

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2235 (Lowenthal) – As Amended April 15, 2024

**SUBJECT:** Public contracts: local agencies: wind infrastructure.

**SUMMARY:** Provides the City of Long Beach (city) and its departments, including the City of Long Beach Harbor Department (Harbor Department) with flexible procurement methods and processes for the Pier Wind project (project). Specifically, **this bill:**

1) Provides the following definitions for the purposes of this bill:

- a) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.
- b) “Best interests of the city” means a procurement process that is determined by the city to provide the best value and an expedited delivery schedule while maintaining a high level of quality workmanship and materials.
- c) “Best value” means a value determined by an evaluation of objective criteria established by the city that may include, but not be limited to, a combination of price, financing costs, development experience, personnel, past performance, plans and approaches, financial strength, safety record, and other criteria deemed appropriate by the city.
- d) “Business entity” means an individual, partnership, joint venture, corporation, company, or other business organization of any form.
- e) “City” means the City of Long Beach and its departments, including the City of Long Beach Harbor Department.
- f) “Construction” means any new construction work, subsequent construction work, and construction maintenance work following the initial completion of a project that is contracted to be performed by a contractor in the construction industry, including construction work on a barge, in a construction staging area, or in a construction area that is being used as a construction work platform. “Construction” does not include any of the following:
  - i) The loading and unloading of cargo to and from vessels.
  - ii) The movement of cargo to and from vessels at any terminal or port facility to the cargo’s point of rest.
  - iii) Maintenance and repair work on the containers and equipment used to load or unload vessels.

- iv) Maintenance and repair work necessary to facilitate the movement of cargo to and from vessels at any terminal or port facility to the cargo's point of rest.
- g) "Construction Manager or General Contractor" or "CMGC" means a project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction or construction management services during the construction phase of the project.
- h) "Construction subcontract" means each subcontract awarded by a business entity to a subcontractor that will perform work, labor, or render services to the business entity in or about the construction of the project, or a subcontractor licensed by the State of California that, under subcontract to the business entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in plans and specifications.
- i) "Design sequencing" means a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring the design for the entire project to be completed before commencing construction.
- j) "Guaranteed maximum price" means the maximum payment agreed upon by the city and a business entity to finish all remaining design, preconstruction, and construction activities sufficient to complete and close out the project or any part of the project.
- k) "Progressive design-build" means a project delivery method in which the design, preconstruction services, and construction of the project or part of the project are procured, in one or more stages, from a single design-build entity that is selected through a best value-based selection at an early stage of the project.
- l) "Project" means the terminal development project at the Port of Long Beach, currently known as Pier Wind, that is anticipated to involve the construction and development of a large-scale, multiacre terminal and transportation corridor to support offshore wind-related activities. "Project" does not include the construction, assembly, operation or maintenance of offshore wind turbine systems or their floating foundations, nor the manufacturing and fabrication of their components.
- m) "Project labor agreement" means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.
- n) "Public works" has the same meaning as provided in subdivision (a) of Section 1720 of the Labor Code.
- o) "Vessel" includes, but is not limited to, a ship, boat, barge, and other related maritime craft.

- 2) Allows the city to procure contracts relating to the project or any part of the project pursuant to this bill.
- 3) Allows, with respect to any contract procured pursuant to this bill, the city to utilize any alternative project delivery method, including, but not limited to:
  - a) Construction Manager or General Contractor, including construction manager at-risk (CMAR).
  - b) Design sequencing.
  - c) Progressive design-build.
  - d) Design-build.
  - e) Predevelopment agreements or other early contractor involvement models.
  - f) Early works agreements.
  - g) Any other forms of alternative project delivery, or any combination of any such methods.
- 4) Allows the design and construction of the project to occur in sequential or concurrent phases.
- 5) Allows, except to the extent otherwise required under applicable law, the city to include in any contract procured pursuant to this bill any provision that the city determines is necessary or appropriate.
- 6) Requires the city to prepare and issue solicitation documents to procure and award any contract pursuant to this bill.
- 7) Allows the contract solicitation process to include prequalification or short-listing business entities who seek to perform the project or any part of the project.
- 8) Requires the city to review submissions it solicits and receives, and allows the city to award contracts relating to the project to one or more responsible business entities whose submissions are determined by the city to be the most advantageous by providing the best value in meeting the best interests of the city.
- 9) Provides that the city shall retain the right not to award any contract relating to the project, including if the city determines that the project is not in the best interests of the city or should negotiations with any business entity otherwise fail.
- 10) Provides that the city's selection of a business entity or business entities for project award shall be final and shall not be subject to challenge by bid protest.
- 11) Allows, upon agreement of the pricing, including any guaranteed maximum price if applicable, for any relevant aspects of the project, the city, in its sole and absolute discretion, to do all of the following:

- a) Amend its contract or enter into a new contract with the business entity.
  - b) Direct the business entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project or any part of the project.
  - c) Add funds to the contract for the activities pursuant to this subdivision.
- 12) Provides that any amendment of the existing contract or a new contract with the business entity shall not require any additional competitive process.
  - 13) Provides that this bill does not require the city to amend an existing contract or enter into a new contract for remaining design, preconstruction, or construction activities.
  - 14) Allows, if the city and the business entity do not reach an agreement on pricing for any relevant aspect of the project, or if the city otherwise elects not to have the business entity complete some or all of the remaining work, the city to solicit proposals to complete some or all of the remaining work for the project from firms that previously submitted proposals.
  - 15) Allows the city to, upon written determination that it is in the best interest of the city to do so, formally solicit proposals from other business entities to complete some or all of the remaining work, or complete the project using other delivery methods.
  - 16) Requires, if otherwise applicable to the city, any contract awarded to be made on a best value basis.
  - 17) Allows the city, in its solicitation for proposals or bids for the project, to identify specific types of subcontractors, certifications, and license classifications that shall be included in the business entity's proposal or bid.
  - 18) Requires all construction subcontractors that are identified in the business entity's proposal or bid to be afforded the protections of the Subletting and Subcontracting Fair Practices Act, as specified.
  - 19) Requires subcontractors that were not listed by the business entity as part of its proposal or bid submission to be awarded subcontracts by the business entity in accordance with applicable law and the process set forth by the city, which may include, but shall not be limited to, any of the following:
    - a) Providing public notice of availability of work to be subcontracted in accordance with the publication requirements specified by the city, including a fixed date and time on which bids or proposals shall be due.
    - b) Establishing reasonable qualification criteria and standards.
    - c) Awarding the subcontract on a best value basis.
  - 20) Requires all public works constructed pursuant to this bill to comply with existing law governing public works, as specified, and provides that a business entity shall not be

evaluated for selection or eligible for selection by the city unless the business entity provides an enforceable commitment to the city that the business entity and its subcontractors at every tier shall use a skilled and trained workforce to perform all construction work, as defined in this bill, on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with specified existing law governing the use of a skilled and trained workforce. These requirements shall not apply if one or more of the following requirements are met:

- a) The city has entered into a project labor agreement (PLA) that will bind all contractors and subcontractors performing construction work on the project or contract to use a skilled and trained workforce, and the business entity agrees to be bound by that PLA.
  - b) The project or contract is being performed under the extension or renewal of a PLA that was entered into by the city before January 1, 2025, which binds all contractors and subcontractors performing construction work to use a skilled and trained workforce.
  - c) The business entity has entered into a PLA that shall bind the entity and all of its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.
- 21) Provides, for purposes of 20), above, a PLA shall only apply to construction work as defined in this bill.
  - 22) Requires the business entity to provide payment bonds for the project issued by a California-admitted surety in the form, at the times, and in the amount required by the city.
  - 23) Requires the relevant contracts between the city and the business entity relating to the project to require errors and omissions insurance coverage for the design elements of the project.
  - 24) Requires the relevant contracts between the city and the business entity to be subject to subdivision (b) of Section 2782 of the Civil Code, which governs liability regarding construction contracts between a public agency and a contractor.
  - 25) Requires any contract between the business entity and a contractor or subcontractor relating to the project to be subject to Section 2782.05 of the Civil Code, which governs liability regarding construction contracts between contractors and subcontractors.
  - 26) Requires the negotiation process to expressly prohibit practices that may result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration.
  - 27) Requires the negotiation process to expressly prohibit city employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this bill that would subject those employees to Section 87100 of the Government Code, which prohibits a public official at any level of state or local government from making, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.

- 28) Requires all documents related to the project to be subject to disclosure under the California Public Records Act, as specified, except those exempted from disclosure under the act.
- 29) Provides that the provisions of this bill are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- 30) Provides, except as expressly provided, that this bill does not affect, expand, alter, or limit any rights or remedies otherwise available at law.
- 31) 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 unique and special circumstances surrounding the project and the need to immediately, quickly, and efficiently develop the 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. [Public Contract Code (PCC) §§ 20100 – 20929]
- 2) Authorizes 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, as specified. (PCC §§ 22160 – 22169)
- 3) Authorizes the Department of General Services (DGS) to use the progressive design-build procurement process for up to three public works projects, as specified. (PCC §§ 10198 – 10198.8)
- 4) Authorizes, until January 1, 2029, a city, county, city and county, or special district authorized to 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, and outlines the process and additional parameters for the use of this procurement method. (PCC §§ 22170 – 22174)
- 5) Requires local agencies that use the progressive design-build authority described in 4), above, to submit a report on its use to the Legislature by January 1, 2028, as specified. (PCC § 22172.5)
- 6) Authorizes, until January 1, 2029, counties to use CMAR for the construction of buildings costing in excess of \$1 million and allows a county to award the contract to the lowest responsible bidder or by the best value method. (PCC § 20146)

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

1) **Bill Summary.** This bill provides flexibility for the City of Long Beach to procure contracts for the Pier Wind project, as follows:

a) **Project Delivery Methods and Contract Contents.** This bill allows the city to procure contracts relating to the project or any part of the project and to utilize any alternative project delivery method, including, but not limited to:

i) Construction Manager or General Contractor, including CMAR.

ii) Design sequencing.

iii) Progressive design-build.

iv) Design-build.

v) Predevelopment agreements or other early contractor involvement models.

vi) Early works agreements.

vii) Any other forms of alternative project delivery, or any combination of any such methods.

This bill allows, except to the extent otherwise required under applicable law, the city to include in any contract for the project any provision that the city determines is necessary or appropriate.

b) **Solicitation Requirements.** This bill provides the following regarding the solicitation process:

i) The city must prepare and issue solicitation documents to procure and award any contract.

ii) The contract solicitation process may include prequalification or short-listing business entities.

iii) The city must review submissions it solicits and receives.

iv) The city may award contracts to one or more responsible business entities whose submissions are determined by the city to be the most advantageous by providing the best value in meeting the best interests of the city. The city retains the right not to award any contract, as specified.

v) The city's selection of a business entity or entities for project award shall be final and shall not be subject to challenge by bid protest.

c) **Contract Negotiations, Amendments and Awards.** This bill provides the following regarding contract negotiations, amendments and awards:

- i) Upon agreement of the pricing for any relevant aspects of the project, the city, in its sole and absolute discretion, may do all of the following:
  - (1) Amend its contract or enter into a new contract with the business entity.
  - (2) Direct the business entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project or any part of the project.
  - (3) Add funds to the contract for the activities pursuant to this subdivision.
- ii) Any amendment of the existing contract or a new contract with the business entity shall not require any additional competitive process.
- iii) Contains provisions for instances where a pricing is not agreed upon or to complete remaining work or use a different delivery method.
- iv) If otherwise applicable to the city, any contract awarded must be made on a best value basis.
- v) The negotiation process must expressly prohibit the following:
  - (1) Practices that may result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration.
  - (2) City employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract, pursuant to existing law.
- d) **Subcontracting Provisions.** This bill includes a number of provisions regarding subcontracting, including the following:
  - i) The city may, in its solicitation for proposals or bids, identify specific types of subcontractors, certifications, and license classifications that shall be included in the business entity's proposal or bid.
  - ii) Requires all subcontractors that are identified in the business entity's proposal or bid to be afforded the protections of the Subletting and Subcontracting Fair Practices Act. Subcontractors that were not listed by the business entity must be awarded subcontracts in accordance with applicable law and the process set forth by the city, which may include, but shall not be limited to, any of the following:
    - (1) Providing public notice of availability of work to be subcontracted in accordance with the publication requirements specified by the city, including a fixed date and time on which bids or proposals shall be due.
    - (2) Establishing reasonable qualification criteria and standards.



- (3) Awarding the subcontract on a best value basis.
- e) **Labor Provisions.** This bill requires all public works constructed pursuant to its provisions to comply with existing law governing public works. A business entity shall not be evaluated for selection or eligible for selection by the city unless the business entity provides an enforceable commitment to the city that the business entity and its subcontractors at every tier shall use a skilled and trained workforce, as specified. These requirements do not apply if certain provisions regarding PLAs are met, as specified.
  - f) **Payment Bonds and Errors and Omissions Insurance.** This bill requires the business entity to provide payment bonds for the project issued by a California-admitted surety in the form, at the times, and in the amount required by the city. Relevant contracts between the city and the business entity must require errors and omissions insurance coverage for the design elements of the project.

This bill requires all documents related to the project to be subject to disclosure under the California Public Records Act.

This bill specifies that “project” means the terminal development project at the Port of Long Beach, currently known as Pier Wind, that is anticipated to involve the construction and development of a large-scale, multiacre terminal and transportation corridor to support offshore wind-related activities. “Project” does not include the construction, assembly, operation or maintenance of offshore wind turbine systems or their floating foundations, nor the manufacturing and fabrication of their components.

This bill is sponsored by the Port of Long Beach.

- 2) **Author’s Statement.** According to the author, “The Port of Long Beach is embarking on an ambitious plan to help California meet its goal of producing 25 gigawatts of offshore wind power by 2045 and help lower the national cost of offshore wind power by 70% by 2035. Offshore wind will play a critical role in California’s renewable energy portfolio, helping California achieve its SB100 goals while delivering the renewable energy to support decarbonization across multiple sectors, including the Port of Long Beach’s transition to zero emissions.

“Time is of the essence to develop the port infrastructure needed to enable offshore wind and tackle the climate crisis. Due to the complexity and aggressive delivery schedule of Pier Wind needed to meet California’s offshore wind energy goals, it would be expedient to pass AB 2235 to provide an express ability for the City of Long Beach to procure contracts using a plethora of project delivery methods relating to the Pier Wind project.”

- 3) **Background.** Current law generally requires local agencies to use the design-bid-build method for public works contracts, which provides separate contracts for design and construction. However, local agencies have also been granted the authority to use the following alternative procurement methods, with specified parameters:
- a) **Design-Build.** California law allows local agencies to use the design-build method, in which 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. Existing law

generally limits the use of design-build by local agencies to specified types of projects, but with a number of narrow exceptions over the years. It also contains a number of details regarding how design-build projects must progress.

- b) **Progressive Design-Build.** Progressive design-build is a more recent variant on traditional design-build contracting. 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 that completes preliminary plans and preconstruction services necessary to provide a cost estimate and final design proposal. The project then “progresses” to the second phase, 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 when the awarding authority can pursue other options, but still benefit from having the first phase of 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.

AB 137 (Committee on Budget), Chapter 77, Statutes of 2021, authorized the DGS to use the progressive design-build procurement process for up to three public works projects, and outlined extensive parameters for the department’s use of this procurement method. AB 2551 (Gallagher), Chapter 760, Statutes of 2016, authorized local agencies to use a number of alternative procurement methods, including progressive design-build, for any surface storage project that receives specified funding for water storage projects. Some charter cities have implemented their own progressive design-build process, relying on their Constitutional authority to control their own “municipal affairs.”

SB 991 (Newman), Chapter 243, Statutes of 2022, authorized a county, city, or special district that produces, stores, supplies, treats, or distributes water to use progressive design-build for up to 15 public works projects in excess of \$5 million each that treat, pump, store, or convey water, wastewater, recycled water, advanced treated water, or supporting facilities. SB 991 outlined extensive requirements for the procurement process that must be followed, including provisions for the use of a skilled and trained workforce, protections for subcontractors, and other requirements. SB 991 required, no later than January 1, 2028, a local agency that uses the progressive design-build process authorized by the bill to submit a report to the Legislature on the use of the progressive design-build process, and specified the contents of that report. SB 617 (Newman) Chapter 310, Statutes of 2023, expanded on SB 991 to allow transit agencies and regional transportation planning agencies to utilize progressive design-build.

SB 706 (Caballero), Chapter 500, Statutes of 2023, authorized, until January 1, 2030, a city, county, or special district to use the progressive design-build process for up to 10 public works projects in excess of \$5 million.

- c) **Construction Manager/General Contractor (CM/GC).** The CM/GC project-delivery method allows an agency to engage a construction manager during the design process to provide assistance to the design team, which can ultimately lead to a more constructible project. When design is nearly complete, the agency and the construction manager negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a

contract for construction services, and the construction manager becomes the general contractor. CM/GC can lead to less costly or more expediently delivered projects because of the construction manager's involvement in the design process.

The Legislature has authorized a number of agencies to use CM/GC. SB 626 (Dodd), Chapter 247, Statutes of 2021, authorized the Department of Water Resources to use the design-build and CM/GC project delivery methods for facilities of the State Water Project and outlined extensive parameters for the department's use of these methods. AB 1845 (Calderon), Chapter 275, Statutes of 2022 authorized the Metropolitan Water District of Southern California to use design-build, progressive design-build and CM/GC project delivery methods for a regional water recycling project or a drought response project, also with specified requirements.

- d) **Construction Manager At-Risk (CM at-risk).** CM at-risk is a process that allows the client of a project to choose the construction manager (CM) before the design stage is complete. The CM is chosen based on qualifications, and then the entire operation is centralized under a single contract. The architect and CM work together in order to cultivate and assay the design. Then, the CM gives the client a guaranteed maximum price, and coordinates all subcontract work. The architect/engineer (A/E) is hired separately from the CM at-risk and the traditional client – A/E relationship is maintained. However, A/Es can generally perform the CM role, with various restrictions imposed based on state.

CM at-risk has been authorized for use by the California Administrative Office of the Courts, the UC, the California State University System, school districts, counties and some cities.

- 4) **Clean Energy Goals.** The 100 Percent Clean Energy Act of 2018 increased California's renewable portfolio standard (RPS) goal to 60% by 2030 and requires RPS-eligible resources and zero-carbon resources to supply 100% of California's electricity retail sales and electricity procured to serve state agencies by 2045.

Based on a joint analysis by the CEC, the Public Utilities Commission, and the California Air Resources Board (ARB), an estimated six gigawatts (GW) of renewable energy and storage resources need to come online annually to meet the state's 2045 carbon neutrality goal. To meet these bold renewable energy targets, California's offshore waters are quickly emerging as a prime location for new floating offshore wind projects.

- 5) **Offshore Wind.** The advantage of offshore wind over its land-based counterpart is that the offshore wind resource is far more consistent, reliable, and energetic, with little of the topographic and small-scale variability typically seen on land. Offshore wind is a clean energy source at night complementing solar energy by providing energy generation at the end of the day and into the evening as the sun sets. The National Renewable Energy Laboratory has identified 200 GW of offshore wind technical potential for California.

In September 2021, the Legislature passed AB 525 (Chiu), Chapter 231, Statutes of 2021, requiring the CEC to develop a strategic plan for offshore wind energy developments installed off the California coast in federal waters. The strategic plan, released in January 2024, is guided by three AB 525 interim reports. The first report, adopted in August 2022,

evaluated and quantified the maximum feasible capacity of offshore wind to achieve reliability, ratepayer, employment, and decarbonization benefits and established aspirational planning goals of 2 to 5 GW for 2030 and 25 GW for 2045. The second report, adopted in February 2023, provided a preliminary assessment of the economic benefits of offshore wind as they relate to seaport investments and workforce development needs and standards. The third report, adopted in May 2023, described permitting roadmap options that included time frames and milestones for a coordinated, comprehensive, and efficient permitting process for offshore wind energy facilities and associated electricity and transmission infrastructure off the coast of California. The strategic plan also discusses the impacts and strategies to address those impacts in California's underserved communities.

- 6) **Port Infrastructure Costs.** To make offshore wind a reality, California must invest in significant infrastructure improvements to its ports where wind turbines will need to be assembled and deployed. The AB 525 report estimates that an investment of about \$11 billion to \$12 billion would be required to build out the ports to accommodate upgrades to support a range of activities, including construction and staging of floating platform foundations, manufacturing and storage of components, final assembly, and long-term operations and maintenance.

In January, the U.S. Department of Transportation granted \$426 million Infrastructure Investment and Jobs act of 2021 to the Humboldt Bay Harbor, Recreation and Conservation District for construction of the onshore facilities to support the building and operation of offshore wind turbines off the Humboldt County Coast. A deep water port and properly equipped marine terminal will be needed so components of the massive, 1,000-plus-foot turbine devices can be shipped in, assembled and towed out to federally leased waters to begin transmitting power.

- 7) **Pier Wind.** The Port of Long Beach (Port) released plans in May of 2023 for its floating offshore wind facility – known as Pier Wind – which will support the manufacture and assembly of offshore wind turbines. According to an announcement by the Port, “It would be the largest facility at any U.S. seaport specifically designed to accommodate the assembly of offshore wind turbines... The Pier Wind project helps California harness the powerful wind in deep waters in order to generate renewable energy while enhancing air quality by reducing reliance on fossil fuels; meet the state’s goal of producing 25 gigawatts of offshore wind power by 2045; and contribute toward lowering the national cost of offshore wind power by 70% by 2035.

“The facility would span up to 400 acres of newly built land located southwest of the Long Beach International Gateway Bridge within the Harbor District. The Port’s concept study... provides information to continue planning and discussion with state and federal officials, developers and funders for the \$4.7 billion project. Pier Wind would also create new jobs and career opportunities for the communities closest to the Port that have been disproportionately impacted by climate change and port operations. Community members would participate and benefit as California transitions away from fossil fuels and into a green economy. Construction could potentially start in January 2027, with the first 100 acres operational in early 2031, the second 100 acres operational in late 2031, and the last 200 acres coming online in 2035.”

- 8) **Policy Considerations.** This bill provides remarkable flexibility for the city and its departments, including the Harbor Department, in contracting for the Pier Wind project. This bill allows the city and its departments to use a number of alternative contracting methods without cross-references to sections of law that have authorized those methods for other entities, leaving out most of the specificity in those codes sections regarding the allowable number of projects, the allowable dollar amounts, and – most notably – the solicitation processes that must be followed.

For example, while the bill contains provisions for a solicitation process, that process lacks details regarding competitive solicitations/bidding, public noticing, or any details regarding requests for proposals (RFPs) or requests for qualifications (RFQs). Where the bill does mention noticing (for subcontracting), it gives the city complete discretion regarding what those noticing requirements might be and makes them permissive. As another example, the bill specifies that the city's selection of a business entity for project award shall be final and shall not be subject to challenge by bid protest, which is usually considered to be a vital protection for contractors in the bidding process.

The bill also extends its flexible procurement methods to the city *and its departments, including the Harbor Department*. Generally speaking, the Public Contract Code grants similar authorizations to public agencies with specified oversight and transparency requirements on those agencies' governing board members. It is not typical to grant these powers to a *department* of the agency, as governing board oversight is generally considered preferable to safeguard the public's interests.

While it is clear that the Pier Wind project represents a critical environmental and economic opportunity for the city, the region, and the state, the Committee may wish to consider if the language of the bill appropriately balances the city's need for flexibility and speed with the protections for contractors and the public that the Public Contract Code otherwise requires, and if additional parameters should be placed around the city's use of alternative contracting for the project.

- 9) **Committee Amendments.** The Committee may wish to consider the following amendments:
- a) Add or revise definitions to conform to definitions in existing law
  - b) Limit the authorization to the city only (and not its departments).
  - c) Limit the alternative methods to CMAR, CM/GC, design-build, progressive design-build, and design sequencing.
  - d) Require the city, as a condition of using the alternative project delivery methods provided in the bill, to evaluate the traditional design-bid-build process and the alternative project delivery method in a public meeting and make a written finding that use of the alternative project delivery method accomplish one or more of the following objectives: reduce project costs, expedite the project's completion, or provide features not achievable through the design-bid-build method. This finding must be made prior to the city entering into an alternative project delivery method contract.

- e) Required the city to *publicly advertise* and issue solicitation documents to procure and award any contract, pursuant to the following:
  - i) For CM/GC contracts, the city shall comply with the same or substantially similar requirements contained in Section 6703, which contains specifications for an RFQ process.
  - ii) For design-build and progressive design-build contracts, the city shall comply with the same or substantially similar requirements of Sections 22185.2, 22185.3(a)(c) and (d), 22185.4, 22185.5, 22185.6, and 22185.7, which contain specifications for an RFQ process and other contracting provisions governing the use of these methods for local agencies generally.
- f) Remove language stating that the city's selection of a business entity or business entities for project award shall be final and shall not be subject to challenge by bid protest.
- g) Remove the ability of the city to enter into a new contract with a business entity, with which it has agreed upon pricing, without any additional competitive process.
- h) Clarify subcontracting language to conform to existing law.

10) **Related Legislation.** AB 2208 (Zbur, et al.) enacts the California Ports Development and Offshore Wind Infrastructure Bond Act of 2024, to authorize \$1 billion in general obligation bonds for offshore wind energy. AB 2208 is pending in the Assembly Natural Resources Committee.

11) **Previous Legislation.** AB 400 (Blanca Rubio), Chapter 201, Statutes of 2023, eliminated the sunset date of January 1, 2025, on provisions of law authorizing local agencies to use the design-build contracting method.

SB 617 (Newman) Chapter 310, Statutes of 2023, expanded an existing authorization for local water agencies to use the progressive design-build method of project delivery for specified water projects to allow transit agencies and regional transportation planning agencies, as specified, to utilize progressive design-build procurement method, until January 1, 2029.

SB 706 (Caballero), Chapter 500, Statutes of 2023, authorized, until January 1, 2030, a city, county, or special district to use the progressive design-build process for up to 10 public works projects in excess of \$5 million.

AB 1932 (Daly), Chapter 435, Statutes of 2022, extended until January 1, 2029, the authorization for counties to enter into construction manager at-risk (CMAR) contracts.

AB 1845 (Calderon), Chapter 275, Statutes of 2022, authorized the Metropolitan Water District of Southern California to use design-build, progressive design-build and CM/GC project delivery methods for up to 15 regional water recycling projects or drought response projects.

AB 2789 (Mullin), Chapter 214, Statutes of 2022, repealed the January 1, 2023, sunset date authorizing the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority to use the design-build process for the construction of facilities or other buildings, and authorized the East Bay Regional Park District to use the design-build process for the construction of facilities or other buildings.

SB 991 (Newman), Chapter 243, Statutes of 2022, allowed a city, county, city and county, or special district that provides for the production, storage, supply, treatment or distribution of any water from any source to procure progressive design-build contracts and use the progressive design-build contracting process described in the bill for up to 15 public works projects in excess of \$5 million for each project.

SB 1354 (Jones), Chapter 900, Statutes of 2022, allowed cities and counties to use design-build for contracts that are necessary to comply with construction-related accessibility standards as defined in existing law.

AB 137 (Committee on Budget), Chapter 77, Statutes of 2021, authorized the Department of General Services to use the progressive design-build procurement process for up to three public works projects, and outlined parameters for the department's use of this procurement method.

SB 626 (Dodd), Chapter 247, Statutes of 2021, authorized the Department of Water Resources to use the design-build and CM/GC project delivery methods for facilities of the State Water Project, excluding through Delta conveyance, as specified.

SB 914 (Dodd), Chapter 108, Statutes of 2018, expanded the types of projects counties can deliver using the CMAR contracting method.

SB 1262 (Beall), Chapter 465, Statutes of 2018, eliminated the restriction on the number of projects Caltrans can procure through the CM/GC procurement method.

AB 115 (Committee on Budget), Chapter 20, Statutes of 2017, expanded Caltrans authority to utilize CM/GC from 12 to up to 24 projects.

AB 851 (Caballero and Gloria), Chapter 821, Statutes of 2017, extended the sunset date on the authority of counties to use construction manager at-risk (CM at-risk) contracting, extended CM at-risk contracting authority to the City of San Diego (San Diego) for specified projects, and allowed the Santa Clara Valley Water District (District) to use the design-build procurement method for specified types of projects.

AB 994 (Muratsuchi), Chapter 321, Statutes of 2017, allowed the Beach Cities Health District to use the design-build procurement method to assign contracts for the construction of facilities or other buildings in the district.

AB 1523 (Oberholte and Reyes), Chapter 154, Statutes of 2017, authorized the San Bernardino County Transportation Authority to use design-build for the construction of the Mt. Vernon Avenue Viaduct project.

SB 373 (Cannella), Chapter 391, Statutes of 2017, allowed the Stanislaus Regional Water Authority to use design-build for its Regional Surface Water Supply Project.

SB 793 (Hill), Chapter 627, Statutes of 2017, allowed the Peninsula Health Care District, the Midpeninsula Regional Open Space District, and the Santa Clara Valley Open-Space Authority to use the design-build procurement method to assign contracts for the construction of facilities or other buildings in those districts.

AB 2126 (Mullin), Chapter 750, Statutes of 2016, expanded Caltrans authority to utilize CM/GC from 6 to up to 12 projects.

SB 957 (Hueso), Chapter 212, Statutes of 2016, allowed health care districts that own or operate a hospital or clinic to use the design-build procedure to construct a building or improvements directly related to the construction of a hospital or health facility building.

AB 1171 (Linder), Chapter 413, Statutes of 2015, authorized regional transportation agencies (RTAs) to use CM/GC contracts, under limited circumstances.

AB 1290 (Dahle), Chapter 34, Statutes of 2015, allowed the Mayers Memorial Hospital District to use the design-build procedure to construct a building or improvements directly related to the construction of a hospital or health facility building in the district.

SB 374 (Hueso), Chapter 715, Statutes of 2015, allowed SANDAG to use the design-build procurement process for specified development projects related to transit facilities developed or jointly developed by SANDAG.

AB 155 (Alejo), Chapter 865, Statutes of 2014, allowed the Monterey County Water Resources Agency to use design-build contracting to construct a pipeline or tunnel that will connect two reservoirs that the agency owns and operates.

SB 268 (Gaines), Chapter 18, Statutes of 2014, allowed the Last Frontier Health Care District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Modoc Medical Center.

SB 785 (Wolk), Chapter 931, Statutes of 2014, repealed existing law authorizing DGS, 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.

AB 195 (Hall, 2013), Chapter 121, Statutes of 2013, extended the sunset for the use of design-build by counties from July 1, 2014, to July 1, 2016.

AB 797 (Gordon), Chapter 320, Statutes of 2013, authorized the Santa Clara Valley Transportation Authority and the San Mateo County Transit District to use CM/GC contracting on transit projects.



SB 328 (Knight), Chapter 517, Statutes of 2013, authorized, until January 1, 2018, counties to use CMAR contracts for projects in excess of \$1 million on county-owned or leased buildings.

AB 2498 (Gordon), Chapter 752, Statutes of 2012, authorized Caltrans to use CM/GC on no more than six projects, at least five of which must have construction costs greater than \$10 million.

SB 1549 (Vargas), Chapter 767, Statutes of 2012, authorized the San Diego Association of Governments to use CM/GC contracting on transit projects.

- 12) **Arguments in Support.** The Port of Long Beach, sponsor of this bill, writes, “On behalf of the Port of Long Beach (POLB; Port), we thank you for authoring Assembly Bill 2235, which would allow the Port to employ alternative project delivery models to design and build Pier Wind. Because of the proposed project’s complexity and aggressive delivery schedule needed to support California’s offshore wind goals, the Port is seeking enabling legislation for the construction of the terminal and serves as the lead sponsor for this bill.

“Working in alignment with the State’s goals of developing 25 GW of offshore wind energy by 2045, POLB developed a conceptual plan for the Pier Wind project – the nation’s largest facility specifically designed to assemble offshore wind turbines. Once assembled, the turbines would be towed by sea from POLB to wind lease areas in Central and Northern California that will generate reliable, renewable power for the grid. In addition to putting California and the United States at the forefront of floating offshore wind technology and development, Pier Wind would help the state meet climate goals while creating jobs and economic opportunities for local communities, and establishing a new green energy industry that would bring economic benefits throughout the state and nation.

“Pier Wind is designed as a green terminal that will facilitate the efficient production of turbines capable of generating up to 25 megawatts of energy, which will help achieve economies of scale needed to lower energy costs. POLB is at the center of the nation’s supply chain with connections to robust water, rail and roadway networks. The Port additionally has access to the state’s largest manufacturing base and construction and marine workforce with the capability to quickly retool and meet the demands of the growing renewable energy industry.

“We truly appreciate your leadership and commitment to work with labor, including, but not limited to, the International Longshore and Warehouse Union (ILWU) and Building and Construction Trade Council, to ensure they have input in protecting their traditional work. To make sure that this critical project remains on track to meet the State’s offshore wind energy goals, we are proud to serve as the lead sponsor for this bill and thank you, again, for authoring this piece of legislation.”

- 13) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Port of Long Beach [SPONSOR]  
Harbor Association of Industry and Commerce (HAIC)  
Pacific Merchant Shipping Association  
South Bay Association of Chambers of Commerce

**Opposition**

None on file

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