

AMENDED IN SENATE MAY 2, 2007
AMENDED IN SENATE APRIL 23, 2007

SENATE BILL

No. 614

Introduced by Senator Simitian
(Coauthors: Senators Alquist and Torlakson)

February 22, 2007

An act to amend Sections 17250.20, 17250.30, 17250.35, 81700, and 81702 of, and to repeal Sections 81700.5 and 81700.7 of, the Education Code, and to repeal Sections 18 and 19 of Chapter 35 of the Statutes of 2006, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, as amended, Simitian. Public works: design-build contracts.

(1) Existing law authorizes, until January 1, 2010, a school district governing board 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.

This bill instead would authorize a school district governing board to enter into those contracts that exceed \$2,000,000 and would make this authority permanent by deleting the repeal date.

(2) Existing law authorizes the design-build entity to withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor if the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond.

This bill would delete the requirement that the written notice be provided prior to or at the time the bid is requested.

(3) Existing law requires each contract with a design-build entity to provide that no construction or alteration of any school building is to commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services.

This bill would define “plans” for these purposes to include plans for foundations based on design criteria provided by the architect or structural engineer of the design-build entity that are received by the Department of General Services prior to the receipt of completed building plans.

(4) Existing law authorizes the governing boards of 3 specified community college districts and up to 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2011, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$10,000,000.

This bill instead would make those provisions applicable to any community college district governing board; *and* would authorize the governing board of a community college district to enter into those contracts that exceed \$2,000,000, ~~and would make this authority permanent by deleting the repeal date.~~

(5) This bill would provide that the bill does not affect certain matters relating to subcontracting restrictions and employer-employee relations.

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 17250.20 of the Education Code is
2 amended to read:
3 17250.20. Upon making a determination by a school district
4 governing board that it is in the best interest of the school district,
5 the governing board may enter into a design-build contract for
6 both the design and construction of a school facility if that
7 expenditure exceeds two million dollars (\$2,000,000) if, after
8 evaluation of the traditional design, bid, and build process of school
9 construction and of the design-build process in a public meeting,

1 the governing board makes written findings that use of the
2 design-build process on the specific project under consideration
3 will accomplish one of the following objectives: reduce comparable
4 project costs, expedite the project's completion, or provide features
5 not achievable through the traditional design-bid-build method.
6 The governing board also shall review the guidelines developed
7 pursuant to Section 17250.40 and shall adopt a resolution approving
8 the use of a design-build contract pursuant to this article prior to
9 entering into a design-build contract.

10 SEC. 2. Section 17250.30 of the Education Code is amended
11 to read:

12 17250.30. (a) Any design-build entity that is selected to design
13 and build a project pursuant to this chapter shall possess or obtain
14 sufficient bonding to cover the contract amount for nondesign
15 services, and errors and omissions insurance coverage sufficient
16 to cover all design and architectural services provided in the
17 contract. This chapter does not prohibit a general or engineering
18 contractor from being designated the lead entity on a design-build
19 entity for the purposes of purchasing necessary bonding to cover
20 the activities of the design-build entity.

21 (b) Any payment or performance bond written for the purposes
22 of this chapter shall use a bond form developed by the Department
23 of General Services pursuant to subdivision (g) of Section 14661
24 of the Government Code. The purpose of this subdivision is to
25 promote uniformity of bond forms to be used on school district
26 design-build projects throughout the state.

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

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

31 (A) Provide public notice of the availability of work to be
32 subcontracted.

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

35 (3) Subcontractors bidding on contracts pursuant to this
36 subdivision shall be afforded the protections contained in Chapter
37 4 (commencing with Section 4100) of Part 1 of Division 2 of the
38 Public Contract Code.

39 (4) In a contract between the design-build entity and a
40 subcontractor, and in a contract between a subcontractor and any

1 subcontractor thereunder, the percentage of the retention proceeds
2 withheld shall not exceed the percentage specified in the contract
3 between the school district and the design-build entity. If the
4 design-build entity provides written notice to any subcontractor
5 who is not a member of the design-build entity that a bond may
6 be required and the subcontractor subsequently is unable or refuses
7 to furnish a bond to the design-build entity, then the design-build
8 entity may withhold retention proceeds in excess of the percentage
9 specified in the contract between the school district and the
10 design-build entity from any payment made by the design-build
11 entity to the subcontractor.

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

17 (d) The school district shall establish and enforce a labor
18 compliance program containing the requirements outlined in
19 Section 1771.5 of the Labor Code or shall contract with a third
20 party to operate a labor compliance program containing the
21 requirements outlined in Section 1771.5 of the Labor Code. This
22 requirement shall not apply to projects where the school district
23 or the design-build entity has entered into a collective bargaining
24 agreement that binds all of the contractors performing work on the
25 project.

26 SEC. 3. Section 17250.35 of the Education Code is amended
27 to read:

28 17250.35. (a) The minimum performance criteria and design
29 standards established pursuant to this chapter by a school district
30 for quality, durability, longevity, and life-cycle costs, and other
31 criteria deemed appropriate by the school district shall be adhered
32 to by the design-build entity. Any deviations from those standards
33 may only be allowed by written consent of the school district. The
34 governing board may, and is strongly encouraged to, retain the
35 services of an architect or structural engineer throughout the course
36 of the project in order to ensure compliance with this chapter. Any
37 architect or structural engineer retained pursuant to this subdivision
38 shall be duly licensed and registered in California.

39 (b) The school district governing board shall be the employer
40 of the project inspector. The project inspector shall be fully

1 independent from any member of the design-build entity and shall
2 not have an affiliation with any member of the design-build entity
3 or any of the project subcontractors. The project inspector shall
4 act under the direction of either the Director of General Services
5 or a competent, qualified agent of the school district.

6 (c) The total price of the project shall be determined either upon
7 receipt of the lump-sum bids as set forth in paragraph (1) of
8 subdivision (c) of Section 17250.25, or by completion of the
9 process pursuant to paragraph (2) of subdivision (c) of Section
10 17250.25.

11 (d) (1) Each contract with a design-build entity shall provide
12 that no construction or alteration of any school building pursuant
13 to this section shall commence prior to the receipt of the written
14 approval of the plans, as to the safety of design and construction,
15 from the Department of General Services.

16 (2) For purposes of this subdivision, “plans” includes plans for
17 foundations based on design criteria provided by the architect or
18 structural engineer of the design-build entity that are received by
19 the Department of General Services prior to the receipt of
20 completed building plans.

21 (3) Compliance with paragraph (1) shall be deemed to be in
22 compliance with Sections 17267 and 17297.

23 (e) The design-build entity shall be liable for building the facility
24 to specifications set forth in the design-build contract in the absence
25 of contractual language to the contrary.

26 SEC. 4. Section 81700 of the Education Code is amended to
27 read:

28 81700. (a) It is the intent of the Legislature to enable
29 community college districts to utilize safe and cost effective options
30 for building and modernizing community college facilities. The
31 Legislature has recognized the merits of the design-build
32 procurement process in the past by authorizing its use for projects
33 undertaken by the University of California, specified local
34 government projects, including school districts, and state office
35 buildings.

36 (b) The Legislature also finds and declares that community
37 college districts utilizing a design-build contract require a clear
38 understanding of the roles and responsibilities of each participant
39 in the design-build process. The benefits of a design-build contract
40 project delivery system include an accelerated completion of the

1 projects, cost containment, reduction of construction complexity,
2 and reduced exposure to risk for the community college district.
3 The Legislature also finds that the cost effective benefits to the
4 community college districts are achieved by shifting the liability
5 and risk for cost containment and project completion to the
6 design-build entity.

7 (c) It is the intent of the Legislature to provide an optional,
8 alternative procedure for bidding and building community college
9 construction projects.

10 (d) In addition, it is the intent of the Legislature that the full
11 scope of design, construction, and equipment awarded to a
12 design-build entity under this chapter shall be authorized in a single
13 funding phase. The funding phase may be authorized concurrently
14 with, or separately from, the phase that authorizes the creation of
15 the performance criteria and concept drawings.

16 (e) It is the intent of the Legislature that design-build
17 procurement as authorized by this chapter shall not be construed
18 to extend, limit, or change in any manner the legal responsibility
19 of public agencies and contractors to comply with existing laws.

20 SEC. 5. Section 81700.5 of the Education Code is repealed.

21 SEC. 6. Section 81700.7 of the Education Code is repealed.

22 SEC. 7. Section 81702 of the Education Code is amended to
23 read:

24 81702. (a) Upon a determination by a community college
25 district governing board that it is in the best interest of the
26 community college district, the governing board may enter into a
27 design-build contract for both the design and construction of a
28 community college facility if that expenditure exceeds two million
29 dollars (\$2,000,000) if, after evaluation of the traditional design,
30 bid, and build process of community college facility construction
31 and of the design-build process in a public meeting, the governing
32 board makes written findings that use of the design-build process
33 on the specific project under consideration will accomplish one of
34 the following objectives: reduce comparable project costs, expedite
35 the project's completion, or provide features not achievable through
36 the traditional design-bid-build method. The governing board shall
37 also review the guidelines developed pursuant to Section 81706
38 and shall adopt a resolution approving the use of a design-build
39 contract pursuant to this chapter prior to entering into a
40 design-build contract.

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

6 ~~SEC. 8.—Section 18 of Chapter 35 of the Statutes of 2006 is~~
7 ~~repealed.~~

8 ~~SEC. 9.—Section 19 of Chapter 35 of the Statutes of 2006 is~~
9 ~~repealed.~~

10 ~~SEC. 10.~~

11 *SEC. 8.* This act shall not affect (a) the existing restrictions on
12 subcontracting by a public agency imposed by any applicable civil
13 service or merit system or (b) the obligation of any public agency
14 pursuant to state statute or local ordinance to meet and confer with
15 any labor organization concerning any matter within the existing
16 statutorily provided scope of representation.