

AMENDED IN SENATE JUNE 8, 2005

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~~ *the* 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 would~~ 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 *on certain projects, as defined, and would require counties utilizing the design-build method and the Legislative Analyst to submit specified reports by certain dates*. 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~~ yes.
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 five million dollars
13 (\$5,000,000) to twenty million dollars (\$20,000,000), inclusive,
14 the contract shall be awarded to the lowest responsible bidder.
15 For projects costing over twenty million dollars (\$20,000,000),
16 the county may award the project using either the lowest
17 responsible bidder or by best value.

18 (b) (1) It is the intent of the Legislature to enable these
19 counties to utilize cost-effective options for building and
20 modernizing public facilities. ~~The Legislature also recognizes the~~
21 ~~national trend, including authorizations in California, to allow~~
22 ~~public entities to utilize design-build contracts as a project~~
23 ~~delivery method. It is not the intent of the Legislature to~~
24 ~~authorize this procedure for transportation facilities, including,~~
25 ~~but not limited to, roads and bridges.~~

26 (2) The Legislature also finds and declares that utilizing a
27 design-build contract requires a clear understanding of the roles
28 and responsibilities of each participant in the design-build
29 process. ~~The benefits of a design-build contract project delivery~~
30 ~~system include an accelerated completion of the projects, cost~~

1 ~~containment, reduction of construction complexity, and reduced~~
2 ~~exposure to risk for the county. The Legislature also finds that~~
3 ~~process. The Legislature also finds that~~ the cost-effective
4 benefits to the counties are achieved by shifting the liability and
5 risk for cost containment and project completion to the
6 design-build entity.

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

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

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

24 (c) As used in this section:

25 (1) "Best value" means a value determined by objective
26 criteria related to price, features, functions, and life cycle costs.

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

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

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

36 (4) "Project" means the construction of a building and
37 improvements directly related and necessary to the construction
38 of a building, but does not include the construction of other
39 facilities and infrastructure, including, but not limited to, streets

1 *and highways, public rail transit, and water resources facilities*
2 *and infrastructure.*

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

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

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

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

24 (i) Identification of the basic scope and needs of the project or
25 contract, the expected cost range, and other information deemed
26 necessary by the county to inform interested parties of the
27 contracting opportunity, to include the methodology that will be
28 used by the county to evaluate proposals and specifically if the
29 contract will be awarded to the lowest responsible bidder.

30 (ii) Significant factors which the county reasonably expects to
31 consider in evaluating proposals, including cost or price and all
32 nonprice-related factors.

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

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

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

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

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

2 (C) If the county chooses to reserve the right to hold
3 discussions or negotiations with responsive bidders, it shall so
4 specify in the request for proposal and shall publish separately or
5 incorporate into the request for proposal applicable rules and
6 procedures to be observed by the county to ensure that any
7 discussions or negotiations are conducted in good faith.

8 (3) (A) The county shall establish a procedure to prequalify
9 design-build entities using a standard questionnaire developed by
10 the county. In preparing the questionnaire, the county shall
11 consult with the construction industry, including representatives
12 of the building trades and surety industry. This questionnaire
13 shall require information including, but not limited to, all of the
14 following:

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

20 (ii) Evidence that the members of the design-build entity have
21 completed, or demonstrated the experience, competency,
22 capability, and capacity to complete projects of similar size,
23 scope, or complexity, and that proposed key personnel have
24 sufficient experience and training to competently manage and
25 complete the design and construction of the project, as well as a
26 financial statement that assures the county that the design-build
27 entity has the capacity to complete the project.

28 (iii) The licenses, registration, and credentials required to
29 design and construct the project, including information on the
30 revocation or suspension of any license, credential, or
31 registration.

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

35 (v) Any prior serious or willful violation of the California
36 Occupational Safety and Health Act of 1973, contained in Part 1
37 (commencing with Section 6300) of Division 5 of the Labor
38 Code or the federal Occupational Safety and Health Act of 1970
39 (Public Law 91-596), settled against any member of the

1 design-build entity, and information concerning workers'
2 compensation experience history and worker safety program.

3 (vi) Information concerning any debarment, disqualification,
4 or removal from a federal, state, or local government public
5 works project. Any instance where an entity, its owners, officers,
6 or managing employees submitted a bid on a public works
7 project and were found to be nonresponsive, or were found by an
8 awarding body not to be a responsible bidder.

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

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

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

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

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

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

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

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

7 (B) A county may use a design-build competition based upon
8 best value and other criteria set forth in paragraph (2) of
9 subdivision (d). The design-build competition shall include the
10 following elements:

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

19 (ii) Once the evaluation is complete, the top three responsive
20 bidders shall be ranked sequentially from the most advantageous
21 to the least.

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

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

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

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

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

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

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

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

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

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

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

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

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

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

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

27 (l) Each county that elects to proceed under this section and
28 uses the design-build method on a public works project shall
29 submit to the Legislative Analyst's office, ~~the Senate Committee~~
30 ~~on Local Government, and the Assembly Committee on Local~~
31 ~~Government before December 1, 2004, a report containing a~~
32 ~~before December 1, 2009, a report containing a~~ description of
33 each public works project procured through the design-build
34 process, and completed on or before November 1, 2004, *and*
35 *before November 1, 2009*. The report shall include, but shall not
36 be limited to, all of the following information:

37 (1) The type of ~~facility~~ project.

38 (2) The gross square footage of the ~~facility~~ project.

39 (3) The design-build entity who was awarded the project.

1 (4) The estimated and actual length of time to complete the
2 project.

3 (5) The estimated and actual project costs.

4 (6) A description of any written protests concerning any aspect
5 of the solicitation, bid, proposal, or award of the design-build
6 project, including the resolution of the protests.

7 (7) An assessment of the prequalification process and criteria.

8 (8) An assessment of the ~~impact~~ *effect* of retaining 5 percent
9 retention on the project.

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

12 (10) A description of the method used to award the contract. If
13 best value was the method, *the report shall describe* the factors
14 used to evaluate the bid ~~shall be described~~, including the
15 weighting of each factor and an assessment of the effectiveness
16 of the methodology.

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

19 (12) An assessment of the design-build dollar limits on county
20 projects. This *assessment* shall include projects where the county
21 wanted to use design-build and was precluded by the dollar
22 limitation. ~~At This assessment~~ shall also include projects where
23 the best value method of awarding contracts was not used; due to
24 dollar limitations.

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

27 (m) Any county named in this ~~section~~ *subdivision* that elects to
28 not use the ~~authority granted herein may also submit a report to~~
29 ~~the entities named and in accordance with the schedule in~~
30 ~~subdivision (l). This report may include an analysis of why the~~
31 ~~authority granted herein was not used by the county. authority~~
32 *granted herein may submit a report to the Legislative Analyst’s*
33 *office explaining why the county elected to not use the*
34 *design-build method.*

35 (n) On or before January 1, ~~2005~~ *2010*, the Legislative Analyst
36 shall report to the Legislature on the use of the design-build
37 method by counties pursuant to this section, including the
38 information listed in subdivision (l). The report may include
39 recommendations for modifying or extending this section.

1 (o) This section shall remain in effect only until January 1,
2 2011, and as of that date is repealed, unless a later enacted
3 statute, that is enacted before January 1, 2011, deletes or extends
4 that date.

5 SEC. 2. The Legislature finds and declares that a special law
6 is necessary and that a general law cannot be made applicable
7 within the meaning of Section 16 of Article IV of the California
8 Constitution because of the unique need to build and modernize
9 public facilities in a cost-effective manner in the Counties of
10 Butte, Del Norte, Fresno, Humboldt, Madera, Mariposa,
11 Mendocino, Merced, Monterey, Napa, Placer, San Diego, San
12 Joaquin, San Luis Obispo, Shasta, Siskiyou, Stanislaus, Yolo,
13 and Yuba.