

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 879

Introduced by Senator Cox

January 12, 2010

An act to amend ~~Section 20133~~ *Sections 20133 and 20175.2* of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 879, as amended, Cox. Construction projects: alternative bidding procedures: design-build.

Existing law authorizes counties to use alternative procedures, known as design-build, for bidding on construction projects in the county in excess of \$2,500,000, in accordance with specified procedures. Each county that elects to use the design-build method on a public works project is required to submit a report to the Legislative Analyst's Office before December 1, 2009, containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. Existing law also requires the Legislative Analyst, on or before January 1, 2010, to report to the Legislature on the use of the design-build method by counties.

This bill would, *instead, authorize counties to use these alternative procedures, known as design-build, for bidding on construction projects in the county in excess of \$1,000,000, and would make various changes in the procedures required for the use of design-build by those counties, as specified. The bill would also* repeal those reporting provisions.

Existing law authorizing design-build contracts for county construction projects is effective only until January 1, 2011, and as of that date is repealed.

This bill would delete that repeal date, thereby making the county design-build provisions operative indefinitely.

Existing law also authorizes cities to use alternative procedures, known as design-build, for bidding on construction projects in the city in excess of \$1,000,000.

This bill would make various changes in the procedures required for the use of design-build by those cities, as specified.

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 amended to read:

3 20133. (a) A county, with approval of the board of
4 supervisors, may utilize an alternative procedure for bidding on
5 construction projects in the county in excess of ~~two million five~~
6 ~~hundred thousand dollars (\$2,500,000)~~ *one million dollars*
7 *(\$1,000,000)* and may award the project using either the lowest
8 responsible bidder or by best value.

9 (b) (1) It is the intent of the Legislature to enable counties to
10 utilize design-build for buildings and county sanitation wastewater
11 treatment facilities. It is not the intent of the Legislature to
12 authorize this procedure for other infrastructure, including, but not
13 limited to, streets and highways, public rail transit, or water
14 resources facilities and infrastructures.

15 (2) The Legislature also finds and declares that utilizing a
16 design-build contract requires a clear understanding of the roles
17 and responsibilities of each participant in the design-build process.

18 (3) (A) For contracts awarded prior to either the effective date
19 of regulations adopted by the Department of Industrial Relations
20 pursuant to subdivision (b) of Section 1771.55 of the Labor Code
21 or the fees established by the department pursuant to subparagraph
22 (B), if the board of supervisors elects to proceed under this section,
23 the board of supervisors shall establish and enforce for design-build
24 projects a labor compliance program containing the requirements
25 outlined in Section 1771.5 of the Labor Code, or it shall contract
26 with a third party to operate a labor compliance program containing
27 the requirements outlined in Section 1771.5 of the Labor Code.
28 This requirement shall not apply to any project where the county

1 or the design-build entity has entered into any collective bargaining
2 agreement or agreements that bind all of the contractors performing
3 work on the projects.

4 (B) For contracts awarded on or after both the effective date of
5 regulations adopted by the Department of Industrial Relations
6 pursuant to subdivision (b) of Section 1771.55 of the Labor Code
7 and the fees established by the department pursuant to this
8 subparagraph, the board of supervisors shall pay a fee to the
9 department, in an amount that the department shall establish, and
10 as it may from time to time amend, sufficient to support the
11 department's costs in ensuring compliance with and enforcing
12 prevailing wage requirements on the project, and labor compliance
13 enforcement as set forth in subdivision (b) of Section 1771.55. All
14 fees collected pursuant to this paragraph shall be deposited in the
15 State Public Works Enforcement Fund created by Section 1771.3
16 of the Labor Code, and shall be used only for enforcement of
17 prevailing wages requirements on those projects.

18 (C) The Department of Industrial Relations may waive the fee
19 set forth in subparagraph (B) if the board of supervisors has
20 previously been granted approval by the director to initiate and
21 operate a labor compliance program on its projects and requests
22 to continue to operate that labor compliance program on its projects
23 in lieu of labor compliance by the department pursuant to
24 subdivision (b) of Section 1771.55. The fee shall not be waived
25 for the board of supervisors if it contracts with a third party to
26 initiate and enforce labor compliance programs on its projects.

27 (c) As used in this section:

28 (1) "Best value" means a value determined by objective criteria
29 related to price, features, functions, and life-cycle costs.

30 (2) "Design-build" means a procurement process in which both
31 the design and construction of a project are procured from a single
32 entity.

33 (3) "Design-build entity" means a partnership, corporation, or
34 other legal entity that is able to provide appropriately licensed
35 contracting, architectural, and engineering services as needed
36 pursuant to a design-build contract.

37 (4) "Project" means the construction of a building and
38 improvements directly related to the construction of a building,
39 and county sanitation wastewater treatment facilities, but does not
40 include the construction of other infrastructure, including, but not

1 limited to, streets and highways, public rail transit, or water
2 resources facilities and infrastructure.

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

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

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

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

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

30 (ii) Significant *objective* factors that the county reasonably
31 expects to consider in evaluating proposals, including cost or price
32 and all nonprice related factors.

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

35 (B) With respect to clause (iii) of subparagraph (A), if a
36 nonweighted system is used, the agency shall specifically disclose
37 whether all evaluation factors other than cost or price when
38 combined are:

39 (i) Significantly more important than cost or price.

40 (ii) Approximately equal in importance to cost or price.

1 (iii) Significantly less important than cost or price.

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

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

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

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

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

30 (iv) Evidence that establishes that the design-build entity has
31 the capacity to obtain all required payment and performance
32 bonding, liability insurance, and errors and omissions insurance.

33 (v) Any prior serious or willful violation of the California
34 Occupational Safety and Health Act of 1973, contained in Part 1
35 (commencing with Section 6300) of Division 5 of the Labor Code,
36 or the federal Occupational Safety and Health Act of 1970 (P.L.
37 91-596), settled against any member of the design-build entity,
38 and information concerning workers' compensation experience
39 history and worker safety program.

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

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

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

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

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

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

(xii) *(I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was ever determined by a court of competent jurisdiction to have submitted, or legally admitted for purposes of a settlement agreement or criminal plea to have submitted either of the following:*

(ia) Any claim to any public agency or official in violation of the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

1 ~~(ib) Any claim to any public official in violation of the California~~
2 ~~False Claims Act (Article 9 (commencing with Section 12650) of~~
3 ~~Chapter 6 of Part 2 of Division 3 of the Government Code).~~

4 ~~(II) Information provided pursuant to this subdivision shall~~
5 ~~include the name and number of any case filed, the court in which~~
6 ~~it was filed, and the date on which it was filed. The entity may also~~
7 ~~provide further information regarding any such instance, including~~
8 ~~any mitigating or extenuating circumstances that the entity wishes~~
9 ~~the county to consider.~~

10 ~~(B) The information required pursuant to this subdivision shall~~
11 ~~be verified under oath by the entity and its members in the manner~~
12 ~~in which civil pleadings in civil actions are verified. Information~~
13 ~~that is not a public record pursuant to the California Public Records~~
14 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
15 ~~of Title 1 of the Government Code) shall not be open to public~~
16 ~~inspection.~~

17 ~~(4) The county shall establish a procedure for final selection of~~
18 ~~the design-build entity. Selection shall be based on either of the~~
19 ~~following criteria:~~

20 ~~(A) A competitive bidding process resulting in lump-sum bids~~
21 ~~by the prequalified design-build entities. Awards shall be made to~~
22 ~~the lowest responsible bidder.~~

23 ~~(B) A county may use a design-build competition based upon~~
24 ~~best value and other criteria set forth in paragraph (2). The~~
25 ~~design-build competition shall include the following elements:~~

26 ~~(i) Competitive proposals shall be evaluated by using only the~~
27 ~~criteria and selection procedures specifically identified in the~~
28 ~~request for proposal. However, the following minimum factors~~
29 ~~shall each represent at least 10 percent of the total weight of~~
30 ~~consideration given to all criteria factors: price, technical design,~~
31 ~~and construction expertise, life cycle costs over 15 years or more,~~
32 ~~skilled labor force availability, and acceptable safety record.~~

33 ~~(ii) Once the evaluation is complete, the top three responsive~~
34 ~~bidders shall be ranked sequentially from the most advantageous~~
35 ~~to the least.~~

36 ~~(iii) The award of the contract shall be made to the responsible~~
37 ~~bidder whose proposal is determined, in writing, to be the most~~
38 ~~advantageous.~~

39 ~~(iv) Notwithstanding any provision of this code, upon issuance~~
40 ~~of a contract award, the county shall publicly announce its award,~~

1 identifying the contractor to whom the award is made, along with
2 a written decision supporting its contract award and stating the
3 basis of the award. The notice of award shall also include the
4 county's second and third ranked design-build entities.

5 (v) For purposes of this paragraph, "skilled labor force
6 availability" shall be determined by the existence of an agreement
7 with a registered apprenticeship program, approved by the
8 California Apprenticeship Council, which has graduated
9 apprentices in each of the preceding five years. This graduation
10 requirement shall not apply to programs providing apprenticeship
11 training for any craft that has been deemed by the Department of
12 Labor and the Department of Industrial Relations to be an
13 apprenticeable craft in the five years prior to enactment of this act.

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

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

31 (2) Any payment or performance bond written for the purposes
32 of this section shall be written using a bond form developed by
33 the county.

34 (f) All subcontractors that were not listed by the design-build
35 entity in accordance with clause (i) of subparagraph (A) of
36 paragraph (3) of subdivision (d) shall be awarded by the
37 design-build entity in accordance with the design-build process
38 set forth by the county in the design-build package. All
39 subcontractors bidding on contracts pursuant to this section shall
40 be afforded the protections contained in Chapter 4 (commencing

1 with Section 4100) of Part 1. The design-build entity shall do both
2 of the following:

3 (1) Provide public notice of the availability of work to be
4 subcontracted in accordance with the publication requirements
5 applicable to the competitive bidding process of the county.

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

9 *(g) Lists of subcontractors, bidders, and bid awards relating to*
10 *the project shall be submitted by the design-build entity to the*
11 *awarding body within 14 days of the award. These documents are*
12 *deemed to be public records and shall be available for public*
13 *inspection pursuant to this chapter and Article 1 (commencing*
14 *with Section 6250) of Chapter 3.5 of Division 7 of the Government*
15 *Code.*

16 ~~(g)~~

17 (h) The minimum performance criteria and design standards
18 established pursuant to paragraph (1) of subdivision (d) shall be
19 adhered to by the design-build entity. Any deviations from those
20 standards may only be allowed by written consent of the county.

21 ~~(h)~~

22 (i) The county may retain the services of a design professional
23 or construction project manager, or both, throughout the course of
24 the project in order to ensure compliance with this section.

25 ~~(i)~~

26 (j) Contracts awarded pursuant to this section shall be valid until
27 the project is completed.

28 ~~(j)~~

29 (k) Nothing in this section is intended to affect, expand, alter,
30 or limit any rights or remedies otherwise available at law.

31 ~~(k)~~

32 (l) (1) If the county elects to award a project pursuant to this
33 section, retention proceeds withheld by the county from the
34 design-build entity shall not exceed 5 percent if a performance and
35 payment bond, issued by an admitted surety insurer, is required in
36 the solicitation of bids.

37 (2) In a contract between the design-build entity and the
38 subcontractor, and in a contract between a subcontractor and any
39 subcontractor thereunder, the percentage of the retention proceeds
40 withheld may not exceed the percentage specified in the contract

1 between the county and the design-build entity. If the design-build
2 entity provides written notice to any subcontractor who is not a
3 member of the design-build entity, prior to or at the time the bid
4 is requested, that a bond may be required and the subcontractor
5 subsequently is unable or refuses to furnish a bond to the
6 design-build entity, then the design-build entity may withhold
7 retention proceeds in excess of the percentage specified in the
8 contract between the county and the design-build entity from any
9 payment made by the design-build entity to the subcontractor.

10 ~~(h)~~

11 *(m)* Except as provided in this section, nothing in this act shall
12 be construed to affect the application of any other law.

13 *SEC. 2. Section 20175.2 of the Public Contract Code is*
14 *amended to read:*

15 20175.2. (a) (1) A city, with approval of the appropriate city
16 council, may utilize an alternative procedure for bidding on
17 building construction projects in the city in excess of one million
18 dollars (\$1,000,000), except as provided in subdivision (p).

19 (2) Cities may award the project using either the lowest
20 responsible bidder or by best value.

21 (b) (1) It is the intent of the Legislature to enable cities to utilize
22 cost-effective options for building and modernizing public
23 facilities. The Legislature also recognizes the national trend,
24 including authorization in California, to allow public entities to
25 utilize design-build contracts as a project delivery method. It is
26 not the intent of the Legislature to authorize this procedure for
27 transportation facilities, including, but not limited to, roads and
28 bridges.

29 (2) The Legislature also finds and declares that utilizing a
30 design-build contract requires a clear understanding of the roles
31 and responsibilities of each participant in the design-build process.
32 The Legislature also finds that the cost-effective benefits to cities
33 are achieved by shifting the liability and risk for cost containment
34 and project completion to the design-build entity.

35 (3) It is the intent of the Legislature to provide an alternative
36 and optional procedure for bidding and building construction
37 projects for cities.

38 (4) The design-build approach may be used, but is not limited
39 to use, when it is anticipated that it will: reduce project cost,

1 expedite project completion, or provide design features not
2 achievable through the design-bid-build method.

3 (5) (A) For contracts awarded prior to the effective date of
4 either the regulations adopted by the Department of Industrial
5 Relations pursuant to subdivision (b) of Section 1771.55 of the
6 Labor Code or the fees established by the department pursuant to
7 subparagraph (B), if a city council elects to proceed under this
8 section, the city council shall establish and enforce, for design-build
9 projects, a labor compliance program containing the requirements
10 outlined in Section 1771.5 of the Labor Code, or it shall contract
11 with a third party to operate a labor compliance program containing
12 the requirements outlined in Section 1771.5 of the Labor Code.
13 This requirement shall not apply to any project where the city or
14 the design-build entity has entered into any collective bargaining
15 agreement or agreements that bind all of the contractors performing
16 work on the projects.

17 (B) For contracts awarded on or after the effective date of both
18 the regulations adopted by the Department of Industrial Relations
19 pursuant to subdivision (b) of Section 1771.55 of the Labor Code
20 and the fees established by the department pursuant to this
21 subparagraph, the city council shall pay a fee to the department,
22 in an amount that the department shall establish, and as it may
23 from time to time amend, sufficient to support the department's
24 costs in ensuring compliance with and enforcing prevailing wage
25 requirements on the project, and labor compliance enforcement as
26 set forth in subdivision (b) of Section 1771.55. All fees collected
27 pursuant to this paragraph shall be deposited in the State Public
28 Works Enforcement Fund created by Section 1771.3 of the Labor
29 Code, and shall be used only for enforcement of prevailing wage
30 requirements on those projects.

31 (C) The Department of Industrial Relations may waive the fee
32 set forth in subparagraph (2) if the city council has previously been
33 granted approval by the director to initiate and operate a labor
34 compliance program on its projects and requests to continue to
35 operate that labor compliance program on its projects in lieu of
36 labor compliance by the department pursuant to subdivision (b)
37 of Section 1771.55. The fee shall not be waived for the city council
38 if it contracts with a third party to initiate and enforce labor
39 compliance programs on its projects.

40 (c) As used in this section:

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

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

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

10 (4) “Project” means the construction of a building and
11 improvements directly related to the construction of a building,
12 but does not include streets and highways, public rail transit, or
13 water resource facilities and infrastructure.

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

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

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

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

34 (i) Identification of the basic scope and needs of the project or
35 contract, the expected cost range, and other information deemed
36 necessary by the city to inform interested parties of the contracting
37 opportunity, to include the methodology that will be used by the
38 city to evaluate proposals, and specifically if the contract will be
39 awarded to the lowest responsible bidder.

1 (ii) Significant *objective* factors which the city reasonably
2 expects to consider in evaluating proposals, including cost or price
3 and all nonprice related factors.

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

6 (B) With respect to clause (iii) of subparagraph (A), if a
7 nonweighted system is used, the agency shall specifically disclose
8 whether all evaluation factors, other than cost or price, when
9 combined are:

10 (i) Significantly more important than cost or price.

11 (ii) Approximately equal in importance to cost or price.

12 (iii) Significantly less important than cost or price.

13 (C) If the city chooses to reserve the right to hold discussions
14 or negotiations with responsive bidders, it shall so specify in the
15 request for proposal and shall publish separately, or incorporate
16 into the request for proposal, applicable rules and procedures to
17 be observed by the city to ensure that any discussions or
18 negotiations are conducted in good faith.

19 (3) (A) The city shall establish a procedure to prequalify
20 design-build entities using a standard questionnaire developed by
21 the city. In preparing the questionnaire, the city shall consult with
22 the construction industry, including representatives of the building
23 trades and surety industry. This questionnaire shall require
24 information including, but not limited to, all of the following:

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

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

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

1 (iv) Evidence that establishes that the design-build entity has
2 the capacity to obtain all required payment and performance
3 bonding, liability insurance, and errors and omissions insurance.

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

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

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

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

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

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

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

(xii) (I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was ever determined by a court of competent jurisdiction to have submitted, or legally admitted for purposes of a settlement agreement or criminal plea to have submitted either of the following:

(ia) Any claim to any public agency or official in violation of the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

(ib) Any claim to any public official in violation of the California False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of the Government Code).

(II) Information provided pursuant to this subdivision shall include the name and number of any case filed, the court in which it was filed, and the date on which it was filed, and the date on which it was filed. The entity may also provide further information regarding any such instance, including any mitigating or extenuating circumstances that the entity wishes the city to consider.

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

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

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

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

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life-cycle costs over 15 years or more,

1 skilled labor force availability, and acceptable safety record. Each
2 of these factors shall be weighted equally.

3 (ii) Once the evaluation is complete, the top three responsive
4 bidders shall be ranked sequentially from the most advantageous
5 to the least.

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

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

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

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

32 (e) (1) Any design-build entity that is selected to design and
33 build a project pursuant to this section shall possess or obtain
34 sufficient bonding to cover the contract amount for nondesign
35 services and errors and omissions insurance coverage sufficient
36 to cover all design and architectural services provided in the
37 contract. This section does not prohibit a general or engineering
38 contractor from being designated the lead entity on a design-build
39 entity for the purposes of purchasing necessary bonding to cover
40 the activities of the design-build entity.

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

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

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

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

(g) Lists of subcontractors, bidders, and bid awards relating to the project shall be submitted by the design-build entity to the awarding body within 14 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of the Government Code.

~~(g)~~

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

~~(h)~~

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

~~(i)~~

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

~~(j)~~

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

1 ~~(k)~~

2 ~~(l)~~ (1) If the city elects to award a project pursuant to this
3 section, retention proceeds withheld by the city from the
4 design-build entity shall not exceed 5 percent if a performance and
5 payment bond, issued by an admitted surety insurer, is required in
6 the solicitation of bids.

7 (2) In a contract between the design-build entity and the
8 subcontractor, and in a contract between a subcontractor and any
9 subcontractor thereunder, the percentage of the retention proceeds
10 withheld may not exceed the percentage specified in the contract
11 between the city and the design-build entity. If the design-build
12 entity provides written notice to any subcontractor who is not a
13 member of the design-build entity, prior to or at the time the bid
14 is requested, that a bond may be required and the subcontractor
15 subsequently is unable or refuses to furnish a bond to the
16 design-build entity, then the design-build entity may withhold
17 retention proceeds in excess of the percentage specified in the
18 contract between the city and the design-build entity from any
19 payment made by the design-build entity to the subcontractor.

20 ~~(t)~~

21 (m) Each city that elects to proceed under this section and uses
22 the design-build method on a public works project shall submit to
23 the Legislative Analyst's Office before December 1, 2014, a report
24 containing a description of each public works project procured
25 through the design-build process that is completed after January
26 1, 2011, and before November 1, 2014. The report shall include,
27 but shall not be limited to, all of the following information:

28 (1) The type of project.

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

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

31 (4) The estimated and actual project costs.

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

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

36 (7) An assessment of the effect of retaining 5 percent retention
37 on the project.

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

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

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

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

9 ~~(m)~~

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

13 ~~(n)~~

14 (o) On or before January 1, 2015, the Legislative Analyst’s
15 Office shall report to the Legislature on the use of the design-build
16 method by cities pursuant to this section, including the information
17 listed in subdivision (l). The report may include recommendations
18 for modifying or extending this section.

19 ~~(o)~~

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

22 ~~(p)~~

23 (q) Before January 1, 2011, the project limitation of one million
24 dollars (\$1,000,000), as set forth in subdivision (a), shall not apply
25 to any city in the Counties of Solano and Yolo, or to the Cities of
26 Stanton and Victorville.

27 ~~(q)~~

28 (r) This section shall remain in effect only until January 1, 2016,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2016, deletes or extends that date.