

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JULY 12, 1999

AMENDED IN ASSEMBLY MAY 18, 1999

AMENDED IN ASSEMBLY APRIL 13, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 958

Introduced by Assembly Member Scott

February 25, 1999

An act to add Article 6.8 (commencing with Section 20209.5) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as amended, Scott. Transit design-build contracts.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

This bill would authorize transit districts to enter into a design-build contract, as defined, according to specified procedures. The bill would require each contract to prohibit construction or alteration of any school building without the

prior written approval of the plans by the Department of General Services. *A transit district that uses the design-build process would be required to report to the Legislative Analyst at the conclusion of the project.*

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. (a) The Legislature finds and declares
2 that the design-build process is a valuable alternative to
3 the existing three-step process for public transit entities.
4 The design-build process can improve the project
5 delivery process by accelerating delivery schedules and
6 saving costs by promoting improved coordination
7 between contractor and architect, shifting management
8 risk from the public entity to the design-build entity, and
9 minimizing change orders through early collaboration
10 between design and construction disciplines.

11 (b) The Legislature has recognized the merits of the
12 design-build procurement process in the past by
13 authorizing its use for projects undertaken by certain
14 transit districts, the University of California, joint-venture
15 public school projects, specified local government
16 projects, and several state office buildings under
17 construction in Oakland, San Francisco, and Los Angeles.
18 The design-build procurement process has also been
19 approved for use by public entities in other states, as well
20 as by the federal government.

21 (c) Therefore, it is the intent of the Legislature in
22 enacting this act to define the transit design-build
23 construction procurement process and to establish the
24 parameters for its use for public transit projects.

25 (d) In addition, it is the intent of the Legislature that
26 the full scope of design, construction, and equipment
27 awarded to a design-build entity shall be authorized in a
28 single funding phase. The funding phase may be
29 authorized concurrently with, or separately from, the
30 phase that authorizes the creation of the performance
31 criteria and concept drawings.



1 (e) It is the intent of the Legislature that transit
 2 design-build procurement as authorized by this act shall
 3 not be construed to extend, limit, or change in any
 4 manner the legal responsibility of public agencies and
 5 contractors to comply with existing laws requiring
 6 prompt and timely payment of progress payments and
 7 retention proceeds pursuant to the terms of the
 8 construction contract.

9 ~~SEC. 2. Part 6 (commencing with Section 22400) is~~
 10 ~~added to Division 2 of the Public Contract Code, to read:~~

11
 12 ~~Article 6.8. Transit Design-Build Contracts~~

13
 14 *SEC. 2. Article 6.8 (commencing with Section*
 15 *20209.5) is added to Chapter 1 of Part 3 of Division 2 of the*
 16 *Public Contract Code, to read:*

17
 18 *Article 6.8. Transit Design-Build Contracts*

19
 20 20209.5. As used in this article, the following terms
 21 have the following meanings:

22 (a) “Best value” means a value determined by
 23 objective criteria and may include, but is not limited to,
 24 price, features, functions, life-cycle costs, and other
 25 criteria deemed appropriate by the transit district.

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

29 (c) “Design-build entity” means a partnership,
 30 corporation, or other legal entity that is able to provide
 31 appropriately licensed contracting, architectural, and
 32 engineering services as needed pursuant to a design-build
 33 contract.

34 20209.6. (a) When it is in the best interest of the
 35 transit district, the transit district may enter into a
 36 design-build contract for both the design and
 37 construction of a project under this article. After
 38 evaluation of the traditional design, bid, and build process
 39 of transit construction and of the design-build process in
 40 a public hearing, and after a review of the checklist



1 developed pursuant to paragraph (e), the transit district
2 shall adopt a resolution approving the use of a
3 design-build contract pursuant to this article prior to
4 entering into a design-build contract. In the design-build
5 project proposal, the resolution shall be included as part
6 of any application for state funds pursuant to this chapter.

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

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

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

30 (i) A listing of all subcontractors that the design-build
31 entity will use as a part of the design-build entity at the
32 time of bid. All subcontractors that are listed at the time
33 of bid shall be afforded all of the protections contained in
34 Chapter 4 (commencing with Section 4100) of Part 1.

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



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

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

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

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

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

29 (vii) Any instance where the entity, its owner, officers
30 or managing employees defaulted on a construction
31 contract.

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



1 (ix) Information concerning the bankruptcy or
2 receivership of any member of the entity, including
3 information concerning any work completed by a surety.

4 (B) The information required pursuant to this
5 paragraph shall be verified under oath by the entity and
6 its members in the manner in which civil pleadings in
7 civil actions are verified. The information required is not
8 a public record and may not be open to public inspection.

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

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

16 (B) A transit district may use a design-build
17 competition based upon performance and other criteria
18 set forth by the governing board in the solicitation of
19 proposals. Criteria used in this evaluation of proposals
20 may include, but need not be limited to, the proposed
21 design approach, life-cycle costs, project features, and
22 project functions. However, any criteria and methods
23 used to evaluate proposals shall be limited to those
24 contained in the request for design-build proposals. Any
25 architectural or engineering firm or individual retained
26 by the governing board to assist in the development of
27 criteria or preparation of the solicitation is not eligible to
28 participate in the competition with any design-build
29 entity. The award shall be made to the design-build entity
30 whose proposal is judged as providing the best value,
31 meeting the interest of the governing board and the
32 objectives of the project.

33 (C) If the governing body of a transit district elects to
34 award a ~~school~~ *transit capital* project through the
35 design-build selection process pursuant to this article, all
36 of the following apply:

37 (1) Notwithstanding Section 7200, the retention
38 proceeds withheld by the transit district from the
39 design-build entity listed at the time of bid shall be zero.



1 (2) Notwithstanding Section 7200, the retention
2 proceeds withheld by the design-build entity from
3 subcontractors not listed at the time of bid pursuant to
4 clause (i) of subparagraph (A) of paragraph (2) of
5 subdivision (b) may not exceed 5 percent.

6 (3) If a bona fide dispute exists, the retention proceeds
7 withheld by the transit district from the design-build
8 entity may not exceed 150 percent of the estimated value
9 of the disputed amount.

10 (4) If a bona fide dispute exists, the retention proceeds
11 withheld by the design-build entity from a subcontractor
12 not originally listed, the subcontractor's portion of the
13 retention proceeds may not exceed 150 percent of the
14 disputed amount.

15 20209.7. (a) Any design-build entity that is selected
16 to design and build a project pursuant to this article shall
17 possess or obtain sufficient bonding consistent with this
18 article. Nothing in this part prohibits a general or
19 engineering contractor from being designated the lead
20 entity on a design-build entity for the purposes of
21 purchasing necessary bonding to cover the activities of
22 the design-build entity.

23 (b) Any payment or performance bond written for the
24 purposes of this part shall be written using a bond form
25 developed by the Department of General Services
26 pursuant to subdivision (i) of Section 14661 of the
27 Government Code. The purpose of this subdivision is to
28 promote uniformity of bond forms to be used on transit
29 district design-build projects throughout the state.

30 (c) All subcontracts that were not listed by the
31 design-build entity in accordance with subdivision (b) of
32 Section 20209.6 shall be awarded by the design-build
33 entity in accordance with the design-build process set
34 forth by the public entity in the design-build package.
35 The design-build entity shall do both of the following:

36 (1) Provide public notice of the availability of work to
37 be subcontracted in accordance with the publication
38 requirements applicable to the competitive bidding
39 process of the public entity.



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

4 20209.8. (a) The minimum performance criteria and
5 design standards established pursuant to this article by a
6 transit district for quality, durability, longevity, life-cycle
7 costs, and other criteria deemed appropriate by the
8 transit district shall be adhered to by the design-build
9 entity. Any deviations from those standards may only be
10 allowed by written consent of the transit district. The
11 governing board may retain the services of a design
12 professional through the course of the project in order to
13 ensure compliance with this article.

14 (b) The total price of the project shall be determined
15 either upon receipt of the lump-sum bids of subparagraph
16 (A) of paragraph (3) of subdivision (b) of Section 20209.6
17 or by completion of the process pursuant to subparagraph
18 (B) of paragraph (3) of subdivision (b) of Section 20209.6.

19 (c) Each contract with a design-build entity shall
20 provide that construction or alteration of any transit
21 project pursuant to this section may not commence prior
22 to the receipt of the written approval of the plans, as to
23 the safety of design and construction, from the
24 Department of General Services.

25 20209.9. *Within 120 days of the completion of each*
26 *design-build transit capital project conducted pursuant to*
27 *this article, the transit district shall report to the*
28 *Legislative Analyst as to the positive and negative effects*
29 *on cost and quality of the project of utilizing the*
30 *design-build process.*

