

AMENDED IN ASSEMBLY AUGUST 7, 2014

**SENATE BILL**

**No. 1433**

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**Introduced by Senator Hill**

February 21, 2014

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An act to amend Sections 20209.5, 20209.7, ~~and 20209.11 of, and to repeal Sections 20209.12 and 20209.14 of, 20209.11, and 20209.14 of, to add and repeal Article 6.9 (commencing with Section 20209.15) of Chapter 1 of Part 3 of Division 2 of, and to repeal Section 20209.12 of, the Public Contract Code, relating to transit contracts, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as amended, Hill. Local Agency Public Construction Act: transit design-build contracts.

Existing law authorizes a transit operator to enter into a design-build contract, as specified. Existing law defines a "transit operator" as a transit district, included transit district, municipal operator, included municipal operator, or transit development board, a consolidated agency, or any joint powers authority formed to provide transit service. Existing law establishes conditions for the selection of the design-build entity relating to the dollar amounts of the contracts. Existing law requires a transit operator, as defined, awarding a contract for a public works project pursuant to these provisions, to reimburse the Department of Industrial Relations for costs of performing prevailing wage monitoring and enforcement of the public works project and would require moneys collected to be deposited into the State Public Works Enforcement Fund, a continuously appropriated fund. Existing law repeals these provisions on January 1, 2015.

This bill would include in the definition of “transit operator” any other local or regional agency responsible for the construction of transit projects, thereby extending the design-build procurement authorization. The bill would eliminate the requirement that the project cost exceed a specified amount. The bill would ~~delete the repeal date, thus extending the operation of these provisions indefinitely~~ *provide that these provisions apply to project solicitations that commenced prior to January 1, 2015, and would extend the repeal date to January 1, 2017. These bill would, for project solicitations that commence on or after January 1, 2015, establish conditions for a “transit operator,” as defined, to select a design-build entity for a design-build project, and would repeal these provisions on January 1, 2024.*

The bill, by extending the design-build procurement authorization and by extending the deposit of moneys into the State Public Works Enforcement Fund, a continuously appropriated fund, would make an appropriation.

The bill, by extending the design-build procurement authorization, would impose the statement of qualifications requirement upon transit operators, subject to penalty of perjury, thereby creating a new crime and imposing a state-mandated local program.

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: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 20209.5 of the Public Contract Code is
- 2 amended to read:
- 3 20209.5. As used in this article, the following terms have the
- 4 following meanings:
- 5 (a) “Best value” means a value determined by objective criteria
- 6 and may include, but is not limited to, price, features, functions,
- 7 life-cycle costs, and other criteria deemed appropriate by the transit
- 8 district.

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

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

8 (d) “RFP” means request for proposal.

9 (e) “Transit operator” means any transit district, included transit  
10 district, municipal operator, included municipal operator, transit  
11 development board, a consolidated agency as described in Section  
12 132353.1 of the Public Utilities Code, any joint powers authority  
13 formed to provide transit service, or any other local or regional  
14 agency responsible for the construction of transit projects,  
15 including, but not limited to, a county transportation commission  
16 created by Section 130050 of the Public Utilities Code.

17 SEC. 2. Section 20209.7 of the Public Contract Code is  
18 amended to read:

19 20209.7. Design-build projects shall progress in a three-step  
20 process, as follows:

21 (a) The transit operator shall prepare a set of documents setting  
22 forth the scope of the project. The documents shall include, but  
23 are not limited to, the size, type, and desired design character of  
24 the buildings, transit facilities, and site, performance specifications  
25 covering the quality of materials, equipment, and workmanship,  
26 preliminary plans or building layouts, or any other information  
27 deemed necessary to describe adequately the transit operator’s  
28 needs. The performance specifications and any plans shall be  
29 prepared by a design professional duly licensed or registered in  
30 California.

31 (b) Any architectural or engineering firm or individual retained  
32 by the transit operator to assist in the development criteria or  
33 preparation of the request for proposal (RFP) is not eligible to  
34 participate in the competition for the design-build entity.

35 (c) (1) For contracts for public works projects awarded prior  
36 to the effective date of the regulations adopted by the Department  
37 of Industrial Relations pursuant to subdivision (g) of Section 1771.5  
38 of the Labor Code, the transit operator shall establish and enforce  
39 a labor compliance program containing the requirements outlined  
40 in Section 1771.5 of the Labor Code or shall contract with a third

1 party to operate this labor compliance program containing the  
2 requirements outlined in Section 1771.5 of the Labor Code. This  
3 requirement shall not apply to projects where the transit operator  
4 or the design-build entity has entered into a collective bargaining  
5 agreement that binds all of the contractors performing work on the  
6 project, or to any other project of the transit operator that is not  
7 design-build.

8 (2) For contracts for public works projects awarded on or after  
9 the effective date of the regulations adopted by the Department of  
10 Industrial Relations pursuant to subdivision (g) of Section 1771.5  
11 of the Labor Code, the transit operator shall reimburse the  
12 department for its reasonable and directly related costs of  
13 performing prevailing wage monitoring and enforcement on public  
14 works projects pursuant to rates established by the department as  
15 set forth in subdivision (h) of Section 1771.5 of the Labor Code.  
16 All moneys collected pursuant to this subdivision shall be deposited  
17 in the State Public Works Enforcement Fund created by Section  
18 1771.3 of the Labor Code, and shall be used only for enforcement  
19 of prevailing wage requirements on those projects.

20 (3) In lieu of reimbursing the Department of Industrial Relations  
21 for its reasonable and directly related costs of performing  
22 monitoring and enforcement on public works projects, the transit  
23 operator may elect to continue operating an existing previously  
24 approved labor compliance program to monitor and enforce  
25 prevailing wage requirements on the project if it has either not  
26 contracted with a third party to conduct its labor compliance  
27 program and requests and receives approval from the department  
28 to continue its existing program or it enters into a collective  
29 bargaining agreement that binds all of the contractors performing  
30 work on the project and that includes a mechanism for resolving  
31 disputes about the payment of wages.

32 (d) (1) Each RFP shall identify the basic scope and needs of  
33 the project or contract, the expected cost range, and other  
34 information deemed necessary by the contracting agency to inform  
35 interested parties of the contracting opportunity.

36 (2) Each RFP shall invite interested parties to submit competitive  
37 sealed proposals in the manner prescribed by the contracting  
38 agency.

39 (3) Each RFP shall include a section identifying and describing:

1 (A) All significant factors that the agency reasonably expects  
2 to consider in evaluating proposals, including cost or price and all  
3 nonprice-related factors.

4 (B) The methodology and rating or weighting process that will  
5 be used by the agency in evaluating competitive proposals and  
6 specifically whether proposals will be rated according to numeric  
7 or qualitative values.

8 (C) The relative importance or weight assigned to each of the  
9 factors identified in the RFP. If a nonweighted system is used, the  
10 agency shall specifically disclose whether all evaluation factors  
11 other than cost or price, when combined, are any of the following:

- 12 (i) Significantly more important than cost or price.
- 13 (ii) Approximately equal in importance to cost or price.
- 14 (iii) Significantly less important than cost or price.

15 (D) If the contracting agency wishes to reserve the right to hold  
16 discussions or negotiations with offerers, it shall specify the same  
17 in the RFP and shall publish separately or incorporate into the RFP  
18 applicable rules and procedures to be observed by the agency to  
19 ensure that any discussions or negotiations are conducted in a fair  
20 and impartial manner.

21 (e) (1) The transit operator shall establish a procedure to  
22 prequalify design-build entities using a standard questionnaire  
23 developed by the Director of Industrial Relations. The standardized  
24 questionnaire shall not require prospective bidders to disclose any  
25 violations of Chapter 1 (commencing with Section 1720) of Part  
26 7 of Division 2 of the Labor Code committed prior to January 1,  
27 1998, if the violation was based on a subcontractor's failure to  
28 comply with these provisions and the bidder had no knowledge of  
29 the subcontractor's violations and the bidder complied with the  
30 conditions set forth in subdivision (b) of Section 1775 of the Labor  
31 Code. In preparing the questionnaire, the director shall consult  
32 with the construction industry, building trades, transit operators,  
33 and other affected parties. This questionnaire shall require  
34 information relevant to the architecture or engineering firm that  
35 will be the lead on the design-build project. The questionnaire  
36 shall include, but is not limited to, all of the following:

37 (A) A listing of all the contractors that are part of the  
38 design-build entity.

39 (B) Evidence that the members of the design-build entity have  
40 completed, or demonstrated the experience, competency, capability,

1 and capacity to complete, projects of similar size, scope, or  
2 complexity, and that proposed key personnel have sufficient  
3 experience and training to competently manage and complete the  
4 design and construction of the project.

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

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

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

20 (F) Information concerning any debarment, disqualification, or  
21 removal from a federal, state, or local government public works  
22 project. Any instance where an entity, its owners, officers, or  
23 managing employees submitted a bid on a public works project  
24 and were found by an awarding body not to be a responsible bidder.

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

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

34 (I) Information concerning the bankruptcy or receivership of  
35 any member of the entity, and information concerning all legal  
36 claims, disputes, or lawsuits arising from any construction project  
37 of any member of the entity during the past three years, including  
38 information concerning any work completed by a surety.

39 (J) If the design-build entity is a partnership, limited partnership,  
40 or other association, a listing of all of the partners, general partners,

1 or association members who will participate as subcontractors in  
2 the design-build contract.

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

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

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

22 (f) The transit operator shall establish a procedure for final  
23 selection of the design-build entity.

24 (g) Except as provided in this section, nothing in this act shall  
25 be construed to affect the application of any other law.

26 SEC. 3. Section 20209.11 of the Public Contract Code is  
27 amended to read:

28 20209.11. The minimum performance criteria and design  
29 standards established pursuant to this article by a transit operator  
30 for quality, durability, longevity, life-cycle costs, and other criteria  
31 deemed appropriate by the transit operator shall be adhered to by  
32 the design-build entity. Any deviations from those standards may  
33 only be allowed by written consent of the transit operator. The  
34 transit operator may retain the services of a design professional  
35 through the course of the project in order to ensure compliance  
36 with this article.

37 SEC. 4. Section 20209.12 of the Public Contract Code is  
38 repealed.

39 ~~SEC. 5. Section 20209.14 of the Public Contract Code is~~  
40 ~~repealed.~~

1 SEC. 5. Section 20209.14 of the Public Contract Code is  
2 amended to read:

3 20209.14. (a) This article shall remain in effect only until  
4 January 1, ~~2015~~ 2017, and as of that date is repealed.

5 (b) This article shall only apply to transit operators that begin  
6 a project solicitation before January 1, 2015. A transit operator  
7 that begins project solicitation on or after January 1, 2015, is  
8 subject to Article 6.9 (commencing with Section 20209.15).

9 SEC. 6. Article 6.9 (commencing with Section 20209.15) is  
10 added to Chapter 1 of Part 3 of Division 2 of the Public Contract  
11 Code, to read:

12

13 Article 6.9. Transit Design-Build Projects

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15 20209.15. This article shall only apply to transit operators that  
16 begin a project solicitation on or after January 1, 2015. A transit  
17 operator that begins project solicitation before January 1, 2015,  
18 is subject to Article 6.8 (commencing with Section 20209.5).

19 20209.16. For purposes of this article, the following definitions  
20 apply:

21 (a) “Best value” means a value determined by evaluation of  
22 objective criteria related to price, features, functions, life-cycle  
23 costs, experience, and past performance. A best value  
24 determination may involve the selection of the lowest cost proposal  
25 meeting the interests of the local agency and meeting the objectives  
26 of the project, selection of the best proposal for a stipulated sum  
27 established by the procuring agency, or a tradeoff between price  
28 and other specified factors.

29 (b) “Construction subcontract” means each subcontract  
30 awarded by the design-build entity to a subcontractor that will  
31 perform work or labor or render service to the design-build entity  
32 in or about the construction of the work or improvement, or a  
33 subcontractor licensed by the State of California that, under  
34 subcontract to the design-build entity, specially fabricates and  
35 installs a portion of the work or improvement according to detailed  
36 drawings contained in the plans and specifications produced by  
37 the design-build team.

38 (c) “Design-build” means a project delivery process in which  
39 both the design and construction of a project are procured from  
40 a single entity.

1 (d) “Design-build entity” means a corporation, limited liability  
2 company, partnership, joint venture, or other legal entity that is  
3 able to provide appropriately licensed contracting, architectural,  
4 and engineering services as needed pursuant to a design-build  
5 contract.

6 (e) “Design-build team” means the design-build entity itself  
7 and the individuals and other entities identified by the design-build  
8 entity as members of its team. Members shall include the general  
9 contractor and, if utilized in the design of the project, all electrical,  
10 mechanical, and plumbing contractors.

11 (f) “Transit operator” means any transit district, included  
12 transit district, municipal operator, included municipal operator,  
13 any consolidated agency, as described in Section 132353.1 of the  
14 Public Utilities Code, any joint powers authority formed to provide  
15 transit service, any county transportation commission created  
16 pursuant to Section 130050 of the Public Utilities Code, or any  
17 other local or regional agency, responsible for the construction  
18 of transit projects.

19 (g) “Project” means a transit capital project, but does not  
20 include state highway construction or local street and road  
21 projects.

22 20209.17. (a) Except as provided in subdivision (b), and  
23 notwithstanding any other law, a transit operator, with approval  
24 of its governing body, may procure design-build contracts for  
25 public works projects in excess of one million dollars (\$1,000,000),  
26 awarding the contract to either the low bid or the best value,  
27 provided that this article shall not apply to any projects on the  
28 state highway system.

29 (b) For the acquisition and installation of technology  
30 applications or surveillance equipment designed to enhance safety,  
31 disaster preparedness, and homeland security efforts, there shall  
32 be no cost threshold and the transit operator may award the  
33 contract to the lowest responsible bidder or by using the best value  
34 method.

35 (c) The transit operator shall develop guidelines for a standard  
36 organizational conflict-of-interest policy, consistent with applicable  
37 law, regarding the ability of a person or entity, that performs  
38 services for the transit operator relating to the solicitation of a  
39 design-build project, to submit a proposal as a design-build entity,  
40 or to join a design-build team. This conflict-of-interest policy shall

1 *apply to each transit operator entering into design-build contracts*  
2 *authorized under this article.*

3 *20209.18. The procurement process for the design-build*  
4 *projects shall progress as follows:*

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

15 *(2) The documents shall not include a design-build-operate*  
16 *contract for any project. The documents, however, may include*  
17 *operations during a training or transition period but shall not*  
18 *include long-term operations for any project.*

19 *(b) Based on the documents prepared under subdivision (a),*  
20 *the transit operator shall prepare and issue a request for*  
21 *qualifications in order to prequalify or short-list the design-build*  
22 *entities whose proposals shall be evaluated for final selection. The*  
23 *request for qualifications shall include, but need not be limited to,*  
24 *the following elements:*

25 *(1) Identification of the basic scope and needs of the project or*  
26 *contract, the expected cost range, the methodology that will be*  
27 *used by the transit operator to evaluate proposals, the procedure*  
28 *for final selection of the design-build entity, and any other*  
29 *information deemed necessary by the transit operator to inform*  
30 *interested parties of the contracting opportunity.*

31 *(2) Significant factors that the transit operator reasonably*  
32 *expects to consider in evaluating qualifications, including technical*  
33 *design and construction expertise, acceptable safety record, and*  
34 *all other nonprice-related factors.*

35 *(3) A standard template request for statements of qualifications*  
36 *prepared by the transit operator. In preparing the standard*  
37 *template, the transit operator may consult with the construction*  
38 *industry, the building trades and surety industry, and other transit*  
39 *operators interested in using the authorization provided by this*  
40 *article. The template shall require the following information:*

1 (A) *If the design-build entity is a privately held corporation,*  
2 *limited liability company, partnership, or joint venture, a listing*  
3 *of all of the shareholders, partners, or members known at the time*  
4 *of statement of qualification submission who will perform work*  
5 *on the project.*

6 (B) *Evidence that the members of the design-build team have*  
7 *completed, or demonstrated the experience, competency, capability,*  
8 *and capacity to complete projects of similar size, scope, or*  
9 *complexity, and that proposed key personnel have sufficient*  
10 *experience and training to competently manage and complete the*  
11 *design and construction of the project, and a financial statement*  
12 *that ensures that the design-build entity has the capacity to*  
13 *complete the project.*

14 (C) *The licenses, registration, and credentials required to design*  
15 *and construct the project, including, but not limited to, information*  
16 *on the revocation or suspension of any license, credential, or*  
17 *registration.*

18 (D) *Evidence that establishes that the design-build entity has*  
19 *the capacity to obtain all required payment and performance*  
20 *bonding, liability insurance, and errors and omissions insurance.*

21 (E) *Information concerning workers' compensation experience*  
22 *history and a worker safety program.*

23 (F) *If the proposed design-build entity is a corporation, limited*  
24 *liability company, partnership, joint venture, or other legal entity,*  
25 *a copy of the organizational documents or agreement committing*  
26 *to form the organization.*

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

35 (4) (A) *The information required under this subdivision shall*  
36 *be certified under penalty of perjury by the design-build entity and*  
37 *its general partners or joint venture members.*

38 (B) *Information required under this subdivision that is not*  
39 *otherwise a public record under the California Public Records*  
40 *Act (Chapter 3.5 (commencing with Section 6250) of Division 7*

1 of Title 1 of the Government Code) shall not be open to public  
2 inspection.

3 (c) A design-build entity shall not be prequalified or shortlisted  
4 unless the entity provides an enforceable commitment to the transit  
5 operator that the entity and its subcontractors at every tier will  
6 use a skilled and trained workforce to perform all work on the  
7 project or contract that falls within an apprenticeable occupation  
8 in the building and construction trades.

9 (1) For purposes of this subdivision:

10 (A) "Apprenticeable occupation" means an occupation for  
11 which the chief had approved an apprenticeship program pursuant  
12 to Section 3075 of the Labor Code prior to January 1, 2014.

13 (B) "Skilled and trained workforce" means a workforce that  
14 meets all of the following conditions:

15 (i) All the workers are either skilled journeypersons or  
16 apprentices registered in an apprenticeship program approved by  
17 the Chief of the Division of Apprenticeship Standards.

18 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled  
19 journey persons employed to perform work on the contract or  
20 project by the entity and each of its subcontractors at every tier  
21 are graduates of an apprenticeship program for the applicable  
22 occupation that was either approved by the Chief of the Division  
23 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
24 Code or located outside California and approved for federal  
25 purposes pursuant to the apprenticeship regulations adopted by  
26 the federal Secretary of Labor.

27 (II) As of January 1, 2017, at least 30 percent of the skilled  
28 journey persons employed to perform work on the contract or  
29 project by the entity and each of its subcontractors at every tier  
30 are graduates of an apprenticeship program for the applicable  
31 occupation that was either approved by the Chief of the Division  
32 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
33 Code or located outside California and approved for federal  
34 purposes pursuant to the apprenticeship regulations adopted by  
35 the federal Secretary of Labor.

36 (III) As of January 1, 2018, at least 40 percent of the skilled  
37 journey persons employed to perform work on the contract or  
38 project by the entity and each of its subcontractors at every tier  
39 are graduates of an apprenticeship program for the applicable  
40 occupation that was either approved by the Chief of the Division

1 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
2 Code or located outside California and approved for federal  
3 purposes pursuant to the apprenticeship regulations adopted by  
4 the federal Secretary of Labor.

5 (IV) As of January 1, 2019, at least 50 percent of the skilled  
6 journey persons employed to perform work on the contract or  
7 project by the entity and each of its subcontractors at every tier  
8 are graduates of an apprenticeship program for the applicable  
9 occupation that was either approved by the Chief of the Division  
10 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
11 Code or located outside California and approved for federal  
12 purposes pursuant to the apprenticeship regulations adopted by  
13 the federal Secretary of Labor.

14 (V) As of January 1, 2020, at least 60 percent of the skilled  
15 journey persons employed to perform work on the contract or  
16 project by the entity and each of its subcontractors at every tier  
17 are graduates of an apprenticeship program for the applicable  
18 occupation that was either approved by the Chief of the Division  
19 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
20 Code or located outside California and approved for federal  
21 purposes pursuant to the apprenticeship regulations adopted by  
22 the federal Secretary of Labor.

23 (iii) For an apprenticeable occupation in which no  
24 apprenticeship program had been approved by the chief prior to  
25 January 1, 1995, up to one-half of the graduation percentage  
26 requirement in subclause (I) of clause (ii) may be satisfied by  
27 skilled journeypersons who commenced working in the  
28 apprenticeable occupation prior to the chief's approval of an  
29 apprenticeship program for that occupation in the county in which  
30 the project is located.

31 (C) "Skilled journey person" means a worker who either:

32 (i) Graduated from an apprenticeship program for the  
33 applicable occupation that was approved by the chief or located  
34 outside California and approved for federal purposes pursuant to  
35 the apprenticeship regulations adopted by the federal Secretary  
36 of Labor.

37 (ii) Has at least as many hours of on-the-job experience in the  
38 applicable occupation as would be required to graduate from an  
39 apprenticeship program for the applicable occupation that is  
40 approved by the chief.

1 (2) An entity's commitment that a skilled and trained workforce  
2 will be used to perform the project or contract may be established  
3 by any of the following:

4 (A) The entity's agreement with the transit operator that the  
5 entity and its subcontractors at every tier will comply with the  
6 requirements of this subdivision and that the entity will provide  
7 the transit operator with evidence, on a monthly basis while the  
8 project or contract is being performed, that the entity and its  
9 subcontractors are complying with the requirements of this  
10 subdivision.

11 (B) If the transit operator has entered into a project labor  
12 agreement that will bind all contractors and subcontractors  
13 performing work on the project or contract and that includes the  
14 requirements of this subdivision, the entity's agreement that it will  
15 become a party to that project labor agreement.

16 (C) Evidence that the entity has entered into a project labor  
17 agreement that includes the requirements of this subdivision and  
18 that will bind the entity and all its subcontractors at every tier  
19 performing the project or contract.

20 (d) Based on the documents prepared as described in subdivision  
21 (a), the transit operator shall prepare a request for proposals that  
22 invites prequalified or short-listed entities to submit competitive  
23 sealed proposals in the manner prescribed by the transit operator.  
24 The request for proposals shall include, but need not be limited  
25 to, the following elements:

26 (1) Identification of the basic scope and needs of the project or  
27 contract, the estimated cost of the project, the methodology that  
28 will be used by the transit operator to evaluate proposals, whether  
29 the contract will be awarded on the basis of low bid or best value,  
30 and any other information deemed necessary by the transit  
31 operator to inform interested parties of the contracting opportunity.

32 (2) Significant factors that the transit operator reasonably  
33 expects to consider in evaluating proposals, including, but not  
34 limited to, cost or price and all nonprice-related factors.

35 (3) The relative importance or the weight assigned to each of  
36 the factors identified in the request for proposals.

37 (4) Where a best value selection method is used, the transit  
38 operator may reserve the right to request proposal revisions and  
39 hold discussions and negotiations with responsive proposers, in  
40 which case the transit operator shall so specify in the request for

1 proposals and shall publish separately or incorporate into the  
2 request for proposals applicable procedures to be observed by the  
3 transit operator to ensure that any discussions or negotiations are  
4 conducted in good faith.

5 (e) For those projects utilizing low bid as the final selection  
6 method, the competitive bidding process shall result in lump-sum  
7 bids by the prequalified or short-listed design-build entities, and  
8 awards shall be made to the design-build entity that is the lowest  
9 responsible bidder.

10 (f) For those projects utilizing best value as a selection method,  
11 the design-build competition shall progress as follows:

12 (1) Competitive proposals shall be evaluated by using only the  
13 criteria and selection procedures specifically identified in the  
14 request for proposals. The following minimum factors, however,  
15 shall be weighted as deemed appropriate by the transit operator:

16 (A) Price, unless a stipulated sum is specified .

17 (B) Technical design and construction expertise.

18 (C) Life-cycle costs over 15 or more years.

19 (2) Pursuant to subdivision (d), the transit operator may hold  
20 discussions or negotiations with responsive proposers using the  
21 process articulated in the transit operator's request for proposals.

22 (3) When the evaluation is complete, the responsive proposers  
23 shall be ranked based on a determination of value provided,  
24 provided that no more than three proposers are required to be  
25 ranked.

26 (4) The award of the contract shall be made to the responsible  
27 design-build entity whose proposal is determined by the transit  
28 operator to have offered the best value to the public.

29 (5) Notwithstanding any other provision of this code, upon  
30 issuance of a contract award, the transit operator shall publicly  
31 announce its award, identifying the design-build entity to which  
32 the award is made, along with a statement regarding the basis of  
33 the award.

34 (6) The statement regarding the transit operator's contract  
35 award, described in paragraph (5), and the contract file shall  
36 provide sufficient information to satisfy an external audit.

37 20209.19. (a) The design-build entity shall provide payment  
38 and performance bonds for the project in the form and in the  
39 amount required by the transit operator, and issued by a California

1 admitted surety. The amount of the payment bond shall not be less  
2 than the amount of the performance bond.

3 (b) The design-build contract shall require errors and omissions  
4 insurance coverage for the design elements of the project.

5 (c) The transit operator shall develop a standard form of  
6 payment and performance bond for its design-build projects.

7 20209.20. (a) The transit operator, in each design-build  
8 request for proposals, may identify specific types of subcontractors  
9 that must be included in the design-build entity statement of  
10 qualifications and proposal. All construction subcontractors that  
11 are identified in the proposal shall be afforded all the protections  
12 of Chapter 4 (commencing with Section 4100) of Part 1.

13 (b) Following award of the design-build contract, the  
14 design-build entity shall proceed as follows in awarding  
15 construction subcontracts with a value exceeding one-half of 1  
16 percent of the contract price allocable to construction work:

17 (1) Provide public notice of availability of work to be  
18 subcontracted in accordance with the publication requirements  
19 applicable to the competitive bidding process of the transit  
20 operator, including a fixed date and time on which qualifications  
21 statements, bids, or proposals will be due.

22 (2) Establish reasonable qualification criteria and standards.

23 (3) Award the subcontract either on a best value basis or to the  
24 lowest responsible bidder. The process may include  
25 prequalification or short-listing. The foregoing process does not  
26 apply to construction subcontractors listed in the original proposal.  
27 Subcontractors awarded construction subcontracts under this  
28 subdivision shall be afforded all the protections of Chapter 4  
29 (commencing with Section 4100) of Part 1.

30 20209.21. (a) If the transit operator elects to award a project  
31 pursuant to this article, retention proceeds withheld by the transit  
32 operator from the design-build entity shall not exceed 5 percent  
33 if a performance and payment bond, issued by an admitted surety  
34 insurer, is required in the solicitation of bids.

35 (b) In a contract between the design-build entity and a  
36 subcontractor, and in a contract between a subcontractor and any  
37 subcontractor thereunder, the percentage of the retention proceeds  
38 withheld may not exceed the percentage specified in the contract  
39 between the transit operator and the design-build entity. If the  
40 design-build entity provides written notice to any subcontractor

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

9 *20209.22. Nothing in this article affects, expands, alters, or*  
10 *limits any rights or remedies otherwise available at law.*

11 *20209.23. This article shall remain in effect only until January*  
12 *1, 2024, and as of that date is repealed.*

13 ~~SEC. 6.~~

14 *SEC. 7.* No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.