

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1511

**Introduced by Assembly Member Evans
(Coauthor: Assembly Member Wolk)**

February 22, 2005

An act to amend Section 20133 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1511, as amended, Evans. Design-build contracting.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement.

Existing law, until January 1, 2006, authorizes certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions. These provisions require that contracts with a cost ranging from \$10,000,000 to \$20,000,000 be awarded to the lowest responsible bidder, and authorizes contracts costing more than \$20,000,000 to be awarded to the lowest responsible bidder or by best value.

This bill would extend that authorization *for these contracts* to January 1, 2011, *would extend the authorization to contracts with costs ranging from \$5,000,000 to \$20,000,000*, and also authorize the Counties of Butte, Del Norte, Fresno, Humboldt, Madera, Mariposa, Mendocino, Merced, *Monterey*, Napa, Placer, *San Diego*, San Joaquin, San Luis Obispo, Shasta, Siskiyou, Stanislaus, Yolo, and Yuba to use the design-build process. This bill would also make

legislative findings and declarations as to the necessity of a special statute for these counties.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 20133 of the Public Contract Code is
2 amended to read:

3 20133. (a) (1) This section provides for an alternative
4 procedure on bidding on building construction projects in excess
5 of ten million dollars (\$10,000,000) applicable only in the
6 Counties of Alameda, Butte, Contra Costa, Del Norte, Fresno,
7 Humboldt, Madera, Mariposa, Mendocino, Merced, *Monterey*,
8 Napa, Placer, Sacramento, *San Diego*, San Joaquin, San Luis
9 Obispo, Santa Clara, Shasta, Siskiyou, Solano, Sonoma,
10 Stanislaus, Tulare, Yolo, and Yuba, upon approval of the
11 appropriate board of supervisors.

12 (2) For projects with costs ranging from ~~ten million dollars~~
13 ~~(\$10,000,000)~~ *five million dollars (\$5,000,000)* to twenty
14 million dollars (\$20,000,000), inclusive, the contract shall be
15 awarded to the lowest responsible bidder. For projects costing
16 over twenty million dollars (\$20,000,000), the county may award
17 the project using either the lowest responsible bidder or by best
18 value.

19 (b) (1) It is the intent of the Legislature to enable these
20 counties to utilize cost-effective options for building and
21 modernizing public facilities. The Legislature also recognizes the
22 national trend, including authorizations in California, to allow
23 public entities to utilize design-build contracts as a project
24 delivery method.

25 (2) The Legislature also finds and declares that utilizing a
26 design-build contract requires a clear understanding of the roles
27 and responsibilities of each participant in the design-build
28 process. The benefits of a design-build contract project delivery
29 system include an accelerated completion of the projects, cost
30 containment, reduction of construction complexity, and reduced
31 exposure to risk for the county. The Legislature also finds that
32 the cost-effective benefits to the counties are achieved by shifting

1 the liability and risk for cost containment and project completion
2 to the design-build entity.

3 (3) It is the intent of the Legislature to provide an alternative
4 and optional procedure for bidding and building construction
5 projects for these counties.

6 (4) The design-build approach may be used, but is not limited
7 to use when it is anticipated that it will: reduce project cost,
8 expedite project completion, or provide design features not
9 achievable through the design-bid-build method.

10 (5) If the board of supervisors elects to proceed under this
11 section, the board of supervisors shall establish and enforce for
12 design-build projects a labor compliance program containing the
13 requirements outlined in Section 1771.5 of the Labor Code, or it
14 shall contract with a third party to operate a labor compliance
15 program containing the requirements outlined in Section 1771.5
16 of the Labor Code. This requirement shall not apply to any
17 project where the county or the design-build entity has entered
18 into any collective bargaining agreement or agreements that bind
19 all of the contractors performing work on the projects.

20 (c) As used in this section:

21 (1) "Best value" means a value determined by objective
22 ~~criteria and may include, but is not limited to, price, features,~~
23 ~~functions, life-cycle costs, and other criteria deemed appropriate~~
24 ~~by the county.~~ *criteria related to price, features, functions, and*
25 *life cycle costs.*

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

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

33 (4) *"Project" means the erection, construction, alteration,*
34 *painting, or improvement of any office facility or other building.*

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

37 (1) (A) The county shall prepare a set of documents setting
38 forth the scope of the project. The documents may include, but
39 are not limited to, the size, type and desired design character of
40 the buildings and site, performance specifications covering the

1 quality of materials, equipment, and workmanship, preliminary
2 plans or building layouts, or any other information deemed
3 necessary to describe adequately the county's needs. The
4 performance specifications and any plans shall be prepared by a
5 design professional who is duly licensed and registered in
6 California.

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

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

16 (i) Identification of the basic scope and needs of the project or
17 contract, the expected cost range, and other information deemed
18 necessary by the county to inform interested parties of the
19 contracting opportunity, to include the methodology that will be
20 used by the county to evaluate proposals and specifically if the
21 contract will be awarded to the lowest responsible bidder.

22 (ii) Significant factors which the county reasonably expects to
23 consider in evaluating proposals, including cost or price and all
24 nonprice related factors.

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

27 (B) With respect to clause (iii) of paragraph (A), if a
28 nonweighted system is used, the agency shall specifically
29 disclose whether all evaluation factors other than cost or price
30 when combined are:

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

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

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

34 (C) If the county chooses to reserve the right to hold
35 discussions or negotiations with responsive bidders, it shall so
36 specify in the request for proposal and shall publish separately or
37 incorporate into the request for proposal applicable rules and
38 procedures to be observed by the county to ensure that any
39 discussions or negotiations are conducted in good faith.

1 (3) (A) The county shall establish a procedure to prequalify
2 design-build entities using a standard questionnaire developed by
3 the county. In preparing the questionnaire, the county shall
4 consult with the construction industry, including representatives
5 of the building trades and surety industry. This questionnaire
6 shall require information including, but not limited to, all of the
7 following:

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

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

21 (iii) The licenses, registration, and credentials required to
22 design and construct the project, including information on the
23 revocation or suspension of any license, credential, or
24 registration.

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

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

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

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

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

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

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

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

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

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

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

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of

1 subdivision (d). The design-build competition shall include the
2 following elements:

3 (i) Competitive proposals shall be evaluated by using only the
4 criteria and selection procedures specifically identified in the
5 request for proposal. However, the following minimum factors
6 shall collectively represent at least 50 percent of the total weight
7 of consideration given to all criteria factors; price, technical
8 design and construction expertise, life cycle costs over 15 years
9 or more, skilled labor force availability, and acceptable safety
10 record. *Each of these factors shall be equally weighed.*

11 (ii) Once the evaluation is complete, the top three responsive
12 bidders shall be ranked sequentially from the most advantageous
13 to the least.

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

17 (iv) Notwithstanding any provision of this code, upon issuance
18 of a contract award, the county shall publicly announce its award,
19 identifying the contractor to whom the award is made, along with
20 a written decision supporting its contract award and stating the
21 basis of the award. The notice of award shall also include the
22 county's second and third ranked design-build entities.

23 (v) For the purposes of this paragraph, "skilled labor force
24 availability" shall be determined by the existence of an
25 agreement with a registered apprenticeship program, approved by
26 the California Apprenticeship Council, which has graduated
27 apprentices in each of the preceding five years. This graduation
28 requirement shall not apply to programs providing apprenticeship
29 training for any craft that has been deemed by the Department of
30 Labor and the Department of Industrial Relations to be an
31 apprenticeable craft in the five years prior to enactment of this
32 act.

33 (vi) For the purposes of this paragraph, a bidder's "safety
34 record" shall be deemed "acceptable" if their experience
35 modification rate for the most recent three-year period is an
36 average of 1.00 or less, and their average Total Recordable
37 Injury/Illness rate and average lost work rate for the most recent
38 three-year period does not exceed the applicable statistical
39 standards for its business category or if the bidder is a party to an

1 alternative dispute resolution system as provided for in Section
2 3201.5 of the Labor Code.

3 (e) (1) Any design-build entity that is selected to design and
4 build a project pursuant to this section shall possess or obtain
5 sufficient bonding to cover the contract amount for nondesign
6 services, and errors and omission insurance coverage sufficient to
7 cover all design and architectural services provided in the
8 contract. This section does not prohibit a general or engineering
9 contractor from being designated the lead entity on a
10 design-build entity for the purposes of purchasing necessary
11 bonding to cover the activities of the design-build entity.

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

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

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

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

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

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

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

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

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

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

20 (l) Each county that elects to proceed under this section and
21 uses the design-build method on a public works project shall
22 submit to the Legislative Analyst's office, the Senate Committee
23 on Local Government, and the Assembly Committee on Local
24 Government before December 1, 2004, a report containing a
25 description of each public works project procured through the
26 design-build process, and completed on or before November 1,
27 2004. The report shall include, but shall not be limited to, all of
28 the following information:

- 29 (1) The type of facility.
30 (2) The gross square footage of the facility.
31 (3) The design-build entity who was awarded the project.
32 (4) The estimated and actual length of time to complete the
33 project.
34 (5) The estimated and actual project costs.
35 (6) A description of any written protests concerning any aspect
36 of the solicitation, bid, proposal, or award of the design-build
37 project, including the resolution of the protests.
38 (7) An assessment of the prequalification process and criteria.
39 (8) An assessment of the impact of retaining 5 percent
40 retention on the project.

1 (9) A description of the Labor Force Compliance program and
2 an assessment of the project impact, where required.

3 (10) A description of the method used to award the contract. If
4 best value was the method, the factors used to evaluate the bid
5 shall be described, including the weighting of each factor and an
6 assessment of the effectiveness of the methodology.

7 (11) An assessment of the project impact of “skilled labor
8 force availability.”

9 (12) An assessment of the design-build dollar limits on county
10 projects. This shall include projects where the county wanted to
11 use design-build and was precluded by the dollar limitation. It
12 shall also include projects where the best value method of
13 awarding contracts was not used, due to dollar limitations.

14 (13) An assessment of the most appropriate uses for the
15 design-build approach.

16 (m) Any county named in this section that elects to not use the
17 authority granted herein may also submit a report to the entities
18 named and in accordance with the schedule in subdivision (l).
19 This report may include an analysis of why the authority granted
20 herein was not used by the county.

21 (n) On or before January 1, 2005, the Legislative Analyst shall
22 report to the Legislature on the use of the design-build method by
23 counties pursuant to this section, including the information listed
24 in subdivision (l). The report may include recommendations for
25 modifying or extending this section.

26 (o) This section shall remain in effect only until January 1,
27 2011, and as of that date is repealed, unless a later enacted
28 statute, that is enacted before January 1, 2011, deletes or extends
29 that date.

30 SEC. 2. The Legislature finds and declares that a special law
31 is necessary and that a general law cannot be made applicable
32 within the meaning of Section 16 of Article IV of the California
33 Constitution because of the unique need to build and modernize
34 public facilities in a cost-effective manner in the Counties of
35 Butte, Del Norte, Fresno, Humboldt, Madera, Mariposa,
36 Mendocino, Merced, ~~Napa, Placer, San Joaquin, Monterey,~~
37 ~~Napa, Placer, San Diego, San Joaquin, San Luis Obispo, Shasta,~~
38 Siskiyou, Stanislaus, Yolo, and Yuba.

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