

Assembly Bill No. 1000

CHAPTER 637

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

[Approved by Governor September 17, 2002. Filed
with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

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

Under existing law, a community college district governing board is required to award 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 the governing boards of 3 specified community college districts and 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2008. The bill would authorize factors in addition to price and cost to be considered in awarding a contract for the design and construction of a community college facility for an amount 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 no later than June 30, 2003. The bill, among other things, would 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.

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

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



CHAPTER 3.5. DESIGN-BUILD CONTRACTS

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

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

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college 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 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 three community college districts, and up to five community college facility construction projects selected by the Chancellor of the California Community Colleges, to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.

81700.5. This chapter applies only with respect to all of the following:

- (a) The Los Angeles Community College District.
- (b) The San Jose-Evergreen Community College District.
- (c) The San Mateo Community College District.



(d) Up to five community college facility construction projects selected by the chancellor pursuant to Section 81700.7.

81700.7. The chancellor may select up to five community college facility construction projects, from districts, other than the districts specified in Section 81700.5, that apply for this designation, that he or she deems appropriate to use the procedures of this chapter.

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

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.

81703. Design-build projects shall progress as follows:

(a) (1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character



of the buildings and site, 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 community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

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

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

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

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

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

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

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

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

(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.

(v) If the community college district governing board wishes 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 community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

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

(b) The community college district shall establish a procedure to prequalify design-build entities using a standard questionnaire



developed by the Director of the Department of Industrial Relations pursuant to subdivision (b) of Section 17250.25.

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

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

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the



basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

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

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

(G) For the purposes of this chapter, 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 or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For the purposes of this chapter, when a community college district determines a design-build entity's "experience," the district shall give credit only to design-build experience and to California school design and construction experience.

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 in accordance with the design-build process set forth by the community college district in the design-build package.

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

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

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or 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 projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

81705. (a) The minimum performance criteria and design standards established pursuant to this chapter by a community college district for quality, durability, longevity, and life cycle costs, and other



criteria deemed appropriate by the community college district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the community college district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

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

(c) The project inspector shall act under the direction of either the Director of General Services or a competent, qualified agent 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.

(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 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.
- (g) 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.
- (h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.
- (i) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved.
- (j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

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

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

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

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

SEC. 5. This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing



in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.

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