

AMENDED IN ASSEMBLY JULY 5, 2012

AMENDED IN SENATE APRIL 18, 2012

**SENATE BILL**

**No. 1509**

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**Introduced by Senator Simitian  
(Coauthor: Senator Alquist)**

February 24, 2012

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An act to amend Sections 17250.10, 17250.25, 81700, and 81703 of the Education Code, to repeal Section 4 of Chapter 421 of the Statutes of 2001, and to repeal Section 4 of Chapter 637 of the Statutes of 2002, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1509, as amended, Simitian. School facilities: design-build contracts.

**Existing**

(1) Existing law authorizes, until January 1, 2014, a school district governing board or community college governing board to enter into a design-build contract for both the design and construction of a school facility or community college facility, respectively, if specified requirements are met.

This bill would delete the January 1, 2014, repeal dates of these respective provisions, making the ~~design-build~~ *design-build* authority operative indefinitely.

(2) Existing law states the intent of the Legislature that design-build procurement by a school district or community college district not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing law.

*This bill would also state the intent of the Legislature that design-build procurement does not replace or eliminate competitive bidding.*

*(3) Existing law requires design-build projects by a school district or community college district to progress in a specified manner, including, among other things, requiring the school district governing board or community college district board to prepare a request for proposal setting forth the scope of the project and authorizing the request for proposal to include, but not be limited to, specified information.*

*This bill would require the request for proposal not to include a design-build-operate contract for educational facilities.*

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 17250.10 of the Education Code is  
2     amended to read:

3     17250.10. (a) It is the intent of the Legislature to enable school  
4     districts to utilize safe and cost-effective options for building and  
5     modernizing school facilities. The Legislature has recognized the  
6     merits of the design-build procurement process in the past by  
7     authorizing its use for projects undertaken by the University of  
8     California, specified local government projects, and state office  
9     buildings.

10    (b) The Legislature also finds and declares that school districts  
11    ~~utilizing~~ using a design-build contract require a clear understanding  
12    of the roles and responsibilities of each participant in the  
13    design-build process. The benefits of a design-build contract project  
14    delivery system include an accelerated completion of the projects,  
15    cost containment, reduction of construction complexity, and  
16    reduced exposure to risk for the school district. The Legislature  
17    also finds that the cost-effective benefits to the school districts are  
18    achieved by shifting the liability and risk for cost containment and  
19    project completion to the design-build entity.

20    (c) It is the intent of the Legislature to provide an optional,  
21    alternative procedure for bidding and building school construction  
22    projects.

23    (d) In addition, it is the intent of the Legislature that the full  
24    scope of design, construction, and equipment awarded to a

1 design-build entity shall be authorized in a single funding phase.  
2 The funding phase may be authorized concurrently with, or  
3 separately from, the phase that authorizes the creation of the  
4 performance criteria and concept drawings.

5 (e) It is the intent of the Legislature that design-build  
6 procurement as authorized by the act adding this chapter shall not  
7 be construed to extend, limit, or change in any manner the legal  
8 responsibility of public agencies and contractors to comply with  
9 existing laws.

10 (f) *In addition, it is the intent of the Legislature that design-build*  
11 *procurement does not replace or eliminate competitive bidding.*

12 *SEC. 2. Section 17250.25 of the Education Code is amended*  
13 *to read:*

14 17250.25. Design-build projects shall progress as follows:

15 (a) (1) The school district governing board shall prepare a  
16 request for proposal setting forth the scope of the project that may  
17 include, but is not limited to, the size, type and desired design  
18 character of the buildings and site, performance specifications  
19 covering the quality of materials, equipment, and workmanship,  
20 preliminary plans or building layouts, or any other information  
21 deemed necessary to describe adequately the school district's  
22 needs. The performance specifications and any plans shall be  
23 prepared by a design professional duly licensed or registered in  
24 this state. *The request for proposal shall not include a*  
25 *design-build-operate contract for educational facilities pursuant*  
26 *to this chapter.*

27 (2) Each request for proposal shall do all of the following:

28 (A) Identify the basic scope and needs of the project or contract,  
29 the expected cost range, and other information deemed necessary  
30 by the school district to inform interested parties of the contracting  
31 opportunity.

32 (B) Invite interested parties to submit competitive sealed  
33 proposals in the manner prescribed by the school district.

34 (C) Include a section identifying and describing the following:

35 (i) All significant factors and subfactors that the school district  
36 reasonably expects to consider in evaluating proposals, including  
37 cost or price and all nonprice related factors and subfactors.

38 (ii) The methodology and rating or weighting scheme that will  
39 be used by the school district governing board in evaluating

1 competitive proposals and specifically whether proposals will be  
2 rated according to numeric or qualitative values.

3 (iii) The relative importance or weight assigned to each of the  
4 factors identified in the request for proposal.

5 (iv) As an alternative to clause (iii), the governing board of a  
6 school district shall specifically disclose whether all evaluation  
7 factors other than cost or price, when combined, are any of the  
8 following:

9 (I) Significantly more important than cost or price.

10 (II) Approximately equal in importance to cost or price.

11 (III) Significantly less important than cost or price.

12 (v) If the school district governing board wishes to reserve the  
13 right to hold discussions or negotiations with responsive bidders,  
14 it shall so specify in the request for proposal and shall publish  
15 separately or incorporate into the request for proposal applicable  
16 rules and procedures to be observed by the school district to ensure  
17 that any discussions or negotiations are conducted in a fair and  
18 impartial manner.

19 (3) Notwithstanding Section 4-315 of Title 24 of the California  
20 Code of Regulations, an architect or structural engineer who is  
21 party to a design-build entity may perform the services set forth  
22 in Section 17302.

23 (b) (1) The school district shall establish a procedure to  
24 prequalify design-build entities using a standard questionnaire  
25 developed by the Director of the Department of Industrial  
26 Relations. In preparing the questionnaire, the director shall consult  
27 with the construction industry, including representatives of the  
28 building trades, surety industry, school districts, and other affected  
29 parties. This questionnaire shall require information including, but  
30 not limited to, all of the following:

31 (A) If the design-build entity is a partnership, limited  
32 partnership, or other association, a listing of all of the partners,  
33 general partners, or association members who will participate as  
34 subcontractors in the design-build contract, including, but not  
35 limited to, electrical and mechanical subcontractors.

36 (B) Evidence that the members of the design-build entity have  
37 completed, or demonstrated, the experience, competency,  
38 capability, and capacity to complete projects of similar size, scope  
39 or complexity, and that proposed key personnel have sufficient

1 experience and training to competently manage and complete the  
2 design and construction of the project.

3 (C) The licenses, registration, and credentials required to design  
4 and construct the project, including information on the revocation  
5 or suspension of any license, credential, or registration.

6 (D) Evidence that establishes that the design-build entity has  
7 the capacity to obtain all required payment and performance  
8 bonding, liability insurance, and errors and omissions insurance,  
9 as well as a financial statement that assures the school district that  
10 the design-build entity has the capacity to complete the project.

11 (E) Any prior serious or willful violation of the California  
12 Occupational Safety and Health Act of 1973 (Part 1 (commencing  
13 with Section 6300) of Division 5 of the Labor Code) or the Federal  
14 Occupational Safety and Health Act of 1970 (P.L. 91-596), settled  
15 against any member of the design-build entity, and information  
16 concerning a contractor member's workers' compensation  
17 experience history and worker safety program.

18 (F) Information concerning any debarment, disqualification, or  
19 removal from a federal, state or local government public works  
20 project.

21 (G) Any instance where an entity, its owners, officers, or  
22 managing employees, submitted a bid on a public works project  
23 and were found by an awarding body not to be a responsible bidder.

24 (H) Any instance where the entity, its owner, officers, or  
25 managing employees defaulted on a construction contract.

26 (I) Any prior violations of the Contractors' State License Law  
27 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
28 Business and Professions Code), excluding alleged violations of  
29 federal or state law including the payment of wages, benefits,  
30 apprenticeship requirements, or personal income tax withholding,  
31 or of Federal Insurance Contribution Act (FICA) withholding  
32 requirements, settled against any member of the design-build entity.

33 (J) Information concerning the bankruptcy or receivership of  
34 any member of the entity, including information concerning any  
35 work completed by a surety.

36 (K) Information concerning all settled adverse claims, disputes,  
37 or lawsuits between the owner of a public works project and any  
38 member of the design-build entity during the five-year period  
39 preceding submission of the bid pursuant to this section, in which  
40 the claim, settlement, or judgment exceeds fifty thousand dollars

1 (\$50,000). Information shall also be provided concerning any work  
2 completed by a surety during this period.

3 (L) In the case of a partnership or other association that is not  
4 a legal entity, a copy of the agreement creating the partnership or  
5 association.

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

13 (c) The school district shall establish a procedure for final  
14 selection of the design-build entity. Selection shall be based on  
15 either of the following criteria:

16 (1) A competitive bidding process resulting in lump-sum bids  
17 by the prequalified design-build entities. Award shall be made on  
18 the basis of the lowest responsible bid.

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

31 (A) Any architectural or engineering firm or individual retained  
32 by the governing ~~body~~ *board* of the school district to assist in the  
33 development criteria or preparation of the request for proposal  
34 shall not be eligible to participate in the competition with the  
35 design-build entity.

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

39 (C) Proposals shall be evaluated and scored solely on the basis  
40 of the factors and source selection procedures identified in the

1 request for proposal. However, the following minimum factors  
2 shall collectively represent at least 50 percent of the total weight  
3 or consideration given to all criteria factors: price, technical  
4 expertise, life cycle costs over 15 years or more, skilled labor force  
5 availability, and acceptable safety record.

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

10 (E) Notwithstanding any provision of the Public Contract Code,  
11 upon issuance of a contract award, the school district governing  
12 board shall publicly announce its awards identifying the contractor  
13 to whom the award is made, the winning contractor's price proposal  
14 and its overall combined rating on the request for proposal  
15 evaluation factors. The notice of award shall also include the  
16 agency's ranking in relation to all other responsive bidders and  
17 their respective price proposals and a summary of the school  
18 district's rationale for the contract award.

19 (F) For the purposes of this chapter, "skilled labor force  
20 availability" means that an agreement exists with a registered  
21 apprenticeship program, approved by the California Apprenticeship  
22 Council, which has graduated apprentices in the preceding five  
23 years. This graduation requirement shall not apply to programs  
24 providing apprenticeship training for any craft that has not been  
25 deemed by the Department of Labor and the Department of  
26 Industrial Relations to be an apprenticable craft in the two years  
27 ~~prior to~~ before enactment of this act.

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

36 *SEC. 3. Section 81700 of the Education Code is amended to*  
37 *read:*

38 81700. (a) It is the intent of the Legislature to enable  
39 community college districts to utilize safe and cost-effective  
40 options for building and modernizing community college facilities.

1 The Legislature has recognized the merits of the design-build  
2 procurement process in the past by authorizing its use for projects  
3 undertaken by the University of California, specified local  
4 government projects, including school districts, and state office  
5 buildings.

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

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

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

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

30 (f) *In addition, it is the intent of the Legislature that design-build*  
31 *procurement does not replace or eliminate competitive bidding.*

32 *SEC. 4. Section 81703 of the Education Code is amended to*  
33 *read:*

34 81703. Design-build projects shall progress as follows:

35 (a) (1) The community college district governing board shall  
36 prepare a request for proposal setting forth the scope of the project  
37 that may include, but is not limited to, the size, type and desired  
38 design character of the buildings and site, performance  
39 specifications covering the quality of materials, equipment, and  
40 workmanship, preliminary plans or building layouts, or any other

1 information deemed necessary to describe adequately the  
2 community college district's needs. The performance specifications  
3 and any plans shall be prepared by a design professional duly  
4 licensed or registered in this state to perform the services required  
5 by the Field Act, as defined in Section 17281. *The request for*  
6 *proposal shall not include a design-build-operate contract for*  
7 *educational facilities pursuant to this chapter.*

8 (2) Each request for proposal shall do all of the following:

9 (A) Identify the basic scope and needs of the project or contract,  
10 the expected cost range, and other information deemed necessary  
11 by the community college district to inform interested parties of  
12 the contracting opportunity.

13 (B) Invite interested parties to submit competitive sealed  
14 proposals in the manner prescribed by the community college  
15 district.

16 (C) Include a section identifying and describing the following:

17 (i) All significant factors and subfactors that the community  
18 college district reasonably expects to consider in evaluating  
19 proposals, including cost or price and all nonprice related factors  
20 and subfactors.

21 (ii) The methodology and rating or weighting scheme that will  
22 be used by the community college district governing board in  
23 evaluating competitive proposals and specifically whether  
24 proposals will be rated according to numeric or qualitative values.

25 (iii) The relative importance or weight assigned to each of the  
26 factors identified in the request for proposal.

27 (iv) As an alternative to clause (iii), the governing board of a  
28 community college district shall specifically disclose whether all  
29 evaluation factors other than cost or price, when combined, are  
30 any of the following:

31 (I) Significantly more important than cost or price.

32 (II) Approximately equal in importance to cost or price.

33 (III) Significantly less important than cost or price.

34 (v) If the community college district governing board wishes  
35 to reserve the right to hold discussions or negotiations with  
36 responsive bidders, it shall so specify in the request for proposal  
37 and shall publish separately or incorporate into the request for  
38 proposal applicable rules and procedures to be observed by the  
39 community college district to ensure that any discussions or  
40 negotiations are conducted in a fair and impartial manner.

1 (3) Notwithstanding Section 4-315 of Title 24 of the California  
2 Code of Regulations, an architect or structural engineer who is  
3 party to a design-build entity may perform the services set forth  
4 in Section 81138.

5 (b) The community college district shall establish a procedure  
6 to prequalify design-build entities using a standard questionnaire  
7 developed by the Director of the Department of Industrial Relations  
8 pursuant to subdivision (b) of Section 17250.25.

9 (c) The community college district shall establish a procedure  
10 for final selection of the design-build entity. Selection shall be  
11 based on either of the following criteria:

12 (1) A competitive bidding process resulting in lump-sum bids  
13 by the prequalified design-build entities. Award shall be made on  
14 the basis of the lowest responsible bid.

15 (2) Notwithstanding any other provision of this code or of  
16 Section 20650 of the Public Contract Code, a community college  
17 district may use a design-build competition based upon  
18 performance and other criteria set forth by the governing board *of*  
19 *the community college district* in the solicitation of proposals.  
20 Criteria used in this evaluation of proposals may include, but need  
21 not be limited to, the proposed design approach, life cycle costs,  
22 project features, and project functions. However, competitive  
23 proposals shall be evaluated by using the criteria and source  
24 selection procedures specifically identified in the request for  
25 proposal. Once the evaluation is complete, all responsive bidders  
26 shall be ranked from the most advantageous to least advantageous  
27 to the community college district. A community college district  
28 that limits the number of responsible bidders participating in the  
29 design-build competition, at any time after a request for a proposal  
30 has been issued, shall use the source selection procedures and  
31 minimum factors set forth in subparagraph (C).

32 (A) Any architectural firm, engineering firm, construction  
33 manager, contractor, subcontractor, consultant, or individual  
34 retained by the governing ~~body~~ *board* of the community college  
35 district directly or indirectly ~~prior to~~ *before* the award of the project  
36 to assist in the planning of the project, including, but not  
37 necessarily limited to, the development criteria or preparation of  
38 the request for proposal, shall not be eligible to participate in the  
39 competition with the design-build entity or to perform work on  
40 the project as a subcontractor.

1 (B) The award of the contract shall be made to the responsible  
2 bidder whose proposal is determined, in writing by the community  
3 college district, to be the best value to the community college  
4 district.

5 (C) Proposals shall be evaluated and scored solely on the basis  
6 of the factors and source selection procedures identified in the  
7 request for proposal. However, the following minimum factors  
8 shall each represent at least 10 percent of the total weight or  
9 consideration given to all criteria factors: price, technical expertise,  
10 life cycle costs over 15 years or more, skilled labor force  
11 availability, and acceptable safety record.

12 (D) The community college district governing board shall issue  
13 a written decision supporting its contract award and stating in detail  
14 the basis of the award. The decision and the contract file must be  
15 sufficient to satisfy an external audit.

16 (E) Notwithstanding any provision of the Public Contract Code,  
17 upon issuance of a contract award, the community college district  
18 governing board shall publicly announce its awards identifying  
19 the contractor to whom the award is made, the winning contractor's  
20 price proposal and its overall combined rating on the request for  
21 proposal evaluation factors. The notice of award shall also include  
22 the agency's ranking in relation to all other responsive bidders and  
23 their respective price proposals and a summary of the community  
24 college district's rationale for the contract award.

25 (F) For ~~the~~ purposes of this chapter, "skilled labor force  
26 availability" means that an agreement exists with a registered  
27 apprenticeship program, approved by the California Apprenticeship  
28 Council, which has graduated apprentices in each of the  
29 immediately preceding five years. This graduation requirement  
30 shall not apply to programs providing apprenticeship training for  
31 any craft that has not been deemed by the Department of Labor  
32 and the Department of Industrial Relations to be an apprenticable  
33 craft in the five years ~~prior to~~ *before* enactment of the act adding  
34 this section.

35 (G) For ~~the~~ purposes of this chapter, a bidder's "safety record"  
36 shall be deemed "acceptable" if its experience modification rate  
37 for the most recent three-year period is an average of 1.00 or less,  
38 and its average total recordable injury or illness rate and average  
39 lost work rate for the most recent three-year period does not exceed  
40 the applicable statistical standards for its business category, or if

1 the bidder is a party to an alternative dispute resolution system as  
2 provided for in Section 3201.5 of the Labor Code.

3 (H) For the purposes of this chapter, when a community college  
4 district determines a design-build entity's "experience," the  
5 *community college* district shall give credit only to design-build  
6 experience and to California school design and construction  
7 experience.

8 ~~SECTION 1.~~

9 ~~SEC. 5.~~ Section 4 of Chapter 421 of the Statutes of 2001, as  
10 amended by Section 9 of Chapter 471 of the Statutes of 2007, is  
11 repealed.

12 ~~SEC. 2.~~

13 ~~SEC. 6.~~ Section 4 of Chapter 637 of the Statutes of 2002, as  
14 amended by Section 10 of Chapter 471 of the Statutes of 2007, is  
15 repealed.