

# SixTen and Associates

## MANDATE REIMBURSEMENT SERVICES

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**PROGRAM: 664/02 DESIGN-BUILD CONTRACTS (K-14) DBC 1.9**

### LEGAL REQUIREMENTS

#### School Districts

- A) Pursuant to Education Code Section 17250.10, developing and implementing and periodically updating policies and procedures necessary to enter into design-build contracts with design-build entities for the building and modernization of school facilities.
- B) Pursuant to Education Code Section 17250.10, subdivision (b), taking the necessary steps to understand the roles and responsibilities of each participant in the design-build process.
- C) Pursuant to Education Code Section 17250.20, prior to entering into a design-build contract, evaluating the traditional design, bid and build process and reviewing guidelines developed pursuant to section 17250.40. Adopting a resolution approving the use of a design-build contract.
- D) Pursuant to Education Code Section 17250.25, subdivision (a), and pages 14-21 of the 2002 edition of "Design-Build Projects Guidelines", which are attached hereto in their entirety as Exhibit 4, preparing a request for proposal which shall do all of the following:
  - 1) Pursuant to Education Code Section 17250.25, subdivision (a)(2)(A), identifying the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary;
  - 2) Pursuant to Education Code Section 17250.25, subdivision (a)(2)(B), inviting interested parties to submit competitive proposals; and
  - 3) Pursuant to Education Code Section 17250.25, subdivision (a)(2)(C), including a section identifying and describing the factors, methodology and importance of each factor which is to be evaluated.
- E) Pursuant to Education Code Section 17250.25, subdivision (b)(1), establishing and implementing a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations.
- F) Pursuant to Education Code Section 17250.25, subdivision (c), and "Design-Build Projects Guidelines" 2002, pages 23-29, establishing and implementing a procedure for final selection of the design-build entity based on either of the following criteria:
  - 1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities, and the award shall be made on the basis of the lowest responsible bid; or
  - 2) Performance and other criteria set forth by the governing board in the solicitation of proposals.
  - 3) Pursuant to Education Code Section 17250.25 (c)(2)(B), (D) and (E),

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notifying in writing, the bidder to whom the award for the contract is given, and issuing a written decision supporting its contract award and stating in detail the basis of the award, including the agency's ranking in relation to all other responsive bidders, their respective price proposals and a summary of the school districts's rationale for the contract award.

- G) Pursuant to Education Code Section 17250.30, subdivision (a), verifying that the design-build entity selected possesses or obtains sufficient bonding for nondesign services and errors and omission insurance sufficient to cover all design and architectural services.
- H) Pursuant to Education Code Section 17250.30, subdivision (d), and "Design-Build Projects Guidelines" 2002, page 34, establishing and enforcing a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or contracting with a third party to operate a labor compliance program. The labor compliance program shall include, but not be limited to:
  - 1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter,
  - 2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract,
  - 3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury,
  - 4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter,
  - 5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate, and
  - 6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
- I) Pursuant to Education Code Section 17250.35, retaining the services of an architect or structural engineer to monitor compliance with performance criteria and design standards who shall be an independent project inspector.
- J) Pursuant to Education Code Section 17250.40, and "Design-Build Project Guidelines" 2002, complying with any adopted guidelines for design-build projects.
- K) Pursuant to Education Code Section 17250.45, and "Design-Build Project Guidelines" 2002, pages 34 and 38-39, submitting a project report to the Legislative Analyst within 60 days of completing the project which shall include:
  - 1) The type of facility,
  - 2) The gross square footage of the facility,
  - 3) The company or contractor who was awarded the project,
  - 4) The estimated and actual length of time to complete the project,
  - 5) The estimated and actual project cost,

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- 6) A description of the relative merits of a project,
- 7) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited,
- 8) The findings established pursuant to Section 17250.20 and a post-completion evaluation as to whether the findings were achieved, and
- 9) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

**COLLEGE DISTRICTS**

- A) Pursuant to Education Code Section 81700, developing and implementing and periodically updating policies and procedures necessary to enter into design-build contracts with design-build entities for the building and modernization of school facilities.
- B) Pursuant to Education Code Section 81700, subdivision (b), taking steps to understand the roles and responsibilities of each participant in the design-build process.
- C) Pursuant to Education Code Section 81702, prior to entering into a design-build contract, evaluating the traditional design, bid and build process and reviewing guidelines developed pursuant to section 81706. Adopting a resolution approving the use of a design-build contract.
- D) Pursuant to Education Code Section 81703, subdivision (a), preparing a request for proposal which shall do all of the following:
  - 1) Pursuant to Education Code Section 81703, subdivision (a)(2)(A), identifying the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary;
  - 2) Pursuant to Education Code Section 81703, subdivision (a)(2)(B), inviting interested parties to submit competitive proposals; and
  - 3) Pursuant to Education Code Section 81703, subdivision (a)(2)(C), including a section identifying and describing the factors, methodology and importance of each factor which is to be evaluated.
- E) Pursuant to Education Code Section 81703, subdivision (b), establishing and implementing a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations.
- F) Pursuant to Education Code Section 81703, subdivision (c), establishing and implementing a procedure for final selection of the design-build entity based on either of the following criteria:
  - 1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities, and the award shall be made on the basis of the lowest responsible bid; or
  - 2) Performance and other criteria set forth by the governing board in the

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- solicitation of proposals.
- 3) Pursuant to Education Code Section 81703, subdivisions (c)(2)(B), (D) and (E), notifying in writing, the bidder to whom the award for the contract is given, and issuing a written decision supporting its contract award and stating in detail the basis of the award, including the agency's ranking in relation to all other responsive bidders, their respective price proposals and a summary of the school districts's rationale for the contract award.
- G) Pursuant to Education Code Section 81704, subdivision (a), verifying that the design-build entity selected possesses or obtains sufficient bonding for nondesign services and errors and omissions insurance sufficient to cover all design architectural services.
- H) Pursuant to Education Code 81704 (d), establishing and enforcing a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or contracting with a third party to operate a labor compliance program. The labor compliance program shall include, but not be limited to:
- 1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter,
  - 2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract,
  - 3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury,
  - 4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter,
  - 5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate, and
  - 6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
- I) Pursuant to Education Code Section 81705 (b), retaining the services of an architect or structural engineer to monitor compliance with performance criteria and design standards who shall be an independent project inspector.
- J) Pursuant to Education Code Section 81705 (d), obtaining written approval of the plans as to safety of design and construction from the Department of General Services before commencement of any construction or alteration of a college facility.
- K) Pursuant to Education Code Section 81706, complying with any adopted guidelines for design-build projects.
- L) Pursuant to Education Code Section 81707, submitting a project report to the Legislative Analyst within 60 days of completing the project which shall include:

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- 1) The type of facility,
- 2) The gross square footage of the facility,
- 3) The company or contractor who was awarded the project,
- 4) The estimated and actual length of time to complete the project,
- 5) The estimated and actual project cost,
- 6) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code,
- 7) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest,
- 8) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited,
- 9) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved, and
- 10) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.