

AMENDED IN ASSEMBLY AUGUST 31, 2007
AMENDED IN ASSEMBLY AUGUST 23, 2007
AMENDED IN ASSEMBLY AUGUST 20, 2007
AMENDED IN ASSEMBLY JULY 10, 2007
AMENDED IN ASSEMBLY JUNE 25, 2007
AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 645

Introduced by Senator Correa
(Principal coauthor: Assembly Member Tran)

February 22, 2007

An act to amend Section 20175.2 of, and to add and repeal Section 20785 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 645, as amended, Correa. Design-build contracts: cities: counties.

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, until January 1, 2011, permits cities in the Counties of Solano and Yolo and the City of Victorville, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified procedures. Existing law requires any city that elects to use the design-build method to make a specified report to the Legislative Analyst's Office before December 2009, and requires

the Legislative Analyst's Office to report to the Legislature regarding the use of the design-build method.

This bill, until January 1, 2011, would also permit the City of Stanton, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified provisions. This bill would require the City of Stanton, if it elects to use the design-build method, to make a specified report to the Legislative Analyst's Office before December 1, 2009, and would require the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the design-build method. This bill makes a finding and declaration of the necessity to enact special legislation with respect to the City of Stanton.

Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

This bill would authorize, until January 1, 2013, the Orange County Sanitation District to enter into design-build contracts in excess of \$6,000,000, as defined, according to a specified procedure.

This bill makes findings regarding the necessity of a special statute.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 20175.2 of the Public Contract Code is
- 2 amended to read:
- 3 20175.2. (a) (1) This section provides an alternative procedure
- 4 for bidding on building construction projects applicable in cities
- 5 in the Counties of Solano and Yolo and the Cities of Stanton and
- 6 Victorville upon approval of the appropriate city council.
- 7 (2) These cities may award the project using either the lowest
- 8 responsible bidder or by best value.

1 (b) (1) It is the intent of the Legislature to enable cities to utilize
2 cost-effective options for building and modernizing public
3 facilities. The Legislature also recognizes the national trend,
4 including authorization in California, to allow public entities to
5 utilize design-build contracts as a project delivery method. It is
6 not the intent of the Legislature to authorize this procedure for
7 transportation facilities, including, but not limited to, roads and
8 bridges.

9 (2) The Legislature also finds and declares that utilizing a
10 design-build contract requires a clear understanding of the roles
11 and responsibilities of each participant in the design-build process.
12 The Legislature also finds that the cost-effective benefits to cities
13 are achieved by shifting the liability and risk for cost containment
14 and project completion to the design-build entity.

15 (3) It is the intent of the Legislature to provide an alternative
16 and optional procedure for bidding and building construction
17 projects for cities.

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

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

32 (c) As used in this section:

33 (1) “Best value” means a value determined by objectives relative
34 to price, features, functions, and life cycle costs.

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

38 (3) “Design-build entity” means a partnership, corporation, or
39 other legal entity that is able to provide appropriately licensed

1 contracting, architectural, and engineering services, as needed,
2 pursuant to a design-build contract.

3 (4) “Project” means the construction of a building and
4 improvements directly related to the construction of a building,
5 but does not include streets and highways, public rail transit, or
6 water resources facilities and infrastructure.

7 (d) Design-build projects shall progress in a four-step process,
8 as follows:

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

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

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

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

33 (ii) Significant factors which the city reasonably expects to
34 consider in evaluating proposals, including cost or price and all
35 nonprice related factors.

36 (iii) The relative importance of weight assigned to each of the
37 factors identified in the request for proposals.

38 (B) With respect to clause (iii) of subparagraph (A), if a
39 nonweighted system is used, the agency shall specifically disclose

1 whether all evaluation factors, other than cost or price, when
2 combined are:

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

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

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

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

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

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

34 (iv) 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 (v) Any prior serious or willful violation of the California
38 Occupational Safety and Health Act of 1973, contained in Part 1
39 (commencing with Section 6300) of Division 5 of the Labor Code
40 or the federal Occupational Safety and Health Act of 1970 (Public

1 Law 91–596) settled against any member of the design-build entity,
2 and information concerning workers’ compensation experience
3 history and worker safety program.

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

10 (vii) Any instance where the entity, its owners, officers, or
11 managing employees defaulted on a construction contract.

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

19 (ix) Information concerning the bankruptcy or receivership of
20 any member of the design-build entity, including information
21 concerning any work completed by a surety.

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

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

34 (B) The information required pursuant to this subdivision shall
35 be verified under oath by the entity and its members in the manner
36 in which civil pleadings in civil actions are verified. Information
37 that is not a public record pursuant to the California Public Records
38 Act (Chapter 3.5 (*commencing with Section 6250*) of Division 7
39 of Title 1 of the Government Code) shall not be open to public
40 inspection.

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

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

7 (B) The city may use a design-build competition based upon
8 best value and other criteria set forth in paragraph (2) of
9 subdivision (d). The design-build competition shall include the
10 following elements:

11 (i) Competitive proposals shall be evaluated by using only the
12 criteria and selection procedures specifically identified in the
13 request for proposal. However, the following minimum factors
14 shall each represent at least 10 percent of the total weight of
15 consideration given to all criteria factors: price, technical design
16 and construction expertise, life cycle costs over 15 years or more,
17 skilled labor force availability, and acceptable safety record. Each
18 of these factors shall be weighted equally.

19 (ii) Once the evaluation is complete, the top three responsive
20 bidders shall be ranked sequentially from the most advantageous
21 to the least.

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

25 (iv) Notwithstanding any provision of this code, upon issuance
26 of a contract award, the city shall publicly announce its award,
27 identifying the contractor to whom the award is made, along with
28 a written decision supporting its contract award and stating the
29 basis of the award. The notice of award shall also include the city's
30 second and third ranked design-build entities.

31 (v) For the purposes of this paragraph, "skilled labor force
32 availability" shall be determined by the existence of an agreement
33 with a registered apprenticeship program, approved by the
34 California Apprenticeship Council, which has graduated
35 apprentices in each of the preceding five years. This graduation
36 requirement shall not apply to programs providing apprenticeship
37 training for any craft that has been deemed by the Department of
38 Labor and the Department of Industrial Relations to be an
39 apprenticeable craft in the five years prior to enactment of this act.

1 (vi) For the purposes of this paragraph, a bidder’s “safety
2 record” shall be deemed “acceptable” if their experience
3 modification rate for the most recent three-year period is an average
4 of 1.00 or less, and their average Total Recordable Injury/Illness
5 rate and average lost work rate for the most recent three-year period
6 does not exceed the applicable statistical standards for its business
7 category, or if the bidder is a party to an alternative dispute
8 resolution system, as provided for in Section 3201.5 of the Labor
9 Code.

10 (e) (1) Any design-build entity that is selected to design and
11 build a project pursuant to this section shall possess or obtain
12 sufficient bonding to cover the contract amount for nondesign
13 services and errors and omissions insurance coverage sufficient
14 to cover all design and architectural services provided in the
15 contract. This section does not prohibit a general or engineering
16 contractor from being designated the lead entity on a design-build
17 entity for the purposes of purchasing necessary bonding to cover
18 the activities of the design-build entity.

19 (2) Any payment or performance bond written for the purposes
20 of this section shall be written using a bond form developed by
21 the city.

22 (f) All subcontractors that were not listed by the design-build
23 entity in accordance with clause (i) of subparagraph (A) of
24 paragraph (3) of subdivision (d) shall be awarded by the
25 design-build entity in accordance with the design-build process
26 set forth by the city in the design-build package. All subcontractors
27 bidding on contracts pursuant to this section shall be afforded the
28 protections contained in Chapter 4 (commencing with Section
29 4100) of Part 1. The design-build entity shall do both of the
30 following:

31 (1) Provide public notice of the availability of work to be
32 subcontracted in accordance with the publication requirements
33 applicable to the competitive bidding process of the city.

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

37 (g) The minimum performance criteria and design standards
38 established pursuant to paragraph (1) of subdivision (d) shall be
39 adhered to by the design-build entity. Any deviations from those
40 standards may only be allowed by written consent of the city.

1 (h) The city may retain the services of a design professional or
2 construction project manager, or both, throughout the course of
3 the project in order to ensure compliance with this section.

4 (i) Contracts awarded pursuant to this section shall be valid until
5 the project is completed.

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

8 (k) (1) If the city elects to award a project pursuant to this
9 section, retention proceeds withheld by the city from the
10 design-build entity shall not exceed 5 percent if a performance and
11 payment bond, issued by an admitted surety insurer, is required in
12 the solicitation of bids.

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

26 (l) Each city that elects to proceed under this section and uses
27 the design-build method on a public works project shall submit to
28 the Legislative Analyst's Office before December 1, 2009, a report
29 containing a description of each public works project procured
30 through the design-build process that is completed after January
31 1, 2006, and before November 1, 2009. The report shall include,
32 but shall not be limited to, all of the following information:

33 (1) The type of project.

34 (2) The gross square footage of the project.

35 (3) The design-build entity that was awarded the project.

36 (4) The estimated and actual project costs.

37 (5) A description of any written protests concerning any aspect
38 of the solicitation, bid, proposal, or award of the design-build
39 project, including the resolution of the protests.

40 (6) An assessment of the prequalification process and criteria.

1 (7) An assessment of the effect of retaining 5 percent retention
2 on the project.

3 (8) A description of the Labor Force Compliance Program and
4 an assessment of the project impact, where required.

5 (9) A description of the method used to award the contract. If
6 the best value method was used, the report shall describe the factors
7 used to evaluate the bid, including the weighting of each factor
8 and an assessment of the effectiveness of the methodology.

9 (10) An assessment of the project impact of “skilled labor force
10 availability.”

11 (11) An assessment of the most appropriate uses for the
12 design-build approach.

13 (m) Any city that elects not to use the authority granted by this
14 section may submit a report to the Legislative Analyst’s Office
15 explaining why the city elected not to use the design-build method.

16 (n) On or before January 1, 2010, the Legislative Analyst’s
17 Office shall report to the Legislature on the use of the design-build
18 method by cities pursuant to this section, including the information
19 listed in subdivision (l). The report may include recommendations
20 for modifying or extending this section.

21 (o) Except as provided in this section, nothing in this act shall
22 be construed to affect the application of any other law.

23 (p) This section shall remain in effect only until January 1, 2011,
24 and *as* of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2011, deletes or extends that date.

26 SEC. 2. Section 20785 is added to the Public Contract Code,
27 to read:

28 20785. (a) Notwithstanding any other provision of law, the
29 Orange County Sanitation District may use the procedures
30 described in Section 20133 for the construction of projects in
31 excess of six million dollars (\$6,000,000), including, but not
32 limited to, public wastewater facilities.

33 (b) For purposes of this section, all references in Section 20133
34 to “county” and “board of supervisors” shall mean the Orange
35 County Sanitation District, and its board of directors.

36 (c) This section shall remain in effect only until January 1, 2013,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before January 1, 2013, deletes or extends that date.

39 SEC. 3. (a) The Legislature finds and declares that a special
40 law contained in Section 1 of this act is necessary and that a general

1 law cannot be made applicable within the meaning of Section 16
2 of Article IV of the California Constitution because of the unique
3 need to build public facilities in a cost-effective manner in the City
4 of Stanton.

5 (b) The Legislature further finds and declares that due to the
6 unique circumstances of the Orange County Sanitation District
7 with regard to a consent decree that was mutually negotiated with
8 the federal Environmental Protection Agency and the State Water
9 Resources Control Board for the completion of an additional
10 secondary treatment facility within the district by December 2012,
11 a general statute cannot be made applicable within the meaning
12 of Section 16 of Article IV of the California Constitution.
13 Therefore, the special legislation contained in Section 2 of this act
14 is necessarily applicable only to the Orange County Sanitation
15 District.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.