

AMENDED IN ASSEMBLY AUGUST 19, 2014

AMENDED IN ASSEMBLY AUGUST 7, 2014

SENATE BILL

No. 1433

Introduced by Senator Hill

February 21, 2014

An act to amend Sections 20209.5, 20209.7, 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.~~ *contracts.*

LEGISLATIVE COUNSEL'S DIGEST

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

~~Existing law~~

~~The Local Agency Public Construction Act authorizes a transit operator to enter into a design-build contract, as specified. Existing law The act 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 The act 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 and establishes monetary thresholds for the use of~~

a design-build contract. The act 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.~~ *revise the monetary thresholds to generally require that project costs exceed \$1,000,000 for the use of a design-build contract.* The bill would 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;~~ *The bill,* for project solicitations that commence on or after January 1, 2015, *would* 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-no~~. 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,

1 life-cycle costs, and other criteria deemed appropriate by the transit
2 district.

3 (b) “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 (c) “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 (d) “RFP” means request for proposal.

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

19 ~~SEC. 2. Section 20209.7 of the Public Contract Code is~~
20 ~~amended to read:~~

21 ~~20209.7. Design-build projects shall progress in a three-step~~
22 ~~process, as follows:~~

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

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

37 ~~(c) (1) For contracts for public works projects awarded prior~~
38 ~~to the effective date of the regulations adopted by the Department~~
39 ~~of Industrial Relations pursuant to subdivision (g) of Section 1771.5~~
40 ~~of the Labor Code, the transit operator shall establish and enforce~~

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

10 (2) For contracts for public works projects awarded on or after
 11 the effective date of the regulations adopted by the Department of
 12 Industrial Relations pursuant to subdivision (g) of Section 1771.5
 13 of the Labor Code, the transit operator shall reimburse the
 14 department for its reasonable and directly related costs of
 15 performing prevailing wage monitoring and enforcement on public
 16 works projects pursuant to rates established by the department as
 17 set forth in subdivision (h) of Section 1771.5 of the Labor Code.
 18 All moneys collected pursuant to this subdivision shall be deposited
 19 in the State Public Works Enforcement Fund created by Section
 20 1771.3 of the Labor Code, and shall be used only for enforcement
 21 of prevailing wage requirements on those projects.

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

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

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

- 1 ~~(3) Each RFP shall include a section identifying and describing:~~
2 ~~(A) All significant factors that the agency reasonably expects~~
3 ~~to consider in evaluating proposals, including cost or price and all~~
4 ~~nonprice-related factors.~~
5 ~~(B) The methodology and rating or weighting process that will~~
6 ~~be used by the agency in evaluating competitive proposals and~~
7 ~~specifically whether proposals will be rated according to numeric~~
8 ~~or qualitative values.~~
9 ~~(C) The relative importance or weight assigned to each of the~~
10 ~~factors identified in the RFP. If a nonweighted system is used, the~~
11 ~~agency shall specifically disclose whether all evaluation factors~~
12 ~~other than cost or price, when combined, are any of the following:~~
13 ~~(i) Significantly more important than cost or price.~~
14 ~~(ii) Approximately equal in importance to cost or price.~~
15 ~~(iii) Significantly less important than cost or price.~~
16 ~~(D) If the contracting agency wishes to reserve the right to hold~~
17 ~~discussions or negotiations with offerers, it shall specify the same~~
18 ~~in the RFP and shall publish separately or incorporate into the RFP~~
19 ~~applicable rules and procedures to be observed by the agency to~~
20 ~~ensure that any discussions or negotiations are conducted in a fair~~
21 ~~and impartial manner.~~
22 ~~(e) (1) The transit operator shall establish a procedure to~~
23 ~~prequalify design-build entities using a standard questionnaire~~
24 ~~developed by the Director of Industrial Relations. The standardized~~
25 ~~questionnaire shall not require prospective bidders to disclose any~~
26 ~~violations of Chapter 1 (commencing with Section 1720) of Part~~
27 ~~7 of Division 2 of the Labor Code committed prior to January 1,~~
28 ~~1998, if the violation was based on a subcontractor's failure to~~
29 ~~comply with these provisions and the bidder had no knowledge of~~
30 ~~the subcontractor's violations and the bidder complied with the~~
31 ~~conditions set forth in subdivision (b) of Section 1775 of the Labor~~
32 ~~Code. In preparing the questionnaire, the director shall consult~~
33 ~~with the construction industry, building trades, transit operators,~~
34 ~~and other affected parties. This questionnaire shall require~~
35 ~~information relevant to the architecture or engineering firm that~~
36 ~~will be the lead on the design-build project. The questionnaire~~
37 ~~shall include, but is not limited to, all of the following:~~
38 ~~(A) A listing of all the contractors that are part of the~~
39 ~~design-build entity.~~

1 ~~(B) Evidence that the members of the design-build entity have~~
2 ~~completed, or demonstrated the experience, competency, capability,~~
3 ~~and capacity to complete, projects of similar size, scope, or~~
4 ~~complexity, and that proposed key personnel have sufficient~~
5 ~~experience and training to competently manage and complete the~~
6 ~~design and construction of the project.~~

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

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

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

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

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

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

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

1 ~~(J) If the design-build entity is a partnership, limited partnership,~~
2 ~~or other association, a listing of all of the partners, general partners,~~
3 ~~or association members who will participate as subcontractors in~~
4 ~~the design-build contract.~~

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

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

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

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

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

28 *SEC. 2. Section 20209.7 of the Public Contract Code is*
29 *amended to read:*

30 20209.7. Design-build projects shall progress in a three-step
31 process, as follows:

32 (a) The transit operator shall prepare a set of documents setting
33 forth the scope of the project. The documents shall include, but
34 are not limited to, the size, type, and desired design character of
35 the buildings, transit facilities, and site, performance specifications
36 covering the quality of materials, equipment, and workmanship,
37 preliminary plans or building layouts, or any other information
38 deemed necessary to describe adequately the transit operator's
39 needs. The performance specifications and any plans shall be

1 prepared by a design professional duly licensed or registered in
2 California.

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

7 (c) (1) For contracts for public works projects awarded prior
8 to January 1, 2012, the transit operator shall establish and enforce
9 a labor compliance program containing the requirements outlined
10 in Section 1771.5 of the Labor Code or shall contract with a third
11 party to operate this labor compliance program containing the
12 requirements outlined in Section 1771.5 of the Labor Code. This
13 requirement shall not apply to projects where the transit operator
14 or the design-build entity has entered into a collective bargaining
15 agreement that binds all of the contractors performing work on the
16 project, or to any other project of the transit operator that is not
17 design-build.

18 (2) For contracts for public works projects awarded on or after
19 January 1, 2012, the project shall be subject to the requirements
20 of Section 1771.4 of the Labor Code.

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

25 (2) Each RFP shall invite interested parties to submit competitive
26 sealed proposals in the manner prescribed by the contracting
27 agency.

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

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

32 (B) The methodology and rating or weighting process that will
33 be used by the agency in evaluating competitive proposals and
34 specifically whether proposals will be rated according to numeric
35 or qualitative values.

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

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

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

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

3 (D) If the contracting agency wishes to reserve the right to hold
4 discussions or negotiations with offerors, it shall specify the same
5 in the RFP and shall publish separately or incorporate into the RFP
6 applicable rules and procedures to be observed by the agency to
7 ensure that any discussions or negotiations are conducted in a fair
8 and impartial manner.

9 (e) (1) The transit operator shall establish a procedure to
10 prequalify design-build entities using a standard questionnaire
11 developed by the Director of Industrial Relations. The standardized
12 questionnaire shall not require prospective bidders to disclose any
13 violations of Chapter 1 (commencing with Section 1720) of Part
14 7 of Division 2 of the Labor Code committed prior to January 1,
15 1998, if the violation was based on a subcontractor's failure to
16 comply with these provisions and the bidder had no knowledge of
17 the subcontractor's violations and the bidder complied with the
18 conditions set forth in subdivision (b) of Section 1775 of the Labor
19 Code. In preparing the questionnaire, the director shall consult
20 with the construction industry, building trades, transit operators,
21 and other affected parties. This questionnaire shall require
22 information relevant to the architecture or engineering firm that
23 will be the lead on the design-build project. The questionnaire
24 shall include, but is not limited to, all of the following:

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

27 (B) Evidence that the members of the design-build entity have
28 completed, or demonstrated the experience, competency, capability,
29 and capacity to complete, projects of similar size, scope, or
30 complexity, and that proposed key personnel have sufficient
31 experience and training to competently manage and complete the
32 design and construction of the project.

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

36 (D) Evidence that establishes that the design-build entity has
37 the capacity to obtain all required payment and performance
38 bonding, liability insurance, and errors and omissions insurance,
39 as well as a financial statement that assures the transit operator
40 that the design-build entity has the capacity to complete the project.

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

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

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

15 (H) Any violations of the Contractors' State License Law
16 (Chapter 9 (commencing with Section 7000) of Division 3 of the
17 Business and Professions Code), excluding alleged violations of
18 federal or state law, including the payment of wages, benefits,
19 apprenticeship requirements, or personal income tax withholding,
20 or of Federal Insurance Contribution Act (FICA; 26 U.S.C. Sec.
21 3101 et seq.) withholding requirements settled against any member
22 of the design-build entity.

23 (I) Information concerning the bankruptcy or receivership of
24 any member of the entity, and information concerning all legal
25 claims, disputes, or lawsuits arising from any construction project
26 of any member of the entity during the past three years, including
27 information concerning any work completed by a surety.

28 (J) If the design-build entity is a partnership, limited partnership,
29 or other association, a listing of all of the partners, general partners,
30 or association members who will participate as subcontractors in
31 the design-build contract.

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

39 (L) In the case of a partnership or other association that is not
40 a legal entity, a copy of the agreement creating the partnership or

1 association and specifying that all partners or association members
2 agree to be liable for full performance under the design-build
3 contract.

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

11 (f) (1) The transit operator shall establish a procedure for final
12 selection of the design-build entity. ~~Selection shall be subject to~~
13 ~~the following conditions:~~ *Except as provided in paragraph (2), in*
14 *no case shall the transit operator award a contract pursuant to*
15 *this article unless that project exceeds one million dollars*
16 *(\$1,000,000) in cost.*

17 ~~(1) In no case shall the transit operator award a contract to a~~
18 ~~design-build entity pursuant to this article for a capital maintenance~~
19 ~~or capacity-enhancing rail project unless that project exceeds~~
20 ~~twenty-five million dollars (\$25,000,000) in cost.~~

21 ~~(2) For nonrail transit projects that exceed two million five~~
22 ~~hundred thousand dollars (\$2,500,000), the transit operator may~~
23 ~~award the project to the lowest responsible bidder or by using the~~
24 ~~best value method.~~

25 ~~(3)~~

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

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

33 SEC. 3. Section 20209.11 of the Public Contract Code is
34 amended to read:

35 20209.11. The minimum performance criteria and design
36 standards established pursuant to this article by a transit operator
37 for quality, durability, longevity, life-cycle costs, and other criteria
38 deemed appropriate by the transit operator shall be adhered to by
39 the design-build entity. Any deviations from those standards may
40 only be allowed by written consent of the transit operator. The

1 transit operator may retain the services of a design professional
2 through the course of the project in order to ensure compliance
3 with this article.

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

6 SEC. 5. Section 20209.14 of the Public Contract Code is
7 amended to read:

8 ~~20209.14. (a) This article shall remain in effect only until~~
9 ~~January 1, 2017, and as of that date is repealed.~~

10 *20209.14. (a) This article shall remain in effect only until*
11 *January 1, 2017, and as of that date is repealed, unless a later*
12 *enacted statute, that is enacted before January 1, 2017, deletes or*
13 *extends that date.*

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

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

21

22 Article 6.9. Transit Design-Build Projects

23

24 20209.15. This article shall only apply to transit operators that
25 begin a project solicitation on or after January 1, 2015. A transit
26 operator that begins project solicitation before January 1, 2015, is
27 subject to Article 6.8 (commencing with Section 20209.5).

28 20209.16. For purposes of this article, the following definitions
29 apply:

30 (a) “Best value” means a value determined by evaluation of
31 objective criteria related to price, features, functions, life-cycle
32 costs, experience, and past performance. A best value determination
33 may involve the selection of the lowest cost proposal meeting the
34 interests of the local agency and meeting the objectives of the
35 project, selection of the best proposal for a stipulated sum
36 established by the procuring agency, or a tradeoff between price
37 and other specified factors.

38 (b) “Construction subcontract” means each subcontract awarded
39 by the design-build entity to a subcontractor that will perform work
40 or labor or render service to the design-build entity in or about the

1 construction of the work or improvement, or a subcontractor
2 licensed by the State of California that, under subcontract to the
3 design-build entity, specially fabricates and installs a portion of
4 the work or improvement according to detailed drawings contained
5 in the plans and specifications produced by the design-build team.

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

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

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

19 (f) “Transit operator” means any transit district, included transit
20 district, municipal operator, included municipal operator, any
21 consolidated agency, as described in Section 132353.1 of the Public
22 Utilities Code, any joint powers authority formed to provide transit
23 service, any county transportation commission created pursuant
24 to Section 130050 of the Public Utilities Code, or any other local
25 or regional agency, responsible for the construction of transit
26 projects.

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

29 20209.17. (a) Except as provided in subdivision (b), and
30 notwithstanding any other law, a transit operator, with approval
31 of its governing body, may procure design-build contracts for
32 public works projects in excess of one million dollars (\$1,000,000),
33 awarding the contract to either the low bid or the best value,
34 provided that this article shall not apply to any projects on the state
35 highway system.

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

1 (c) The transit operator shall develop guidelines for a standard
2 organizational conflict-of-interest policy, consistent with applicable
3 law, regarding the ability of a person or entity, that performs
4 services for the transit operator relating to the solicitation of a
5 design-build project, to submit a proposal as a design-build entity,
6 or to join a design-build team. This conflict-of-interest policy shall
7 apply to each transit operator entering into design-build contracts
8 authorized under this article.

9 20209.18. The procurement process for the design-build
10 projects shall progress as follows:

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

21 (2) The documents shall not include a design-build-operate
22 contract for any project. The documents, however, may include
23 operations during a training or transition period but shall not
24 include long-term operations for any project.

25 (b) Based on the documents prepared under subdivision (a), the
26 transit operator shall prepare and issue a request for qualifications
27 in order to prequalify or short-list the design-build entities whose
28 proposals shall be evaluated for final selection. The request for
29 qualifications shall include, but need not be limited to, the
30 following elements:

31 (1) Identification of the basic scope and needs of the project or
32 contract, the expected cost range, the methodology that will be
33 used by the transit operator to evaluate proposals, the procedure
34 for final selection of the design-build entity, and any other
35 information deemed necessary by the transit operator to inform
36 interested parties of the contracting opportunity.

37 (2) Significant factors that the transit operator reasonably expects
38 to consider in evaluating qualifications, including technical design
39 and construction expertise, acceptable safety record, and all other
40 nonprice-related factors.

1 (3) A standard template request for statements of qualifications
2 prepared by the transit operator. In preparing the standard template,
3 the transit operator may consult with the construction industry, the
4 building trades and surety industry, and other transit operators
5 interested in using the authorization provided by this article. The
6 template shall require the following information:

7 (A) If the design-build entity is a privately held corporation,
8 limited liability company, partnership, or joint venture, a listing
9 of all of the shareholders, partners, or members known at the time
10 of statement of qualification submission who will perform work
11 on the project.

12 (B) Evidence that the members of the design-build team have
13 completed, or demonstrated the experience, competency, capability,
14 and capacity to complete projects of similar size, scope, or
15 complexity, and that proposed key personnel have sufficient
16 experience and training to competently manage and complete the
17 design and construction of the project, and a financial statement
18 that ensures that the design-build entity has the capacity to
19 complete the project.

20 (C) The licenses, registration, and credentials required to design
21 and construct the project, including, but not limited to, information
22 on the revocation or suspension of any license, credential, or
23 registration.

24 (D) Evidence that establishes that the design-build entity has
25 the capacity to obtain all required payment and performance
26 bonding, liability insurance, and errors and omissions insurance.

27 (E) Information concerning workers' compensation experience
28 history and a worker safety program.

29 (F) If the proposed design-build entity is a corporation, limited
30 liability company, partnership, joint venture, or other legal entity,
31 a copy of the organizational documents or agreement committing
32 to form the organization.

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

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

4 (B) Information required under this subdivision that is not
5 otherwise a public record under the California Public Records Act
6 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
7 Title 1 of the Government Code) shall not be open to public
8 inspection.

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

15 (1) For purposes of this subdivision:

16 (A) “Apprenticeable occupation” means an occupation for which
17 the chief had approved an apprenticeship program pursuant to
18 Section 3075 of the Labor Code prior to January 1, 2014.

19 (B) “Skilled and trained workforce” means a workforce that
20 meets all of the following conditions:

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

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

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

1 purposes pursuant to the apprenticeship regulations adopted by
2 the federal Secretary of Labor.

3 (III) As of January 1, 2018, at least 40 percent of the skilled
4 journey persons employed to perform work on the contract or
5 project by the entity and each of its subcontractors at every tier
6 are graduates of an apprenticeship program for the applicable
7 occupation that was either approved by the Chief of the Division
8 of Apprenticeship Standards pursuant to Section 3075 of the Labor
9 Code or located outside California and approved for federal
10 purposes pursuant to the apprenticeship regulations adopted by
11 the federal Secretary of Labor.

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

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

30 (iii) For an apprenticeable occupation in which no apprenticeship
31 program had been approved by the chief prior to January 1, 1995,
32 up to one-half of the graduation percentage requirement in
33 subclause (I) of clause (ii) may be satisfied by skilled
34 journeypersons who commenced working in the apprenticeable
35 occupation prior to the chief's approval of an apprenticeship
36 program for that occupation in the county in which the project is
37 located.

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

39 (i) Graduated from an apprenticeship program for the applicable
40 occupation that was approved by the chief or located outside

1 California and approved for federal purposes pursuant to the
2 apprenticeship regulations adopted by the federal Secretary of
3 Labor.

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

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

11 (A) The entity's agreement with the transit operator that the
12 entity and its subcontractors at every tier will comply with the
13 requirements of this subdivision and that the entity will provide
14 the transit operator with evidence, on a monthly basis while the
15 project or contract is being performed, that the entity and its
16 subcontractors are complying with the requirements of this
17 subdivision.

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

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

27 (d) Based on the documents prepared as described in subdivision
28 (a), the transit operator shall prepare a request for proposals that
29 invites prequalified or short-listed entities to submit competitive
30 sealed proposals in the manner prescribed by the transit operator.
31 The request for proposals shall include, but need not be limited
32 to, the following elements:

33 (1) Identification of the basic scope and needs of the project or
34 contract, the estimated cost of the project, the methodology that
35 will be used by the transit operator to evaluate proposals, whether
36 the contract will be awarded on the basis of low bid or best value,
37 and any other information deemed necessary by the transit operator
38 to inform interested parties of the contracting opportunity.

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

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

6 (4) Where a best value selection method is used, the transit
7 operator may reserve the right to request proposal revisions and
8 hold discussions and negotiations with responsive proposers, in
9 which case the transit operator shall so specify in the request for
10 proposals and shall publish separately or incorporate into the
11 request for proposals applicable procedures to be observed by the
12 transit operator to ensure that any discussions or negotiations are
13 conducted in good faith.

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

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

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

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

26 (B) Technical design and construction expertise.

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

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

31 (3) When the evaluation is complete, the responsive proposers
32 shall be ranked based on a determination of value provided,
33 provided that no more than three proposers are required to be
34 ranked.

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

38 (5) Notwithstanding any other provision of this code, upon
39 issuance of a contract award, the transit operator shall publicly
40 announce its award, identifying the design-build entity to which

1 the award is made, along with a statement regarding the basis of
2 the award.

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

6 20209.19. (a) The design-build entity shall provide payment
7 and performance bonds for the project in the form and in the
8 amount required by the transit operator, and issued by a California
9 admitted surety. The amount of the payment bond shall not be less
10 than the amount of the performance bond.

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

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

15 20209.20. (a) The transit operator, in each design-build request
16 for proposals, may identify specific types of subcontractors that
17 must be included in the design-build entity statement of
18 qualifications and proposal. All construction subcontractors that
19 are identified in the proposal shall be afforded all the protections
20 of Chapter 4 (commencing with Section 4100) of Part 1.

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

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

30 (2) Establish reasonable qualification criteria and standards.

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

38 20209.21. (a) If the transit operator elects to award a project
39 pursuant to this article, retention proceeds withheld by the transit
40 operator from the design-build entity shall not exceed 5 percent if

1 a performance and payment bond, issued by an admitted surety
2 insurer, is required in the solicitation of bids.

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

17 20209.22. Nothing in this article affects, expands, alters, or
18 limits any rights or remedies otherwise available at law.

19 ~~20209.23. This article shall remain in effect only until January~~
20 ~~1, 2024, and as of that date is repealed.~~

21 *20209.23. This article shall remain in effect only until January*
22 *1, 2024, and as of that date is repealed, unless a later enacted*
23 *statute, that is enacted before January 1, 2024, deletes or extends*
24 *that date.*

25 SEC. 7. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.