

AMENDED IN ASSEMBLY AUGUST 1, 2002

AMENDED IN SENATE MAY 2, 2002

**SENATE BILL**

**No. 1904**

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**Introduced by Senator Vasconcellos**

February 22, 2002

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An act to amend Section 17250.25 of the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

SB 1904, as amended, Vasconcellos. School facilities construction and modernization: design-build contracts.

Existing law authorizes the governing board of a school district to enter into a design-build contract, as defined, for both the design and construction of a school facility if the costs exceed \$10,000,000. Existing law requires a school district that elects to enter into a design-build contract to, among other things, establish a procedure for the final selection of the design-build entity and requires the selection to be based on either a competitive bidding process or on a design-build competition based upon performance or other criteria.

This bill would ~~add~~ *authorize applicant school districts selected by the State Department of Education to use a selection process based upon qualifications, experience, and expertise, as prescribed, as a 3rd option upon which a the school district districts may base its their selection.*

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

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

1 SECTION 1. Section 17250.25 of the Education Code is  
 2 amended to read:  
 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.



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.  
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 responsible bidder.  
12 (H) Any instance where the entity, its owners, officers, or  
13 managing employees defaulted on a construction contract.  
14 (I) Any prior violations of the Contractors’ State License Law  
15 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
16 Business and Professions Code), excluding alleged violations of  
17 federal or state law including the payment of wages, benefits,  
18 apprenticeship requirements, or personal income tax withholding,  
19 or of Federal Insurance Contribution Act (FICA) withholding  
20 requirements, settled against any member of the design-build  
21 entity.  
22 (J) Information concerning the bankruptcy or receivership of  
23 any member of the entity, including information concerning any  
24 work completed by a surety.  
25 (K) Information concerning all settled adverse claims,  
26 disputes, or lawsuits between the owner of a public works project  
27 and any member of the design-build entity during the five-year  
28 period preceding submission of the bid pursuant to this section, in  
29 which the claim, settlement, or judgment exceeds fifty thousand  
30 dollars (\$50,000). Information shall also be provided concerning  
31 any work completed by a surety during this period.  
32 (L) In the case of a partnership or other association that is not  
33 a legal entity, a copy of the agreement creating the partnership or  
34 association.  
35 (2) The information required pursuant to this subdivision shall  
36 be verified under oath by the design-build entity and its members  
37 in the manner in which civil pleadings in civil actions are verified.  
38 Information that is not a public record pursuant to the California  
39 Public Records Act (Chapter 3.5 (commencing with Section 6250)



1 of Division 7 of Title I of the Government Code) shall not be open  
2 to public inspection.

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

6 (1) A school district may select a competitive bidding process  
7 resulting in lump-sum bids by the prequalified design-build  
8 entities. Award shall be made on the basis of the lowest responsible  
9 bid.

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

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

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

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

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



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

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

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

27 ~~(3) A district~~

28 *(d) (1) The Legislature finds and declares all of the following:*

29 *(A) Qualifications-based selection is recognized elsewhere in*  
30 *the nation as an option for the final selection of a design-build*  
31 *team and is considered an important element of national*  
32 *best-practices in the design-build industry.*

33 *(B) The option of qualifications-based selection provides*  
34 *another effective tool for school districts to use in the procurement*  
35 *of badly needed classrooms.*

36 *(C) The required reports on design-build contracts issued by*  
37 *the Office of the Legislative Analyst pursuant to Section 17250.45*  
38 *should be as comprehensive as possible and should assess the*  
39 *efficacy of all design-build industry best-practices.*



1 (D) It is, therefore the intent of the Legislature to provide the  
2 Office of the Legislative Analyst with the ability to obtain sufficient  
3 information so as to include an analysis of qualifications-based  
4 selection as part of its analysis of price and best value in its reports  
5 on design-build contracts.

6 (2) The State Department of Education shall select at least  
7 three, and no more than six, applicant school districts that choose  
8 to include qualifications-based selection as an element of its  
9 design-build process. Notwithstanding any provisions of law to the  
10 contrary, the school districts selected shall be authorized to use a  
11 qualifications-based selection process as set forth in this  
12 subdivision.

13 (3) Participating school districts shall, to the extent possible,  
14 be representative of rural, suburban, and urban, regions of the  
15 state. At least one of the selected school districts shall be located  
16 in the northern portion of the state and at least one shall be located  
17 in the southern portion of the state.

18 (4) A selected school district shall comply with the reporting  
19 requirements set forth in Section 17250.45.

20 (5) A school district authorized to use qualifications-based  
21 selection in accordance with this subdivision may select a  
22 design-build team on the basis of qualifications, experience, and  
23 expertise, in accordance with all of the following:

24 (A) The governing board shall issue a request for  
25 qualifications, interview no fewer than three of the responsible  
26 respondents responding to the request for qualifications, and select  
27 a design-build team from among those respondents. If fewer than  
28 three firms are deemed qualified, the governing board may, at its  
29 discretion, proceed with interviewing fewer than three firms, or it  
30 may alternately advertise for additional qualifications submittals.

31 (B) The governing board shall adopt procedures that ensure  
32 that the design-build team is selected on the basis of demonstrated  
33 competence and qualifications for the types of services to be  
34 performed. These procedures also shall ensure maximum  
35 participation of small business firms. These procedures shall  
36 specifically prohibit practices that might result in unlawful activity  
37 including, but not limited to, rebates, kickbacks, or other unlawful  
38 consideration, and shall specifically prohibit members of the  
39 governing board and school district employees from participating  
40 in the selection process when those board members or employees



1 have a relationship with a person or business entity seeking a  
2 contract under this chapter that would be in violation of Section  
3 87100 of the Government Code.

4 (C) The governing board shall issue a request for qualifications  
5 that discloses that the board shall consider only those respondents  
6 that comply with all of the following:

7 (i) The respondent shall agree to any maximum price set by the  
8 governing board.

9 (ii) The respondent shall demonstrate its technical expertise.

10 (iii) The respondent shall certify it will meet any performance  
11 criteria set by the governing board in accordance with national  
12 standards, that may include Divisions 2 to 16, inclusive, of the  
13 Construction Specification Institute.

14 (iv) The respondent shall certify it has access to an adequate  
15 skilled labor force in accordance with this chapter.

16 (v) The respondent shall demonstrate the acceptability of its  
17 safety record in accordance with this chapter.

