Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 373 (Cannella) – As Amended July 3, 2017

SENATE VOTE: 37-0

SUBJECT: Public contracts: design-build: Stanislaus Regional Water Authority.

SUMMARY: Allows the Stanislaus Regional Water Authority (SRWA) to use the design-build procurement method that is authorized for local agencies for its Regional Surface Water Supply Project (Water Supply Project). Specifically, **this bill**:

1) Adds the SRWA to the list of local agencies that are allowed under existing law to use design-build.

2) Specifies that the SRWA may only use design-build for its Water Supply Project.

3) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the need for the increased flexibility provided by the design-build alternative procurement process in contracting for the SRWA's Water Supply Project.

EXISTING LAW:

1) Requires, pursuant to the Local Agency Public Construction Act (LAPC Act), local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder under the traditional design-bid-build project delivery system.

2) Authorizes, until January 1, 2025, cities, counties, and specified special districts and transit agencies to use design-build for specified public works contracts in excess of $1 million using either a low bid or best value process.

3) Provides the following parameters for cities and counties that use design-build pursuant to 2), above:

    a) Allows design-build for the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities;

    b) Allows cities and counties that operate wastewater facilities, solid waste management facilities, or water recycling facilities to use design-build for the construction of such facilities, both local and regional; and,

    c) Prohibits cities and counties from using design-build for the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure [with the exception of b), above].

4) Generally limits the types of special districts that may use design-build pursuant to 2), above, to transit districts, and special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities.

5) Limits the types of projects that special districts can construct using design-build pursuant to 2), above, to the following:

   a) Transit capital projects that begin project solicitation on or after January 1, 2015, excluding state highway construction or local street and road projects (for transit districts); and,

   b) Regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities (for special districts that operate those types of facilities).

6) Authorizes, pursuant to the Joint Exercise of Powers Act (Act), two or more public agencies, by agreement, to form a joint powers authority (JPA) to exercise any power common to the contracting parties, as specified.

FISCAL EFFECT: None

COMMENTS:

1) **Bill Summary**. This bill allows SRWA to use the design-build procurement process that is authorized for local agencies for its Water Supply Project. This bill is sponsored by SRWA.

2) **Author's Statement**. According to the author, "Design build is a public works project delivery process in which both the design and construction of a project are procured from a single entity. Design build can offer significant cost savings for local entities over the design-bid-build process. SB 373 is needed so that the SRWA's Water Supply Project can be brought to fruition expeditiously and in the most cost-effective manner. This project will create a long-term, reliable water source for the cities of Ceres and Turlock, and will reduce groundwater dependence, avoid future over-drafting, improve drinking water quality, and improve water supply reliability and resiliency through future droughts, among other benefits."

3) **SRWA**. Established in 2011, SRWA is a JPA that includes the cities of Ceres and Turlock. Each of the cities is authorized to develop, obtain, and serve a municipal and industrial water supply. The SRWA was formed for the purpose of making responsible decisions related to the development and operation of the Water Supply Project, which is intended to provide for the long-term drinking water needs of each participating city. Specifically, the project's purpose is to correct existing and projected water supply deficiencies, avoid over-drafting of groundwater, improve water quality, increase system reliability, and meet requirements for an assured water supply.

   According to a white paper on the project, additional water is needed in most of the cities throughout the south Stanislaus County area because the current local groundwater supply is neither sufficient nor reliable to meet existing and/or future demands. The only existing municipal water supply source for areas in the south County is the limited groundwater from

the Turlock Subbasin, where a significant amount of the previously existing groundwater supply has been lost due to water quality issues. It is expected that this decrease in reliable groundwater production capacity will, at a minimum, remain the same or continue to decrease as other wells are taken out-of-service due to increasingly stringent water quality regulations. Additionally, the disposal cost for wellhead treatment waste has increased significantly and this cost is anticipated to continue increasing due to regulatory requirements. The source water for this new water treatment plant is the Tuolumne River and the proposed intake is an existing infiltration gallery located four to five feet below the river bottom.

4) **Background**. The Local Agency Public Construction Act generally requires local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder. This design-bid-build method is the traditional approach to public works construction. The design-bid-build process was developed to protect taxpayers from extravagance, corruption, and other improper practices by public officials, as well as to secure a fair and reasonable price for public works construction by injecting competition amongst bidders into the process. Although design-bid-build generally results in the lowest cost construction contract, it is not without its drawbacks, including:

   a) Projects generally take longer to complete because designs must be entirely completed, permits obtained, and right-of-way acquired before the construction contract can be bid and awarded;

   b) Designs prepared for a competitive low-bid procurement are developed to allow for a broad range of construction approaches. As a result, low-bid designs do not always equate to the most efficient design possible, depending on a particular contractor's particular strengths or capabilities;

   c) Because the project designer does not have the benefit of consulting with the entity that will ultimately be responsible for construction of the project, there may be significant issues that the designer does not anticipate, particularly constructability issues. This can result in change orders that ultimately drive up the price of the contract; and,

   d) Low-bid is not always the least expensive option, once change orders and contractor claims are factored into the overall project costs.

   In the early 1990s, public works agencies grew frustrated with design-bid-build and began experimenting with other project delivery methods, including design-build. Under the design-build method, a single contract covers the design and construction of a project with a single company or consortium that acts as both the project designer and builder. The design-build entity arranges all architectural, engineering, and construction services, and is responsible for delivering the project at a guaranteed price and schedule based upon performance criteria set by the public agency.

   Design-build differs from design-bid-build in some key areas, including:

   a) Shorter overall elapsed project delivery time because construction can begin before final design is complete;

b) Project costs and schedule risks are more heavily borne by the design-build contractor;

c) Construction claims and change orders are minimized;

d) Designs can be developed to take advantage of particular contractor's strengths and abilities, thereby reducing the need to "over-design" for generic use as in design-bid-build;

e) Project specifications are typically based on definitive performance criteria (which may or may not be well established by the project owner) rather than established specifications; and,

f) Contracts are awarded based on best-value analyses rather than low-bid.

Design-build contracts are not without their drawbacks as well. For example, with a design-build project, the project owner must give up a good deal of control over the details of the project design. Additionally, design-build contractors are typically selected using qualifications-based selection criteria or best value analysis. These approaches are more subjective than a low-bid approach, potentially subjecting the public works owner to greater contract challenges and higher costs.

5) **Design-Build in California Law**. As noted above, the Legislature began granting design-build authority in the early 1990's, and has typically done so with specified parameters, such as the duration of the authority, the types of agencies allowed to use it, the types of projects for which it can be used, cost thresholds, and specified procedures that must be followed in preparing and awarding contracts. Over the years, this resulted in a plethora of statutes in a variety of code sections, which created confusion for public agencies and contractors alike. In an effort to consolidate these statutes, SB 785 (Wolk), Chapter 931, Statutes of 2014, repealed existing law authorizing the Department of General Services (DGS), the Department of Corrections and Rehabilitation (CDCR), and local agencies to use the design-build procurement process, and enacted uniform provisions authorizing DGS, CDCR, and specified local agencies to utilize the design-build procurement process for specified public works projects (with some exceptions, notably design-build authority for CalTrans). SB 785 created one set of codes for DGS and CDCR, and a separate set for specified local agencies, but with similar parameters.

6) **Related Legislation**. AB 851 (Caballero) allows the Santa Clara Valley Water District to use design-build for the construction of buildings, and for the following types of projects: flood protection improvements; habitat restorations or enhancements; groundwater recharge or storage facilities; water treatment facilities; and, the retrofit, repair, or expansion of existing surface water storage facilities. AB 851 is pending in the Senate Appropriations Committee.

AB 1523 (Obernolte) authorizes the San Bernardino County Transportation Authority to use design-build for the construction of the Mt. Vernon Avenue Viaduct project in the City of San Bernardino. AB 1523 is pending in the Senate Appropriations Committee.

7) **Arguments in Support**. The SRWA, sponsor of this measure, writes, "The Water Supply Project would provide the cities of Ceres and Turlock with a long-term, reliable water source that would correct existing system deficiencies and help meet projected future drinking water demand in the portion of Stanislaus County south of the Tuolumne River. In general, the proposed Water Supply Project would provide the following benefits:

   a) Correct existing and projected water supply deficiencies by providing the water needed to keep pace with existing and future demands;

   b) Avoid further over-drafting of the groundwater supply and assist in compliance with the Sustainable Groundwater Management Act;

   c) Improve declining water quality;

   d) Increase system reliability and create operational flexibility;

   e) Eliminate water system pressure problems currently experienced during peak water demand; and,

   f) Provide an assured water supply for a minimum of 20 years.

8) **Arguments in Opposition**. None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Stanislaus Regional Water Authority [SPONSOR]
Turlock Irrigation District

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958