are:

<i>Attribute</i>	<i>Factors to Consider</i>
<p>POTENTIAL FOR VALUE ADDED</p> <p><i>Does private sector involvement suggest potential for value added?</i></p>	<ul style="list-style-type: none"> • Life cycle cost efficiencies • Cash flow management • On-time, within-budget delivery • Innovative ideas for design, construction and Operations & Maintenance (O&M) • Integration and coordination issues • Efficient risk allocation
<p>INSTITUTIONAL PREPAREDNESS</p> <p><i>Is the Department/RTA capable of obtaining institutional preparedness prior to start of project procurement?</i></p>	<ul style="list-style-type: none"> • Project is in the Department's 20-year plan / RTA long-range transportation plan • Clear internal decision-making structure • Clear work allocation • Adopted rules and regulations • Dedicated capable P3 staff and consultant team • Adopted conflicts of interest policy • Local political support / consensus on project and alternative delivery • Adopted standard form P3 documents
<p>PROJECT MATURITY</p> <p><i>Is project development at a stage that is suitable to start / use P3 procurement?</i></p>	<ul style="list-style-type: none"> • Status of environmental clearance and major permits • Status of preliminary engineering • Sufficient design to permit price and completion date guarantees but not so far advanced to preclude private sector innovation

<i>Attribute</i>	<i>Factors to Consider</i>
	<ul style="list-style-type: none"> • Status of site characterization, geotechnical investigations, etc. for estimating and allocating risks • Status of third party agreements • Proposed project schedule
<i>Attribute</i>	<i>Factors to Consider</i>
<p>MARKET INTEREST</p> <p><i>Will the project be attractive to the industry?</i></p>	<ul style="list-style-type: none"> • Favorable investment environment • Competitive interest from industry • Feedback from industry
<p>FINANCIAL FEASIBILITY</p> <p><i>Does a preliminary financial feasibility analysis indicate that the project is suitable for private financing?</i></p>	<ul style="list-style-type: none"> • Level and reliability of public funding commitment / cash flow • Opportunity / need for private equity or debt • Decisions regarding tolling (i.e. are funds needed from tolling?) • If fully funded, can value be recovered by redirecting allocated funds to other projects? • Financial market conditions
<p>PROJECT SCOPE</p> <p><i>Is the project scope suitable for P3 delivery?</i></p>	<ul style="list-style-type: none"> • Comparison of project scope alternatives • Construction cost (preferable if between \$250 million to \$1.5 billion) • Project complexity, including whether there are any significant design / construction constraints • Approach to O&M, including integration with existing roadway systems • Other project characteristics that make it particularly appropriate for a P3

It is expected that this evaluation step in the screening process would be fairly expeditious and not require significant resources to perform. A review and determination by the Department's local district office will be conducted on a periodic basis as determined by the P3 Program.

Guidance: Additional information about project suitability criteria is attached as Appendix D.

3.2.2. Project Selection

This step of the project screening process would require assessing whether a P3 delivery method would better achieve project-specific objectives when compared to traditional delivery methods. This would involve a comparison of the various delivery alternatives including P3s and traditional design-bid-build (DBB) or design-build (DB) to identify (1) advantages (if any) of pursuing a P3 delivery method and (2) which type of P3 is best suited to deliver the project and reduce lifecycle costs. The analysis would require determinations of the project scope, expected risk allocations, and quantification of procurement options. It would also require evaluation of qualitative factors.

It is expected that this part of the screening process would require commitment of a reasonable amount of time and resources to prepare a comprehensive financial analysis and a business case evaluating quantitative and qualitative factors to determine financial feasibility and comparison of reasonable delivery alternatives. The screening tools may include a value for money analysis with completion of a reference case or public sector comparator. In addition, a work product at this point that recommends a P3 approach would become part of the annual program reporting update documenting/evaluating the performance and selection process for P3 delivery.

3.2.3. Project Nomination

This step of the project screening process would require that both *Suitability* and *Selection* criteria have been met and that a PPR has been prepared to nominate the project to the CTC. The PPR must illustrate that the project meets CTC policy guidance requirements on P3s and ensures that the PPR is consistent with SBX2 4. The PPR must be adequate to meet the requirements of the required CTC review and approval.

3.2.4. Project Approval

This step of the project screening process would require that prior screening and evaluation has been completed and that a PPR approval request, including a business case report, has been submitted to the CTC. The submission of the PPR and business case will provide the basis for a formal approval by the CTC based on procedures and objectives identified in the CTC policy guidance (Resolution G-09-13). Approval by the CTC would allow the start of the procurement process.

3.2.5. Project Pipeline

The emerging pipeline consists of projects that (1) meet a high-priority transportation need; (2) enjoy significant public and political support; (3) have or soon will have achieved sufficient environmental readiness; (4) show the promise of greater value—including speed of delivery—when compared to conventional procurement; and (5) have the potential to generate revenue or enhance program capacity through better cash or other means. Projects are categorized in pipeline levels one (low readiness) through four (high readiness), depending upon the level of progress and effort towards P3 delivery.

4. Project Procurement

The Department and/or RTAs may solicit proposals, accept unsolicited proposals, negotiate, and enter into comprehensive development lease agreements with public or private entities, or

consortia thereof, for transportation projects. The Department may solicit interested parties for participation in a P3 for any project presuming the project selection criteria includes public need, technical and financial feasibility, transportation efficiency or efficacy, cost effectiveness, available resources, or project acceleration. The selection process must appreciate economy and potential savings to the public, but selection of the successful Proposer will also consider the quality and technical merit of the proposal.

The Department or RTA may engage in preliminary steps leading to the development of procurement documentation for a P3 project prior to the CTC's project approval, which may include the solicitation of a Request for Interest (RFI) or Request for Qualification (RFQ). However, the CTC expects that the Department or RTA will not issue the Request for Proposal (RFP) prior to securing the CTC approval. Based on the approved evaluation criteria, the Department or RTA may select the preferred proposal, and develop and negotiate the comprehensive development lease agreement associated with the project.

If the Department determines that a proposed project, whether arising from an Unsolicited Proposal or its internal project selection process, serves a public purpose, the Department may request competing proposals to develop, finance, construct, improve, maintain or operate, or any combination thereof, the transportation facility.

4.1. Delivery Mechanisms

Both Solicited Proposal and Unsolicited Proposal processes will accommodate several different types of project and service delivery methods. The type of delivery mechanism will be determined on the basis of, among other things, the nature and status of the project, project risk factors, schedule, funding and goals. The procurement package will reflect the intended project delivery mechanisms. Possible delivery mechanisms for P3 projects include:

- Predevelopment Agreements leading to other implementing agreements
- Design-Build-Maintain Agreement
- Design-Build-Finance-Operate Agreement
- Design-Build-Operate-Maintain Agreement
- Design-Build-Finance-Operate-Maintain Agreement
- Concession providing for the Private Partner to design, build, operate, maintain, manage or lease an Eligible Facility defined as a transportation project under the P3 authority
- Any other project delivery method or agreement or combination of methods or agreements that the Department determines will serve the public interest

4.2. P3 Procurement Components

P3 procurement components will vary and require specific adjustments depending on a particular project, but the general components and activities of a typical P3 procurement process are as follows:

- Commercial Close – Execute Contract Documents.
- Development – Obtain environmental and other approvals; assess the value of P3 versus public procurement; develop institutional capability; hire financial, legal and other advisors; and develop drafts of RFQs, RFP, comprehensive development lease agreement, and other project documents.

- RFQ/RFP – Host Industry Review meetings, issue RFQ, receive Statement of Qualifications (SOQs), shortlist Proposers, issue preliminary-draft RFP, conduct one-on-one meetings, consolidate feedback, issue final RFP, receive detailed proposals, select winning Proposer based on evaluation criteria.
- Financial Closing – Developer finalizes financing package, developer and lenders execute financing agreements, developer draws on financing and funding commitments.
- Term of Agreement – Developer completes design work and constructs the facility, developer operates and maintains the facility, public sector responsible for ongoing oversight and monitoring responsibilities, facility reverts to public sector at the end of the term.

4.3. P3 Procurement Process

The Department may use a multi-phase process to procure a P3 project. A multi-phase selection process may consist of some or all of the following: the issuance of a RFQ, Industry Review Meetings, and/or issuance of a RFP. The determination whether to utilize some or all of these procurement phases will be project-specific. Although there may be several phases as described above, including Industry Review Meetings, common terminology refers to “one-step” or “two-step” procurements. The former is used when a RFP is posted and any entity may respond. The latter is used when qualifications are evaluated and then used as a basis for issuing RFPs to a shortlist of entities deemed qualified.

Upon receipt of an Unsolicited Proposal and a determination that the transportation facility serves a public purpose, the Department may issue a RFP for competing project proposals or may issue a RFQ for the transportation facility described in the Unsolicited Proposal. The Department may also modify the potential project submitted in the Unsolicited Proposal for the RFP.

Request for Qualifications (RFQ)

The purpose of a RFQ is to identify qualified candidates for continuing in the procurement process. The Department may prequalify or select a short-list of two or more candidates based on their responses to the RFQ. Those candidates will then be eligible to receive a RFP and submit a proposal for the project in response to the RFP. The Department is not obligated to utilize a RFQ and may, in its sole discretion, proceed directly to the issuance of a RFP. If procurement is for a proposed project identified by an Unsolicited Proposal, the entity that submitted the original Unsolicited Proposal may, in the sole discretion of the Department, be required to submit a SOQ in response to a RFQ or a Proposal in response to a RFP.

4.3.1. Industry Review Meetings

Industry review meetings, held at the discretion of the Department, are intended to share information regarding RFP-related documents (Instruction to Proposers, Technical Provisions, P3 Agreement) with shortlisted Proposers and to obtain feedback, comments and suggestions from such Proposers regarding draft documents, key project components and technical, financial and legal issues. The meetings may be joint workshops with all shortlisted Proposers or individual one-on-one meetings (which may be in-person meetings or conference calls), as deemed necessary by the Department. One-on-one meetings with the shortlisted Proposers are confidential and often address topics that are proprietary to the shortlisted Proposer. Nonetheless, the Department will always reserve the right to modify or revise the RFP documents as a result of the one-on-one meetings. Each shortlisted Proposer shall be afforded materially the same

opportunity to meet and talk with the Department in connection with the project and, to the extent practicable, the same Department personnel and advisors, if appropriate, will be present during each round of meetings.

In addition to meetings with the shortlisted Proposers, the Department may issue drafts of some or all of the RFP documents, including the Instructions to Proposers, Technical Provisions/Scope of Work and the draft Agreement. Shortlisted Proposers will be encouraged to submit written comments and questions concerning these documents through a written request for clarification process, and the Department will review and consider, in its sole discretion, such input and potentially revise or adjust the documents as appropriate.

The goal of the industry review process is primarily, to the extent possible, to refine the RFP in order to address Proposers' concerns while maximizing competition and incorporating innovative and/or cost-saving ideas. The Industry Review process can prove mutually beneficial to the Department and shortlisted Proposers. Information and materials that may be provided and discussed during Industry Review Meetings may also include updated project information on preliminary engineering, ROW acquisition, utility work, environmental clearances and the procurement schedule.

Following shortlisting and the industry review process, the Department may issue a RFP.

4.3.3 Request for Proposal (RFP)

The RFP will outline the minimum Proposal requirements and selection criteria. The Department and/or RTAs may engage in preliminary steps leading to the development of procurement documentation (RFP) for a P3 project prior to the CTC's preliminary project approval. However, the CTC expects that the Department or RTA will not issue the RFP prior to securing preliminary approval from the CTC. The Department or RTA may also select the Preferred Proposer and develop and negotiate the comprehensive development lease agreement associated with the project prior to the formal CTC approval. However, in accordance with Section 145(c)(5), the Department or RTA may not hold the public hearing or execute the final Agreement prior to final CTC approval.

5. UNSOLICITED PROPOSALS

5.1. Authority

SBX2 4 allows the Department and RTAs to accept Unsolicited Proposals if the Department determines that such proposal has sufficient merit and that a reasonable opportunity is afforded other entities to submit competing proposals for consideration. A submittal by an entity that conforms to the statutory authority and regulations with respect to a project which has not been initiated by the Department is considered an Unsolicited Proposal. Each Unsolicited Proposal must include, among other requirements, a conceptual, technical and financial proposal.

5.2. Costs Incurred

All costs incurred by the Proposer in preparing and submitting an Unsolicited Proposal will be borne solely and completely by the Proposer. Under no circumstances will the State, the Department or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to, reimburse the costs incurred by the Proposer for preparing and submitting an Unsolicited Proposal, whether or not the Proposer is selected for negotiations, in developing the Proposal or negotiating an Agreement.

5.3. Preliminary Meetings to Discuss Unsolicited Proposals

Prospective Proposers are encouraged to request confidential one-on-one meetings with the Department for preliminary discussions on potential Unsolicited Proposals prior to submission.

5.4. Proposal Review (Administration) Fees and Other Fees

5.4.1. Administration Fees

Unlike a Solicited Proposal where the Department defines a project and establishes project parameters, the definition of a project through an Unsolicited Proposal is initially established by the Proposer. As a result, an evaluation of the Proposal by the Department will be made to determine if:

- The project is of value to the State
- The Proposer is qualified to execute the project if awarded
- The proposed project has a reasonable probability of being successful as a P3 project

The burden is on the Proposer to demonstrate these attributes to the Department.

Unsolicited Proposals will be subject to a Preliminary Evaluation (Accept/Reject) and a follow-up Detailed Evaluation. Once an Unsolicited Proposal has been determined to have met the requirements of the Preliminary Evaluation, the Department will then conduct a Detailed Evaluation. The Department may return the Unsolicited Proposal to the Proposer at any time during this period if it determines that the Unsolicited Proposal lacks merit.

When an Unsolicited Proposal is received it must be accompanied by two certified checks. These checks together constitute the administration fee for Unsolicited Proposals. The intended purpose of the administration fee is to cover the costs of the Department for evaluation of Unsolicited Proposals. The Department, in its sole discretion, may waive the fee(s) for an Unsolicited Proposal, in whole or in part, if it determines that its costs have been substantially covered by a portion of the fee or if it is otherwise determined to be reasonable and in the best interest of the State.

The first check is for \$15,000 and covers the Preliminary Evaluation costs and will be deposited by the Department once it is determined that the Unsolicited Proposal passes the Accept/Reject test. The second check submitted will be for the Detailed Evaluation; the amount should be based on the schedule below and calculated on the anticipated capital cost of the project described by the Unsolicited Proposal. This second certified check will be deposited by the Department once it determines that the Proposal has sufficient merit to move to the Detailed Evaluation. Should the Department determine after the Preliminary Evaluation that the Unsolicited Proposal lacks merit; the second check will be returned to the Proposer.

As part of the Preliminary Evaluation, an assessment will be made as to the anticipated complexity of the Detailed Evaluation. If this assessment leads the Department to determine that the Detailed Evaluation costs will be materially greater than the Estimated Detailed Review Fee submitted, the Proposer will be contacted and provided with an additional amount which must be paid by certified check or direct wire transfer prior to the commencement of the Detailed Evaluation. If the Proposer does not wish to incur the additional costs, the Detailed Review Fee check will be returned and the Unsolicited Proposal process terminated.

<u>Estimated Capital Cost</u>	<u>Estimated Detailed Review Fee</u>
< \$100 Million	\$ 35,000
\$100 Million to \$250 Million	\$ 60,000
\$250 Million to \$500 Million	\$ 85,000
\$500 Million to \$1 Billion	\$110,000
>\$1 Billion	\$135,000

These fee amounts are subject to change from time to time. The amounts defined on the Department’s P3 website at the date and time of the original submittal will govern.

5.4.2. Cost of Public Input Process

Evidence of support by the public and elected officials may be a condition for advancing an Unsolicited Proposal to the procurement stage. The Department at its sole discretion may choose the mode of public input during the Detailed Evaluation. If it does so, the cost of such effort will be borne by the Proposer as a condition of continued evaluation and the Proposer will be informed of the additional cost prior to the commencement of the Detailed Evaluation.

5.4.3. Other Costs of Department Services

If the Department rejects an Unsolicited Proposal after the Preliminary or Detailed Evaluations and the Proposer wishes to request further consideration, the Department may, at its sole discretion, continue to further evaluate additional information presented by the Proposer. However, the Proposer will be responsible for paying all Department costs beyond the initial rejection, including staff and consultant costs. These costs will be estimated and must be paid by an additional certified check or direct wire transfer prior to the commencement of the further analysis.

5.4.4. Required Contents

In order to be considered responsive, an Unsolicited Proposal must contain information which is sufficient for the Department to evaluate the merits of the proposed project, the capability of the Proposer to deliver the project, the financial viability of the project and the benefits to the State of a P3 delivery method over a conventional delivery method. The information required to be included in an Unsolicited Proposal will be posted on the Department’s website and may be modified from time to time. The requirements posted on the day the Unsolicited Proposal is submitted will govern its contents.

The number of copies of the Unsolicited Proposal and the location in which they are to be delivered will be made available on the Department’s P3 website.

5.4.5. Executive Summary

The Proposer must include an Executive Summary covering the major elements of its Proposal that do not address the Proposer’s price, financing plan or other confidential or proprietary information or trade secrets. The Executive Summary may be made a public document and posted on the Department’s P3 website.

5.4.6. Qualifications

Information is required concerning the experience, expertise, technical competence and qualifications of the Proposer and of each member of the Proposer's management team and of other key employees, consultants and subcontractors, including the name, address and professional designation. Capacity of the Proposer in terms of resources and financial strength should be demonstrated by the inclusions of financial statements (including two years of audited financial statements where available) and disclosure of material changes in the Proposer's financial position.

5.4.7. Project Description

A description of the project depicted through graphics (maps, plans, etc.) with accompanying narrative of:

- The limits, scope, location of the proposed facility, including where applicable project length, termini, number of lanes and lane miles, number and type of structures, rolling stock, capital equipment, etc.
- Right-of-way requirements
- Interconnections to other transportation facilities and improvements to those facilities which will be necessary if the project is developed
- A conceptual project design if available
- A statement of the project's consistency with the Statewide Transportation Plan and relevant metropolitan planning organization plans and expected results including financial performance and improvements to mobility and capacity
- All studies which may have been completed by the Proposer concerning the project
- Information to the extent available on the Department's performance of its environmental review responsibilities

5.4.8. Schedule

A schedule should be provided showing anticipated dates of contract award, start of construction, completion of construction, start of operations and anticipated major maintenance or reconstruction activities during the life of proposed Agreement.

5.4.9. Operating Plan

A plan describing the operation of the completed facility is required if operation is part of the Proposal. This should describe the management structure and approach, the proposed period of operations, enforcement, emergency response, etc.

5.4.10. Finance Plan

A plan describing the proposed financing of the project should identify the source of funds to design, construct and maintain the facility, including, as relevant, Proposer equity, commercial debt, TIFIA loans, requested Department contributions if any, and the projected revenue stream.

5.4.11. Financial Feasibility

The financial feasibility of the project should be demonstrated by showing that projected funding from all relevant sources is sufficient to support all design, construction, operation and maintenance activities, as well as providing for contingencies and sums to meet handback requirements at the end of the Agreement (pursuant to the Department's Technical Provisions outlined in the Agreement).

5.4.12. Legal Basis for the Project

The Proposer must cite the statutory authority (federal, state and local if applicable) under which the project will be delivered. If such authority does not exist, exemptions or proposed changes to the relevant statutes, which are necessary to allow the project to move forward, should be identified.

5.4.13. Bonds, Letters of Credit, Guarantees, Insurance

The Proposer must demonstrate that it is able to obtain performance and payment bonds, a letter of credit, parent company guarantee or other security acceptable to the Department and consistent with the size and complexity of the project. Similarly, it must demonstrate that it is able to obtain insurance covering general liability and liability for errors and omissions as the Department, in its sole discretion, may require.

5.4.14. No Previous Breach of Contract or Disqualification

The Proposer must demonstrate that neither it nor its subcontractors and consultants have, within the past five years, been found in breach of contract with the Department or been disqualified from contracting with the Department.

5.4.15. Licenses and Certifications

The Proposer must demonstrate that it and its members, subcontractors, and consultants possess or can obtain by the award date, if any, the licenses and certificates necessary to carry out their respective functions within the State.

5.4.16. Project Value

Unsolicited Proposals will be evaluated on a project's compatibility with existing transportation plans and its value in increasing capacity, decreasing congestion, improving air quality, improving safety, improving intelligent transportation systems or satisfying other Department or RTA needs.

5.4.17. Added Value of the P3 Approach

Proposal review will assess whether the Proposer has clearly demonstrated creativity, innovation, and that moving a proposed project as a P3 project is clearly advantageous to the State as compared to other public delivery methods.

5.4.18. Protection Against Disclosures

Subject to the California Records Act (California Government Code §§ 6250 et seq.), the Department has taken measures to protect the confidentiality of all submitted SOQs, letters of interest, and Proposals during the entire evaluation and selection process. Every person involved in the process shall sign a confidentiality and nondisclosure agreement. However, under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by law, by an order

of court, or occurs through inadvertence, mistake, or negligence on the part of Department or its respective officers, employees, contractors, or consultants.

In the event Department is requested to disclose any of the materials identified by the Proposer as confidential, Department will promptly notify the Proposer so that Proposer may seek a protective order or other appropriate remedy. If it wishes to protect the materials from disclosure, the Proposer shall seek court protection immediately on an emergency basis. In the event that such protective order or other remedy is not sought by the Proposer within seven (7) days after the Proposer receives notice from Department, Department will be free to release the requested information. Department will consider the Proposer to have waived any claim of confidentiality and exemption from public disclosure for any materials not identified as confidential. Proposers are advised to consult with their legal counsel regarding the scope and provisions of the Public Records Act.

6. PROJECT EVALUATION PROCESS

The CTC's Policy Guidance indicates that the PPR and request for P3 project approval is to include or make reference to whether the Department or RTA proposes to make a final evaluation of proposals based on qualifications and Best Value, consistent with Section 143(g)(1)(C), and the criteria used in making that evaluation.

The Department proposes the RFP evaluation criteria set out below. Further refinements and details of the evaluation criteria, to be developed in conjunction with the development of the RFP, are anticipated to follow and be consistent with the evaluation criteria set out below.

6.1. "Pass/Fail" Evaluation Factors

6.1.1. Administrative Pass/Fail Requirements

The administrative pass/fail requirements evaluate whether the Proposer has submitted the necessary documents pursuant to the RFP, and that the equity members, major non-equity members and key personnel listed in the Proposer's SOQ have not changed since submission of the SOQ, or such change is consistent with the Department's consent of an organizational change in the Proposer's team.

6.1.2. Technical Pass/Fail Requirements

The technical pass/fail requirements evaluate whether the Proposer has submitted certain Technical Proposal submittals. Also, to "pass," the Technical Proposal receives an average adjectival score of at least "Fair" on each of the individual technical evaluation criteria and receives an average adjectival score of at least "Good" on the entire Technical Proposal.

6.1.3. Financial Pass/Fail Requirements

The financial pass/fail requirements evaluate whether or not the Proposer has submitted certain required financial proposal submittals including supporting documentation for the financing proposal.

6.2. Proposal Evaluation Criteria

Unless the Department determines that a proposal does not pass the "pass/fail" qualification requirements set forth above, each proposal will be evaluated and scored according to the criteria set forth below. The order in which the evaluation criteria appear within each category is not an indication of weighting or importance.

6.3. Technical Proposal Criteria

6.3.1. Management / Administration Evaluation Criteria

The Department may require the Proposer to provide such technical information regarding the project scope of work and technical requirements as the Department deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, project management approach, schedule, phasing, quality control and assurance approach, and other information as appropriate for the project's development. The intent of the Technical Proposal is to provide assurance that the Private Partner selected has:

- A sufficient understanding of the project or desired service
- An approach that meets technical and contractual requirements
- The ability to timely and efficiently deliver the project or service in a quality manner consistent with contractual requirements

The Department will use the following evaluation criteria to score the Management / Administration portion of the technical proposal:

- The degree to which the Project Management Plan (PMP) contains a comprehensive and efficient construction management concept.
- The degree to which the PMP contains a comprehensive and efficient design management concept.
- The degree to which the PMP demonstrates an efficient and effective interface between various stakeholders.
- The degree to which the PMP demonstrates a comprehensive and efficient approach to management of traffic during the construction period and the operating and maintenance (O&M) period.
- The degree to which the Preliminary Quality Plan demonstrates that adequate quality assurance/quality control procedures and staffing will be in place during performance of the design work, construction work and O&M work.
- The degree to which the project schedule and Construction Phasing/Sequencing Plan addresses certain issues, including traffic management and right of entry issues.
- The degree to which the Environmental Compliance Plan addresses certain issues, including but not limited to environmental permit commitments, including mitigation and design features, and the ability to work with Section 4f and Section 106 issues.

6.3.2. Preliminary Master Plan Submittal Evaluation Criteria

The Department will use the following evaluation criteria to score the Preliminary Master Plan Submittal portion of the technical proposal:

- The degree to which the Proposer's Preliminary Master Plan (PMP) demonstrates an understanding of the physical attributes of the project.
- The degree to which the Proposer's PMP demonstrates an understanding of storm water issues.
- The degree to which the Proposer's PMP structures/tunnels design meets standards and requirements.

- The degree to which the Proposer’s PMP demonstrates an understanding of the architecturally-significant features of the structures/tunnels and the landscaping features.
- The degree to which the Proposer’s PMP landscaping design meets standards and requirements, and demonstrates an understanding of the landscaping features.
- The degree to which the Proposer’s PMP demonstrates a broad understanding of the electrical & mechanical systems for tunnel lighting, ventilation, fire and life-safety systems, and intelligent transportation systems for the Project.

6.3.3. Operation and Maintenance Evaluation Criteria

The Department will use the following evaluation criteria to score the Operation and Maintenance (O&M) portion of the technical proposal, if applicable:

- The Proposer’s approach, as described in the O&M Plan, to the operations and maintenance requirements during the construction period, including operation of movable median barriers for management of traffic during construction.
- The Proposer’s approach, as described in the O&M Plan, to the operations and maintenance requirements during the operating period, including the Developer’s approach to operation and maintenance of tunnels, tunnel systems (lighting, ventilation, fire and life-safety systems, and intelligent transportation systems), maintenance of the landscaping and the architectural features of the structures/tunnels, renewal work, and the Proposer’s overall approach to meeting the routine maintenance requirements, incident response and the management of the project.
- The Proposer’s approach, as described in the O&M Plan, to coordinating and working with other government agencies whose operations are associated with the project.
- The Proposer’s approach, as described in the O&M Plan, to the Handback requirements for the project.

6.4. Financial and Commercial Proposal Criteria

The type and extent of financial documentation to be submitted as part of the financial section of the proposal will depend on the delivery mechanism. The RFP may also require that the Proposer update the financial information provided in the SOQ.

If the RFP and project scope require the Proposer to finance any or all of the project, the Financial Proposal must include a financial plan and a financial model. The nature of the project, the project delivery method and current market conditions will dictate the contents and level of detail of the financial plan, whether the financial section of the proposal is fully or partially committed, and whether conditions may be included by the Proposer.

Requirements for a Financial Plan may require the Proposer to identify the financial institution(s) involved; provide a description of senior debt finance, mezzanine debt finance, equity and quasi-equity finance (including subordinated debt or loan stock), any other forms of finance; identify investors, lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/ commitments; describe the type and purpose of each funding source and facility; describe the proposed steps and timeframes for reaching Financial Close; and provide specific information for each separate bank, loan facility, or other debt instrument such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts, interest rate, any proposed

hedging arrangements in respect of interest rates, average life of debt, credit ratings, due diligence, and timetables.

Generally, requirements for a Financial Model submittal may include inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation), outputs (cash balances, returns on equity, cost of capital, net present value of construction costs, and reserves), and calculations. Proposers may be required to provide detailed backup information, a list of assumptions, and details of how the financial model operates.

The RFP will provide details regarding requirements for the Financial Plan and Financial Model portions of the Financial Proposal.

Where possible and financially feasible, the Department will seek Proposals that minimize the use of public funds as well as the creation of State-supported debt. If a Proposal including public or private debt is submitted, then the RFP may require that the Proposal, to the extent possible, identify the amount of public funds required and specify the project-level approvals by the Department, other appropriate public entities, private lending institutions and ratings agencies.

6.4.1. Maximum Annual Availability Payment (If considered)

The evaluation criteria will consider the net present value of availability payments made over the life of the project term assuming standard macro-economic assumptions set out by Department or RTA in the RFP.

6.4.2. Feasibility of Financial and Commercial Proposal

The Department will use the following evaluation criteria to score the feasibility of the financial section of the proposal:

- The level of support from lenders and evidence of equity commitment
- Coherence, robustness and deliverability of the financial plan

6.5. Adjectival Scoring System

The Sponsors will evaluate and score the criteria for all portions of the proposal, other than the administrative information provided the proposal and the maximum availability payment (MAP), if any.

The evaluation process will include a rating of each evaluation criterion using an adjectival (qualitative/descriptive) ratings method, as follows:

ADJECTIVAL RATING	DESCRIPTION
Excellent	The proposal exceeds in a significant manner stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the project, and provides a consistently outstanding level of quality.
Very Good	The proposal exceeds the stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the project, and offers a significantly better than acceptable quality.

Good	The proposal comfortably meets the stated requirements/objectives, provides some advantages, benefits or added value to the project and offers a generally better than acceptable quality.
Fair	The proposer has demonstrated an approach which is considered to marginally meet stated requirements/objectives and meets a minimum level of quality.
Poor	The proposer has demonstrated an approach which contains significant weaknesses/deficiencies and/or unacceptable quality.

In assigning ratings, The Sponsor may assign “+” or “-” (such as, “Excellent -”, “Good +”, and “Fair +”) to the ratings to better differentiate within a rating in order to more clearly distinguish between the evaluation factors and the overall Project Development Plans. However, the Sponsor will not assign ratings of “Poor -” or “Excellent +.”

6.6. Technical Proposal Score*

The Technical Proposal Score is comprised of the sum of the categories under Evaluation Criteria and Weighting. The Technical Proposals Criteria and maximum number of points for each criterion will be set forth in the procurement documents specific to each project.

6.7. Financial Proposal Score

The allocation of points will vary from project to project depending on known risk allocation expectations. Generally, the Financial Proposal Score will be comprised of the sum of the MAP Score, if any, and the Financial Proposal Score. The MAP Score formula, Financial Proposal evaluation criteria, and the maximum number of points for each criterion will be set forth in the procurement documents specific to each project. The Department recognizes that each potential P3 project is unique. The scoring protocol for projects will be clearly identified in the RFQ/RFP.

6.8. Procedure

The following is a brief outline of the evaluation process.

- Prior to receipt of the proposals, the Project Selection Committee (PSC), which will be comprised of public sector employees from the Department and other sponsor personnel (if appropriate), will meet to assign values/weights to each of the adjectival scores, and determine the weightings of the criteria in each evaluation category (e.g., if there are eight criteria under a category worth 10 points, the PSC will set the maximum points allocated to each criterion). These numbers will not be revealed to the Proposers or the evaluation panels.
- The proposals will be received by the Department; a Pass/Fail Review Panel made up of public sector employees from the Department and/or sponsor personnel (if appropriate) will review the proposals for responsiveness and compliance with the pass/fail requirements. The Pass/Fail Review Panel will make a recommendation to the PSC. The PSC will then determine whether the proposal meets the pass/fail requirements.
- Proposals will then be reviewed by technical and financial review panels, comprised of appropriate public sector employees from the Department and/or sponsor personnel, who will make consensus recommendations to the PSC for each of the evaluation criteria, using the adjectival scoring system described above. The review panels will not know the weighting of the adjectives, nor will they know the relative weightings of the criteria. The Financial

Review Panel will also calculate the MAP score based on the formula specifically developed for the specific procurement.

- The PSC will then receive the scoring from the review panels and, informed by these recommendations, make its own decision as to the scoring of each of the evaluation criteria for the proposals. These scores will then be multiplied by the “weighting” (which will have been previously assigned to the RFP Criteria by the PSC). The products of the foregoing multiplications will be added together in order to compute the “Criteria Score.”
- Finally, the PSC will determine the total proposal score for each proposal by adding the proposal’s technical score and financial score. The “Best Value Proposer” will be the Proposer receiving the highest score out of 100 possible points.

7. BASIC ELEMENTS OF A P3 AGREEMENT

7.1. Agreement Assignments

The Department may enter into one or more agreements with the successful Proposer. The agreements may be “pre-development”, covering primarily project development or preconstruction activities, comprehensive development agreements, financing agreements, operating agreements, or any other agreement appropriate to the project. The Department may seek policy, legal, financial, and/or technical advice as may be needed to successfully negotiate or execute the agreements. The agreements may include, but not be limited to the following terms and conditions:

- Appropriation of responsibilities among parties
- Allocation of risk among parties
- Allocation of resources and costs among parties
- Allocation of cost overruns
- Penalties for non-performance
- Incentives for performance
- Invoicing and payment procedures
- Bonding and issue requirements
- Limitations on user fees
- Revenue sharing
- Encroachment agreements
- Environmental documentation requirements
- Asset management requirements
- Hand back provisions and expectations
- Costs for third-party constraints such as railroads and utility companies
- Cooperation with other existing or planned facilities
- Rights-of-Way dedicated and the Department’s use of eminent domain

- Planning, development, design, construction, operation and maintenance standards
- Submittal requirements
- Inspection requirements and rights
- Terms of reimbursement for services provided by the Department
- Maximum rate or return on investment
- Default of contract provisions
- Force Majeure
- Liability for personal injury, facility repair and unknown hazards waste remediation
- Record retention and audit requirements
- Submission and review of financial statements
- Other requirements suitable to the type, size, complexity and duration of the contract

7.2. Agreement Conditions

The Department reserves all rights available to it by law in administering policies and procedures, including without limitation the right in its sole discretion, at any time, to:

- Withdraw a request for qualifications or a request for proposals and either issue a new request or suspend the solicitation indefinitely.
- Reject and/or terminate evaluation of any and all statements of qualifications, letters of interest or proposals.
- Issue a request for qualifications and request for proposals for competing proposals for any project presented to the Department in the form of an Unsolicited Proposal.
- Suspend, discontinue, or terminate negotiations with any Proposer prior to the actual authorized execution of a final development agreement by all parties.
- Negotiate with a Proposer without being bound by any provision in its proposal.
- Negotiate with a Proposer to include in the development agreement any aspect of unsuccessful proposals.
- Request or obtain additional information about any technical proposal from any source.
- Modify or issue addenda to any request for qualifications or request for proposals, including after review of competing proposals.
- Permit or request clarifications or supplements to statements of qualifications and proposals, either for responsive or non-responsive proposals
- Information provided to Proposers is done so for convenience and is without representation or warranty of any kind.
- Amend, supersede, or supplement any part of these policies and procedures, provided the amendment or supplement is clearly denoted in the request for qualifications or request for proposals as appropriate.

8. FINANCING INSTRUMENTS

8.1. Transportation Infrastructure Finance and Innovation Act

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments. TIFIA can help advance qualified, large-scale projects that otherwise might be delayed or deferred because of size, complexity, or uncertainty over the timing of revenues. Many surface transportation projects--highway, transit, railroad, intermodal freight, and port access--are eligible for assistance. Each dollar of federal funds can provide up to \$10 in TIFIA credit assistance and leverage \$30 in transportation infrastructure investment.

The fundamental goal of TIFIA is to leverage federal funds by attracting substantial private and other non-federal co-investment in critical improvements to the nation's surface transportation system. TIFIA was created because state and local governments that sought to finance large-scale transportation projects with tolls and other forms of user-backed revenue often had difficulty obtaining financing at reasonable rates due to the uncertainties associated with these revenue streams. Although tolls can become a predictable revenue source over the long term, it is difficult to estimate how many road users will pay tolls, particularly during the initial "ramp-up" years after construction of a new facility. Similarly, innovative revenue sources, such as proceeds from tax increment financing, are difficult to predict. TIFIA credit assistance is often available on more advantageous terms than in the financial market making it possible to obtain financing for needed projects when it might not otherwise be possible.

The TIFIA credit program offers three distinct types of financial assistance designed to address the varying requirements of projects throughout their life cycles:

- Secured (direct) loan — Offers flexible repayment terms and provides combined construction and permanent financing of capital costs. Maximum term of 35 years.
- Loan guarantee — Provides full-faith and credit guarantees by the federal government and guarantees a borrower's repayments to non-federal lender.
- Standby line of credit — Represents a secondary source of funding in the form of a contingent federal loan to supplement project revenues, if needed, during the first ten years of project operations, available up to ten years after substantial project completion.

8.2. Private Activity Bonds

A private activity bond is a bond issued by or on behalf of local or state government for the purpose of financing the project of a private user. Section 11143 of Title XI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amends Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued. This change allows private activity on these types of projects, while maintaining the tax-exempt status of the bonds. The law limits the total amount of such bonds to \$15 billion and directs the Secretary of Transportation to allocate this amount among qualified facilities. The \$15 billion in exempt facility bonds is not subject to the state volume caps.

Qualified highway or surface freight transfer facilities include:

- Any surface transportation project which receives federal assistance under Title 23, United States Code (effective August 10, 2005).
- Any project for an international bridge or tunnel for which an international entity authorized under federal or state law is responsible and which receives federal assistance under Title 23, United States Code.
- Any facility for the transfer of freight from truck to rail or rail to truck, including any temporary storage facilities directly related to such transfers, which receives federal assistance under Title 23 or Title 49.

8.3. Availability Payments

Many P3s involve projects that generate no revenues from users or inadequate revenues to cover their full cost of construction and ongoing operation. An *availability payment* is a payment for performance made irrespective of demand. They may serve as financing and project delivery alternatives for projects which, for reasons related to policy, public perception and/or profitability are not feasible or advisable under a user-fee based Concession. An availability payment-based payment structure:

- Transfers the risk of designing, building, financing and operating/maintaining a project to a Private Partner;
- Is generally appropriate if:
 - It does not generate direct revenue,
 - Performance / operational outcomes are easy to define and monitor,
 - Government wishes to retain direct rate setting authority,
 - Revenue and/or demand is difficult to predict and/or influence through operational changes, or
 - Service quality is more important than or applicable than revenue maximization;
- Caps both the government's obligation and private upside and therefore can compare favorably to public debt;
- Results in public retention of demand risk, reducing the risk premium in private cost of capital but potentially increasing public exposure to shortfalls and volatility;
- Preserves strong incentives for concessionaries to provide efficiency gains in the construction, operations and maintenance of a project; and
- May be subordinated in part or whole to other government debt.

8.4. Tolls

SBX2 4 provides that P3 Agreements may authorize the lessee to impose tolls and user fees for use of a facility constructed by it, with revenues to be applied to payment of the capital outlay costs, operating costs, and other related costs. Excess revenues must be applied to the lessee's indebtedness, improvements to the facility, or paid into the State Highway Account, or for all three purposes. Excess revenue under a lease with a RTA may also be used for improving public transportation in and near the P3 facility.

SBX2 4 does not allow the conversion of a non-tolled, existing lane to a tolled lane, except for the conversion of a high occupancy lane (HOV) lane to a high-occupancy toll lane. Existing non-toll or non-user-fee lanes cannot be converted to toll lanes except that HOV lanes can be converted to high-occupancy toll lanes for vehicles not otherwise meeting the occupancy level requirements for those lanes.

APPENDIX A DEFINITIONS

Agreement - A binding comprehensive development lease agreement between the Department and a Private Partner to finance, design, construct, operate and maintain (or any combination of these activities) an Eligible Facility.

Availability Payment - Payments made over a period of time (beginning at the time of beneficial use) by the Department to a Private Partner who has designed, built, financed, operated and maintained a project, with adjustments to the payment stream based on availability of the facility.

Best Value - The selection process in which a Proposal contains both financial and qualitative components as set forth in the RFP that the Sponsor determines, through the evaluation process and evaluation criteria described in the ITP, to present the best value and to be in the best interest of Sponsors and the State.

“CalSTA” means the California Transportation Agency.

California Transportation Commission - Also referred to as CTC or Commission, the California Transportation Commission consists of eleven voting members and two non-voting ex-officio members. The Commission is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. For P3 projects, the CTC has final approval authority for the project prior to the Department or RTA holding public hearings and executing a final Agreement.

Commercial Close - The date on which the Agreement (Contract) between the Department and the Private Partner is signed.

Compensation Event - An event beyond the Private Partner’s control and not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or law or violation of a governmental approval (and subject to notice requirements and the duty to mitigate) and which event or its effects could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, for which compensation to the Private Partner may be negotiated.

Competitive Range - A list of the initially most highly ranked proposals based on the rating of each proposal against all evaluation criteria.

Concession - Any lease, ground lease, franchise, easement, permit or other binding agreement transferring rights for the use or control, in whole or in part, of an Eligible Facility by the department or other unit of government to a Private Partner.

Department - The California Department of Transportation; also referred to as Caltrans.

Design-Build Agreement (DB) - An Agreement that provides for design and construction of improvements by a Private Partner.

Design-Build-Maintain Agreement (DBM) - An Agreement that provides for design and construction of improvements by a Private Partner and the maintenance of those improvements for a specified period of time.

Design-Build-Finance-Operate Agreement (DBFO) - An Agreement that provides for financing, design and construction of improvements by a Private Partner and the operation of those improvements for a specified period of time.

Design-Build-Operate-Maintain Agreement (DBOM) - An Agreement that provides for design and construction of improvements by a Private Partner and the operation and maintenance of those improvements for a specified period of time.

Design-Build-Finance-Operate-Maintain Agreement (DBFOM) - An Agreement that provides for financing, design and construction of improvements by a Private Partner and the operation and maintenance of those improvements for a specified period of time.

District Office – One of twelve geographically located Department offices staffed with personnel for the administration and delivery of regional transportation projects.

Eligible Facility - Any facility developed or operated in accordance with Streets and Highways Code section 143.

Evaluation Committee - A Committee consisting of Department personnel, assisted as appropriate by Department staff and outside consultants that evaluate and rank Statements of Qualifications and Proposals against criteria established in RFQs and RFPs, respectively.

Financial Close - The date on which the project financing documentation is signed and conditions precedent to the payment of equity and an initial drawing of the debt have been satisfied or waived.

Handback Provisions - The terms, conditions, requirements and procedures governing the condition in which a Private Partner is to deliver the project to the Department upon expiration or earlier termination of the Agreement, as set forth in the Technical Provisions.

Industry Review Meeting - A meeting held prior to the Department's issuance of either a RFQ or RFP in order to inform the industry of a project opportunity and to hear industry suggestions that may, at the Department's sole discretion, be incorporated into procurement documents.

One-on-One Meetings - A meeting held jointly or individually to share information regarding RFPs with shortlisted Proposers and to obtain feedback, comments and suggestions from such Proposers.

Project Development Agreement (PDA) - An Agreement with a Private Partner to provide predevelopment services such as concept definition, environmental studies, etc. in order to advance a project to the stage at which a fixed price DBFOM or variation thereof or a Concession can be negotiated.

Private Partner - A person, entity or organization that is not the federal government, the State of California, a political subdivision of the State of California, or a unit of government.

Public Infrastructure Advisory Commission (PIAC) - An auxiliary unit of the Business, Transportation and Housing Agency that advises the Department on potential P3 projects as well as assisting transportation agencies by helping to identify suitable P3 opportunities, researching and analyzing P3 projects around the world, assembling a library of best practices and lessons learned, and providing advice and procurement-related services.

Project Selection Committee - A committee of Department, and RTA (if appropriate) personnel formed on a project-specific basis to consider the recommendations of the Proposal Evaluation Committee and make a recommendation to the Department Director.

Proposal means a proposal submitted by a Proposer in response to the RFP.

Proposer – One or all (as the context requires) of the Private Partner teams, joint ventures, partnerships or consortia shortlisted by Department to submit a Proposal in response to a RFP.

Public-Private Partnership (P3) - A contractual Agreement formed between the Department and a Private Partner that allows for greater private sector participation in the delivery and financing of transportation projects than by traditional delivery methods, pursuant to Streets and Highways Code section 143.

Refinancing Gain - The net present value of the reduction in financing costs arising from a renegotiation of the loan terms which formed a part of the Agreement.

Relief Event - An event beyond the Private Partner’s control and not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or law or violation of a governmental approval (and subject to notice requirements and the duty to mitigate) and which event or its effects could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, for which adjustments to the project’s schedule may be negotiated.

Request for Proposal (RFP) - A solicitation by the Department for a proposal to develop, finance, operate and/or maintain an Eligible Facility.

Request for Qualifications (RFQ) - A solicitation by the Department for a SOQ that demonstrates a Private Partner’s ability to develop and/or operate an Eligible Facility.

SBX2 4 - Senate Bill Second Extraordinary Session 4 (SBX2 4) Chapter 2, Statutes of 2009 (Cogdill), authorizes the Department and regional transportation agencies to enter into an unlimited number of public-private partnership agreements until January 1, 2017. Section 143 of the Streets and Highways code was codified by SBX2 4.

Section 143 – reference to California Streets and Highways Code (“Section 143”) which grants the Department the authority to solicit proposals from and enter into agreements with private entities, or consortia thereof, for the planning, design, development, finance, construction, reconstruction, rehabilitation, acquisition, lease, operation or maintenance of transportation projects.

Statement of Qualifications (SOQ) - A response to a Department issued RFQ by a Proposer that demonstrates its capabilities and capacity to develop a project described in the RFQ.

Solicited Proposal - A proposal issued by the Department as a result of its determining that a project may best be suited for and developed as a P3 project pursuant to Streets and Highways Code section 143.

Technical Advisory Committee (TAC) - A Committee formed on a project-specific basis to provide technical input during the project identification phase prior to a decision to proceed with procurement and to provide advice during the development of the RFQ, RFP and other procurement documents.

Technical Provisions - The document describing the scope of work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the project.

Unsolicited Proposal - A proposal to develop an Eligible Facility received unsolicited by the Department from a potential Proposer

User Fee - A fee charged for use of an Eligible Facility, usually a toll for a highway or fare for rail or bus travel.

APPENDIX B
CTC RESOLUTION G-09-13



CALIFORNIA TRANSPORTATION COMMISSION

POLICY GUIDANCE PUBLIC PRIVATE PARTNERSHIP PROJECTS Resolution G-09-13

1. Authority and Purpose. Section 143 of the California Streets and Highways Code, as amended by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), authorizes the California Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements with public or private entities for transportation projects, commonly known as public private partnership (P3) agreements. Section 143 further provides that P3 projects and associated lease agreements proposed by the Department or a regional transportation agency shall be submitted to the California Transportation Commission, and that the Commission shall select and approve the projects before the Department or regional transportation agency begins a public review process for the final lease agreement. For Department projects, the Commission shall also certify the Department's determination of the useful life of the project in establishing the lease agreement terms. Where the Department or a regional transportation agency uses a final evaluation of proposals based on qualifications and best value to select a contracting private entity, Section 143 mandates that the Commission adopt the criteria for making that evaluation. However, the Commission does not approve or execute the final lease agreement nor does it have a role in selecting the private entities for P3 agreements.

The purpose of this guidance is to set forth the Commission's policy for carrying out its role in implementing P3 projects in order to assist and advise the Department, regional transportation entities, and private entities that may be contemplating the development of P3 agreements. This Commission policy guidance is not a regulation and should not be construed as imposing any requirement or imposing any deadline on any agency beyond those found in Section 143. References to timeframes in this guidance are statements of Commission intent for responding to submittals from other agencies. They are not deadlines or restrictions for either the Commission itself or for other agencies. References to the contents of submittals from other agencies are statements of what the Commission expects that it will need in order to carry out its own responsibility for project approval under statute. They are not procedural requirements. Section 143 does not modify nor does this guidance address the Commission's authority to program and allocate state funds. This guidance does not address Department and regional transportation agency P3 project procedures that are not within the purview of the Commission.

2. Scope of Project Approval. The Commission will select and approve each P3 transportation project, as defined in Section 143(a)(6), through the adoption of a resolution at a regularly scheduled Commission meeting. Before approving a project, the Commission will conduct a

public hearing on the project as a scheduled meeting agenda item. The Commission will approve each project with reference to a P3 project proposal report, as described in section 4 below, prepared and submitted by the Department or regional transportation agency. The Commission's P3 project approval will include and apply to:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
- The project financial plan, including the allocation of financial risk between public and private entities.
- For Department projects, a certification of the determination of the useful life of the project in establishing the lease agreement terms.
- Where the Department or regional transportation agency proposes to use a final evaluation of proposals based on qualifications and best value to select a contracting entity or lessee, the criteria that the Department or regional transportation agency will use for that evaluation.

3. Criteria for Commission Approval. The Commission will approve a P3 project if, after reviewing the project proposal report as described in section 4 below, it finds all of the following:

- That the project as described in the project proposal report is consistent with the requirements of statute.
- That the Commission's approval of the project and its financial plan does not in and of itself create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects. This does not preclude the commitment of state funds as a separate, even simultaneous, action. For example, the Commission could approve an amendment of the state transportation improvement program (STIP) to commit new funds to a P3 project, subject to the constraints of STIP funding.
- That the project, consistent with Section 143(c)(3), is primarily designed to achieve the following performance objectives, as evidenced in the project proposal report:
 - Improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor.
 - Improve the operation or safety of the affected corridor.
 - Provide quantifiable air quality benefits for the region in which the project is located.
- That the project, consistent with Section 143(c)(4), addresses a known forecast demand, as determined by the Department or regional transportation agency and evidenced in the project proposal report.
- Where applicable, that the criteria that the Department or regional transportation agency proposes to use for a final evaluation of proposals based on qualifications and best value are consistent with statute.
- For a Department project, that the Department has made a determination of the useful life of the project in establishing the lease agreement terms that is consistent with the terms of the lease agreement.

4. Project Proposal Report. The Commission will consider approval of a P3 project only when the Department or regional transportation agency has prepared and submitted a project proposal report to the Commission. The Department or regional transportation agency may engage in preliminary steps leading to the development of the draft lease agreement, including the general solicitation of proposals and the prequalification of potential contracting entities, prior to submitting a project proposal report. However, the Department or regional transportation agency should not issue the final request for proposals to implement a specific transportation project, and the Department or regional transportation agency shall not conduct the final evaluation of proposals, prior to the Commission's approval of the P3 project. The Commission will place a request for approval of a P3 project on its agenda when the Commission office receives the project proposal report at least 45 days prior to the meeting.

The project proposal report and request for P3 project approval will include or make reference to the following:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
- The basis of the Department or regional transportation agency for finding that it would be in the public interest to implement the project through a public private partnership agreement.
- The Department or regional transportation agency's proposed project financial plan, including the allocation of risk between public and private entities. The financial plan will include:
 - forecasts of revenue from tolls and user fees, as determined by the Department or regional transportation agency;
 - commitments of state or local revenues to the project (including capital, operating, maintenance, and debt service) or to any neighboring or ancillary projects necessary or desirable for full implementation of the project;
 - the alternative source of project revenue should revenues from tolls and user fees fail to meet projections or otherwise be insufficient to meet project costs; and
 - public financial responsibility for meeting project costs (including costs for operations, maintenance, and debt service) in case of default by the contracting entity or lessee.
- The Department or regional transportation agency's estimate, with supporting documentation, of the extent to which the project will be designed to achieve each of the following performance objectives:
 - improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor;
 - improve the operation or safety of the affected corridor; and
 - provide quantifiable air quality benefits for the region in which the project is located.
- The Department or regional transportation agency's forecast of travel demand, with supporting documentation.
- The terms of the draft lease agreement associated with the project.

- Where the Department or regional transportation agency proposes to make a final evaluation of proposals based on qualifications and best value, consistent with Section 143(g)(1)(C), the criteria the Department or regional transportation agency proposes to use in making that evaluation.
 - For a Department project, the Department's determination of the useful life of the project in establishing the lease agreement terms, consistent with Section 143(d), including the basis the Department used for making that determination.
5. Project Changes after Approval. The Commission does not approve or execute the final lease agreement. However, the Commission's expectation is that, pursuant to Section 143, the final lease agreement executed by the Department or regional transportation agency will implement the project approved by the Commission, consistent with project scope as described in section 2 of this guidance. After the Commission has approved a project, it will have no further role in reviewing or approving changes to the project or the lease agreement except at the request of the Department or regional transportation agency. If the Department or regional transportation agency finds it necessary or appropriate to make changes that alter the project scope, as described in section 2 of this guidance, the Commission expects that the agency will request approval of the change by submitting a supplement to the project proposal report setting forth a description of the change and the reasons for it. The Commission will approve the change if it finds that the revised project meets the criteria set forth in section 3 of this guidance. The Commission will place a proposed project supplement on its agenda in sufficient time to allow action to be taken on the requested change within 45 days after the Commission office receives the supplement to the project proposal report.

APPENDIX C
PROJECT DATA REQUEST FORM

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE DIRECTOR
P.O. Box 942873, MS-49
SACRAMENTO, CA 94273-0001
PHONE (916) 654-4227
FAX (916) 654-6608
TTY 711



*Flex your power!
Be energy efficient!*

OUTLINE FOR INITIAL PROJECT PROPOSAL INFORMATION SHEET

To begin evaluating the proposal, the Department needs the proposer to provide the following information:

Proposer's Identity

1. Name and Identity of Proposer
2. Names of Key Principal Officers
3. Parent and Affiliate Companies (if relevant)
4. Experience/qualifications developing projects similar to proposal
5. Brief Description of Financial Wherewithal to meet obligations under a P3 type agreement

Project Definition

1. Functional and Locational Description of the Project (describe any innovative methods, approaches or concepts to advance the project)
2. Legal Authority for the department to participate in the project
3. Environmental Approvals and/or Permitting Required for the Project

Project Commercial Elements

1. Brief Commercial Aspects of the Project Proposal
2. Business and Financial Aspects of the Project
3. Estimated Development Costs
4. Estimated Operating and Maintenance costs (include life cycle cost analysis)
5. Anticipated Sources of Funds (include simple projection of revenue if relevant)

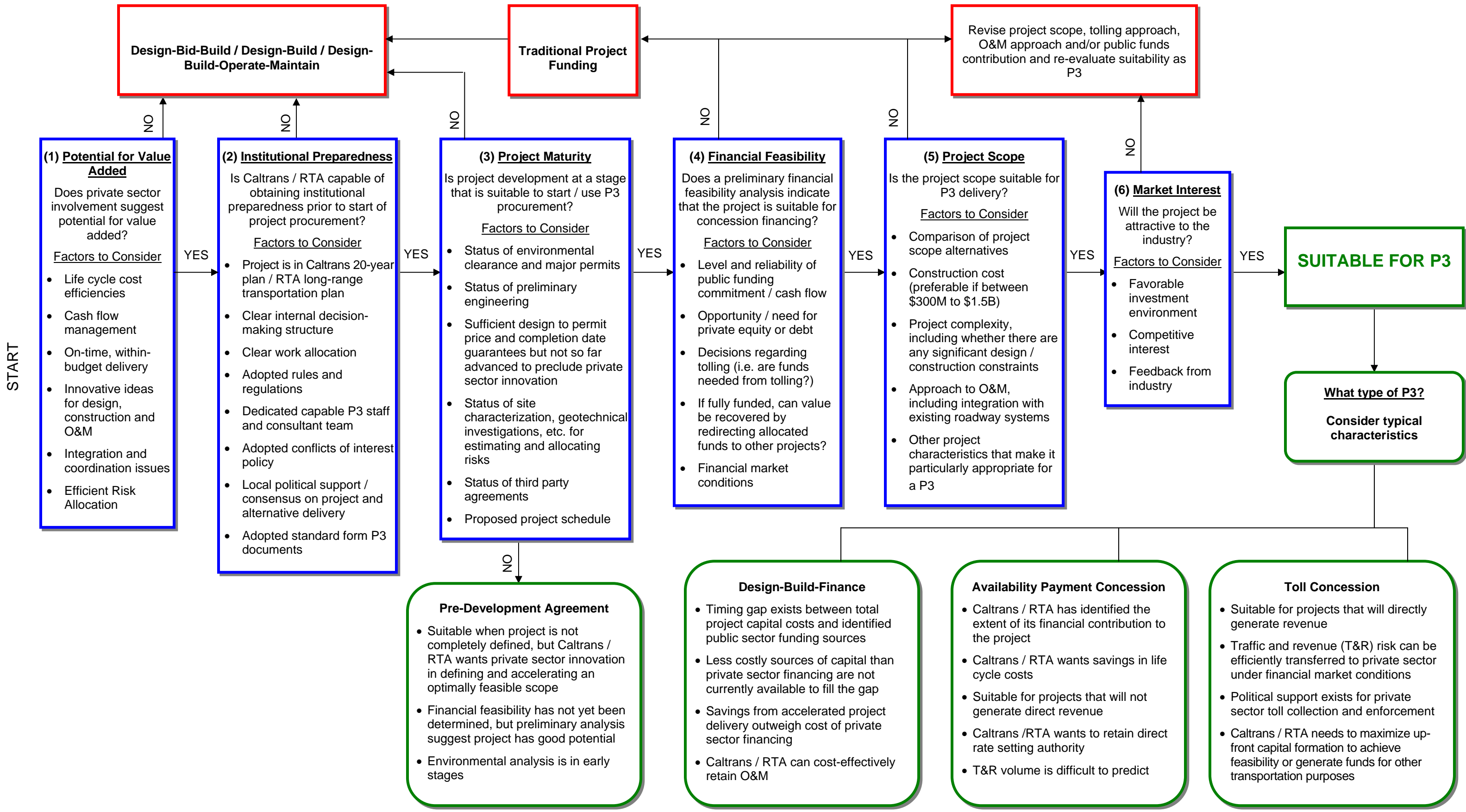
Other Project Information

1. Anticipated Benefits of the Project to the community, the region or the state.
2. State Resources Needed to Implement (if any)
3. Any Known Public Support (or opposition)
4. Other interesting details for consideration



APPENDIX D
PROJECT SUITABILITY CRITERIA CHART

PROJECT SUITABILITY CRITERIA FOR P3



(1) Potential for Value Added
 Does private sector involvement suggest potential for value added?
Factors to Consider

- Life cycle cost efficiencies
- Cash flow management
- On-time, within-budget delivery
- Innovative ideas for design, construction and O&M
- Integration and coordination issues
- Efficient Risk Allocation

(2) Institutional Preparedness
 Is Caltrans / RTA capable of obtaining institutional preparedness prior to start of project procurement?
Factors to Consider

- Project is in Caltrans 20-year plan / RTA long-range transportation plan
- Clear internal decision-making structure
- Clear work allocation
- Adopted rules and regulations
- Dedicated capable P3 staff and consultant team
- Adopted conflicts of interest policy
- Local political support / consensus on project and alternative delivery
- Adopted standard form P3 documents

(3) Project Maturity
 Is project development at a stage that is suitable to start / use P3 procurement?
Factors to Consider

- Status of environmental clearance and major permits
- Status of preliminary engineering
- Sufficient design to permit price and completion date guarantees but not so far advanced to preclude private sector innovation
- Status of site characterization, geotechnical investigations, etc. for estimating and allocating risks
- Status of third party agreements
- Proposed project schedule

(4) Financial Feasibility
 Does a preliminary financial feasibility analysis indicate that the project is suitable for concession financing?
Factors to Consider

- Level and reliability of public funding commitment / cash flow
- Opportunity / need for private equity or debt
- Decisions regarding tolling (i.e. are funds needed from tolling?)
- If fully funded, can value be recovered by redirecting allocated funds to other projects?
- Financial market conditions

(5) Project Scope
 Is the project scope suitable for P3 delivery?
Factors to Consider

- Comparison of project scope alternatives
- Construction cost (preferable if between \$300M to \$1.5B)
- Project complexity, including whether there are any significant design / construction constraints
- Approach to O&M, including integration with existing roadway systems
- Other project characteristics that make it particularly appropriate for a P3

(6) Market Interest
 Will the project be attractive to the industry?
Factors to Consider

- Favorable investment environment
- Competitive interest
- Feedback from industry

SUITABLE FOR P3

What type of P3?
 Consider typical characteristics

Pre-Development Agreement

- Suitable when project is not completely defined, but Caltrans / RTA wants private sector innovation in defining and accelerating an optimally feasible scope
- Financial feasibility has not yet been determined, but preliminary analysis suggest project has good potential
- Environmental analysis is in early stages

Design-Build-Finance

- Timing gap exists between total project capital costs and identified public sector funding sources
- Less costly sources of capital than private sector financing are not currently available to fill the gap
- Savings from accelerated project delivery outweigh cost of private sector financing
- Caltrans / RTA can cost-effectively retain O&M

Availability Payment Concession

- Caltrans / RTA has identified the extent of its financial contribution to the project
- Caltrans / RTA wants savings in life cycle costs
- Suitable for projects that will not generate direct revenue
- Caltrans /RTA wants to retain direct rate setting authority
- T&R volume is difficult to predict

Toll Concession

- Suitable for projects that will directly generate revenue
- Traffic and revenue (T&R) risk can be efficiently transferred to private sector under financial market conditions
- Political support exists for private sector toll collection and enforcement
- Caltrans / RTA needs to maximize upfront capital formation to achieve feasibility or generate funds for other transportation purposes

APPENDIX E
CALIFORNIA P3 LEGISLATION (S&H 143)

Senate Bill No. 4

CHAPTER 2

An act to add Sections 14661.1 and 70391.7 to the Government Code, to add and repeal Section 20688.6 of, and to add and repeal Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of, the Public Contract Code, and to amend Section 143 of the Streets and Highways Code, relating to public contracts.

[Approved by Governor February 20, 2009. Filed with
Secretary of State February 20, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 4, Cogdill. Public contract: design-build: public private partnerships.

(1) Existing law designates the Judicial Council as the entity having full responsibility, jurisdiction, control, and authority over trial court facilities for which title is held by the state, including the acquisition and development of facilities.

Existing law requires the Department of Corrections and Rehabilitation to design, construct, or renovate prison housing units, prison support buildings, and programming space as specified.

Existing law authorizes the Director of General Services, when authorized by the Legislature, to use the design-build procurement process for a specific project to contract and procure state office facilities, other buildings, structures, and related facilities. Existing law requires a bidder participating in the process to provide written declarations, subject to misdemeanor penalties.

This bill would also authorize the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation, as appropriate, to use the design-build procurement process in contracting and procuring a state office facility or prison facility, and would authorize the Judicial Council to use that same process in contracting and procuring a court facility, but would limit this authorization to 5 total projects, to be approved by the Department of Finance, as specified. The bill would require the Department of General Services, the Department of Corrections and Rehabilitation, and the Judicial Council to submit to the Joint Legislative Budget Committee, before January 1, 2014, a report containing a description of each public works project procured through the design-build process, as specified. The bill would require a bidder participating in the process to provide written declarations, subject to misdemeanor penalties, and would thereby impose a state-mandated local program.

(2) Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure,

building, road, or other public improvement. Existing law also authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis. Existing law, until January 1, 2011, authorizes transit operators to enter into a design-build contract, as defined, according to specified procedures.

This bill would, until January 1, 2014, allow certain state and local transportation entities, if authorized by the California Transportation Commission, to use a design-build process for contracting on transportation projects, as specified. The bill would require a transportation entity to implement, or contract with a third-party to implement, a labor compliance program for design-build projects, except as specified. The bill would also require these transportation entities to report to the commission, and the commission to submit a mid-term and a final report to the Legislature, regarding the design-build process as specified. The bill would establish a procedure for submitting bids that includes a requirement that design-build entities provide a statement of qualifications submitted to the transportation entity that is verified under oath. Because a verification under oath is made under penalty of perjury, the bill would, by requiring a verification, create a new crime and thereby impose a state-mandated local program.

(3) Under existing law, any work of grading, clearing, demolition, or construction undertaken by a redevelopment agency is required to be done by contract after competitive bidding if the cost of that work exceeds a specified amount.

This bill would, until January 1, 2016, authorize a redevelopment agency, with the approval of its duly constituted board in a public hearing, to enter into design-build contracts for projects, as defined, in excess of \$1,000,000, in accordance with specified provisions. This bill would authorize up to 10 design-build contracts, would require an agency to apply to the State Public Works Board for authorization to enter a design-build contract, as provided, and would require the State Public Works Board to notify the Legislative Analyst's Office when 10 projects have been approved. This bill would also require an agency using the design-build method to submit a report to the Legislative Analyst's Office, as provided, and for the Legislative Analyst to report to the Legislature before January 1, 2015, on the agency's use of the design-build method, as provided.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of existing crime.

(4) Existing law authorizes the Department of Transportation and regional transportation agencies, as defined, until January 1, 2012, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. Existing law limits the number of projects authorized pursuant to these provisions to 2 in northern California and 2 in southern California.

This bill would extend the authorization for these agreements to January 1, 2017, and would delete the restriction on the number of projects that may be undertaken pursuant to these provisions. The bill would require the projects to be primarily designed to achieve improved mobility, improved operations or safety, and quantifiable air quality benefits.

(5) Existing law requires that the negotiated lease agreements be submitted to the Legislature for approval or rejection. Under existing law, the Legislature has 60 legislative days to act after submittal of the agreement and the agreement is deemed approved unless both houses of the Legislature concur in the passage of a resolution rejecting the agreement. Existing law prohibits the Legislature from amending these lease agreements.

The bill would eliminate that prohibition and the provision requiring approval or rejection by the Legislature. The bill would require that all lease agreements first be submitted to the California Transportation Commission for approval, then to the Legislature and the Public Infrastructure Advisory Commission, as defined, for review, as specified. The bill would also require the Public Infrastructure Advisory Commission to perform specified acts and would authorize that commission to charge the department and regional transportation agencies a fee for specified services.

(6) Existing law authorizes the department and regional transportation agencies to utilize various procurement approaches, including, among other things, acceptance of unsolicited proposals, as specified.

This bill would prohibit the department or a regional transportation agency from awarding a contract to an unsolicited bidder without receiving at least one other responsible bid.

(7) Under existing law, for these projects, tolls and user fees may not be charged to noncommercial vehicles with 3 or fewer axles.

This bill would eliminate that prohibition.

(8) Existing law imposes various contract requirements for these projects, including permitting compensation for a leaseholder for losses in toll or fee revenues in certain instances if caused by the construction of supplemental transportation projects, but prohibits the compensation to exceed the reduction in revenues.

This bill would prohibit that compensation from exceeding the difference between the reduction in revenues and the amount necessary to cover the costs of debt service, as specified. The bill would additionally require the agreements to include an indemnity agreement, as specified, and to authorize the contracting entity or lessee to utilize the design-build method of procurement for transportation projects, subject to specified conditions. The bill would also require contracting entities or lessees to have specified qualifications.

The bill would authorize the department or the regional transportation agency, when evaluating a proposal submitted by a contracting entity or lessee, to award a contract on the basis of the lowest bid or best value, as defined.

The bill would provide that the Department of Transportation is the responsible agency for the performance of certain tasks and the preparation

of certain documents, relative to projects on the state highway system, where a regional transportation agency is otherwise the sponsor of the project. The bill would state that the department may perform those functions with department employees or with consultants contracted by the department.

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

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

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

SECTION 1. Section 14661.1 is added to the Government Code, to read:

14661.1. (a) For purposes of this section, the definitions in subdivision (a) of Section 13332.19 shall apply. For purposes of subdivision (a) of Section 13332.19, references to the Department of General Services shall be deemed to be references to the Department of General Services or the Department of Corrections and Rehabilitation, as applicable.

(b) Notwithstanding any provision of the Public Contract Code or any other provision of law, when the Legislature appropriates funds for a specific project, or for any project using funds appropriated pursuant to Chapter 3.2.1 (commencing with Section 15819.40) or 3.2.2 (commencing with Section 15819.41) of Part 10b of this division, the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation, as appropriate, may contract and procure state office facilities and prison facilities pursuant to this section.

(c) Prior to contracting with a design-build entity for the procurement of a state office facility or prison facility under this section, the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation shall:

(1) Prepare a program setting forth the performance criteria for the design-build project. The performance criteria shall be prepared by a design professional duly licensed and registered in the State of California.

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

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

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

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

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

(iv) Submission of evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the Department of General Services or the Department of Corrections and Rehabilitation that the design-build entity has the capacity to complete the project.

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

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

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

(II) Serious violations of the California Occupational Safety and Health Act of 1973, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.

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

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

(V) Violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations or complaints.

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

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

(C) The Director of General Services or the Secretary of the Department of Corrections and Rehabilitation, when requested by the design-build entity,

shall hold in confidence any information required by clauses (i) to (vi), inclusive, of subparagraph (B).

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

(3) (A) Determine, as he or she deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. He or she shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.

(B) The Director of General Services or the Secretary of the Department of Corrections and Rehabilitation shall make his or her determination by choosing one of the following methods:

(i) A design-build competition based upon performance, price, and other criteria set forth by the Department of General Services or the Department of Corrections and Rehabilitation in the design-build solicitation package. The Department of General Services or the Department of Corrections and Rehabilitation shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interests of the Department of General Services or the Department of Corrections and Rehabilitation and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

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

(iii) A design-build competition based upon program requirements and a detailed scope of work, including any performance criteria and concept drawings set forth by the Department of General Services or the Department of Corrections and Rehabilitation in the design-build solicitation package.

Award shall be made on the basis of the lowest responsible bid. A project with an approved budget of two hundred fifty thousand dollars (\$250,000) or more may be awarded pursuant to this clause.

(4) For purposes of this subdivision, the following definitions shall apply:

(A) “Best interest of the state” means a design-build process that is projected by the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(B) “Best value” means a value determined by objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and other criteria deemed appropriate by the Department of General Services or the Department of Corrections and Rehabilitation.

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

(1) The Department of General Services and the Department of Corrections and Rehabilitation, in each design-build solicitation package, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the Department of General Services and the Department of Corrections and Rehabilitation shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the Department of General Services or the Department of Corrections and Rehabilitation specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total number of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license

classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

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

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

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

(C) As authorized by the Department of General Services or the Department of Corrections and Rehabilitation, establish reasonable prequalification criteria and standards, limited in scope to those detailed in paragraph (2) of subdivision (c).

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

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

(f) Any design-build entity that is selected to design and construct a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract Code. Nothing in this section shall prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

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

(h) The Department of General Services or the Department of Corrections and Rehabilitation, as appropriate, shall each submit to the Joint Legislative Budget Committee, before January 1, 2014, a report containing a description of each public works project procured by that department through the design-build process described in this section that is completed after January 1, 2009, and before December 1, 2013. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.

- (4) The estimated and actual project costs.
- (5) An assessment of the prequalification process and criteria.
- (6) An assessment of the effect of any retention on the project made under the law.

(7) A description of the method used to award the contract. If the best value method was used, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(i) The authority provided under this section shall be in addition to the authority provided to the Department of General Services pursuant to Section 4 of Chapter 252 of the Statutes of 1998, as amended by Section 3 of Chapter 154 of the Statutes of 2007. The authority under this section and Section 70391.7 shall apply to a total of not more than five state office facilities, prison facilities, or court facilities, which shall be determined pursuant to this subdivision.

(1) In order to enter into a contract utilizing the procurement method authorized under this section, the Director of General Services or the Secretary of the Department of Corrections and Rehabilitation shall submit a request to the Department of Finance.

(2) The Department of Finance shall make a determination whether to approve or deny a request made pursuant to paragraph (1) if the design-build project requested will not exceed the five facilities maximum set forth in this section and Section 70391.7.

(3) After receiving notification that the Department of Finance has approved the request and that the Legislature has appropriated funds for a specific project, the director or secretary may enter into a design-build contract under this section.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available under the law.

SEC. 2. Section 70391.7 is added to the Government Code, to read:

70391.7. (a) For purposes of this section, the definitions in subdivision (a) of Section 13332.19 shall apply. For purposes of subdivision (a) of Section 13332.19, references to the Department of General Services shall be deemed to be references to the Judicial Council.

(b) Notwithstanding any provision of the Public Contract Code or any other law, when the Legislature appropriates funds for a specific project, the Judicial Council may contract and procure court facilities pursuant to this section.

(c) Prior to contracting with a design-build entity for the procurement of a court facility under this section, the Judicial Council shall:

(1) Prepare a program setting forth the performance criteria for the design-build project. The performance criteria shall be prepared by a design professional duly licensed and registered in the State of California.

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

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

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

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

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

(iv) Submission of evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the Judicial Council that the design-build entity has the capacity to complete the project.

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

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

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

(II) Serious violations of the California Occupational Safety and Health Act of 1973, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.

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

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

(V) Violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations or complaints.

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

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

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

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

(3) (A) Determine, as the Judicial Council deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. The Judicial Council shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.

(B) The Judicial Council shall make its determination by choosing one of the following methods:

(i) A design-build competition based upon performance, price, and other criteria set forth by the Judicial Council in the design-build solicitation package. The Judicial Council shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interests of the Judicial Council and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

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

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

(4) For purposes of this subdivision, the following definitions shall apply:

(A) “Best interest of the state” means a design-build process that is projected by the Judicial Council to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(B) “Best value” means a value determined by objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and other criteria deemed appropriate by the Judicial Council.

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

(1) The Judicial Council, in each design-build solicitation package, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the Judicial Council shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the Judicial Council specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total number of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4

(commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

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

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

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

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

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

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

(f) Any design-build entity that is selected to design and construct a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract Code. Nothing in this section shall prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

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

(h) The Judicial Council shall submit to the Joint Legislative Budget Committee, before January 1, 2014, a report containing a description of each public works project procured through the design-build process described in this section that is completed after January 1, 2009, and before December 1, 2013. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual project costs.

(5) An assessment of the prequalification process and criteria.

(6) An assessment of the effect of any retention on the project made under the law.

(7) A description of the method used to award the contract. If the best value method was used, the report shall describe the factors used to evaluate

the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(i) The authority under this section and Section 14661.1 shall apply to a total of not more than five state office facilities, prison facilities, or court facilities, which shall be determined pursuant to this subdivision.

(1) In order to enter into a contract utilizing the procurement method authorized under this section, the Judicial Council shall submit a request to the Department of Finance.

(2) The Department of Finance shall make a determination whether to approve or deny a request made pursuant to paragraph (1) if the design-build project requested will not exceed the five facilities maximum set forth in this section and Section 14661.1.

(3) After receiving notification that the Department of Finance has approved the request and that the Legislature has appropriated funds for a specific project, the Judicial Council may enter into a design-build contract under this section.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available under the law.

SEC. 3. Chapter 6.5 (commencing with Section 6800) is added to Part 1 of Division 2 of the Public Contract Code, to read:

CHAPTER 6.5. THE DESIGN-BUILD DEMONSTRATION PROGRAM

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.

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 awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subdivision (b), a transportation entity authorized to use the design-build method of procurement shall implement a labor compliance program, as described in Section 1771.5 of the Labor Code, or it shall contract with a third party to implement, on the transportation entity's behalf, a labor compliance program subject to that statute. This requirement does not apply to a project where the transportation entity or design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(b) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subdivision, the transportation entity shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55 of the Labor Code. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(c) The Department of Industrial Relations may waive the fee set forth in subdivision (b) for a transportation entity that has previously been granted approval by the director to initiate and operate a labor compliance program on its projects, and that requests to continue to operate the labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55 of the Labor Code. This fee shall not be waived for a transportation entity that contracts with a third party to initiate and enforce labor compliance programs on the transportation entity's projects.

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 described 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.

SEC. 4. Section 20688.6 is added to the Public Contract Code, to read:

20688.6. (a) (1) Notwithstanding any other law, an agency, with approval of its duly constituted board in a public hearing, may utilize an alternative procedure for bidding on projects in the community in excess of one million dollars (\$1,000,000) and may award the project using either the lowest responsible bidder or by best value.

(2) Only 10 design-build projects shall be authorized under this section.

(b) (1) It is the intent of the Legislature to enable entities as provided in Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code to utilize design-build for those infrastructure improvements authorized in Sections 33421 and 33445 of the Health and Safety Code and subject to the limitations on that authority described in Section 33421.1 of the Health and Safety Code.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) (A) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subparagraph (B), if the board elects to proceed under this section, the board shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it 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 any project where the agency or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subparagraph, if the board elects to proceed under this section it shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55 of the Labor Code. All fees 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) The Department of Industrial Relations may waive the fee set forth in subdivision (b) for a board that has previously been granted approval by the director to initiate and operate a labor compliance program on its projects, and that requests to continue to operate the labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for a board that contracts with a third party to initiate and enforce labor compliance programs on the board's projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

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

(3) "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.

(4) "Project" means those infrastructure improvements authorized in Sections 33421 and 33455 of the Health and Safety Code and subject to the limitations and conditions on that authority described in Article 10 (commencing with Section 33420) and Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(d) Design-build projects shall progress in a four-step process, as follows:

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

(B) Any architect or engineer retained by the agency to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared as described in paragraph (1), the agency shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the agency. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the agency to inform interested parties of the contracting opportunity, to include the methodology that will be used by the agency to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

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

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the agency chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the agency to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The agency shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the agency. In preparing the questionnaire, the agency shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) 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, as well as a financial statement that assures the agency that the design-build entity has the capacity to complete the project.

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

(iv) 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.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance

in which an entity, 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.

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

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

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all 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 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.

(xi) In the case of a partnership, joint venture, or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all general partners, joint venturers, or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity 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.

(4) The agency shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) An agency may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the agency 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 agency's second- and third-ranked design-build entities.

(v) For purposes of this paragraph, skilled labor force availability shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For purposes of this paragraph, 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.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the agency.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the agency in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) 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 agency.

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

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the agency.

(h) The agency 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 section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the agency elects to award a project pursuant to this section, retention proceeds withheld by the agency 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.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the agency and the design-build entity. If the design-build entity provides written notice to any subcontractor who 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 agency and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each agency that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process after January 1, 2010, and before November 1, 2014. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.
- (4) Where appropriate, the estimated and actual length of time to complete the project.
- (5) The estimated and actual project costs.
- (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
- (7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the labor force compliance program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of skilled labor force availability.

(12) An assessment of the design-build dollar limits on agency projects. This assessment shall include projects where the agency wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) (1) In order to comply with paragraph (2) of subdivision (a), the State Public Works Board is required to maintain the list of agencies that have applied and are eligible to be qualified for this authority.

(2) Each agency that is interested in proceeding under the authority in this section must apply to the State Public Works Board. The application to proceed shall be in writing and contain such information that the State Public Works Board may require.

(3) The State Public Works Board shall approve or deny an application, in writing, within 90 days of the submission of a complete application. The authority to deny an application shall only be exercised if the condition set forth in paragraph (2) of subdivision (a) has been satisfied.

(4) An agency that has applied for this authorization shall, after it determines it no longer is interested in using this authority, notify the State Public Works Board in writing within 30 days of its determination. Upon notification, the State Public Works Board may contact any previous applicants, denied pursuant to paragraph (2) of subdivision (a), to inform them of the availability to proceed under this section.

(5) The State Public Works Board may authorize no more than 10 projects. The board shall not authorize or approve more than two projects for any one eligible redevelopment agency that submits a completed application.

(6) The State Public Works Board shall notify the Legislative Analyst's Office when 10 projects have been approved.

(n) On or before January 1, 2015, the Legislative Analyst shall report to the Legislature on the use of the design-build method by agencies pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 5. Section 143 of the Streets and Highways Code is amended to read:

143. (a) (1) “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 department or the regional transportation agency.

(2) “Contracting entity or lessee” means a public or private entity, or consortia thereof, that has entered into a comprehensive development lease agreement with the department or a regional transportation agency for a transportation project pursuant to this section.

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

(4) “Regional transportation agency” means any of the following:

(A) A transportation planning agency as defined in Section 29532 or 29532.1 of the Government Code.

(B) A county transportation commission as defined in Section 130050, 130050.1, or 130050.2 of the Public Utilities Code.

(C) Any other local or regional transportation entity that is designated by statute as a regional transportation agency.

(D) A joint exercise of powers authority as defined in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, with the consent of a transportation planning agency or a county transportation commission for the jurisdiction in which the transportation project will be developed.

(5) “Public Infrastructure Advisory Commission” means a unit or auxiliary organization established by the Business, Transportation and Housing Agency that advises the department and regional transportation agencies in developing transportation projects through performance-based infrastructure partnerships.

(6) “Transportation project” means one or more of the following: planning, design, development, finance, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of highway, public street, rail, or related facilities supplemental to existing facilities currently owned and operated by the department or regional transportation agencies that is consistent with the requirements of subdivision (c).

(b) (1) The Public Infrastructure Advisory Commission shall do all of the following:

(A) Identify transportation project opportunities throughout the state.

(B) Research and document similar transportation projects throughout the state, nationally, and internationally, and further identify and evaluate lessons learned from these projects.

(C) Assemble and make available to the department or regional transportation agencies a library of information, precedent, research, and

analysis concerning infrastructure partnerships and related types of public-private transactions for public infrastructure.

(D) Advise the department and regional transportation agencies, upon request, regarding infrastructure partnership suitability and best practices.

(E) Provide, upon request, procurement-related services to the department and regional transportation agencies for infrastructure partnership.

(2) The Public Infrastructure Advisory Commission may charge a fee to the department and regional transportation agencies for the services described in subparagraphs (D) and (E) of paragraph (1), the details of which shall be articulated in an agreement entered into between the Public Infrastructure Advisory Commission and the department or the regional transportation agency.

(c) (1) Notwithstanding any other provision of law, only the department, in cooperation with regional transportation agencies, and regional transportation agencies, may solicit proposals, accept unsolicited proposals, negotiate, and enter into comprehensive development lease agreements with public or private entities, or consortia thereof, for transportation projects.

(2) Projects proposed pursuant to this section and associated lease agreements shall be submitted to the California Transportation Commission. The commission, at a regularly scheduled public hearing, shall select the candidate projects from projects nominated by the department or a regional transportation agency after reviewing the nominations for consistency with paragraphs (3) and (4). Approved projects may proceed with the process described in paragraph (5).

(3) The projects authorized pursuant to this section shall be primarily designed to achieve the following performance objectives:

(A) Improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor.

(B) Improve the operation or safety of the affected corridor.

(C) Provide quantifiable air quality benefits for the region in which the project is located.

(4) In addition to meeting the requirements of paragraph (3), the projects authorized pursuant to this section shall address a known forecast demand, as determined by the department or regional transportation agency.

(5) At least 60 days prior to executing a final lease agreement authorized pursuant to this section, the department or regional transportation agency shall submit the agreement to the Legislature and the Public Infrastructure Advisory Commission for review. Prior to submitting a lease agreement to the Legislature and the Public Infrastructure Advisory Commission, the department or regional transportation agency shall conduct at least one public hearing at a location at or near the proposed facility for purposes of receiving public comment on the lease agreement. Public comments made during this hearing shall be submitted to the Legislature and the Public Infrastructure Advisory Commission with the lease agreement. The Secretary of Business, Transportation and Housing or the Chairperson of the Senate or Assembly fiscal committees or policy committees with jurisdiction over transportation matters may, by written notification to the department or

regional transportation agency, provide any comments about the proposed agreement within the 60-day period prior to the execution of the final agreement. The department or regional transportation agency shall consider those comments prior to executing a final agreement and shall retain the discretion for executing the final lease agreement.

(d) For the purpose of facilitating those projects, the agreements between the parties may include provisions for the lease of rights-of-way in, and airspace over or under, highways, public streets, rail, or related facilities for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the construction of transportation projects. Facilities subject to an agreement under this section shall, at all times, be owned by the department or the regional transportation agency, as appropriate. For department projects, the commission shall certify the department's determination of the useful life of the project in establishing the lease agreement terms. In consideration therefor, the agreement shall provide for complete reversion of the leased facility, together with the right to collect tolls and user fees, to the department or regional transportation agency, at the expiration of the lease at no charge to the department or regional transportation agency. At time of the reversion, the facility shall be delivered to the department or regional transportation agency, as applicable, in a condition that meets the performance and maintenance standards established by the department or regional transportation agency and that is free of any encumbrance, lien, or other claims.

(e) Agreements between the department or regional transportation agency and the contracting entity or lessee shall authorize the contracting entity or lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method contained in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, other than Sections 6802, 6803, and 6813 of that code, if those provisions are enacted by the Legislature during the 2009–10 Regular Session, or a 2009–10 extraordinary session.

(f) (1) (A) Notwithstanding any other provision of this chapter, for projects on the state highway system, 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 the quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the department or regional transportation agency.

(B) The department may use department employees or consultants to perform the services described in subparagraph (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.

(2) The department or a regional transportation agency may exercise any power possessed by it with respect to transportation projects to facilitate the transportation projects pursuant to this section. The department, regional transportation agency, and other state or local agencies may provide services to the contracting entity or lessee for which the public entity is reimbursed, including, but not limited to, planning, environmental planning, environmental certification, environmental review, preliminary design, design, right-of-way acquisition, construction, maintenance, and policing of these transportation projects. The department or regional transportation agency, as applicable, shall regularly inspect the facility and require the contracting entity or lessee to maintain and operate the facility according to adopted standards. Except as may otherwise be set forth in the lease agreement, the contracting entity or lessee shall be responsible for all costs due to development, maintenance, repair, rehabilitation, and reconstruction, and operating costs.

(g) (1) In selecting private entities with which to enter into these agreements, notwithstanding any other provision of law, the department and regional transportation agencies may utilize, but are not limited to utilizing, one or more of the following procurement approaches:

(A) Solicitations of proposals for defined projects and calls for project proposals within defined parameters.

(B) Prequalification and short-listing of proposers prior to final evaluation of proposals.

(C) Final evaluation of proposals based on qualifications and best value. The California Transportation Commission shall develop and adopt criteria for making that evaluation prior to evaluation of a proposal.

(D) Negotiations with proposers prior to award.

(E) Acceptance of unsolicited proposals, with issuance of requests for competing proposals. Neither the department nor a regional transportation agency may award a contract to an unsolicited bidder without receiving at least one other responsible bid.

(2) When evaluating a proposal submitted by the contracting entity or lessee, the department or the regional transportation agency may award a contract on the basis of the lowest bid or best value.

(h) The contracting entity or lessee shall have the following qualifications:

(1) Evidence that the members of the contracting entity or lessee have completed, or have demonstrated the experience, competency, capability, and capacity to complete, a project 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 contracting entity or lessee has the capacity to complete the project.

(2) 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.

(3) Evidence that establishes that members of the contracting entity or lessee have the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(4) Evidence that the contracting entity or lessee has workers' compensation experience, history, and a worker safety program of members of the contracting entity or lessee that is acceptable to the department or regional transportation agency.

(5) A full disclosure regarding all of the following with respect to each member of the contracting entity or lessee during the past five years:

(A) 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).

(B) Any instance where members of the contracting entity or lessee were debarred, disqualified, or removed from a federal, state, or local government public works project.

(C) Any instance where members of the contracting entity or lessee, 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.

(D) Any instance where members of the contracting entity or lessee, or its owners, officers, or managing employees defaulted on a construction contract.

(E) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), including, but not limited to, 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.

(F) Any bankruptcy or receivership of any member of the contracting entity or lessee, including, but not limited to, information concerning any work completed by a surety.

(G) Any settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the contracting entity or lessee 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.

(H) If the contracting entity or lessee is a partnership, joint venture, or an association that is not a legal entity, a copy of the agreement creating the partnership or association that specifies that all general partners, joint venturers, or association members agree to be fully liable for the performance under the agreement.

(i) No agreement entered into pursuant to this section shall infringe on the authority of the department or a regional transportation agency to develop, maintain, repair, rehabilitate, operate, or lease any transportation project. Lease agreements may provide for reasonable compensation to the contracting entity or lessee for the adverse effects on toll revenue or user

fee revenue due to the development, operation, or lease of supplemental transportation projects with the exception of any of the following:

(1) Projects identified in regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(2) Safety projects.

(3) Improvement projects that will result in incidental capacity increases.

(4) Additional high-occupancy vehicle lanes or the conversion of existing lanes to high-occupancy vehicle lanes.

(5) Projects located outside the boundaries of a public-private partnership project, to be defined by the lease agreement.

However, compensation to a contracting entity or lessee shall only be made after a demonstrable reduction in use of the facility resulting in reduced toll or user fee revenues, and may not exceed the difference between the reduction in those revenues and the amount necessary to cover the costs of debt service, including principal and interest on any debt incurred for the development, operation, maintenance, or rehabilitation of the facility.

(j) (1) Agreements entered into pursuant to this section shall authorize the contracting entity or lessee to impose tolls and user fees for use of a facility constructed by it, and shall require that over the term of the lease the toll revenues and user fees be applied to payment of the capital outlay costs for the project, the costs associated with operations, toll and user fee collection, administration of the facility, reimbursement to the department or other governmental entity for the costs of services to develop and maintain the project, police services, and a reasonable return on investment. The agreement shall require that, notwithstanding Sections 164, 188, and 188.1, any excess toll or user fee revenue either be applied to any indebtedness incurred by the contracting entity or lessee with respect to the project, improvements to the project, or be paid into the State Highway Account, or for all three purposes, except that any excess toll revenue under a lease agreement with a regional transportation agency may be paid to the regional transportation agency for use in improving public transportation in and near the project boundaries.

(2) Lease agreements shall establish specific toll or user fee rates. Any proposed increase in those rates not otherwise established or identified in the lease agreement during the term of the agreement shall first be approved by the department or regional transportation agency, as appropriate, after at least one public hearing conducted at a location near the proposed or existing facility.

(3) The collection of tolls and user fees for the use of these facilities may be extended by the commission or regional transportation agency at the expiration of the lease agreement. However, those tolls or user fees shall not be used for any purpose other than for the improvement, continued operation, or maintenance of the facility.

(k) Agreements entered into pursuant to this section shall include indemnity, defense, and hold harmless provisions agreed to by the department or regional transportation agency and the contracting entity or lessee, including provisions for indemnifying the State of California or the

regional transportation agency against any claims or losses resulting or accruing from the performance of the contracting entity or lessee.

(l) The plans and specifications for each transportation project on the state highway system developed, maintained, repaired, rehabilitated, reconstructed, or operated pursuant to this section shall comply with the department's standards for state transportation projects. The lease agreement shall include performance standards, including, but not limited to, levels of service. The agreement shall require facilities on the state highway system to meet all requirements for noise mitigation, landscaping, pollution control, and safety that otherwise would apply if the department were designing, building, and operating the facility. If a facility is on the state highway system, the facility leased pursuant to this section shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(m) Failure to comply with the lease agreement in any significant manner shall constitute a default under the agreement and the department or the regional transportation agency, as appropriate, shall have the option to initiate processes to revert the facility to the public agency.

(n) The assignment authorized by subdivision (c) of Section 130240 of the Public Utilities Code is consistent with this section.

(o) A lease to a private entity pursuant to this section is deemed to be public property for a public purpose and exempt from leasehold, real property, and ad valorem taxation, except for the use, if any, of that property for ancillary commercial purposes.

(p) Nothing in this section is intended to infringe on the authority to develop high-occupancy toll lanes pursuant to Section 149.4, 149.5, or 149.6.

(q) Nothing in this section shall be construed to allow the conversion of any existing nontoll or nonuser-fee lanes into tolled or user fee lanes with the exception of a high-occupancy vehicle lane that may be operated as a high-occupancy toll lane for vehicles not otherwise meeting the requirements for use of that lane.

(r) The lease agreement shall require the contracting entity or lessee to provide any information or data requested by the California Transportation Commission or the Legislative Analyst. The commission, in cooperation with the Legislative Analyst, shall annually prepare a report on the progress of each project and ultimately on the operation of the resulting facility. The report shall include, but not be limited to, a review of the performance standards, a financial analysis, and any concerns or recommendations for changes in the program authorized by this section.

(s) Notwithstanding any other provision of this section, no lease agreement may be entered into pursuant to the section that affects, alters, or supersedes the Memorandum of Understanding (MOU), dated November 26, 2008, entered into by the Golden Gate Bridge Highway and Transportation District, the Metropolitan Transportation Commission, and

the San Francisco County Transportation Authority, relating to the financing of the U.S. Highway 101/Doyle Drive reconstruction project located in the City and County of San Francisco.

(t) No lease agreements may be entered into under this section on or after January 1, 2017.

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.

(2) The California Transportation Commission shall submit a final report of its findings to the Legislature no later than June 30, 2015.

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.