
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

Bill No: AB 400
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Version: 6/13/23
Consultant: Peterson

Hearing Date: 6/21/23
Tax Levy: No
Fiscal: Yes

LOCAL AGENCY DESIGN-BUILD PROJECTS: AUTHORIZATION

Extends the sunset date for specified local agencies to use design-build, from January 1, 2025, to January 1, 2031.

Background

Contracting. The Local Agency Public Construction Act generally requires local agencies to invite bids for construction projects and award contracts to the lowest responsible bidder. Local agencies typically use the traditional design-bid-build method for constructing public works. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local agencies invite bids from the construction community and award the contract to the lowest responsible bidder. Over the last couple of decades, the Legislature has gradually expanded local agencies' authority to procure construction projects using various alternatives to the design-bid-build project delivery method.

Design-build. State law allows state and local officials, until January 1, 2025, to use the design-build method for contracts in excess of \$1 million to procure both design and construction services from a single company before developing complete plans and specifications. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price. The Department of General Services, the California Department of Corrections and Rehabilitation, cities, counties, transit districts, including joint powers authorities (JPAs) formed to provide transit service, special districts operating wastewater, water recycling, or solid waste management facilities, and certain health care districts may use design-build.

Originally, the authorizations for state agencies and local governments to use design-build were dispersed throughout state law in separate code sections. In 2014, the Legislature consolidated these provisions into consistent, generally-applicable statutes (SB 785, Wolk, 2014). SB 785 outlines a standardized design-build procurement process in which the awarding authority may prepare a list of qualified or short-listed entities, based on specified criteria. Once a list of qualified or short-listed entities is complete, the awarding authority may prepare a request for

proposals (RFP) inviting prequalified or short-listed entities to submit competitive sealed proposals in the manner the awarding authority prescribes.

For projects utilizing low bid as the selection method, the competitive bidding process must involve lump-sum bids by the prequalified or short-listed design-build entities. Local agencies must award contracts to the design-build entity that is the lowest responsible bidder.

For those projects utilizing best value as a selection method, local agencies must evaluate proposals using only the criteria and selection procedures specifically identified in the RFP. The awarding authority may reserve the right to request revisions and conduct negotiations with responsive proposers, if the authority specifies in the RFP how it will ensure negotiations are conducted in good faith. The authority may hold discussions or negotiations with responsive bidders using the process the RFP specifies. The awarding authority ranks responsive bidders on value provided. The awarding authority must award the contract to the responsible design-build entity whose proposal is determined by the authority to have offered the best value to the public. Upon issuance of a contract award, the awarding authority must publicly announce its award, identifying the design-build entity it has awarded the contract to, along with a written decision supporting its contract award and stating the basis of the award.

The state's design-build statutes also impose requirements for the use of skilled labor, the issuance of payment and performance bonds, insurance coverage, and identification of subcontractors that will complete at least one-half of 1% of the value of a contract.

Local governments want to continue to use design-build to complete projects after the January 1, 2025, sunset date.

Proposed Law

Assembly Bill 400 extends the sunset date for specified local agencies to use design-build, from January 1, 2025, to January 1, 2031. The measure also allows any JPA to use design-build, not just those formed to provide transit service.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "The Design Build method streamlines public project delivery by allowing local governments to enter into a single contract with a design and construction team that is responsible for designing and building the project. The Design Build method allows counties and local governments to complete and deliver complex public works projects more efficiently and cost effectively versus the more traditional process. Extending the existing design-build authority will provide more certainty for counties and local governments to plan, fund and complete pending and future projects."

2. Premature? Local agencies' design-build authority sunsets on January 1, 2025. Even though local agencies still have over a year to use design-build authority, AB 400 extends the sunset until 2031. Supporters argue extending the sunset now is necessary to ensure the projects underway or planned to begin prior to the sunset have the legal certainty to finish using design-

build. On the other hand, the time remaining under the existing sunset could provide an opportunity to further evaluate whether existing design-build statutes function effectively. The Committee may wish to consider whether extending the design-build sunset is premature.

3. Related legislation. Recently, some local agencies have used *progressive* design-build to construct projects. While there is some variation, the progressive design-build model generally includes two phases. In the first phase, the awarding authority uses a best value process to select a design-build entity who completes preliminary plans and preconstruction services necessary to provide a cost estimate and final design proposal. The project then “progresses” to the second phase of the project, where the awarding authority and the design-build entity agree to a final design, project cost, and schedule. If they cannot agree, there is an “off ramp” between the two phases where the awarding authority can pursue other options, but still benefit from having the first phase work complete. This is different from traditional design-build where the awarding entity contracts with a single entity to design and construct a project at a set price before design work begins, and without a similar off ramp. SB 991 (Newman, 2022) authorizes, until January 1, 2029, local agencies that provide for the production, storage, supply, treatment, or distribution of water to use progressive design-build for up to 15 specified water projects each over \$5 million. The Legislature is considering two measures regarding progressive design-build:

- SB 706 (Caballero, 2023) expands local agency progressive design-build authority to any type of project, not just water projects, and extends the progressive design-build sunset date to January 1, 2030. The bill is currently pending in the Assembly Local Government Committee.
- SB 617 (Newman, 2023) authorizes transit agencies and regional transportation planning agencies to utilize progressive design-build procurement method, but keeps the January 1, 2029 sunset date from SB 991. The bill is currently pending in the Assembly Local Government Committee.

Assembly Actions

Assembly Local Government Committee:	8-0
Assembly Appropriations Committee:	14-0
Assembly Floor:	74-0

Support and Opposition (6/16/23)

Support: California State Association of Counties (Sponsor)
 American Council of Engineering Companies of California
 California Builders Alliance
 California Special Districts Association
 City of Whittier
 County of Contra Costa
 County of Fresno
 County of Los Angeles
 County of Monterey
 County of Orange
 County of Placer
 County of Sacramento
 County of San Bernardino

County of San Diego
County of Santa Barbara
County of Santa Clara
County of Santa Cruz
County of Solano
Design Build Institute of America Western Pacific Chapter
League of California Cities
Los Angeles County Sanitation Districts
Rural County Representatives of California (RCRC)
Sacramento Regional Builders Exchange
Streets for All
Urban Counties of California (UCC)
Water Replenishment District of Southern California

Opposition: None received.

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