

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 400 (Blanca Rubio) – As Introduced February 2, 2023

SUBJECT: Local agency design-build projects: authorization.

SUMMARY: Eliminates the sunset date of January 1, 2025, on provisions of law authorizing local agencies to use the design-build contracting method.

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, 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. (PCC §§ 22160 – 22169)

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

COMMENTS:

- 1) **Bill Summary and Author’s Statement.** This bill eliminates the sunset date of January 1, 2025, on provisions of law authorizing local agencies to use the design-build contracting method.

According to the author, “Making the existing design-build authority permanent will provide more certainty for counties and local governments to plan, fund and complete pending and future public works projects. Extending authority in short time spans brings some near-term certainty but can lead to project slowdowns as the authority sunset approaches and the potential of non-renewal is contemplated by local governments. Providing permanent authority will bring greater certainty for local governments to plan and complete these projects. Finally, providing permanent authority will ensure that the continued benefits of the DB procurement method, which include faster project delivery, cost savings and better quality as compared to traditional contracting methods on the same project.”

This bill is sponsored by the California State Association of Counties and the League of California Cities.

- 2) **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.

- 3) **Policy Considerations and Committee Amendments.** As noted above, since AB 785 was enacted, the Legislature has approved a multitude of additional authorizations for the use of design-build (see list of previous legislation, below). Some of these authorizations are contained within the chapter of law from which this bill removes the sunset. Some are in other code sections that refer to this chapter by cross-reference. This bill is also one year ahead of what would be necessary to avoid the sunset from taking effect. Eliminating the sunset entirely one year early might not pose problems. However, it is not clear that allowing all of the additional authorizations for the use of design-build that the Legislature has approved since 2014 to continue in perpetuity is necessary or reasonable. The Committee may wish to consider re-instating a sunset of January 1, 2031.
- 4) **Previous Legislation.** AB 1845 (Calderon), Chapter 275, Statutes of 2022, authorized the Metropolitan Water District of Southern California to use design-build, progressive design-build and construction manager/general contractor project delivery methods for a regional water recycling project or a drought response project.

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.

AB 2932 (O'Donnell), Chapter 54, Statutes of 2020, allowed the City of Long Beach to use the design-build contracting process to award contracts for curb ramps that are compliant with the Americans with Disabilities Act.

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.

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 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.

- 5) **Arguments in Support.** The California State Association of Counties, sponsor of this measure, writes, “Existing statute enacts more uniform provisions authorizing most local agencies, counties included, to use the DB procurement process for specified public works projects within Public Contract Codes Sections 22160-22169, which excludes roads but includes buildings, utility improvements associated with buildings, flood control, underground utility improvements, and bridges.

“The DB method is an approach to delivering public works projects in which both the design and construction of a project are procured from a single entity. Under design-build, the owner contracts with a single entity to both design and construct a project at a fixed price. Simultaneously, contractors are provided with more flexibility over project design, materials

and construction methods. This promotes project design and construction innovation, which can result in higher quality, as well as cost savings. The approach also reduces the county and local agencies risk and results in fewer litigation claims for all parties involved.

“In the traditional Design-Bid-Build (DBB) method of construction procurement the design and contracting phases are sequential, with no direct collaboration process. Allowing alternative delivery methods for construction projects gives counties the ability to make the most cost-effective and advantageous decision for a particular project. The DB method streamlines project delivery through a single contract between the owner and the design-build team. Thus, using the DB method for more complex projects facilitates the completion and delivery of public works construction projects efficiently and cost effectively. AB 400 would allow counties to continue using this authority indefinitely.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties [SPONSOR]
 League of California Cities [SPONSOR]
 American Council of Engineering Companies of California
 Association of California Cities - Orange County (ACC-OC)
 California Special Districts Association
 City of San Marcos
 City of Whittier
 Contra Costa County
 County of Fresno
 County of Monterey
 County of Orange
 County of Placer
 County of Sacramento
 County of San Diego
 County of San Luis Obispo Department of Public Works
 County of San Mateo
 County of Santa Barbara
 County of Santa Clara
 Design-Build Institute of America Western Pacific Region
 Los Angeles County
 Los Angeles County Sanitation Districts
 Mariposa County Board of Supervisors
 San Bernardino County
 Santa Clara Valley Water District
 Santa Cruz County Board of Supervisors
 Sierra County Department of Public Works and Transportation
 Water Replenishment District of Southern California

Opposition

None on file

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