

AMENDED IN SENATE JULY 11, 2001

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**  
*(Coauthor: Senator Alpert)*

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~~ *an interim* report to the Legislature by *January 1, 2004, and a final report* by January 1, 2006. The provisions of the bill would be repealed on January 1, 2007.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.



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

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

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

15 17250.15. As used in this chapter, the following terms have  
16 the following meanings:

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

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

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

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



1 the guidelines developed pursuant to Section 17250.40 and shall  
2 adopt a resolution approving the use of a design-build contract  
3 pursuant to this article prior to entering into a design-build  
4 contract.

5 17250.25. Design-build projects shall progress as follows:

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

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

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

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

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

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

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

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

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

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

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

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



1 (v) If the school district governing board wishes to reserve the  
2 right to hold discussions or negotiations with responsive bidders,  
3 it shall so specify in the request for proposal and shall publish  
4 separately or incorporate into the request for proposal applicable  
5 rules and procedures to be observed by the school district to ensure  
6 that any discussions or negotiations are conducted in a fair and  
7 impartial manner.

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

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

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

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

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

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

39 (E) Any prior serious or willful violation of the California  
40 Occupational Safety and Health Act of 1973 (Part 1 (commencing



1 with Section 6300) of Division 5 of the Labor Code) or the Federal  
 2 Occupational Safety and Health Act of 1970 (P.L. 91-596), settled  
 3 against any member of the design-build entity, and information  
 4 concerning a contractor member’s workers’ compensation  
 5 experience history and worker safety program.

6 (F) Information concerning any debarment, disqualification,  
 7 or removal from a federal, state or local government public works  
 8 project. ~~Any~~

9 (G) Any instance where an entity, its owners, officers, or  
 10 managing employees, submitted a bid on a public works project  
 11 and were found by an awarding body not to be a responsive  
 12 *responsible* bidder.

13 ~~(G)~~

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

16 ~~(H)~~

17 (I) Any prior violations of the Contractors’ State License Law  
 18 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
 19 Business and Professions Code), excluding alleged violations of  
 20 federal or state law including the payment of wages, benefits,  
 21 apprenticeship requirements, or personal income tax withholding,  
 22 or of Federal Insurance Contribution Act (FICA) withholding  
 23 requirements, settled against any member of the design-build  
 24 entity.

25 ~~(I)~~

26 (J) Information concerning the bankruptcy or receivership of  
 27 any member of the entity, including information concerning any  
 28 work completed by a surety.

29 ~~(J)~~

30 (K) Information concerning all settled adverse claims,  
 31 disputes, or lawsuits between the owner of a public works project  
 32 and any member of the design-build entity during the five-year  
 33 period preceding submission of the bid pursuant to this section, in  
 34 which the claim, settlement, or judgment exceeds fifty thousand  
 35 dollars (\$50,000). Information shall also be provided concerning  
 36 any work completed by a surety during this period.

37 ~~(K)~~

38 (L) In the case of a partnership or other association that is not  
 39 a legal entity, a copy of the agreement creating the partnership or  
 40 association.



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

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

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

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

26 (A) Any architectural or engineering firm or individual  
27 retained by the governing body of the school district to assist in the  
28 development criteria or preparation of the request for proposal  
29 shall not be eligible to participate in the competition with the  
30 design-build entity.

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

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



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

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

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

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

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



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

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

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

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

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

15 (3) Subcontractors bidding on contracts pursuant to this  
16 subdivision shall be afforded the protections contained in Chapter  
17 4 (commencing with Section 4100) of Part 1 of Division 2 of the  
18 Public Contract Code.

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

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

38 (d) The school district shall establish and enforce a labor  
39 compliance program containing the requirements outlined in  
40 Section 1771.5 of the Labor Code or shall contract with a third



1 party to operate a labor compliance program containing the  
2 requirements outlined in Section 1771.5 of the Labor Code. This  
3 requirement shall not apply to projects where the school district or  
4 the design-build entity has entered into a collective bargaining  
5 agreement that binds all of the contractors performing work on the  
6 project.

7 17250.35. (a) The minimum performance criteria and design  
8 standards established pursuant to this chapter by a school district  
9 for quality, durability, longevity, and life cycle costs, and other  
10 criteria deemed appropriate by the school district shall be adhered  
11 to by the design-build entity. Any deviations from those standards  
12 may only be allowed by written consent of the school district. The  
13 ~~governing board may retain the services of an architect or~~  
14 ~~structural engineer who is duly licensed and registered in~~  
15 ~~California through the course of the project, in order to ensure~~  
16 ~~compliance with this chapter.~~ *governing board may, and is strongly*  
17 *encouraged to, retain the services of an architect or structural*  
18 *engineer throughout the course of the project in order to ensure*  
19 *compliance with this chapter. Any architect or structural engineer*  
20 *retained pursuant to this subdivision shall be duly licensed and*  
21 *registered in California.*

22 (b) The school district governing board shall be the employer  
23 of the inspector. The project inspector shall be fully independent  
24 from any member of the design-build entity and may not have any  
25 affiliation with any member of the design-build entity or any of the  
26 project subcontractors. The total price of the project shall be  
27 determined either upon receipt of the lump-sum bids as set forth  
28 in paragraph (1) of subdivision (c) of Section 17250.25, or by  
29 completion of the process pursuant to paragraph (2) of subdivision  
30 (c) of Section 17250.25.

31 (c) Each contract with a design-build entity shall provide that  
32 no construction or alteration of any school building pursuant to this  
33 section shall commence prior to the receipt of the written approval  
34 of the plans, as to the safety of design and construction, from the  
35 Department of General Services. Compliance with this provision  
36 shall be deemed to be *in* compliance with Sections 17267 and  
37 17297.

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



1 17250.40. The ~~Secretary for Education~~ *Superintendent of*  
2 *Public Instruction* shall, in consultation with *the Secretary for*  
3 *Education*, the Department of General Services, the Energy  
4 Resources, Conservation and Development Commission, Seismic  
5 Safety Commission, school district representatives, and industry  
6 representatives, develop guidelines for design-build projects. The  
7 guidelines shall be developed within six months of the operative  
8 date of this chapter.

9 17250.45. Each school district governing board that adopts  
10 the design-build process for a school construction project shall  
11 submit to the Legislative Analyst a report on the project at the  
12 completion of the project. Completion shall have the same  
13 meaning as defined in subdivision (c) of Section 7107 of the Public  
14 Contract Code. This report shall be submitted within 60 days after  
15 completion of the project. The Legislative Analyst shall submit a  
16 *an interim report to the Legislature by January 1, 2004, and a final*  
17 *report to the Legislature by January 1, 2006.* The ~~report~~ *reports*  
18 shall include, but not be limited to, all of the following information  
19 *as to each project:*

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



1 17250.50. A school district shall not commence any  
2 additional design-build projects if 60 days has elapsed after  
3 completion of a design-build project without having filed the  
4 report to the Legislative Analyst’s Office required pursuant to  
5 Section 17250.45.

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

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

16 SEC. 4. This act shall remain in effect only until January 1,  
17 2007, and as of that date is repealed, unless a later enacted statute,  
18 that is enacted before January 1, 2007, deletes or extends that date.

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

