

AMENDED IN SENATE JUNE 18, 2001  
AMENDED IN ASSEMBLY MAY 16, 2001  
AMENDED IN ASSEMBLY APRIL 18, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1402**

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**Introduced by Assembly Member Simitian**

February 23, 2001

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An act to add and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, as amended, Simitian. Public works: design-build contracts.

Under existing law, a school 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 school districts constructing school facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, use of factory-built school buildings, and the acquisition of proposed schoolsites.

This bill would authorize school district governing boards to enter into a design-build contract, as defined, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a school facility that exceeds \$10,000,000. The bill would require the Superintendent of Public Instruction to develop guidelines for design-build projects within 6 months after the operative

date of the bill. The bill would require each contract to prohibit construction or alteration of any school building without the prior written approval of the plans by the Department of General Services, and would prescribe related matters. The bill would require a school district that elects to use the design-build process to submit its report to the Legislative Analyst, and would require the Legislative Analyst to submit a report to the ~~chairs of the education policy committees of the Senate and the Assembly with any recommendations~~ Legislature by January 1, 2006. The provisions of the bill would ~~become inoperative~~ be repealed on January 1, 2007.

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 2.5 (commencing with Section  
2 17250.10) is added to Part 10.5 of the Education Code, to read:

3

4

CHAPTER 2.5. DESIGN-BUILD CONTRACTS

5

6 17250.10. (a) It is the intent of the Legislature to enable  
7 school districts to utilize safe and cost-effective options for  
8 building and modernizing school facilities. The Legislature has  
9 recognized the merits of the design-build procurement process in  
10 the past by authorizing its use for projects undertaken by the  
11 University of California, specified local government projects, and  
12 state office buildings.

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

23 (c) It is the intent of the Legislature to provide an optional,  
24 alternative procedure for bidding and building school construction  
25 projects.



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

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

12 17250.15. As used in this chapter, the following terms have  
13 the following meanings:

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

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

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

25 17250.20. Upon making a determination by a school district  
26 governing that it is in the best interest of the school district, the  
27 governing board may enter into a design-build contract for both  
28 the design and construction of a school facility if that expenditure  
29 exceeds ten million dollars (\$10,000,000) if, after evaluation of  
30 the traditional design, bid, and build process of school  
31 construction and of the design-build process in a public meeting,  
32 the governing board makes written findings that use of the  
33 design-build process on the specific project under consideration  
34 will accomplish one of the following objectives: reduce  
35 comparable project costs, expedite the project’s completion, or  
36 provide features not achievable through the traditional  
37 design-bid-build method. The governing board shall also review  
38 the guidelines developed pursuant to Section 17250.40 and shall  
39 adopt a resolution approving the use of a design-build contract



1 pursuant to this article prior to entering into a design-build  
2 contract.

3 17250.25. Design-build projects shall progress as follows:

4 (a) (1) The school district governing board shall prepare a  
5 request for proposal setting forth the scope of the project that may  
6 include, but is not limited to, the size, type and desired design  
7 character of the buildings and site, performance specifications  
8 covering the quality of materials, equipment, and workmanship,  
9 preliminary plans or building layouts, or any other information  
10 deemed necessary to describe adequately the school district's  
11 needs. The performance specifications and any plans shall be  
12 prepared by a design professional duly licensed or registered in  
13 this state.

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

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

19 (B) Invite interested parties to submit competitive sealed  
20 proposals in the manner prescribed by the school district.

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

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

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

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

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

35 (I) Significantly more important than cost or price.  
36 (II) Approximately equal in importance to cost or price.  
37 (III) Significantly less important than cost or price.

38 (v) If the school district governing board wishes to reserve the  
39 right to hold discussions or negotiations with responsive bidders,  
40 it shall so specify in the request for proposal and shall publish



1 separately or incorporate into the request for proposal applicable  
2 rules and procedures to be observed by the school district to ensure  
3 that any discussions or negotiations are conducted in a fair and  
4 impartial manner.

5 (3) Notwithstanding Section 4-315 of Title 24 of the California  
6 Code of Regulations, an architect or structural engineer who is  
7 party to a design-build entity may perform the services set forth in  
8 Section 17302.

9 (b) (1) The school district shall establish a procedure to  
10 prequalify design-build entities using a standard questionnaire  
11 developed by the Director of the Department of Industrial  
12 Relations. In preparing the questionnaire, the director shall consult  
13 with the construction industry, including representatives of the  
14 building trades, surety industry, school districts, and other affected  
15 parties. This questionnaire shall require information including, but  
16 not limited to, all of the following:

17 (A) If the design-build entity is a partnership, limited  
18 partnership, or other association, a listing of all of the partners,  
19 general partners, or association members who will participate as  
20 subcontractors in the design-build contract, *including, but not*  
21 *limited to, electrical and mechanical subcontractors.*

22 (B) Evidence that the members of the design-build entity have  
23 completed, or demonstrated, the experience, competency,  
24 capability, and capacity to complete projects of similar size, scope  
25 or complexity, and that proposed key personnel have sufficient  
26 experience and training to competently manage and complete the  
27 design and construction of the project.

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

31 (D) Evidence that establishes that the design-build entity has  
32 the capacity to obtain all required payment and performance  
33 bonding, liability insurance, and errors and omissions insurance,  
34 as well as a financial statement that assures the school district that  
35 the design-build entity has the capacity to complete the project.

36 (E) Any prior serious or willful violation of the California  
37 Occupational Safety and Health Act of 1973 (Part 1 (commencing  
38 with Section 6300) of Division 5 of the Labor Code) or the Federal  
39 Occupational Safety and Health Act of 1970 (P.L. 91-596), settled  
40 against any member of the design-build entity, and information



1 concerning a contractor member's workers' compensation  
2 experience history and worker safety program.

3 (F) Information concerning any debarment, disqualification,  
4 or removal from a federal, state or local government public works  
5 project. Any instance where an entity, its owners, officers, or  
6 managing employees, submitted a bid on a public works project  
7 and were found by an awarding body not to be a responsive bidder.

8 (G) Any instance where the entity, its owner, officers, or  
9 managing employees defaulted on a construction contract.

10 (H) Any prior violations of the Contractors' State License Law  
11 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
12 Business and Professions Code), excluding alleged violations of  
13 federal or state law including the payment of wages, benefits,  
14 apprenticeship requirements, or personal income tax withholding,  
15 or of Federal Insurance Contribution Act (FICA) withholding  
16 requirements, settled against any member of the design-build  
17 entity.

18 (I) Information concerning the bankruptcy or receivership of  
19 any member of the entity, including information concerning any  
20 work completed by a surety.

21 (J) Information concerning all settled adverse claims, disputes,  
22 or lawsuits between the owner of a public works project and any  
23 member of the design-build entity during the five-year period  
24 preceding submission of the bid pursuant to this section, in which  
25 the claim, settlement, or judgment exceeds fifty thousand dollars  
26 (\$50,000). Information shall also be provided concerning any  
27 work completed by a surety during this period.

28 (K) In the case of a partnership or other association that is not  
29 a legal entity, a copy of the agreement creating the partnership or  
30 association and specifying that all partners or association members  
31 agree to be liable for full performance under the design-build  
32 contract- association.

33 (2) The information required pursuant to this subdivision shall  
34 be verified under oath by the entity and its members in the manner  
35 in which civil pleadings in civil actions are verified. Information  
36 that is not a public record pursuant to the California Public Records  
37 Act (Chapter 3.5 (commencing with Section 6250) of Division 7  
38 of Title I of the Government Code) shall not be open to public  
39 inspection.



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

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

7 (2) Notwithstanding any other provision of this code or of  
8 Section 20110 of the Public Contract Code, a school district may  
9 use a design-build competition based upon performance and other  
10 criteria set forth by the governing board in the solicitation of  
11 proposals. Criteria used in this evaluation of proposals may  
12 include, but need not be limited to, the proposed design approach,  
13 life cycle costs, project features, and project functions. However,  
14 competitive proposals shall be evaluated by using the criteria and  
15 source selection procedures specifically identified in the request  
16 for proposal. Once the evaluation is complete, all responsive  
17 bidders shall be ranked from the most advantageous to least  
18 advantageous to the school district.

19 (A) Any architectural or engineering firm or individual  
20 retained by the governing body of the school district to assist in the  
21 development criteria or preparation of the request for proposal  
22 shall not be eligible to participate in the competition with the  
23 design-build entity.

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

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

34 (D) The school district governing board shall issue a written  
35 decision supporting its contract award and stating in detail the  
36 basis of the award. The decision and the contract file must be  
37 sufficient to satisfy an external audit.

38 (E) Notwithstanding any provision of the Public Contract  
39 Code, upon issuance of a contract award, the school district  
40 governing board shall publicly announce its awards identifying the



1 contractor to whom the award is made, the winning contractor's  
2 price proposal and its overall combined rating on the request for  
3 proposal evaluation factors. The notice of award shall also include  
4 the agency's ranking in relation to all other responsive bidders and  
5 their respective price proposals and a summary of the school  
6 district's rationale for the contract award.

7 (F) For the purposes of this chapter, "skilled labor force  
8 availability" means that an agreement exists with a registered  
9 apprenticeship program, approved by the California  
10 Apprenticeship Council, which has graduated apprentices in the  
11 preceding ~~two~~ *five* years. This graduation requirement shall not  
12 apply to programs providing apprenticeship training for any craft  
13 that has not been deemed by the Department of Labor and the  
14 Department of Industrial Relations to be an apprenticeship craft in  
15 the two years prior to enactment of this act.

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

24 17250.30. (a) Any design-build entity that is selected to  
25 design and build a project pursuant to this chapter shall possess or  
26 obtain sufficient bonding to cover the contract amount for  
27 nondesign services, and errors and omission insurance coverage  
28 sufficient to cover all design and architectural services provided in  
29 the contract. This chapter does not prohibit a general or  
30 engineering contractor from being designated the lead entity on a  
31 design-build entity for the purposes of purchasing necessary  
32 bonding to cover the activities of the design-build entity.

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



1 (c) (1) All subcontracts that were not listed by the design-build  
2 entity in accordance with Section 17250.25 shall be awarded by  
3 the design-build entity.

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

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

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

9 (3) Subcontractors bidding on contracts pursuant to this  
10 subdivision shall be afforded the protections contained in Chapter  
11 4 (commencing with Section 4100) of Part 1 of Division 2 of the  
12 Public Contract Code.

13 (4) *In a contract between the design-build entity and a*  
14 *subcontractor, and in a contract between a subcontractor and any*  
15 *subcontractor thereunder, the percentage of the retention proceeds*  
16 *withheld may not exceed the percentage specified in the contract*  
17 *between the school district and the design-build entity. If the*  
18 *design-build entity provides written notice to any subcontractor*  
19 *who is not a member of the design-build entity, prior to or at the*  
20 *time the bid is requested, that a bond may be required and the*  
21 *subcontractor subsequently is unable or refuses to furnish a bond*  
22 *to the design-build entity, then the design-build entity may*  
23 *withhold retention proceeds in excess of the percentage specified*  
24 *in the contract between the school district and the design-build*  
25 *entity from any payment made by the design-build entity to the*  
26 *subcontractor.*

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

32 (d) *The school district shall establish and enforce a labor*  
33 *compliance program containing the requirements outlined in*  
34 *Section 1771.5 of the Labor Code or shall contract with a third*  
35 *party to operate a labor compliance program containing the*  
36 *requirements outlined in Section 1771.5 of the Labor Code. This*  
37 *requirement shall not apply to projects where the school district or*  
38 *the design-build entity has entered into a collective bargaining*  
39 *agreement that binds all of the contractors performing work on the*  
40 *project.*



1 17250.35. (a) The minimum performance criteria and design  
2 standards established pursuant to this chapter by a school district  
3 for quality, durability, longevity, and life cycle costs, and other  
4 criteria deemed appropriate by the school district shall be adhered  
5 to by the design-build entity. Any deviations from those standards  
6 may only be allowed by written consent of the school district. The  
7 governing board may retain the services of an architect or  
8 structural engineer who is duly licensed and registered in  
9 California through the course of the project, in order to ensure  
10 compliance with this chapter.

11 (b) The school district governing board shall be the employer  
12 of the inspector. The project inspector shall be fully independent  
13 from any member of the design-build entity and may not have any  
14 affiliation with any member of the design-build entity or any of the  
15 project subcontractors. The total price of the project shall be  
16 determined either upon receipt of the lump-sum bids as set forth  
17 in paragraph (1) of subdivision (c) of Section 17250.25, or by  
18 completion of the process pursuant to paragraph (2) of subdivision  
19 (c) of Section 17250.25.

20 (c) Each contract with a design-build entity shall provide that  
21 no construction or alteration of any school building pursuant to this  
22 section shall commence prior to the receipt of the written approval  
23 of the plans, as to the safety of design and construction, from the  
24 Department of General Services. Compliance with this provision  
25 shall be deemed to be compliance with Sections 17267 and 17297.

26 ~~(d) The design-build entity and each member of the~~  
27 ~~design-build entity, shall be liable for building the facility to~~  
28 ~~specifications as set forth in the design-build contract, and shall~~  
29 ~~assume the risk of any cost overruns, beyond the costs to the school~~  
30 ~~district set forth in the design-build contract, that are necessary to~~  
31 ~~accomplish full performance under the design-build contract.~~

32 17250.40. The Secretary for Education shall, in consultation  
33 with the Department of General Services, the Energy Resources,  
34 Conservation and Development Commission, Seismic Safety  
35 Commission, school district representatives, and industry  
36 representatives, develop guidelines for design-build projects. The  
37 guidelines shall be developed within six months of the operative  
38 date of this chapter.

39 17250.45. Each school district governing board that adopts  
40 the design-build process for a school construction project shall



1 submit to the Legislative Analyst a report on the project at the  
2 completion of the project. Completion shall have the same  
3 meaning as defined in subdivision (c) of Section 7107 of the Public  
4 Contract Code. This report shall be submitted within 60 days after  
5 completion of the project. ~~The Legislative Analyst shall report to~~  
6 ~~the chairs of the education policy committees of the Senate and the~~  
7 ~~Assembly with any recommendations for changing the~~  
8 ~~design-build legislation.~~ The Legislative Analyst shall submit the  
9 ~~report~~ *a report to the Legislature* by January 1, 2006. The report  
10 shall include, but not be limited to, all of the following  
11 information:

- 12 (a) The type of facility.
- 13 (b) The gross square footage of the facility.
- 14 (c) The company or contractor who was awarded the project.
- 15 (d) The estimated and actual length of time to complete the  
16 project.
- 17 (e) The estimated and actual project cost.
- 18 (f) A description of the relative merits of a project procured  
19 pursuant to this chapter and similar projects procured pursuant to  
20 other provisions of this code.
- 21 (g) A description of any written protest concerning any aspect  
22 of the solicitation, bid, proposal, or award of the design-build  
23 project, including the resolution of the protest.
- 24 (h) Other pertinent information that may be instructive in  
25 evaluating whether the design-build method of procurement  
26 should be continued, expanded, or prohibited.
- 27 (i) The findings established pursuant to Section 17250.20 and  
28 a post-completion evaluation to whether the findings were  
29 achieved.
- 30 (j) Any Labor Code violations discovered during the course of  
31 construction or following completion of the project, as well as any  
32 fines or penalties assessed.

33 *17250.50. A school district shall not commence any*  
34 *additional design-build projects if 60 days has elapsed after*  
35 *completion of a design-build project without having filed the*  
36 *report to the Legislative Analyst's Office required pursuant to*  
37 *Section 17250.45.*

38 SEC. 2. This act does not exempt design-build contracts from  
39 otherwise applicable provisions of the Public Contract Code



1 unless the exemption is granted expressly, or by necessary  
2 implication.

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

9 SEC. 4. This act shall remain in effect only until January 1,  
10 2007, and as of that date is repealed, unless a later enacted statute,  
11 that is enacted before January 1, 2007, deletes or extends that date.

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

