

AMENDED IN SENATE MARCH 26, 2003

**SENATE BILL**

**No. 908**

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**Introduced by Senator Denham**

February 21, 2003

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An act to amend ~~Section 20133~~ of the heading of Article 79 (commencing with Section 21120) of Chapter 1.5 of Part 3 of Division 2 of, and to add Section 21122 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 908, as amended, Denham. *Monterey County Water Resources Agency: design-build contracts.*

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement.

Existing law, operative until January 1, 2006, permits counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions. ~~These provisions require that contracts with a cost ranging from \$10,000,000 to \$20,000,000 be awarded to the lowest responsible bidder, and authorizes contracts costing more than \$20,000,000 to be awarded to the lowest responsible bidder or by best value.~~

~~This bill would, instead, require that any design-build contract entered into by a county under these provisions costing less than \$20,000,000 be awarded to the lowest responsible bidder.~~

~~The bill would also add Monterey County to those counties that may elect to use these provisions:~~

Existing law requires the Monterey County Water Resources Agency to let all contracts for any improvement or unit of work that exceed \$5,000 to the lowest responsible bidder, using certain bidding procedures.

This bill would authorize the agency to enter into design-build contracts, with the approval of the board of directors, in accordance with specified provisions of existing law.

This bill would make legislative findings and declarations as to the necessity of a special statute.

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. Section 20133 of the Public Contract Code is~~  
2 *SECTION 1. The heading of Article 79 (commencing with*  
3 *Section 21120) of Chapter 1.5 of Part 3 of Division 2 of the Public*  
4 *Contract Code is amended to read:*

5  
6 Article 79. Monterey County ~~Flood Control and Water~~  
7 ~~Conservation District~~ *Water Resources Agency*

8  
9 *SEC. 2. Section 21122 is added to the Public Contract Code,*  
10 *to read:*

11 *21122. Notwithstanding any other provision of law, upon the*  
12 *approval by the board of directors, the agency may use, for*  
13 *construction contracts, the procedures described in Section*  
14 *20133, relating to design-build contracts.*

15 ~~amended to read:~~

16 ~~20133. (a) (1) This section provides for an alternative~~  
17 ~~procedure on bidding on building construction projects of less than~~  
18 ~~twenty million dollars (\$20,000,000) applicable only in the~~  
19 ~~Counties of Alameda, Contra Costa, Monterey, Sacramento, Santa~~  
20 ~~Clara, Solano, Sonoma, and Tulare, upon approval of the~~  
21 ~~appropriate board of supervisors.~~

22 ~~(2) For a project with costs of less than twenty million dollars~~  
23 ~~(\$20,000,000), the contract shall be awarded to the lowest~~  
24 ~~responsible bidder. For a project costing twenty million dollars~~  
25 ~~(\$20,000,000) or over, the county may award the project using~~  
26 ~~either the lowest responsible bidder or by best value.~~



1 ~~(b) (1) It is the intent of the Legislature to enable these counties~~  
2 ~~to utilize cost-effective options for building and modernizing~~  
3 ~~public facilities. The Legislature also recognizes the national~~  
4 ~~trend, including authorizations in California, to allow public~~  
5 ~~entities to utilize design-build contracts as a project delivery~~  
6 ~~method.~~

7 ~~(2) The Legislature also finds and declares that utilizing a~~  
8 ~~design-build contract requires a clear understanding of the roles~~  
9 ~~and responsibilities of each participant in the design-build process.~~  
10 ~~The benefits of a design-build contract project delivery system~~  
11 ~~include an accelerated completion of the projects, cost~~  
12 ~~containment, reduction of construction complexity, and reduced~~  
13 ~~exposure to risk for the county. The Legislature also finds that the~~  
14 ~~cost-effective benefits to the counties are achieved by shifting the~~  
15 ~~liability and risk for cost containment and project completion to~~  
16 ~~the design-build entity.~~

17 ~~(3) It is the intent of the Legislature to provide an alternative~~  
18 ~~and optional procedure for bidding and building construction~~  
19 ~~projects for these counties.~~

20 ~~(4) The design-build approach may be used, but is not limited~~  
21 ~~to use, when it is anticipated that it will reduce project cost,~~  
22 ~~expedite project completion, or provide design features not~~  
23 ~~achievable through the design-bid-build method.~~

24 ~~(5) If the board of supervisors of a county elects to proceed~~  
25 ~~under this section, the board of supervisors shall establish and~~  
26 ~~enforce for design-build projects a labor compliance program~~  
27 ~~containing the requirements outlined in Section 1771.5 of the~~  
28 ~~Labor Code, or it shall contract with a third party to operate on the~~  
29 ~~county's behalf a labor compliance program containing the~~  
30 ~~requirements outlined in Section 1771.5 of the Labor Code. This~~  
31 ~~requirement shall not apply to any project where the county or the~~  
32 ~~design-build entity has entered into any collective bargaining~~  
33 ~~agreement or agreements that bind all of the contractors~~  
34 ~~performing work on the projects.~~

35 ~~(c) As used in this section:~~

36 ~~(1) "Best value" means a value determined by objective~~  
37 ~~criteria and may include, but is not limited to, price, features,~~  
38 ~~functions, life-cycle costs, and other criteria deemed appropriate~~  
39 ~~by the county.~~



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

4 ~~(3) “Design-build entity” means a partnership, corporation, or~~  
5 ~~other legal entity that is able to provide appropriately licensed~~  
6 ~~contracting, architectural, and engineering services as needed~~  
7 ~~pursuant to a design-build contract.~~

8 ~~(d) Design-build projects shall progress in a four-step process;~~  
9 ~~as follows:~~

10 ~~(1) (A) The county shall prepare a set of documents setting~~  
11 ~~forth the scope of the project. The documents may include, but are~~  
12 ~~not limited to, the size, type and desired design character of the~~  
13 ~~buildings and site, performance specifications covering the quality~~  
14 ~~of materials, equipment, and workmanship, preliminary plans or~~  
15 ~~building layouts, or any other information deemed necessary to~~  
16 ~~describe adequately the county’s needs. The performance~~  
17 ~~specifications and any plans shall be prepared by a design~~  
18 ~~professional who is duly licensed and registered in California.~~

19 ~~(B) Any architect or engineer retained by the county to assist~~  
20 ~~in the development of the project-specific documents shall not be~~  
21 ~~eligible to participate in the preparation of a bid with any~~  
22 ~~design-build entity for that project.~~

23 ~~(2) (A) Based on the documents prepared in paragraph (1), the~~  
24 ~~county shall prepare a request for proposals that invites interested~~  
25 ~~parties to submit competitive sealed proposals in the manner~~  
26 ~~prescribed by the county. The request for proposals shall include,~~  
27 ~~but is not limited to, the following elements:~~

28 ~~(i) Identification of the basic scope and needs of the project or~~  
29 ~~contract, the expected cost range, and other information deemed~~  
30 ~~necessary by the county to inform interested parties of the~~  
31 ~~contracting opportunity. This other information shall include the~~  
32 ~~methodology that will be used by the county to evaluate proposals,~~  
33 ~~and whether the contract will be awarded to the lowest responsible~~  
34 ~~bidder.~~

35 ~~(ii) Significant factors that the county reasonably expects to~~  
36 ~~consider in evaluating proposals, including cost or price and all~~  
37 ~~non-price-related factors.~~

38 ~~(iii) The relative importance of the weight assigned to each of~~  
39 ~~the factors identified in the request for proposals.~~



1 ~~(B) With respect to clause (iii) of paragraph (A), if a~~  
2 ~~nonweighted system is used, the agency shall specifically disclose~~  
3 ~~whether all evaluation factors other than cost or price when~~  
4 ~~combined are:~~

- 5 ~~(i) Significantly more important than cost or price.~~
- 6 ~~(ii) Approximately equal in importance to cost or price.~~
- 7 ~~(iii) Significantly less important than cost or price.~~

8 ~~(C) If the county chooses to reserve the right to hold~~  
9 ~~discussions or negotiations with responsive bidders, it shall so~~  
10 ~~specify in the request for proposals and shall publish separately or~~  
11 ~~incorporate into the request for proposals applicable rules and~~  
12 ~~procedures to be observed by the county to ensure that any~~  
13 ~~discussions or negotiations are conducted in good faith.~~

14 ~~(3) (A) The county shall establish a procedure to prequalify~~  
15 ~~design-build entities using a standard questionnaire developed by~~  
16 ~~the county. In preparing the questionnaire, the county shall consult~~  
17 ~~with the construction industry, including representatives of the~~  
18 ~~building trades and surety industry. This questionnaire shall~~  
19 ~~require information including, but not limited to, all of the~~  
20 ~~following:~~

21 ~~(i) If the design-build entity is a partnership, limited~~  
22 ~~partnership, or other association, a listing of all of the partners,~~  
23 ~~general partners, or association members known at the time of bid~~  
24 ~~submission who will participate in the design-build contract,~~  
25 ~~including, but not limited to, mechanical subcontractors.~~

26 ~~(ii) Evidence that the members of the design-build entity have~~  
27 ~~completed, or demonstrated the experience, competency,~~  
28 ~~capability, and capacity to complete projects of similar size, scope,~~  
29 ~~or complexity, and that proposed key personnel have sufficient~~  
30 ~~experience and training to competently manage and complete the~~  
31 ~~design and construction of the project, as well as a financial~~  
32 ~~statement that assures the county that the design-build entity has~~  
33 ~~the capacity to complete the project.~~

34 ~~(iii) The licenses, registration, and credentials required to~~  
35 ~~design and construct the project, including information on the~~  
36 ~~revocation or suspension of any license, credential, or registration.~~

37 ~~(iv) Evidence that establishes that the design-build entity has~~  
38 ~~the capacity to obtain all required payment and performance~~  
39 ~~bonding, liability insurance, and errors and omissions insurance.~~



1 ~~(v) Any prior serious or willful violation of the California~~  
2 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~  
3 ~~(commencing with Section 6300) of Division 5 of the Labor Code~~  
4 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~  
5 ~~Law 91-596), settled against any member of the design-build~~  
6 ~~entity, and information concerning workers' compensation~~  
7 ~~experience history and a worker safety program.~~

8 ~~(vi) Information concerning any debarment, disqualification,~~  
9 ~~or removal from a federal, state, or local government public works~~  
10 ~~project. Any instance where an entity, its owners, officers, or~~  
11 ~~managing employees submitted a bid on a public works project~~  
12 ~~and were found to be nonresponsive, or were found by an awarding~~  
13 ~~body not to be a responsible bidder.~~

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

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

24 ~~(ix) Information concerning the bankruptcy or receivership of~~  
25 ~~any member of the design-build entity, including information~~  
26 ~~concerning any work completed by a surety.~~

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

34 ~~(xi) In the case of a partnership or other association that is not~~  
35 ~~a legal entity, a copy of the agreement creating the partnership or~~  
36 ~~association and specifying that all partners or association members~~  
37 ~~agree to be fully liable for the performance under the design-build~~  
38 ~~contract.~~

39 ~~(B) The information required pursuant to this subdivision shall~~  
40 ~~be verified under oath by the entity and its members in the manner~~



1 in which civil pleadings in civil actions are verified. Information  
2 that is not a public record pursuant to the California Public Records  
3 Act (Chapter 3.5 (commencing with Section 6250) of Division 7  
4 of Title 1 of the Government Code) shall not be open to public  
5 inspection.

6 (4) The county shall establish a procedure for final selection of  
7 the design-build entity. Selection shall be based on either of the  
8 following criteria:

9 (A) A competitive bidding process resulting in lump-sum bids  
10 by the prequalified design-build entities. Awards shall be made to  
11 the lowest responsible bidder.

12 (B) A county may use a design-build competition based upon  
13 best value and other criteria set forth in paragraph (2) of  
14 subdivision (d). The design-build competition shall include the  
15 following elements:

16 (i) Competitive proposals shall be evaluated by using only the  
17 criteria and selection procedures specifically identified in the  
18 request for proposal. However, the following minimum factors  
19 shall collectively represent at least 50 percent of the total weight  
20 of consideration given to all criteria factors:

21 (I) Price.

22 (II) Technical design and construction expertise.

23 (III) Life cycle costs over 15 years or more.

24 (IV) Skilled labor force availability.

25 (V) Acceptable safety record.

26 (ii) Once the evaluation is complete, the top three responsive  
27 bidders shall be ranked sequentially from the most advantageous  
28 to the least.

29 (iii) The award of the contract shall be made to the responsible  
30 bidder whose proposal is determined, in writing, to be the most  
31 advantageous.

32 (iv) Notwithstanding any provision of this code, upon issuance  
33 of a contract award, the county shall publicly announce its award,  
34 identifying the contractor to whom the award is made, along with  
35 a written decision supporting its contract award and stating the  
36 basis of the award. The notice of award shall also include the  
37 county's second and third ranked design-build entities.

38 (v) For the purposes of this paragraph, "skilled labor force  
39 availability" shall be determined by the existence of an agreement  
40 with a registered apprenticeship program, approved by the



1 ~~California Apprenticeship Council, which has graduated~~  
2 ~~apprentices in each of the preceding five years. This graduation~~  
3 ~~requirement shall not apply to programs providing apprenticeship~~  
4 ~~training for any craft that has been deemed by the Department of~~  
5 ~~Labor and the Department of Industrial Relations to be an~~  
6 ~~apprenticeable craft in the five years prior to enactment of this act.~~

7 ~~(vi) For the purposes of this paragraph, a bidder's "safety~~  
8 ~~record" shall be deemed "acceptable" if either of the following~~  
9 ~~apply:~~

10 ~~(I) The bidder's experience modification rate for the most~~  
11 ~~recent three-year period is an average of 1.00 or less, and its~~  
12 ~~average Total Recordable Injury/Illness rate and average lost work~~  
13 ~~rate for the most recent three-year period does not exceed the~~  
14 ~~applicable statistical standards for its business category.~~

15 ~~(II) The bidder is a party to an alternative dispute resolution~~  
16 ~~system as provided for in Section 3201.5 of the Labor Code.~~

17 ~~(e) (1) Any design-build entity that is selected to design and~~  
18 ~~build a project pursuant to this section shall possess or obtain~~  
19 ~~sufficient bonding to cover the contract amount for nondesign~~  
20 ~~services, and errors and omission insurance coverage sufficient to~~  
21 ~~cover all design and architectural services provided in the contract.~~  
22 ~~This section does not prohibit a general or engineering contractor~~  
23 ~~from being designated the lead entity on a design-build entity for~~  
24 ~~the purposes of purchasing necessary bonding to cover the~~  
25 ~~activities of the design-build entity.~~

26 ~~(2) Any payment or performance bond written for the purposes~~  
27 ~~of this section shall be written using a bond form developed by the~~  
28 ~~county.~~

29 ~~(f) All subcontractors that were not listed by the design-build~~  
30 ~~entity in accordance with clause (i) of subparagraph (A) of~~  
31 ~~paragraph (3) of subdivision (d) shall be awarded by the~~  
32 ~~design-build entity in accordance with the design-build process set~~  
33 ~~forth by the county in the design-build package. All subcontractors~~  
34 ~~bidding on contracts pursuant to this section shall be afforded the~~  
35 ~~protections contained in Chapter 4 (commencing with Section~~  
36 ~~4100) of Part 1. The design-build entity shall do both of the~~  
37 ~~following:~~

38 ~~(1) Provide public notice of the availability of work to be~~  
39 ~~subcontracted in accordance with the publication requirements~~  
40 ~~applicable to the competitive bidding process of the county.~~



1 ~~(2) Provide a fixed date and time on which the subcontracted~~  
2 ~~work will be awarded in accordance with the procedure~~  
3 ~~established pursuant to this section.~~

4 ~~(g) The minimum performance criteria and design standards~~  
5 ~~established pursuant to paragraph (1) of subdivision (d) shall be~~  
6 ~~adhered to by the design-build entity. Any deviations from those~~  
7 ~~standards may only be allowed by written consent of the county.~~

8 ~~(h) The county may retain the services of a design professional~~  
9 ~~or construction project manager, or both, throughout the course of~~  
10 ~~the project in order to ensure compliance with this section.~~

11 ~~(i) Contracts awarded pursuant to this section shall be valid~~  
12 ~~until the project is completed.~~

13 ~~(j) Nothing in this section is intended to affect, expand, alter,~~  
14 ~~or limit any rights or remedies otherwise available at law.~~

15 ~~(k) (1) If the county elects to award a project pursuant to this~~  
16 ~~section retention proceeds withheld by the county from the~~  
17 ~~design-build entity shall not exceed 5 percent if a performance and~~  
18 ~~payment bond, issued by an admitted surety insurer, is required in~~  
19 ~~the solicitation of bids.~~

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

33 ~~(l) Each county that elects to proceed under this section and~~  
34 ~~uses the design-build method on a public works project shall~~  
35 ~~submit to the Legislative Analyst's Office, the Senate Committee on~~  
36 ~~Local Government, and the Assembly Committee on Local~~  
37 ~~Government before December 1, 2004, a report containing a~~  
38 ~~description of each public works project procured through the~~  
39 ~~design-build process, and completed on or before November 1,~~



1 ~~2004. The report shall include, but shall not be limited to, all of the~~  
2 ~~following information:~~

- 3 ~~(1) The type of facility.~~
- 4 ~~(2) The gross square footage of the facility.~~
- 5 ~~(3) The design-build entity that was awarded the project.~~
- 6 ~~(4) The estimated and actual length of time to complete the~~  
7 ~~project.~~
- 8 ~~(5) The estimated and actual project costs.~~
- 9 ~~(6) A description of any written protests concerning any aspect~~  
10 ~~of the solicitation, bid, proposal, or award of the design-build~~  
11 ~~project, including the resolution of the protests.~~
- 12 ~~(7) An assessment of the prequalification process and criteria.~~
- 13 ~~(8) An assessment of the impact of withholding 5 percent~~  
14 ~~retention proceeds on the project.~~
- 15 ~~(9) A description of the Labor Force Compliance program and~~  
16 ~~an assessment of the project impact, where required.~~
- 17 ~~(10) A description of the method used to award the contract. If~~  
18 ~~best value was the method, the factors used to evaluate the bid shall~~  
19 ~~be described, including the weighting of each factor and an~~  
20 ~~assessment of the effectiveness of the methodology.~~
- 21 ~~(11) An assessment of the project impact of “skilled labor force~~  
22 ~~availability”.~~
- 23 ~~(12) An assessment of the design-build dollar limits on county~~  
24 ~~projects. This shall include projects where the county wanted to~~  
25 ~~use design-build but was precluded by the dollar limitation. It shall~~  
26 ~~also include projects where the best value method of awarding~~  
27 ~~contracts was not used, due to dollar limitations.~~
- 28 ~~(13) An assessment of the most appropriate uses for the~~  
29 ~~design-build approach.~~

30 ~~(m) Any county named in this section that elects to not use the~~  
31 ~~authority granted herein may also submit a report to the entities~~  
32 ~~named and in accordance with the schedule in subdivision (l). This~~  
33 ~~report may include an analysis of why the authority granted herein~~  
34 ~~was not used by the county.~~

35 ~~(n) On or before January 1, 2005, the Legislative Analyst shall~~  
36 ~~report to the Legislature on the use of the design-build method by~~  
37 ~~counties pursuant to this section, including the information listed~~  
38 ~~in subdivision (l). The report may include recommendations for~~  
39 ~~modifying or extending this section.~~



1 ~~(c) This section shall remain in effect only until January 1,~~  
2 ~~2006, and as of that date is repealed, unless a later enacted statute,~~  
3 ~~that is enacted before January 1, 2006, deletes or extends that date.~~

4 ~~SEC. 2.—~~

5 *SEC. 3.* The Legislature finds and declares that a special law  
6 is necessary and that a general law cannot be made applicable  
7 within the meaning of Section 16 of Article IV of the California  
8 Constitution because of the unique need to build and modernize  
9 ~~public facilities in a cost-effective manner in Monterey County.~~  
10 *the facilities of the Monterey County Water Resources Agency.*

