

AMENDED IN SENATE JUNE 30, 2005

AMENDED IN SENATE JUNE 8, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1511**

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**Introduced by Assembly Member Evans**  
*(Principal coauthors: Assembly Members Walters and Wolk)*  
*(Principal coauthor: Senator Cox)*  
~~**(Coauthor: Assembly Member Wolk)**~~

February 22, 2005

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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 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 in excess of \$2,500,000, would authorize the Counties of ~~Butte, Del Norte, Fresno, Humboldt, Los Angeles, Madera, Mariposa, Mendocino, Merced, Monterey, Napa, Placer, San Diego, San Joaquin, San Luis Obispo, Shasta, Siskiyou, Stanislaus, Yolo, and Yuba~~ and Yolo to use the design-build process on certain projects, as defined, *would delete the requirement that contracts with costs ranging from \$10,000,000 to \$20,000,000 be awarded to the lowest responsible bidder and instead authorize the counties to award projects using either the lowest responsible bidder or best value method*, 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.

*This bill would incorporate additional changes in Section 21033 of the Public Contract Code, proposed by SB 287, to be operative only if SB 287 and this bill are both chaptered and become effective January 1, 2006, and this bill is chaptered last.*

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. 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)~~ *two million five hundred*  
6 *thousand dollars (\$2,500,000)* applicable only in the ~~Counties of~~  
7 ~~Alameda, Butte, Contra Costa, Del Norte, Fresno, Humboldt,~~  
8 ~~Madera, Mariposa, Mendocino, Merced, Monterey, Napa, Placer,~~  
9 ~~Sacramento, San Diego, San Joaquin, San Luis Obispo, Santa~~  
10 ~~Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tulare,~~  
11 ~~Yolo, and Yuba, upon approval of the Counties of Alameda,~~  
12 ~~Contra Costa, Del Norte, Humboldt, Los Angeles, Mendocino,~~  
13 ~~Napa, Santa Clara, Solano, Sonoma, and Yolo, upon the~~  
14 ~~approval of the appropriate board of supervisors.~~  
15 (2) ~~For projects with costs ranging from five million dollars~~  
16 ~~(\$5,000,000) to twenty million dollars (\$20,000,000), inclusive,~~  
17 ~~the contract shall be awarded to the lowest responsible bidder.~~

1 ~~For projects costing over twenty million dollars (\$20,000,000),~~  
2 ~~the county~~

3 (2) *These counties* may award the project using either the  
4 lowest responsible bidder or by best value.

5 (b) (1) It is the intent of the Legislature to enable these  
6 counties to utilize cost-effective options for building and  
7 modernizing public facilities. It is not the intent of the  
8 Legislature to authorize this procedure for transportation  
9 facilities, including, but not limited to, roads and bridges.

10 (2) The Legislature also finds and declares that utilizing a  
11 design-build contract requires a clear understanding of the roles  
12 and responsibilities of each participant in the design-build  
13 process. The Legislature also finds that the cost-effective benefits  
14 to the counties are achieved by shifting the liability and risk for  
15 cost containment and project completion to the design-build  
16 entity.

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

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

24 (5) If the board of supervisors elects to proceed under this  
25 section, the board of supervisors shall establish and enforce for  
26 design-build projects a labor compliance program containing the  
27 requirements outlined in Section 1771.5 of the Labor Code, or it  
28 shall contract with a third party to operate a labor compliance  
29 program containing the requirements outlined in Section 1771.5  
30 of the Labor Code. This requirement shall not apply to any  
31 project where the county or the design-build entity has entered  
32 into any collective bargaining agreement or agreements that bind  
33 all of the contractors performing work on the projects.

34 (c) As used in this section:

35 (1) “Best value” means a value determined by objective  
36 criteria related to price, features, functions, and life cycle costs.

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

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

5 (4) “Project” means the construction of a building and  
6 improvements directly related and necessary to the construction  
7 of a building, but does not include the construction of other  
8 ~~facilities and~~ infrastructure, including, but not limited to, streets  
9 and highways, public rail transit, and water resources facilities  
10 and infrastructure.

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

13 (1) (A) The county shall prepare a set of documents setting  
14 forth the scope of the project. The documents may include, but  
15 are not limited to, the size, type and desired design character of  
16 the buildings and site, performance specifications covering the  
17 quality of materials, equipment, and workmanship, preliminary  
18 plans or building layouts, or any other information deemed  
19 necessary to describe adequately the county’s needs. The  
20 performance specifications and any plans shall be prepared by a  
21 design professional who is duly licensed and registered in  
22 California.

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

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

32 (i) Identification of the basic scope and needs of the project or  
33 contract, the expected cost range, and other information deemed  
34 necessary by the county to inform interested parties of the  
35 contracting opportunity, to include the methodology that will be  
36 used by the county to evaluate proposals and specifically if the  
37 contract will be awarded to the lowest responsible bidder.

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

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

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

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

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

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

10 (C) If the county chooses to reserve the right to hold  
11 discussions or negotiations with responsive bidders, it shall so  
12 specify in the request for proposal and shall publish separately or  
13 incorporate into the request for proposal applicable rules and  
14 procedures to be observed by the county to ensure that any  
15 discussions or negotiations are conducted in good faith.

16 (3) (A) The county shall establish a procedure to prequalify  
17 design-build entities using a standard questionnaire developed by  
18 the county. In preparing the questionnaire, the county shall  
19 consult with the construction industry, including representatives  
20 of the building trades and surety industry. This questionnaire  
21 shall require information including, but not limited to, all of the  
22 following:

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

28 (ii) Evidence that the members of the design-build entity have  
29 completed, or demonstrated the experience, competency,  
30 capability, and capacity to complete projects of similar size,  
31 scope, or complexity, and that proposed key personnel have  
32 sufficient experience and training to competently manage and  
33 complete the design and construction of the project, as well as a  
34 financial statement that assures the county that the design-build  
35 entity has the capacity to complete the project.

36 (iii) The licenses, registration, and credentials required to  
37 design and construct the project, including information on the  
38 revocation or suspension of any license, credential, or  
39 registration.

- 1 (iv) Evidence that establishes that the design-build entity has  
2 the capacity to obtain all required payment and performance  
3 bonding, liability insurance, and errors and omissions insurance.
- 4 (v) Any prior serious or willful violation of the California  
5 Occupational Safety and Health Act of 1973, contained in Part 1  
6 (commencing with Section 6300) of Division 5 of the Labor  
7 Code or the federal Occupational Safety and Health Act of 1970  
8 (Public Law 91-596), settled against any member of the  
9 design-build entity, and information concerning workers'  
10 compensation experience history and worker safety program.
- 11 (vi) Information concerning any debarment, disqualification,  
12 or removal from a federal, state, or local government public  
13 works project. Any instance where an entity, its owners, officers,  
14 or managing employees submitted a bid on a public works  
15 project and were found to be nonresponsive, or were found by an  
16 awarding body not to be a responsible bidder.
- 17 (vii) Any instance where the entity, its owner, officers, or  
18 managing employees defaulted on a construction contract.
- 19 (viii) Any violations of the Contractors' State License Law  
20 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
21 Business and Professions Code), excluding alleged violations of  
22 federal or state law including the payment of wages, benefits,  
23 apprenticeship requirements, or personal income tax withholding,  
24 or of Federal Insurance Contribution Act (FICA) withholding  
25 requirements settled against any member of the design-build  
26 entity.
- 27 (ix) Information concerning the bankruptcy or receivership of  
28 any member of the design-build entity, including information  
29 concerning any work completed by a surety.
- 30 (x) Information concerning all settled adverse claims, disputes,  
31 or lawsuits between the owner of a public works project and any  
32 member of the design-build entity during the five years preceding  
33 submission of a bid pursuant to this section, in which the claim,  
34 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
35 Information shall also be provided concerning any work  
36 completed by a surety during this period.
- 37 (xi) In the case of a partnership or other association, that is not  
38 a legal entity, a copy of the agreement creating the partnership or  
39 association and specifying that all partners or association

1 members agree to be fully liable for the performance under the  
2 design-build contract.

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

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

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

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

19 (i) Competitive proposals shall be evaluated by using only the  
20 criteria and selection procedures specifically identified in the  
21 request for proposal. However, the following minimum factors  
22 shall ~~collectively represent at least 50~~ *each represent at least 10*  
23 percent of the total weight of consideration given to all criteria  
24 factors; price, technical design and construction expertise, life  
25 cycle costs over 15 years or more, skilled labor force availability,  
26 and acceptable safety record. Each of these factors shall be  
27 equally weighed.

28 (ii) Once the evaluation is complete, the top three responsive  
29 bidders shall be ranked sequentially from the most advantageous  
30 to the least.

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

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

1 (v) For the purposes of this paragraph, “skilled labor force  
2 availability” shall be determined by the existence of an  
3 agreement with a registered apprenticeship program, approved by  
4 the California Apprenticeship Council, which has graduated  
5 apprentices in each of the preceding five years. This graduation  
6 requirement shall not apply to programs providing apprenticeship  
7 training for any craft that has been deemed by the Department of  
8 Labor and the Department of Industrial Relations to be an  
9 apprenticeable craft in the five years prior to enactment of this  
10 act.

11 (vi) For the purposes of this paragraph, a bidder’s “safety  
12 record” shall be deemed “acceptable” if their experience  
13 modification rate for the most recent three-year period is an  
14 average of 1.00 or less, and their average Total Recordable  
15 Injury/Illness rate and average lost work rate for the most recent  
16 three-year period does not exceed the applicable statistical  
17 standards for its business category or if the bidder is a party to an  
18 alternative dispute resolution system as provided for in Section  
19 3201.5 of the Labor Code.

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

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

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

- 1 (1) Provide public notice of the availability of work to be  
2 subcontracted in accordance with the publication requirements  
3 applicable to the competitive bidding process of the county.
- 4 (2) Provide a fixed date and time on which the subcontracted  
5 work will be awarded in accordance with the procedure  
6 established pursuant to this section.
- 7 (g) The minimum performance criteria and design standards  
8 established pursuant to paragraph (1) of subdivision (d) shall be  
9 adhered to by the design-build entity. Any deviations from those  
10 standards may only be allowed by written consent of the county.
- 11 (h) The county may retain the services of a design professional  
12 or construction project manager, or both, throughout the course  
13 of the project in order to ensure compliance with this section.
- 14 (i) Contracts awarded pursuant to this section shall be valid  
15 until the project is completed.
- 16 (j) Nothing in this section is intended to affect, expand, alter,  
17 or limit any rights or remedies otherwise available at law.
- 18 (k) (1) If the county elects to award a project pursuant to this  
19 section retention proceeds withheld by the county from the  
20 design-build entity shall not exceed 5 percent if a performance  
21 and payment bond, issued by an admitted surety insurer, is  
22 required in the solicitation of bids.
- 23 (2) In a contract between the design-build entity and the  
24 subcontractor, and in a contract between a subcontractor and any  
25 subcontractor thereunder, the percentage of the retention  
26 proceeds withheld may not exceed the percentage specified in the  
27 contract between the county and the design-build entity. If the  
28 design-build entity provides written notice to any subcontractor  
29 who is not a member of the design-build entity, prior to or at the  
30 time the bid is requested, that a bond may be required and the  
31 subcontractor subsequently is unable or refuses to furnish a bond  
32 to the design-build entity, then the design-build entity may  
33 withhold retention proceeds in excess of the percentage specified  
34 in the contract between the county and the design-build entity  
35 from any payment made by the design-build entity to the  
36 subcontractor.
- 37 (l) Each county that elects to proceed under this section and  
38 uses the design-build method on a public works project shall  
39 submit to the Legislative Analyst's Office, before December 1,  
40 2009, a report containing a description of each public works

1 project procured through the design-build process, ~~and completed~~  
2 ~~on or before~~ *and completed after* November 1, 2004, and before  
3 November 1, 2009. The report shall include, but shall not be  
4 limited to, all of the following information:

5 (1) The type of project.

6 (2) The gross square footage of the project.

7 (3) The design-build entity ~~who~~ *that* was awarded the project.

8 (4) The estimated and actual length of time to complete the  
9 project.

10 (5) The estimated and actual project costs.

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

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

15 (8) An assessment of the effect of retaining ~~5 percent~~  
16 *5-percent* retention on the project.

17 (9) A description of the Labor Force Compliance ~~program~~  
18 *Program* and an assessment of the project impact, where  
19 required.

20 (10) A description of the method used to award the contract. If  
21 best value was the method, the report shall describe the factors  
22 used to evaluate the bid, including the weighting of each factor  
23 and an assessment of the effectiveness of the methodology.

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

26 (12) An assessment of the design-build dollar limits on county  
27 projects. This assessment shall include projects where the county  
28 wanted to use design-build and was precluded by the dollar  
29 limitation. This assessment shall also include projects where the  
30 best value method of awarding contracts was not used due to  
31 dollar limitations.

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

34 (m) Any county named in ~~this subdivision~~ *subdivision (a)* that  
35 elects to not use the authority granted ~~herein~~ *by this section* may  
36 submit a report to the Legislative Analyst’s Office explaining  
37 why the county elected to not use the design-build method.

38 (n) On or before January 1, 2010, the Legislative Analyst shall  
39 report to the Legislature on the use of the design-build method by  
40 counties pursuant to this section, including the information listed

1 in subdivision (I). The report may include recommendations for  
2 modifying or extending this section.

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

7 *SEC. 1.5. Section 20133 of the Public Contract Code is*  
8 *amended to read:*

9 20133. (a) (1) This section provides for an alternative  
10 procedure on bidding on building construction projects in excess  
11 of ~~ten million dollars (\$10,000,000)~~ *two million five hundred*  
12 *thousand dollars (\$2,500,000)* applicable only in the Counties of  
13 ~~Alameda, Contra Costa, Sacramento, Santa Clara, Solano,~~  
14 ~~Sonoma, and Butte, Contra Costa, Del Norte, El Dorado, Fresno,~~  
15 ~~Humboldt, Kings, Los Angeles, Madera, Mariposa, Mendocino,~~  
16 ~~Merced, Monterey, Napa, Orange, Placer, Sacramento, San~~  
17 ~~Diego, San Joaquin, San Luis Obispo, Santa Clara, Shasta,~~  
18 ~~Siskiyou, Solano, Sonoma, Stanislaus, Tulare, Yolo, and Yuba,~~  
19 upon approval of the appropriate board of supervisors.

20 (2) ~~For projects with costs ranging from ten million dollars~~  
21 ~~(\$10,000,000) to twenty million dollars (\$20,000,000), inclusive,~~  
22 ~~the contract shall be awarded to the lowest responsible bidder.~~  
23 ~~For projects costing over twenty million dollars (\$20,000,000),~~  
24 ~~the county~~ *These counties* may award the project using either the  
25 lowest responsible bidder or by best value.

26 (b) (1) It is the intent of the Legislature to enable these  
27 counties to utilize cost-effective options for building and  
28 modernizing public facilities. ~~The Legislature also recognizes the~~  
29 ~~national trend, including authorizations in California, to allow~~  
30 ~~public entities to utilize design-build contracts as a project~~  
31 ~~delivery method. It is not the intent of the Legislature to~~  
32 ~~authorize this procedure for transportation facilities, including,~~  
33 ~~but not limited to, roads and bridges.~~

34 (2) The Legislature also finds and declares that utilizing a  
35 design-build contract requires a clear understanding of the roles  
36 and responsibilities of each participant in the design-build  
37 process. ~~The benefits of a design-build contract project delivery~~  
38 ~~system include an accelerated completion of the projects, cost~~  
39 ~~containment, reduction of construction complexity, and reduced~~  
40 ~~exposure to risk for the county.~~ The Legislature also finds that

1 the cost-effective benefits to the counties are achieved by shifting  
2 the liability and risk for cost containment and project completion  
3 to the design-build entity.

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

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

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

21 (c) As used in this section:

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

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 construction of a building and*  
34 *improvements directly related to the construction of a building,*  
35 *but does not include the construction of other infrastructure,*  
36 *including, but not limited to, streets and highways, public rail*  
37 *transit, or water resources facilities and infrastructure.*

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

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

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

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

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

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

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

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32 nonweighted system is used, the agency shall specifically  
33 disclose whether all evaluation factors other than cost or price  
34 when combined are:

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

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38 (C) If the county chooses to reserve the right to hold  
39 discussions or negotiations with responsive bidders, it shall so  
40 specify in the request for proposal and shall publish separately or

1 incorporate into the request for proposal applicable rules and  
2 procedures to be observed by the county to ensure that any  
3 discussions or negotiations are conducted in good faith.

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

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12 partnership, or other association, a listing of all of the partners,  
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14 bid submission who will participate in the design-build contract,  
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17 completed, or demonstrated the experience, competency,  
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20 sufficient experience and training to competently manage and  
21 complete the design and construction of the project, as well as a  
22 financial statement that assures the county that the design-build  
23 entity has the capacity to complete the project.

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

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

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

38 (vi) Information concerning any debarment, disqualification,  
39 or removal from a federal, state, or local government public  
40 works project. Any instance where an entity, its owners, officers,

1 or managing employees submitted a bid on a public works  
2 project and were found to be nonresponsive, or were found by an  
3 awarding body not to be a responsible bidder.

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

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

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

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

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

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

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

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

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

5 (i) Competitive proposals shall be evaluated by using only the  
6 criteria and selection procedures specifically identified in the  
7 request for proposal. However, the following minimum factors  
8 shall ~~collectively~~ *each* represent at least ~~50~~ 10 percent of the total  
9 weight of consideration given to all criteria factors; price,  
10 technical design and construction expertise, life cycle costs over  
11 15 years or more, skilled labor force availability, and acceptable  
12 safety record.

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

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

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

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

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

1 standards for its business category or if the bidder is a party to an  
2 alternative dispute resolution system as provided for in Section  
3 3201.5 of the Labor Code.

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

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

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

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

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

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

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

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

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

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

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

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

- 32 (1) The type of ~~facility~~ project.
- 33 (2) The gross square footage of the ~~facility~~ project.
- 34 (3) The design-build entity ~~who~~ that was awarded the project.
- 35 (4) The estimated and actual length of time to complete the  
 36 project.
- 37 (5) The estimated and actual project costs.
- 38 (6) A description of any written protests concerning any aspect  
 39 of the solicitation, bid, proposal, or award of the design-build  
 40 project, including the resolution of the protests.

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

2 (8) An assessment of the ~~impact effect~~ of retaining ~~5 percent~~  
3 ~~5-percent~~ retention on the project.

4 (9) A description of the Labor Force Compliance ~~program~~  
5 *Program* and an assessment of the project impact, where  
6 required.

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

12 (11) An assessment of the project impact of “skilled labor  
13 ~~force availability~~” *availability*.”

14 (12) An assessment of the design-build dollar limits on county  
15 projects. This *assessment* shall include projects where the county  
16 wanted to use design-build and was precluded by the dollar  
17 limitation. ~~It~~ *This assessment* shall also include projects where  
18 the best value method of awarding contracts was not used; due to  
19 dollar limitations.

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

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

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

34 (o) This section shall remain in effect only until January 1,  
35 ~~2006~~ *2011*, and as of that date is repealed, unless a later enacted  
36 statute, that is enacted before January 1, ~~2006~~ *2011*, deletes or  
37 extends that date.

38 SEC. 2. The Legislature finds and declares that a special law  
39 is necessary and that a general law cannot be made applicable  
40 within the meaning of Section 16 of Article IV of the California

1 Constitution because of the unique need to build and modernize  
 2 public facilities in a cost-effective manner in the Counties of  
 3 ~~Butte, Del Norte, Fresno, Humboldt, Madera, Mariposa,~~  
 4 ~~Mendocino, Merced, Monterey, Napa, Placer, San Diego, San~~  
 5 ~~Joaquin, San Luis Obispo, Shasta, Siskiyou, Stanislaus, Yolo,~~  
 6 ~~and Yuba.~~ *Del Norte, Humboldt, Los Angeles, Mendocino, Napa,*  
 7 *and Yolo.*

8 *SEC. 2.5. The Legislature finds and declares that a special*  
 9 *law is necessary and that a general law cannot be made*  
 10 *applicable within the meaning of Section 16 of Article IV of the*  
 11 *California Constitution because of the unique need to build and*  
 12 *modernize public facilities in a cost-effective manner in Butte,*  
 13 *Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles,*  
 14 *Madera, Mariposa, Mendocino, Merced, Monterey, Napa,*  
 15 *Orange, Placer, San Diego, San Joaquin, San Luis Obispo,*  
 16 *Shasta, Siskiyou, Stanislaus, Yolo, and Yuba Counties.*

17 *SEC. 3. Section 1.5 of this bill incorporates amendments to*  
 18 *Section 20133 of the Public Contract Code proposed by both this*  
 19 *bill and SB 287. It shall only become operative if (1) both bills*  
 20 *are enacted and become effective on or before January 1, 2006,*  
 21 *(2) each bill amends Section 20133 of the Public Contract Code,*  
 22 *and (3) this bill is enacted after SB 287, in which case Section*  
 23 *1.5 of this bill shall not become operative.*

24 *SEC. 4. It is the intent of the Legislature that this bill shall*  
 25 *not become operative unless both this bill and Senate Bill 287*  
 26 *are both chaptered and become effective January 1, 2006. If*  
 27 *Senate Bill 287 is not chaptered and does not become effective*  
 28 *January 1, 2006, this bill shall not become operative.*