

AMENDED IN SENATE JUNE 10, 2002  
AMENDED IN ASSEMBLY JANUARY 10, 2002  
CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1000**

**Introduced by Assembly Member Simitian**

February 23, 2001

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An act to add and repeal Chapter 3.5 (commencing with Section 81700) of Part 49 of the Education Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1000, as amended, Simitian. Public works: design-build contracts.

Under existing law, a community college district governing board is required to let any contract for a public project that costs \$15,000 or more to the lowest responsible bidder.

Existing law also requires community college districts constructing community college facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, and the acquisition of proposed schoolsites.

This bill would authorize ~~community college district~~ *the governing boards, until January 1, 2008, of 4 specified community college districts* to enter into a design-build contract, as defined, ~~in which~~ *until January 1, 2008. The bill would authorize* factors in addition to price and cost ~~may~~ to be considered in awarding a contract for the design and construction of a community college facility that exceeds \$10,000,000. The bill would require the Board of Governors of the California Community Colleges to develop guidelines for design-build projects

~~within 6 months after the operative date of the bill~~ *no later than June 30, 2003*. The bill would, among other things, require each contract to prohibit construction or alteration of any community college facility without the prior written approval of the plans by the Department of General Services. The bill would require a community college district that elects to use the design-build process to submit a report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim report and a final report to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 3.5 (commencing with Section 81700)  
2 is added to Part 49 of the Education Code, to read:

3

4 CHAPTER 3.5. DESIGN-BUILD CONTRACTS

5

6 81700. (a) It is the intent of the Legislature to enable  
7 community college districts to utilize safe and cost effective  
8 options for building and modernizing community college  
9 facilities. The Legislature has recognized the merits of the  
10 design-build procurement process in the past by authorizing its use  
11 for projects undertaken by the University of California, specified  
12 local government projects, including school districts, and state  
13 office buildings.

14 (b) The Legislature also finds and declares that community  
15 college districts utilizing a design-build contract require a clear  
16 understanding of the roles and responsibilities of each participant  
17 in the design-build process. The benefits of a design-build contract  
18 project delivery system include an accelerated completion of the  
19 projects, cost containment, reduction of construction complexity,  
20 and reduced exposure to risk for the community college district.  
21 The Legislature also finds that the cost effective benefits to the  
22 community college districts are achieved by shifting the liability  
23 and risk for cost containment and project completion to the  
24 design-build entity.

25 (c) It is the intent of the Legislature to provide an optional,  
26 alternative procedure for bidding and building community college  
27 construction projects.



(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity *under this chapter* shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by ~~the act adding~~ this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(f) *It is the intent of the Legislature to authorize four community college districts to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.*

*81700.5. This chapter applies only to the following community college districts:*

(a) *The Los Angeles Community College District.*

(b) *The San Jose-Evergreen Community College District.*

(c) *The San Mateo Community College District.*

(d) *The West Valley-Mission Community College District.*

81701. As used in this chapter, the following terms have the following meanings:

(a) “Best value” means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the community college district.

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

(c) “Design-build entity” means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

81702. Upon ~~making~~ a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds ten million dollars (\$10,000,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction

1 and of the design-build process in a public meeting, the governing  
2 board makes written findings that use of the design-build process  
3 on the specific project under consideration will accomplish one of  
4 the following objectives: reduce comparable project costs,  
5 expedite the project's completion, or provide features not  
6 achievable through the traditional design-bid-build method. The  
7 governing board shall also review the guidelines developed  
8 pursuant to Section 81706 and shall adopt a resolution approving  
9 the use of a design-build contract pursuant to this chapter prior to  
10 entering into a design-build contract.

11 81703. Design-build projects shall progress as follows:

12 (a) (1) The community college district governing board shall  
13 prepare a request for proposal setting forth the scope of the project  
14 that may include, but is not limited to, the size, type and desired  
15 design character of the buildings and site, performance  
16 specifications covering the quality of materials, equipment, and  
17 workmanship, preliminary plans or building layouts, or any other  
18 information deemed necessary to describe adequately the  
19 community college district's needs. The performance  
20 specifications and any plans shall be prepared by a design  
21 professional duly licensed or registered in this state *to perform the*  
22 *services required by the Field Act, as defined in Section 17281.*

23 (2) Each request for proposal shall do all of the following:

24 (A) Identify the basic scope and needs of the project or  
25 contract, the expected cost range, and other information deemed  
26 necessary by the community college district to inform interested  
27 parties of the contracting opportunity.

28 (B) Invite interested parties to submit competitive sealed  
29 proposals in the manner prescribed by the community college  
30 district.

31 (C) Include a section identifying and describing the following:

32 (i) All significant factors and subfactors that the community  
33 college district reasonably expects to consider in evaluating  
34 proposals, including cost or price and all nonprice related factors  
35 and subfactors.

36 (ii) The methodology and rating or weighting scheme that will  
37 be used by the community college district governing board in  
38 evaluating competitive proposals and specifically whether  
39 proposals will be rated according to numeric or qualitative values.



1 (iii) The relative importance or weight assigned to each of the  
2 factors identified in the request for proposal.

3 (iv) As an alternative to clause (iii), the governing board of a  
4 community college district shall specifically disclose whether all  
5 evaluation factors other than cost or price, when combined, are any  
6 of the following:

7 (I) Significantly more important than cost or price.

8 (II) Approximately equal in importance to cost or price.

9 (III) Significantly less important than cost or price.

10 (v) If the community college district governing board wishes  
11 to reserve the right to hold discussions or negotiations with  
12 responsive bidders, it shall so specify in the request for proposal  
13 and shall publish separately or incorporate into the request for  
14 proposal applicable rules and procedures to be observed by the  
15 community college district to ensure that any discussions or  
16 negotiations are conducted in a fair and impartial manner.

17 (3) Notwithstanding Section 4-315 of Title 24 of the California  
18 Code of Regulations, an architect or structural engineer who is  
19 party to a design-build entity may perform the services set forth in  
20 Section 81138.

21 (b) ~~(1) The community college district shall establish a~~  
22 ~~procedure to prequalify design-build entities using a standard~~  
23 ~~questionnaire developed by the Director of the Department of~~  
24 ~~Industrial Relations. In preparing the questionnaire, the director~~  
25 ~~Industrial Relations pursuant to subdivision (b) of Section~~  
26 ~~17250.25. shall consult with the construction industry, including~~  
27 ~~representatives of the building trades, surety industry, community~~  
28 ~~college districts, and other affected parties. This questionnaire~~  
29 ~~shall require information including, but not limited to, all of the~~  
30 ~~following:~~

31 ~~(A) If the design-build entity is a partnership, limited~~  
32 ~~partnership, or other association, a listing of all of the partners,~~  
33 ~~general partners, or association members who will participate as~~  
34 ~~subcontractors in the design-build contract, including, but not~~  
35 ~~limited to, electrical and mechanical subcontractors.~~

36 ~~(B) Evidence that the members of the design-build entity have~~  
37 ~~completed, or demonstrated, the experience, competency,~~  
38 ~~capability, and capacity to complete projects of similar size, scope~~  
39 ~~or complexity, and that proposed key personnel have sufficient~~

1 ~~experience and training to competently manage and complete the~~  
2 ~~design and construction of the project.~~

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

6 ~~(D) Evidence that establishes that the design-build entity has~~  
7 ~~the capacity to obtain all required payment and performance~~  
8 ~~bonding, liability insurance, and errors and omissions insurance,~~  
9 ~~as well as a financial statement that assures the community college~~  
10 ~~district that the design-build entity has the capacity to complete the~~  
11 ~~project.~~

12 ~~(E) Any prior serious or willful violation of the California~~  
13 ~~Occupational Safety and Health Act of 1973 (Part 1 (commencing~~  
14 ~~with Section 6300) of Division 5 of the Labor Code) or the Federal~~  
15 ~~Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651~~  
16 ~~et seq.), settled against any member of the design-build entity, and~~  
17 ~~information concerning a contractor member's workers'~~  
18 ~~compensation experience history and worker safety program.~~

19 ~~(F) Information concerning any debarment, disqualification,~~  
20 ~~or removal from a federal, state or local government public works~~  
21 ~~project.~~

22 ~~(G) Any instance where an entity, its owners, officers, or~~  
23 ~~managing employees, submitted a bid on a public works project~~  
24 ~~and were found by an awarding body not to be a responsible bidder.~~

25 ~~(H) Any instance where the entity, its owner, officers, or~~  
26 ~~managing employees defaulted on a construction contract.~~

27 ~~(I) Any prior violations of the Contractors' State License Law~~  
28 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~  
29 ~~Business and Professions Code), excluding alleged violations of~~  
30 ~~federal or state law including the payment of wages, benefits,~~  
31 ~~apprenticeship requirements, or personal income tax withholding,~~  
32 ~~or of Federal Insurance Contribution Act (FICA) withholding~~  
33 ~~requirements, settled against any member of the design-build~~  
34 ~~entity.~~

35 ~~(J) Information concerning the bankruptcy or receivership of~~  
36 ~~any member of the entity, including information concerning any~~  
37 ~~work completed by a surety.~~

38 ~~(K) Information concerning all settled adverse claims,~~  
39 ~~disputes, or lawsuits between the owner of a public works project~~  
40 ~~and any member of the design-build entity during the five year~~

1 ~~period preceding submission of the bid pursuant to this section, in~~  
2 ~~which the claim, settlement, or judgment exceeds fifty thousand~~  
3 ~~dollars (\$50,000). Information shall also be provided concerning~~  
4 ~~any work completed by a surety during this period.~~

5 ~~(L) In the case of a partnership or other association that is not~~  
6 ~~a legal entity, a copy of the agreement creating the partnership or~~  
7 ~~association.~~

8 ~~(2) The information required pursuant to this subdivision shall~~  
9 ~~be verified under oath by the design-build entity and its members~~  
10 ~~in the manner in which civil pleadings in civil actions are verified.~~  
11 ~~Information that is not a public record pursuant to the California~~  
12 ~~Public Records Act (Chapter 3.5 (commencing with Section 6250)~~  
13 ~~of Division 7 of Title 1 of the Government Code) shall not be open~~  
14 ~~to public inspection.~~

15 (c) The community college district shall establish a procedure  
16 for final selection of the design-build entity. Selection shall be  
17 based on either of the following criteria:

18 (1) A competitive bidding process resulting in lump-sum bids  
19 by the prequalified design-build entities. Award shall be made on  
20 the basis of the lowest responsible bid.

21 (2) Notwithstanding any other provision of this code or of  
22 Section 20650 of the Public Contract Code, a community college  
23 district may use a design-build competition based upon  
24 performance and other criteria set forth by the governing board in  
25 the solicitation of proposals. Criteria used in this evaluation of  
26 proposals may include, but need not be limited to, the proposed  
27 design approach, life cycle costs, project features, and project  
28 functions. However, competitive proposals shall be evaluated by  
29 using the criteria and source selection procedures specifically  
30 identified in the request for proposal. Once the evaluation is  
31 complete, all responsive bidders shall be ranked from the most  
32 advantageous to least advantageous to the school district.

33 (A) Any architectural or engineering firm or individual  
34 retained by the governing body of the community college district  
35 to assist in the development criteria or preparation of the request  
36 for proposal shall not be eligible to participate in the competition  
37 with the design-build entity.

38 (B) The award of the contract shall be made to the responsible  
39 bidder whose proposal is determined, in writing by the community



1 college district, to be the best value to the community college  
2 district.

3 (C) Proposals shall be evaluated and scored solely on the basis  
4 of the factors and source selection procedures identified in the  
5 request for proposal. However, the following minimum factors  
6 shall collectively represent at least 50 percent of the total weight  
7 or consideration given to all criteria factors: price, technical  
8 expertise, life cycle costs over 15 years or more, skilled labor force  
9 availability, and acceptable safety record.

10 (D) The community college district governing board shall issue  
11 a written decision supporting its contract award and stating in  
12 detail the basis of the award. The decision and the contract file  
13 must be sufficient to satisfy an external audit.

14 (E) Notwithstanding any provision of the Public Contract  
15 Code, upon issuance of a contract award, the community college  
16 district governing board shall publicly announce its awards  
17 identifying the contractor to whom the award is made, the winning  
18 contractor's price proposal and its overall combined rating on the  
19 request for proposal evaluation factors. The notice of award shall  
20 also include the agency's ranking in relation to all other responsive  
21 bidders and their respective price proposals and a summary of the  
22 community college district's rationale for the contract award.

23 (F) For the purposes of this chapter, "skilled labor force  
24 availability" means that an agreement exists with a registered  
25 apprenticeship program, approved by the California  
26 Apprenticeship Council, which has graduated apprentices in the  
27 preceding five years. This graduation requirement shall not apply  
28 to programs providing apprenticeship training for any craft that  
29 has not been deemed by the Department of Labor and the  
30 Department of Industrial Relations to be an apprenticable craft in  
31 the two years prior to enactment of the act adding this section.

32 (G) For the purposes of this chapter, a bidder's "safety record"  
33 shall be deemed "acceptable" if its experience modification rate  
34 for the most recent three-year period is an average of 1.00 or less,  
35 and its average total recordable injury or illness rate and average  
36 lost work rate for the most recent three-year period does not exceed  
37 the applicable statistical standards for its business category, or if  
38 the bidder is a party to an alternative dispute resolution system as  
39 provided for in Section 3201.5 of the Labor Code.





81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter 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 chapter 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.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

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

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the community college district 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 community college district and the

1 design-build entity from any payment made by the design-build  
2 entity to the subcontractor.

3 (5) In accordance with the provisions of applicable state law,  
4 the design-build entity may be permitted to substitute securities in  
5 lieu of the withholding from progress payments. Substitutions  
6 shall be made in accordance with Section 22300 of the Public  
7 Contract Code.

8 (d) The community college district shall establish and enforce  
9 a labor compliance program containing the requirements outlined  
10 in Section 1771.5 of the Labor Code or shall contract with a third  
11 party to operate a labor compliance program containing the  
12 requirements outlined in Section 1771.5 of the Labor Code. This  
13 requirement shall not apply to projects where the school district or  
14 the design-build entity has entered into a collective bargaining  
15 agreement that binds all of the contractors performing work on the  
16 project.

17 81705. (a) The minimum performance criteria and design  
18 standards established pursuant to this chapter by a community  
19 college district for quality, durability, longevity, and life cycle  
20 costs, and other criteria deemed appropriate by the community  
21 college district shall be adhered to by the design-build entity. Any  
22 deviations from those standards may only be allowed by written  
23 consent of the community college district. The governing board  
24 may, and is strongly encouraged to, retain the services of an  
25 architect or structural engineer throughout the course of the project  
26 in order to ensure compliance with this chapter. Any architect or  
27 structural engineer retained pursuant to this subdivision shall be  
28 duly licensed and registered in California.

29 (b) The community college district governing board shall be  
30 the employer of the inspector. The project inspector shall be fully  
31 independent from any member of the design-build entity and may  
32 not have any affiliation with any member of the design-build entity  
33 or any of the project subcontractors. The total price of the project  
34 shall be determined either upon receipt of the lump-sum bids as set  
35 forth in paragraph (1) of subdivision (c) of Section 81703, or by  
36 completion of the process pursuant to paragraph (2) of subdivision  
37 (c) of Section 81703.

38 (c) *The project inspector shall act under the direction of either*  
39 *the Director of General Services or a competent, qualified agent*  
40 *of the community college district.*



(d) Each contract with a design-build entity shall provide that no construction or alteration of any community college facility pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Section 81133.

~~(d)~~

(e) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

81706. The Board of Governors of the California Community Colleges, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, community college district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed ~~within six months of the operative date of this chapter.~~ *no later than June 30, 2003.*

81707. Each community college district governing board that adopts the design-build process for a project pursuant to this chapter shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2005, and a final report to the Legislature by January 1, 2007. The reports shall include, but not be limited to, all of the following information as to each project:

(a) The type of facility.

(b) The gross square footage of the facility.

(c) The company or contractor who was awarded the project.

(d) The estimated and actual length of time to complete the project.

(e) The estimated and actual project cost.

(f) 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.

1 (g) A description of any written protest concerning any aspect  
2 of the solicitation, bid, proposal, or award of the design-build  
3 project, including the resolution of the protest.

4 (h) Other pertinent information that may be instructive in  
5 evaluating whether the design-build method of procurement  
6 should be continued, expanded, or prohibited.

7 (i) The findings established pursuant to Section 81702 and a  
8 postcompletion evaluation as to whether the findings were  
9 achieved.

10 (j) Any Labor Code violations discovered during the course of  
11 construction or following completion of the project, as well as any  
12 fines or penalties assessed.

13 81708. A community college district shall not commence any  
14 additional design-build projects if 60 days has elapsed after  
15 completion of a design-build project without having filed the  
16 report to the Legislative Analyst's Office required pursuant to  
17 Section 81707.

18 SEC. 2. This act does not exempt design-build contracts from  
19 otherwise applicable provisions of the Public Contract Code  
20 unless the exemption is granted expressly, or by necessary  
21 implication.

22 SEC. 3. Unless expressly authorized in this act, no otherwise  
23 applicable provision of the Field Act (Article 3 (commencing with  
24 Section 17365) of Chapter 3 of Part 10.5 of, and Article 7  
25 (commencing with Section 81130) of Chapter 1 of Part 49 of, the  
26 Education Code) may be waived, amended, or ignored by the  
27 community college district or the design-build entity.

28 SEC. 4. This act shall remain in effect only until January 1,  
29 2008, and as of that date is repealed, unless a later enacted statute,  
30 that is enacted before January 1, 2008, deletes or extends that date.

31 SEC. 5. This act shall not apply to contracts in effect prior to  
32 the operative date of this act. Unless expressly set forth in this act,  
33 nothing in this act is intended to affect, expand, alter, or limit rights  
34 or remedies otherwise available at law.

35

