

ASSEMBLY BILL

No. 1358

Introduced by Assembly Member Dababneh

February 27, 2015

An act to repeal, add, and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of Division 1 of Title 1 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1358, as introduced, Dababneh. School facilities: design-build contracts.

Existing law authorizes the governing board of a school district, until January 1, 2020, upon a determination by the governing board of the school district that it is in the best interest of the school district, to enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds \$2,500,000, as provided.

This bill would repeal those provisions and would instead authorize, until January 1, 2025, a school district, with the approval of the governing board of the school district, to procure design-build contracts for public works projects in excess of \$1,000,000, awarding the contract to either the low bid or the best value, as provided. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Chapter 2.5 (commencing with Section 17250.10)
2 of Part 10.5 of Division 1 of Title 1 of the Education Code is
3 repealed.

4 SEC. 2. Chapter 2.5 (commencing with Section 17250.10) is
5 added to Part 10.5 of Division 1 of Title 1 of the Education Code,
6 to read:

7
8 CHAPTER 2.5. DESIGN-BUILD CONTRACTS
9

10 17250.10. (a) The Legislature finds and declares that the
11 design-build method of project delivery, using a best value
12 procurement methodology, has been authorized for various
13 agencies that have reported benefits from those projects, including
14 reduced project costs, expedited project completion, and design
15 features that are not achievable through the traditional
16 design-bid-build method.

17 (b) It is the intent of the Legislature that:

18 (1) This chapter provide general authorization for school districts
19 to use the design-build method for projects.

20 (2) This chapter shall not be deemed to express a preference for
21 the design-build method over other procurement methodologies.

22 17250.15. For purposes of this chapter, the following
23 definitions apply:

24 (a) (1) “Best value” means a value determined by evaluation
25 of objective criteria that may include, but are not limited to, price,
26 features, functions, life-cycle costs, experience, and past
27 performance.

28 (2) A best value determination may involve the selection of the
29 lowest cost proposal meeting the interests of the school district
30 and the objectives of the project, selection of the best proposal for
31 a stipulated sum established by the procuring school district, or a
32 tradeoff between price and other factors.

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

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

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

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

14 (e) (1) “Design-build team” means the design-build entity and
15 the individuals or other entities identified by the design-build entity
16 as members of its team.

17 (2) Members shall include the general contractor and, if utilized
18 in the design of the project, all electrical, mechanical, and plumbing
19 contractors.

20 (f) “Project” means the construction of any school facility.

21 17250.20. (a) A school district, with approval of its governing
22 board, may procure design-build contracts for projects in excess
23 of one million dollars (\$1,000,000), awarding the contract to either
24 the low bid or the best value.

25 (b) The school district shall develop guidelines for a standard
26 organizational conflict-of-interest policy, consistent with applicable
27 law, regarding the ability of a person or entity that performs
28 services for the school district relating to the solicitation of a
29 design-build project, to submit a proposal as a design-build entity,
30 or to join a design-build team. This conflict-of-interest policy shall
31 apply to each school district entering into design-build contracts
32 authorized under this chapter.

33 17250.25. The procurement process for design-build projects
34 shall progress as follows:

35 (a) (1) The school district shall prepare a set of documents
36 setting forth the scope and estimated price of the project. The
37 documents may include, but are not limited to, the size, type, and
38 desired design character of the project, performance specifications
39 covering the quality of materials, equipment, workmanship,
40 preliminary plans or building layouts, or any other information

1 deemed necessary to describe adequately the school district's
2 needs. The performance specifications and any plans shall be
3 prepared by a design professional who is duly licensed and
4 registered in California.

5 (2) The documents shall not include a design-build-operate
6 contract for a project. The documents, however, may include
7 operations during a training or transition period, but shall not
8 include long-term operations for a project.

9 (b) The school district shall prepare and issue a request for
10 qualifications in order to prequalify, or develop a short-list of, the
11 design-build entities whose proposals shall be evaluated for final
12 selection. The request for qualifications shall include, but is not
13 limited to, all of the following elements:

14 (1) Identification of the basic scope and needs of the project or
15 contract, the expected cost range, the methodology that will be
16 used by the school district to evaluate proposals, the procedure for
17 final selection of the design-build entity, and any other information
18 deemed necessary by the school district to inform interested parties
19 of the contracting opportunity.

20 (2) Significant factors that the school district reasonably expects
21 to consider in evaluating qualifications, including technical design
22 and construction expertise, acceptable safety record, and all other
23 nonprice-related factors.

24 (3) A standard template request for statements of qualifications
25 prepared by the school district. In preparing the standard template,
26 the school district may consult with the construction industry, the
27 building trades and surety industry, and other school districts
28 interested in using the authorization provided by this chapter. The
29 template shall require the following information:

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

35 (B) Evidence that the members of the design-build team have
36 completed, or demonstrated the experience, competency, capability,
37 and capacity to complete, projects of similar size, scope, or
38 complexity, and that the proposed key personnel have sufficient
39 experience and training to competently manage and complete the
40 design and construction of the project, and a financial statement

1 that ensures that the design-build entity has the capacity to
2 complete the project.

3 (C) The licenses, registration, and credentials required to design
4 and construct the project, including, but not limited to, information
5 on the revocation or suspension of any license, credential, or
6 registration.

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

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

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

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

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

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

32 (c) A design-build entity shall not be prequalified or shortlisted
33 unless the entity provides an enforceable commitment to the school
34 district that the entity and its subcontractors at every tier will use
35 a skilled and trained workforce to perform all work on the project
36 or contract that falls within an apprenticeable occupation in the
37 building and construction trades.

38 (1) For purposes of this subdivision:

39 (A) "Apprenticeable occupation" means an occupation for which
40 the Chief of the Division of Apprenticeship Standards had approved

1 an apprenticeship program pursuant to Section 3075 of the Labor
2 Code before January 1, 2014.

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

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

8 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
9 journeypersons employed to perform work on the contract or
10 project by the entity and each of its subcontractors at every tier
11 are graduates of an apprenticeship program for the applicable
12 occupation that was either approved by the Chief of the Division
13 of Apprenticeship Standards pursuant to Section 3075 of the Labor
14 Code or located outside California and approved for federal
15 purposes pursuant to the apprenticeship regulations adopted by
16 the federal Secretary of Labor.

17 (II) As of January 1, 2017, at least 30 percent of the skilled
18 journeypersons employed to perform work on the contract or
19 project by the entity and each of its subcontractors at every tier
20 are graduates of an apprenticeship program for the applicable
21 occupation that was either approved by the Chief of the Division
22 of Apprenticeship Standards pursuant to Section 3075 of the Labor
23 Code or located outside California and approved for federal
24 purposes pursuant to the apprenticeship regulations adopted by
25 the federal Secretary of Labor.

26 (III) As of January 1, 2018, at least 40 percent of the skilled
27 journeypersons employed to perform work on the contract or
28 project by the entity and each of its subcontractors at every tier
29 are graduates of an apprenticeship program for the applicable
30 occupation that was either approved by the Chief of the Division
31 of Apprenticeship Standards pursuant to Section 3075 of the Labor
32 Code or located outside California and approved for federal
33 purposes pursuant to the apprenticeship regulations adopted by
34 the federal Secretary of Labor.

35 (IV) As of January 1, 2019, at least 50 percent of the skilled
36 journeypersons employed to perform work on the contract or
37 project by the entity and each of its subcontractors at every tier
38 are graduates of an apprenticeship program for the applicable
39 occupation that was either approved by the Chief of the Division
40 of Apprenticeship Standards pursuant to Section 3075 of the Labor

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

4 (V) As of January 1, 2020, at least 60 percent of the skilled
5 journeypersons employed to perform work on the contract or
6 project by the entity and each of its subcontractors at every tier
7 are graduates of an apprenticeship program for the applicable
8 occupation that was either approved by the Chief of the Division
9 of Apprenticeship Standards pursuant to Section 3075 of the Labor
10 Code or located outside California and approved for federal
11 purposes pursuant to the apprenticeship regulations adopted by
12 the federal Secretary of Labor.

13 (iii) For an apprenticeable occupation in which no apprenticeship
14 program had been approved by the Chief of the Division of
15 Apprenticeship Standards before January 1, 1995, up to one-half
16 of the graduation percentage requirements of clause (ii) may be
17 satisfied by skilled journeypersons who commenced working in
18 the apprenticeable occupation prior to the chief’s approval of an
19 apprenticeship program for that occupation in the county in which
20 the project is located.

21 (C) “Skilled journeyman” means a worker who either:

22 (i) Graduated from an apprenticeship program for the applicable
23 occupation that was approved by the Chief of the Division of
24 Apprenticeship Standards or located outside California and
25 approved for federal purposes pursuant to the apprenticeship
26 regulations adopted by the federal Secretary of Labor.

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

31 (2) An entity’s commitment that a skilled and trained workforce
32 will be used to perform the project or contract may be established
33 by any of the following:

34 (A) The entity’s agreement with the school district that the entity
35 and its subcontractors at every tier will comply with the
36 requirements of this subdivision and that the entity will provide
37 the school district with evidence, on a monthly basis while the
38 project or contract is being performed, that the entity and its
39 subcontractors are complying with the requirements of this
40 subdivision.

1 (B) If the school district has entered into a project labor
2 agreement that will bind all contractors and subcontractors
3 performing work on the project or contract and that includes the
4 requirements of this subdivision, the entity's agreement that it will
5 become a party to that project labor agreement.

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

10 (d) Based on the documents prepared as described in subdivision
11 (a), the school district shall prepare a request for proposals that
12 invites prequalified or short-listed entities to submit competitive
13 sealed proposals in the manner prescribed by the school district.
14 The request for proposals shall include, but need not be limited
15 to, the following elements:

16 (1) Identification of the basic scope and needs of the project or
17 contract, the estimated cost of the project, the methodology that
18 will be used by the school district to evaluate proposals, whether
19 the contract will be awarded on the basis of low bid or best value,
20 and any other information deemed necessary by the school district
21 to inform interested parties of the contracting opportunity.

22 (2) Significant factors that the school district reasonably expects
23 to consider in evaluating proposals, including, but not limited to,
24 cost or price and all nonprice-related factors.

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

27 (4) Where a best value selection method is used, the school
28 district may reserve the right to request proposal revisions and
29 hold discussions and negotiations with responsive proposers, in
30 which case the school district shall so specify in the request for
31 proposals and shall publish separately or incorporate into the
32 request for proposals applicable procedures to be observed by the
33 school district to ensure that any discussions or negotiations are
34 conducted in good faith.

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

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

3 (1) Competitive proposals shall be evaluated by using only the
4 criteria and selection procedures specifically identified in the
5 request for proposals. The following minimum factors, however,
6 shall be weighted as deemed appropriate by the school district:

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

8 (B) Technical design and construction expertise.

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

10 (2) Pursuant to subdivision (d), the school district may hold
11 discussions or negotiations with responsive proposers using the
12 process articulated in the school district's request for proposals.

13 (3) When the evaluation is complete, the responsive proposers
14 shall be ranked based on a determination of value provided,
15 provided that no more than three proposers are required to be
16 ranked.

17 (4) The award of the contract shall be made to the responsible
18 design-build entity whose proposal is determined by the school
19 district to have offered the best value to the public.

20 (5) Notwithstanding any other provision of law, upon issuance
21 of a contract award, the school district shall publicly announce its
22 award, identifying the design-build entity to which the award is
23 made, along with a statement regarding the basis of the award.

24 (6) The statement regarding the school district's contract award,
25 described in paragraph (5), and the contract file shall provide
26 sufficient information to satisfy an external audit.

27 17250.30. (a) The design-build entity shall provide payment
28 and performance bonds for the project in the form and in the
29 amount required by the school district, and issued by a California
30 admitted surety. The amount of the payment bond shall not be less
31 than the amount of the performance bond.

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

34 (c) The school district shall develop a standard form of payment
35 and performance bond for its design-build projects.

36 17250.35. The school district, in each design-build request for
37 proposals, may identify specific types of subcontractors that must
38 be included in the design-build entity statement of qualifications
39 and proposal. All construction subcontractors that are identified
40 in the proposal shall be afforded all the protections of Chapter 4

1 (commencing with Section 4100) of Part 1 of Division 2 of the
2 Public Contract Code.

3 (a) Following award of the design-build contract, the
4 design-build entity shall proceed as follows in awarding
5 construction subcontracts with a value exceeding one-half of 1
6 percent of the contract price allocable to construction work:

7 (1) Provide public notice of availability of work to be
8 subcontracted in accordance with the publication requirements
9 applicable to the competitive bidding process of the school district,
10 including a fixed date and time on which qualifications statements,
11 bids, or proposals will be due.

12 (2) Establish reasonable qualification criteria and standards.

13 (3) Award the subcontract either on a best value basis or to the
14 lowest responsible bidder. The process may include prequalification
15 or short-listing. The foregoing process does not apply to
16 construction subcontractors listed in the original proposal.
17 Subcontractors awarded construction subcontracts under this
18 subdivision shall be afforded all the protections of Chapter 4
19 (commencing with Section 4100) of Part 1 of Division 2 of the
20 Public Contract Code.

21 17250.40. (a) If the school district elects to award a project
22 pursuant to this chapter, retention proceeds withheld by the school
23 district from the design-build entity shall not exceed 5 percent.

24 (b) In a contract between the design-build entity and a
25 subcontractor, and in a contract between a subcontractor and any
26 subcontractor thereunder, the percentage of the retention proceeds
27 withheld may not exceed the percentage specified in the contract
28 between the school district agency and the design-build entity. If
29 the design-build entity provides written notice to any subcontractor
30 that is not a member of the design-build entity, prior to or at the
31 time the bid is requested, that a bond may be required and the
32 subcontractor subsequently is unable or refuses to furnish a bond
33 to the design-build entity, then the design-build entity may withhold
34 retention proceeds in excess of the percentage specified in the
35 contract between the school district and the design-build entity
36 from any payment made by the design-build entity to the
37 subcontractor.

38 17250.45. Nothing in this chapter affects, expands, alters, or
39 limits any rights or remedies otherwise available at law.

1 17250.50. This chapter shall remain in effect only until January
2 1, 2025, and as of that date is repealed, unless a later enacted
3 statute, that takes effect before January 1, 2025, deletes or extends
4 that date.

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.