

# **PUBLIC CONTRACT CODE**

## **SECTION 20120-20146**

20120. This article applies to public works contracts awarded by counties subject to Title 3 (commencing with Section 23000) of the Government Code. For purposes of this article, the population of a county shall be the most recent estimate determined by the Population Research Unit of the Department of Finance.

20121. Whenever the estimated cost of construction of any wharf, chute, or other shipping facility, or of any hospital, almshouse, courthouse, jail, historical museum, aquarium, county free library building, branch library building, art gallery, art institute, exposition building, stadium, coliseum, sports arena or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibitions, spectacles and other public meetings, or other public building or the cost of any painting, or repairs thereto exceeds the sum of four thousand dollars (\$4,000), inclusive of the estimated costs of materials or supplies to be furnished pursuant to Section 20131, the work shall be done by contract. Any such contract not let pursuant to this article is void.

20121.1. Notwithstanding Section 20121, a county board of supervisors need not contract for grading, drainage, pipe laying, fencing, landscaping, instrument installation, and similar construction and repair work necessary to maintain day-to-day landfill operations.

20122. In counties containing a population of 500,000 or over, the work referred to in Section 20121 need not be done by contract if the estimated cost thereof is less than six thousand five hundred dollars (\$6,500), exclusive of the estimated cost of materials or supplies to be furnished pursuant to Section 20133.

20123. In counties containing a population of 2,000,000 or over, as determined by the last federal or special census or subsequent estimate validated by the Population Research Unit of the Department of Finance, Sections 20121 and 20122 do not apply to alteration or repair work upon county-owned buildings, if the cost of the work is under fifty thousand dollars (\$50,000).

20123.5. In any county, it is unlawful to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding. Every person who willfully violates the provisions of this section is guilty of a misdemeanor.

20124. The board of supervisors shall adopt plans, specifications, strain sheets, and working details for the work.

20125. The board shall cause an advertisement for bids for the performance of the work to be published pursuant to Section 6062 of the Government Code in a daily newspaper, or pursuant to Section 6066 of the Government Code in a weekly newspaper, of general circulation published in the county. If there is no such newspaper published in the county, the notice shall be given by posting in three public places for at least two weeks.

20126. Any notice inviting bids which specifies locations of possible materials, such as a borrow pit or gravel bed, for use in the proposed construction project which would be subject to Section 1602 of the Fish and Game Code shall include any conditions or modifications established pursuant to Section 1603 of the Fish and Game Code.

20127. All bidders shall be afforded opportunity to examine the plans, specifications, strain sheets, and working details.

20128. The board shall award the contract to the lowest responsible bidder, and the person to whom the contract is awarded shall perform the work in accordance with the plans, specifications, strain sheets, and working details, unless the contract is modified by a four-fifths vote of the board.

20128.5. Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.

For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.

20129. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- (1) Cash.
- (2) A cashier's check made payable to the county.
- (3) A certified check made payable to the county.
- (4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(b) The person to whom the contract is awarded shall execute a bond to be approved by the board for the faithful performance of the contract.

20130. If the board of supervisors is advised by the county surveyor or engineer that any wharf, chute, or other shipping facility can be constructed or repaired for a sum less than the lowest responsible bid, it may reject all bids and order the work done by day's work under the supervision and direction of the surveyor or engineer.

20131. Counties which employ purchasing agents may:

(a) Authorize the agent to employ state-licensed independent contractors and purchase materials, furnishings, and supplies used in the construction or repair of public works estimated as costing not more than six thousand five hundred dollars (\$6,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.

(b) In counties containing a population of 500,000 or more, authorize the agent to purchase materials and supplies used in the construction or repair of public works estimated as costing not more than three thousand five hundred dollars (\$3,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.

(c) Authorize the agent to purchase or contract for medical or surgical equipment or supplies, or for professional services, for a county hospital without competitive bidding, so long as an appropriation for the costs of those purchases or contracts is included in the county budget.

As used in this subdivision, "medical or surgical equipment or

supplies" means only equipment or supplies commonly, necessarily, and directly used by or under the direction of a physician and surgeon in caring for or treating a patient in a hospital.

20132. The board of supervisors of any county may delegate to the county administrative officer or the county executive officer in an equivalent position, the power to enter into and execute on behalf of the county any contracts, which do not involve the expenditure of more than five thousand dollars (\$5,000), which relate to purposes previously approved and budgeted by the board of supervisors, subject to ratification of such approval and execution by the board of supervisors. This section shall not apply to:

- (a) Matters within the purview of Section 20131.
- (b) Contracts for the construction of public improvements.
- (c) Contracts which must be awarded after public notice and competitive bidding.

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars (\$2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) (A) For contracts for public works projects awarded prior to the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any projects where the county or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the projects.

(B) For contracts for public works projects awarded on or after the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the board of supervisors shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this paragraph shall be deposited in the

State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(C) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the board of supervisors may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) As used in this section:

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

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

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

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

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

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

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

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

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

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

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

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

(i) Significantly more important than cost or price.

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

(iii) Significantly less important than cost or price.

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

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

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

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

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

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

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

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

(vii) Any instance in which the entity, or its owners, officers,

or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

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

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

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

(xii) (I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was, during the five years preceding submission of a bid pursuant to this section, determined by a court of competent jurisdiction to have submitted, or legally admitted for purposes of a criminal plea to have submitted either of the following:

(ia) Any claim to any public agency or official in violation of the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

(ib) Any claim to any public official in violation of the California False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of the Government Code).

(II) Information provided pursuant to this subdivision shall include the name and number of any case filed, the court in which it was filed, and the date on which it was filed. The entity may also provide further information regarding any such instance, including any mitigating or extenuating circumstances that the entity wishes the county to consider.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

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

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

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

(i) Competitive proposals shall be evaluated by using only the

criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

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

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

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

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

(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its 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) Lists of subcontractors, bidders, and bid awards relating to the project shall be submitted by the design-build entity to the awarding body within 14 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of the Government Code.

(h) 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.

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

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

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

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

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

(m) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before September 1, 2013, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2009, and before August 1, 2013. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.
- (4) The estimated and actual length of time to complete the project.
- (5) The estimated and actual project costs.
- (6) Whether the project was met or altered.
- (7) The number and amount of project change orders.
- (8) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

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

(10) An assessment of the effect of retaining 5 percent retention on the project.

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

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

(13) An assessment of the project impact of "skilled labor force availability."

(14) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

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

(n) Any county that elects not to use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected not to use the design-build method.

(o) On or before January 1, 2014, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivisions (m) and (p). The report may include recommendations for modifying or extending this section.

(p) The Legislative Analyst shall complete a fact-based analysis of the use of the design-build method by counties pursuant to this section, utilizing the information provided pursuant to subdivision (m) and any independent information provided by the public or interested parties. The Legislative Analyst shall select a representative sample of projects under this section and review available public records and reports, media reports, and related information in its analysis. The Legislative Analyst shall compile the information required to be analyzed pursuant to this subdivision into a report, which shall be provided to the Legislature. The report shall include conclusions describing the actual cost of projects procured pursuant to this section, whether the project schedule was met or altered, and whether projects needed or used project change orders.

(q) Except as provided in this section, this act shall not be construed to affect the application of any other law.

(r) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

20134. (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing

with Section 22050). The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon

terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136,

20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

20135. The plans and specifications adopted by the board for the erection, alteration, construction, or repair of any public building or other public structure shall not be altered or changed in any manner which increases its cost, except by a vote of two-thirds of the members of the board of supervisors.

20136. Whenever the board enters into a contract for the erection, construction, alteration, or repair of any public building or other structure, the contract shall not be altered or changed in any manner, except:

- (a) As provided in Section 20142.
- (b) As provided for in the contract itself, or specifications.
- (c) By order adopted by a vote of two-thirds of the board, and the consent of the contractor.

20137. If any change or alteration of the contract is ordered, it shall be specified in writing by a duly authorized officer of the county. The cost of such change or alteration must be agreed upon between the board and the contractor unless the contract includes a provision to determine a fair and equitable price for the change or alteration. Such a provision may provide for any method of determining the price common in commercial transactions, including, but not limited to, arbitration or cost plus a fixed fee. If the cost so agreed upon:

- (a) Does not exceed the amounts specified in Sections 20121 and 21031, or
- (b) Does not exceed 10 percent of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids therefor.

No change or alteration shall be authorized the amount of which is within the limitation specified in subdivision (b) and in excess of the limitation specified in subdivision (a) except by four-fifths vote of the board.

20138. If the cost of the work is reduced by reason of any modification of the contract, compensation shall be made to the

county therefor.

20139. The board shall not pay or become liable for any extra work done on, or extra material furnished for, any building or structure in the course of performance of a contract let pursuant to this article except in accordance with Section 20142, unless the contract specifically provides for such payment or the contract is changed or modified in the manner provided for in this article.

20140. The method of payment for construction contracts shall be determined by the board, including progress payments for completed portions of the work and for materials delivered on the ground or stored subject to the control of the board and unused.

20141. The provisions of this article shall not apply to the construction of any public building used for facilities of juvenile forestry camps or juvenile homes, ranches or camps established under Article 15 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, if a major portion of the construction work is to be performed by wards of the juvenile court assigned to such camps, ranches, or homes.

20142. (a) The board of supervisors may, by ordinance, resolution, or board order, authorize the county engineer, or other county officer, to order changes or additions in the work being performed under construction contracts. When so authorized, any change or addition in the work shall be ordered in writing by the county engineer, or other designated officer, and the extra cost to the county for any change or addition to the work so ordered shall not exceed five thousand dollars (\$5,000) when the total amount of the original contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the amount of any original contract that exceeds fifty thousand dollars (\$50,000), but does not exceed two hundred fifty thousand dollars (\$250,000).

(b) For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original contract cost in excess of two hundred fifty thousand dollars (\$250,000). In no event shall any such change or alteration exceed two hundred ten thousand dollars (\$210,000).

20143. The board may cause the insertion of provisions in any contract for the erection, construction, alteration, or repair of any public building or structure, or in the specifications therefor, for the performance of such extra work and the furnishing of materials therefor by the contractor as the board, county engineer, or other duly authorized officer requires for the proper completion or

construction of the whole work contemplated.

20144. The provisions of this article do not apply to any contract which is entered into between Napa County and the State of California or any agency of the executive department of the State of California, for the alteration or repair of the structure located in Napa County and known as the Old Bale Mill.

20145. In counties containing a population of 6,000,000 or over, the board of supervisors may by ordinance authorize such county officer as is deemed appropriate to take or perform any or all acts or actions permitted or required of the board by this article, including the authority to adopt and advertise plans and specifications, award contracts, approve bonds, or order the change or alteration of contracts, with respect to original contracts which do not exceed the total amount of seventy-five thousand dollars (\$75,000), or with respect to changes or alterations to original contracts entered into by the board where the changes or alterations do not exceed 10 percent of the amount of the original contract or seventy-five thousand dollars (\$75,000), whichever is less. The aggregate total amount of such changes or alterations to an original contract may not exceed 25 percent of the amount of the original contract. Any authorization pursuant to this section shall include detailed procedures governing the county officer in the exercise of such authority.

20146. (a) A county, with approval of the board of supervisors, may utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. A construction manager at-risk construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a construction manager at-risk entity that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(b) For purposes of this section, the following definitions apply:

(1) "Best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

(2) "Construction manager at-risk contract" means a competitively procured contract by a county with an individual, partnership, joint venture, corporation, or other recognized legal entity, that is appropriately licensed in this state, including a contractor's license issued by the Contractors' State License Board, and that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and

coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(c) Subcontractors that were not listed by a construction manager at-risk entity as partners, general partners, or association members in a partnership, limited partnership, or association in the entity's construction manager at-risk bid submission shall be awarded by the construction manager at-risk entity in accordance with the process set forth by the county. 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 construction manager at-risk 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.

(d) A county that elects to proceed under this section and uses a construction manager at-risk contract for a building project shall make a copy of the contract available for public inspection on its Internet Web site and notify the appropriate policy committees of the Legislature with instructions on finding and accessing the stored contract.

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

(2) In a contract between the construction manager at-risk entity and any subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the construction manager at-risk entity. If the construction manager at-risk entity provides written notice to any subcontractor that is not a member of the construction manager at-risk entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the construction manager at-risk entity, then the construction manager at-risk entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the construction manager at-risk entity from any payment made by the construction manager at-risk entity to the subcontractor.

(f) If the county elects to award a project pursuant to this section, the contract between the county and construction manager at-risk entity shall be subject to the provisions of subdivision (b) of Section 2782 of the Civil Code. Any contract between the construction manager at-risk entity and a contractor or subcontractor shall be subject to provisions of Section 2782.05 of the Civil Code.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.



