

Date of Hearing: March 23, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1845 (Calderon) – As Amended March 15, 2022

**SUBJECT:** Metropolitan Water District of Southern California: alternative project delivery methods.

**SUMMARY:** Authorizes specified water projects undertaken by the Metropolitan Water District of Southern California (MWD) to use the design-build, progressive design-build, and construction manager/general contractor (CM/GC) methods of project delivery. Specifically, **this bill:**

- 1) Allows a regional recycled water project or other water infrastructure project undertaken by MWD to alleviate water supply shortages attributable to drought or climate change to use the design-build, progressive design-build, and CM/GC methods of project delivery.
- 2) Requires the above-referenced contracts to be awarded on a best value or qualifications basis or to the lowest responsible bidder.
- 3) Limits the authority under this bill to no more than 15 capital outlay projects.
- 4) Requires MWD to develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for MWD relating to the solicitation of a design-build or progressive design-build project to submit a proposal as a design-build entity, or to join a design-build team.
- 5) Provides the following for MWD’s use of design-build:
  - a) Provides that the design-build procedure described in existing law governing the use of design-build by local agencies may be used to assign contracts for the design and construction of a project, as defined in this bill.
  - b) Provides, for purposes of this bill, all references to “county” and “local agency” in existing law governing the use of design-build by local agencies shall mean MWD.
- 6) Provides the following for MWD’s use of progressive design-build:

Requires the procurement process for progressive design-build projects to proceed as follows:

- a) Requires MWD to prepare and issue a request for qualifications (RFQ) in order to select a design-build entity to execute the project. The RFQ shall include, but need not be limited to, the following elements:

- i) Documentation of the size, type, and desired design character of the project and any other information deemed necessary to describe adequately MWD's needs and to inform interested parties of the contracting opportunity, as specified.
- ii) Significant factors that MWD reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, and all other non-price-related factors. MWD may require that a cost estimate, including the detailed basis for the estimate, be included in the design-build entities' responses and may consider those costs in evaluation of the statements of qualifications.
- iii) The relative importance or the weight assigned to each of the factors identified in the RFQ.
- iv) A request for statements of qualifications with a template for the statement that is prepared by MWD. MWD shall require all of the following information in the statement and indicate, in the template, that the following information is required:
  - (1) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the entity's shareholders, partners, or members known at the time of the statement of qualification submission who will perform work on the project.
  - (2) Evidence that the members of the design-build team have completed, or have demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that ensures that the design-build entity has the capacity to complete the project.
  - (3) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.
  - (4) 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.
  - (5) Information concerning workers' compensation experience history and a worker safety program.
  - (6) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.
  - (7) An acceptable safety record, as specified.
- v) Requires the information required in a statement of qualifications to be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

- b) Requires, at the close of the solicitation period, MWD to review the submissions, and allows MWD to evaluate submissions based solely upon the information provided in each design-build entity's statement of qualifications. MWD may also interview some or all of the design-build entities to further evaluate their qualifications for the project.
  - c) Requires, upon issuance of a contract award, MWD to publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award. The statement regarding MWD's contract award and the contract file shall provide sufficient information to satisfy an external audit.
  - d) Allows, after selecting a design-build entity based on qualifications, MWD to enter into a contract and direct the design-build entity to begin design and preconstruction activities sufficient to establish a guaranteed maximum price for the project.
  - e) Allows, upon agreement of the guaranteed maximum price for the project, MWD to amend its contract to direct the design-build entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project, and allows MWD to add funds not exceeding the guaranteed maximum price to the contract for these activities. If the costs for completing these activities exceed the guaranteed maximum price, the costs exceeding the guaranteed maximum price shall be the responsibility of the design-build entity. If the costs for these activities are less than the guaranteed maximum price, the design-build entity shall not be entitled to the difference between the costs and the guaranteed maximum price.
  - f) Allows, if MWD and the design-build entity do not reach agreement on a guaranteed maximum price, or MWD otherwise elects not to amend the design-build entity's contract to complete the remaining work, MWD to solicit proposals to complete the project from other firms that submitted statements of qualifications or requests for proposals. MWD may also, upon written determination that it is in the best interest of MWD to do so, formally solicit proposals from other design-build entities.
  - g) Outlines the procedures that MWD and the design-build entity must follow regarding subcontracting and requires subcontractors to be afforded the protections of the Subletting and Subcontracting Fair Practices Act, as specified.
  - h) Requires MWD to submit to the Joint Legislative Budget Committee, on or before January 1, 2027, a report containing a description of each public works project procured by MWD through the progressive design-build process described in this bill that is completed after January 1, 2023, and before December 1, 2026, and specifies the contents of that report.
- 7) Provides the following for MWD's use of CM/GC:

Requires the procurement process for CM/GC projects to proceed as follows:

- a) Requires MWD to establish a procedure for the evaluation and selection of a construction manager through an RFQ. The RFQ shall include, but not be limited to, the following:

- i) If the construction manager is a partnership, limited partnership, or other association, a list of all the partners, general partners, or association members known at the time of the statement of qualifications submission who will participate in the CM/GC method contract.
- ii) Evidence that the members of the construction manager 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 construction of the project, as well as a financial statement that assures MWD that the construction manager has the capacity to complete the project, construction expertise, and an acceptable safety record, as specified.
- iii) The licenses, registration, and credentials required to construct the project, including information on the revocation or suspension of any license, registration, or credential.
- iv) Evidence that establishes the construction manager 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 or the federal Occupational Safety and Health Act settled against any member of the construction manager, as specified, 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 a construction manager, 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 construction manager, or its owners, officers, or managing employees, defaulted on a construction contract.
- viii) Any violations of the Contractors State License Law, as specified.
- ix) Information concerning the bankruptcy or receivership of any member of the construction manager, 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 construction manager during the five years preceding submission of a bid pursuant to this bill, 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 partnership or other 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 contract.

- b) Requires the information required in the RFQ to be verified under oath by the construction manager 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 shall not be open to public inspection.
  - c) Requires, for each RFQ, MWD to generate a final list of qualified persons or firms that participated in the RFQ prior to entering into negotiations on the contract for which the RFQ applies.
  - d) Requires, for each contract included in the RFQ, MWD to enter into negotiations for the contract with the highest qualified person or firm on the final list for that contract, which shall include consideration of compensation and other contract terms that MWD determines to be fair and reasonable, as specified. If MWD is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, MWD shall formally terminate negotiations and may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list, as specified.
  - e) Provides rules and procedures for preconstruction services by the construction manager, as specified, and prohibits MWD from requesting or obtaining a fixed price or a guaranteed maximum price for the construction contract from the construction manager or entering into a construction contract with the construction manager until after MWD has entered into a services contract. A preconstruction services contract shall provide for the subsequent negotiation for construction of all or any discrete phase or phases of the project.
  - f) Requires a contract for construction services to be awarded after the plans have been sufficiently developed and either a fixed price or a guaranteed maximum price has been successfully negotiated. In the event that a fixed price or a guaranteed maximum price is not negotiated, MWD shall not award the contract for construction services.
  - g) Provides that MWD is not required to award the construction services contract.
  - h) Provides that construction shall not commence on any phase, package, or element until MWD and a construction manager agree in writing on either a fixed price that MWD will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced and a construction schedule for the project.
  - i) Requires all subcontractors to be afforded the protections of the Subletting and Subcontracting Fair Practices Act, as specified.
- 8) Provides that neither a design-build entity nor a construction contractor shall be awarded a construction contract unless it provides an enforceable commitment to MWD that the design-build entity or construction contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, as specified. This requirement shall not apply if any of the following requirements are met:

- a) MWD has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the design-build entity or construction contractor agrees to be bound by that project labor agreement, as defined.
  - b) The design-build entity or construction contractor has entered into a project labor agreement, as defined, that will bind the design-build entity or construction contractor and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.
- 9) Provides that MWD may not award a design-build-operate contract for any project pursuant to this article. A contract may, however, cover operations during a training or transition period.
  - 10) Requires MWD to perform construction inspection services for all projects authorized and awarded pursuant to this bill, and requires it to use district employees or consultants under contract with MWD to perform these services.
  - 11) Requires any design-build entity or CM/GC that is selected to construct a project pursuant to this bill to possess or obtain sufficient bonding to cover the contract amount for construction services and risk and liability insurance MWD may require. Any payment or performance bond written for the purposes of this bill shall be written using a bond form developed by MWD.
  - 12) Provides that, if MWD elects to award a project pursuant to this bill, retention proceeds withheld by MWD from the design-build entity or CM/GC shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.
  - 13) Provides that nothing in this bill affects, expands, alters, or limits any rights or remedies otherwise available at law.
  - 14) Requires the provisions of this bill pertaining to the progressive design-build and CM/GC delivery methods to remain in effect only until January 1, 2028, and as of that date are inoperative.
  - 15) Requires the provisions of this bill pertaining to design-build to remain in effect until January 1, 2025, and as of that date are repealed.
  - 16) Requires a contract awarded pursuant to this bill before the applicable portions of the bill are inoperative to continue in full force and effect until completion, including any subsequently executed changes to the contract, or termination.
  - 17) Provides the following definitions for the purposes of this bill:
    - a) “Best value” means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of MWD and meeting the objectives of the project, selection of the best proposal for a

stipulated sum established by MWD, or a tradeoff between price and other specified factors.

- b) “Construction manager” means a partnership, corporation, or other legal entity that is a licensed contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and that is able to provide appropriately licensed contracting and engineering services as needed pursuant to a CM/GC method contract.
  - c) “Construction Manager/General Contractor method” means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for preconstruction services or at a later time. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.
  - d) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.
  - e) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.
  - f) “District” means MWD.
  - g) “Guaranteed maximum price” means the maximum payment amount agreed upon by MWD and the design-build entity or the CM/GC for the design-build entity or the CM/GC to finish all remaining design, preconstruction, and construction activities sufficient to complete and close out the project.
  - h) “Preconstruction services” means advice during the design phase, including, but not limited to, scheduling, pricing, and phasing to assist MWD to design a more constructible project.
  - i) “Progressive design-build” means a project delivery process in which both the design and construction of a project are procured from a single design-build entity that is selected through a qualifications-based selection at the earliest feasible stage of the project.
  - j) “Project” means a public work necessary for the construction of a recycled water facility or infrastructure designed specifically to alleviate water shortages attributable to drought, climate change, or other environmental factors.
- 18) Contains a number of findings and declarations regarding its purposes and intent, and 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 need to improve water infrastructure in the geographic area served by MWD.

- 19) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Bill Summary.** This bill authorizes a regional recycled water project or other water infrastructure project undertaken by MWD to alleviate water supply shortages attributable to drought or climate change to use the design-build, progressive design-build and CM/GC methods of project delivery.

This bill outlines extensive requirements for the procurement process that must be followed for each project delivery method, consistent with existing statutory authorizations for other agencies' use of these methods. This bill requires MWD to report to the Legislature on its use of progressive design-build, and requires the use of a skilled and trained workforce on all contracts.

The bill is limited to 15 capital outlay projects, and sunsets the provisions regarding progressive design-build and CM/GC on January 1, 2028. Design-build provisions sunset on January 1, 2025. This bill is sponsored by MWD.

- 2) **Author's Statement.** According to the author, "As climate change and drought brings greater uncertainty to water supplies in our state, there is a vested interest in supporting regional recycled water and drought-response projects. However, these projects are currently statutorily limited to a traditional design-bid-build model for the delivery of public works construction contracts. The arduous process required by this model can be detrimental to the construction of large, innovative, and necessary infrastructure. This is the case for time sensitive projects being developed in Southern California to increase water resiliency. AB 1845 will afford the Metropolitan Water District of Southern California some flexibility to expedite the completion of critical new water infrastructure."
- 3) **Background.** The MWD Act authorizes the creation of metropolitan water districts for the purpose of developing, storing, and distributing water for municipal and domestic purposes. MWD is the only district organized under this act. MWD is a regional wholesale water district in Southern California that delivers water to 26 member public agencies. These member agencies in turn provide water to 19 million people in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties, making MWD the largest distributor of treated drinking water in the United States.

MWD owns and operates an extensive water system, including the Colorado River Aqueduct, 16 hydroelectric facilities, nine reservoirs, 819 miles of large-scale pipes, and five water treatment plants. MWD also helps its member agencies develop water recycling, storage, and other local resource programs. The MWD Act sets out MWD's governance structure, powers and duties, annexation processes, and taxation and bonding authorities. MWD is governed by



a 38-member board, representing each of MWD's 26 member agencies. The board establishes and administers MWD's policies and oversees the operations of the district.

According to MWD, "As climate change brings greater uncertainty to imported supplies, water suppliers are looking at regional recycled water projects and a set of drought-response projects to ensure greater regional reliability and flexibility...Currently, MWDC is statutorily limited to traditional design-bid-build model for the delivery of public works construction contracts. This model can be inefficient and inflexible for large, time-sensitive, and complex projects, including recycled water and drought resiliency projects.

"The Regional Recycled Water Program, in partnership with Los Angeles County Sanitation District, will reuse treated wastewater that is currently sent to the ocean. At full scale, the program can produce up to 150 million gallons daily, enough to serve more than 500,000 homes. An estimated 47,000 new jobs will be generated by the project, 24,000 of which will be directly involved in construction.

"MWDC plans to mitigate current and future drought impacts to parts of the service area wholly reliant on State Water Project imports. Drought-related construction projects may include new pump stations and upgrades to local conveyance so water can be moved from local storage in Diamond Valley Lake to the far-east and west reaches of the service area. These projects would benefit from alternative delivery methods to expedite construction and could alleviate pressure on the State Water Project. If alternative methods are allowed, the aforementioned projects could take 8 years to build, instead of 11 years under the existing design-bid-build model."

- 4) **Design-Build in California Law.** California's 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 number 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.

Since SB 785 was enacted, the Legislature has authorized numerous additional local agencies or types of local agencies to use SB 785 design-build authority for additional projects or types of projects.

- 5) **Progressive Design-Build.** According to the Design-Build Institute of America, "One application of design-build delivery is via a stepped, or progressive process (commonly referred to as Progressive Design-Build or PDB). PDB uses a qualifications-based or best

value selection, followed by a process whereby the owner then ‘progresses’ towards a design and contract price with the team (thus the term ‘Progressive’).

“While procurement laws vary for public owners, some have the flexibility to implement a PDB procurement approach that essentially replicates that used by private sector owners. PDB core features include the following:

- The design-builder is retained by the owner early in the life of the project and, in some cases, before the design has been developed at all.
- The design-builder is generally selected primarily, if not exclusively, on qualifications and the design-builder’s final project cost/price and schedule commitment is not established as part of the selection process.
- The design-builder delivers the project in two distinct phases with: (a) Phase One including budget level design development, preconstruction services and the negotiation of a firm contract price (either lump sum or guaranteed maximum price) for Phase Two; and (b) Phase Two including final design, construction and commissioning.

“Phase One Services are also called Preliminary or Preconstruction Services. The design-builder first collaborates with the owner and its consultants to create or confirm the project’s basis of design, programming requirements and then advances that design. Design and other project decisions are based on cost, schedule, quality, operability, life cycle and other considerations, with the design-builder providing ongoing, transparent cost estimates to ensure that the owner’s budgetary requirements are being achieved. At the point in time where the design has been advanced to an appropriate level of definition that aligns with the owner’s requirements, the design-builder will provide a formal commercial proposal (including the overall contract price) for Phase Two services. The proposal is often established when the design is approximately 40 to 60 percent complete, but it can occur anytime (including as late as 90 to 100 percent design completion), depending on the amount of control the owner desires to maintain over the design definition.

“Phase Two Services are also called Final Design and Construction Services. Once the owner and design-builder agree upon commercial terms (including the project’s price and schedule), the design-builder will complete the design and construction of the facility in accordance with those commercial terms. The design-builder will also be responsible for any testing, commissioning, and other services that have been agreed upon.

“If, for any reason, the parties cannot reach agreement on the Phase Two commercial terms, then the owner may consider an ‘off-ramp’ option — where it can use the design and move forward with the project through another contract strategy...(A) PDB relationship can be established with the parties entering into two separate contracts for each phase of work or a single contract that covers both phases. Also, while there appears to be a ‘bright line’ between Phase One and Phase Two Services, the pragmatics of expediting project schedules often require that some Phase Two work be started before the commercial proposal has been agreed upon. As a result, many PDB projects allow the design-builder to proceed on ‘early work’ packages for discrete elements of the physical work (e.g., procurement of long lead items, demolition or site work) before Phase Two authorization.”

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 extensive parameters for the department's use of this procurement method. This bill's progressive design-build provisions are modeled after those contained in AB 137.

- 6) **Construction Manager/General Contractor.** 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. Last year, 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. This bill's CM/GC provisions are modeled after those contained in SB 626.

- 7) **Committee Amendments.** The author's office worked closely with committee staff to make the provisions of this bill consistent with other statutory authorizations for the use of design-build, progressive design-build and CM/GC. A handful of technical and conforming changes remain, and the Committee may wish to consider addressing the following with Committee amendments to clarify that:
  - a) The authorization to use design-build rests with MWD, upon approval by its board of directors, rather than with the project.
  - b) The ability to award contracts on a qualifications basis is limited to progressive design-build and CM/CG contracts, and is not allowable for design-build contracts.
  - c) MWD shall (rather than may) use the design-build procedure contained in the statutes that govern the use of design-build for local agencies generally.
  - d) The report required for MWD's use of progressive design-build shall be submitted to the relevant committees of the Legislature, rather than the Joint Legislative Budget Committee, and shall include the design-build entity that was awarded the contract for the project.
  - e) A report is also required for MWD's use of CM/GC, in addition to the reporting required for MWD's use of progressive design-build that the bill already contains, and specify the contents of that report to generally conform with the report DWR must submit to the Legislature regarding its use of CM/GC.
  - f) All reports required by this bill shall be submitted in compliance with Section 9795 of the Government Code.

In addition, the author has requested the following amendment to prioritize district employees over consultants:

21568.7. (b) The district shall perform construction inspection services for all projects authorized and awarded pursuant to this article, and it shall use district employees to the fullest extent possible, and then ~~or~~ consultants under contract with the district to perform these services.

- 8) **Related Legislation.** AB 1932 (Daly) eliminates the sunset date of January 1, 2023, from existing law authorizing counties to enter into construction manager at-risk (CMAR) contracts. AB 1932 is pending in this committee.

AB 2789 (Mullin) repeals 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 authorizes the East Bay Regional Park District to use the design-build process for the construction of facilities or other buildings. AB 2789 is pending in this committee.

SB 991 (Newman) authorizes, until January 1, 2033, specified local agencies that provide for the production, storage, supply, treatment, or distribution of any water from any source, to use the progressive design-build process for public works projects in excess of \$5,000,000, similar to the progressive design-build process authorized for use by the Department of General Services. SB 991 is pending in the Senate Governance and Finance Committee.

SB 1354 (Jones) allows cities and counties to use design-build for contracts that are necessary to comply with Americans with Disabilities Act requirements. SB 1354 is pending in the Senate Appropriations Committee.

- 9) **Previous Legislation.** 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 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, allowed the Santa Clara Valley Water 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 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.

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.

- 10) **Arguments in Support.** The Metropolitan Water District of Southern California, sponsor of this measure, writes, “As the regional wholesaler of water, Metropolitan and our 26 member agencies share a promise to deliver reliable and high-quality water to Southern California’s businesses and 19 million people. Today, that promise is challenged as parts of our service area have been impacted more significantly than others by historic dry conditions and State Water Project supply shortages.

“AB 1845 will help solve this problem by authorizing Metropolitan to use Design Build, Progressive Design Build and Construction Manager/General Contractor delivery methods for a limited set of drought-response projects and a Regional Recycled Water Project. Metropolitan plans to upgrade our regional distribution infrastructure to allow up to 116,000 acre-feet of water from other sources to move into parts of the service areas dependent on shrinking State Water Project supplies. In addition, we are partnering with Los Angeles County Sanitation Districts on a new Regional Recycled Water Program that could produce up to 150 million gallons of treated wastewater a day, enough for 500,000 homes. A new local source of water on this scale would be transformative and help alleviate the demand for imported water from the Colorado River and State Water Project.

“The efficient and timely delivery of these projects is critically important to Southern California’s water agencies and our customers. Alternative delivery methods not only have the potential to lower overall project costs and help develop earlier cost certainty, which will save Southern California ratepayers money, they will accelerate our efforts to adapt to prolonged droughts exacerbated by climate change.”

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

- 12) **Double-Referral.** This bill is double-referred to the Water, Parks and Wildlife Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Metropolitan Water District of Southern California [SPONSOR]  
Azusa Chamber of Commerce  
Burbank Water and Power  
Calleguas Municipal Water District  
City of Glendale Water & Power  
City of Santa Ana

City of Torrance Public Works  
Coalition of Labor, Agriculture & Business, Imperial County (COLAB)  
Cucamonga Valley Water District  
El Monte/south El Monte Chamber of Commerce  
Elsinore Valley Municipal Water District  
Foothill Municipal Water District  
Glendora Chamber of Commerce  
Inland Empire Economic Partnership  
Inland Empire Utilities Agency  
Las Virgenes Municipal Water District  
Los Angeles County Sanitation Districts  
Pasadena Chamber of Commerce  
Pasadena Water and Power  
Rowland Water District  
San Dimas Chamber of Commerce  
San Gabriel Valley Legislative Coalition of Chambers  
Simi Valley Chamber of Commerce  
Southern California Water Coalition  
Three Valleys Municipal Water District  
Tri County Chamber Alliance  
United Chambers of The San Fernando Valley  
Valley Industry and Commerce Association (VICA)  
Wateruse California  
West Ventura County Business Alliance  
Western Municipal Water District

**Opposition**

None on file

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