

SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN

BILL NO: SB 1793
AUTHOR: McPherson
VERSION: 4/12/04
FISCAL: Yes

Analysis by: Steve Schnaidt

SUBJECT:

Local transportation authorities: highway design-build contracts.

DESCRIPTION:

This bill would authorize four local transportation authorities in Alameda, Santa Clara, Los Angeles and Santa Cruz Counties to use a design-build procurement process for the construction of highway transportation projects in which a single contractor or entity would be responsible for both the design and construction phases of a project. The bill would establish extensive qualifying, procedural, and performance requirements and criteria governing the use of the authority to design-build. The provisions would terminate on January 1, 2010.

ANALYSIS:

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Typically, the awarding of contracts for public projects is done so through the process of competitive bidding, although the use of the competitive negotiation process has grown steadily over the past decade. More recently, the use of design-build and design-sequencing processes have been authorized on a limited basis for specified public entities.

Existing law, until 2005, authorizes transit operators to enter into design-build contracts, according to specified conditions, controls, and compliance procedures. The law also authorizes, until 2006, the use of design-build contracts by the Counties of Alameda, Contra Costa,

Sacramento, Santa Clara, Solano, Sonoma, and Tulare, and makes various other authorizations for the use of such authority.

This bill would, until January 1, 2010, authorize the designated local transportation authorities in Alameda, Santa Cruz, Los Angeles and Santa Clara Counties, or the Department of Transportation in place of Los Angeles County, to enter into design-build contracts for highway projects, according to specific terms, conditions, and procedures. Specifically, the bill:

1. States the Legislature's intent to demonstrate and evaluate an alternate/optional bidding procedure for up to three highway transportation projects each in Alameda and Santa Clara Counties and one project each in Santa Cruz and Los Angeles Counties (a total of 8 projects).
2. Requires that the design-build projects be subject to the existing State Transportation Improvement Program (STIP) process and declare that the projects shall not receive any competitive advantage through the design-build process.
3. Requires the four authorized local transportation authorities, when seeking to utilize the design-build process, to:
 - a) Prepare documents describing the project and its specifications and a detailed request for proposals inviting competitive bids; and,
 - b) Establish a detailed procedure, prescribed in the bill, to pre-qualify design-build entities and additional procedures to select the design-build entity.
4. Specifies the nature and costs of the projects or identifies the specific projects authorized for each of the four participating counties.
5. Requires the supervisors in counties that seek to utilize design-build to establish and enforce labor compliance programs.
6. Requires the local entity to collect at least 10 types of

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information when pre-qualifying design-build entities. The contracting entity must list their proposed mechanical subcontractors and licenses. Design-build

- entities must also document past highway work in California of at least \$50 million and any past worker safety violations, contracting problems, contract defaults, license violations, payroll violations, and bankruptcies, etc. Under the bill, this information must be verified under oath. Public inspection of information that is not available to the public under the Public Records Act is prohibited.
7. Requires the local officials to select the design-build entity by using either a competitive bidding process in which the award goes to the lowest responsible bidder, or a "best-value competition" in which the officials set the criteria, but must include specified minimum criteria stated in the bill.
 8. Specifies that, when utilizing the best value standard, counties must ensure that each of the best-value factors (price, technical design and construction, expertise, life cycle costs, labor availability, and safety records) represent at least 10% of the total weight given to all criteria factors. The county must rank the top three responsive bidders. The award goes to the responsible bidder whose proposal county officials rank as "the most advantageous." After the county publicly announces the award, officials must also identify the county's second and third ranked bidders.
 9. Clarifies that this measure is not intended to effect, expand, alter, or limit any rights or remedies relating to injured workers.
 10. Requires that the winning design-build entity be bonded and carry errors-and-omissions insurance to cover its design and architectural services. This bill also requires that the entity adhere to the county's performance criteria and design standards. Deviations require the county's written consent. Under this bill, the county is allowed to hire a design professional to ensure compliance.
 11. Allows the winning design-build entity to use subcontractors who were not listed in the original bid.

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The bill requires the entity to award subcontracts by following a process set by the county, including publishing notices and setting deadlines.

12. Specifies that, if the local bid request required that the design-build entity carry a performance and payment bond, the county's retention of proceeds would be limited to 5%.

13. Requires the local authority to consult with the Department of Transportation in identifying the selected projects and requires the department to set the parameters for the participation of its employees in this regard.
14. Requires the local authorities to send detailed reports to the transportation committees of both legislative houses regarding the experience with projects built under this design-build process, by December 1, 2008. The report must contain descriptions of each public works project procured through the design-build process and completed on or before November 1, 2008.
15. Declares that the bill does not limit the 1998 Record of Decision given to the department to design the Route 710 gap closure project in Los Angeles.
16. Terminates the design-build authority on January 1, 2010.

COMMENTS:

1. The bill was heard on April 20, 2004 and failed passage on a 6-3-vote. Reconsideration was subsequently granted.
2. This bill is nearly identical to AB 692 (Dutra, 2003) which was approved by the Transportation Committee and the Legislature last year. The Governor vetoed AB 692, however. A significant difference in the two bills was that last year's AB 692 included provisions that required, for design-build projects on the state highway system, the performance of all engineering, construction, inspection and related services by Department of Transportation employees. In his veto message, the Governor stated the following:

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"Unfortunately, as drafted, the bidding procedures included in this bill create legal, liability and accountability obstacles that threaten to undermine the benefits being sought through the design-build process."

3. The author and sponsors of the bill believe that the completion of certain types of highway improvement projects can be expedited if sponsoring agencies have the option to use the design-build method of contracting. They contend that project schedule savings can be

realized because only a single request for proposals is needed to select the project's designer and builder, whereas the traditional project approach requires the separate selection of the design consultant or contractor, completion of the design, and then advertising and selection of the construction contractor.

Proponents add that design-build allows the overlap of design and construction activities, resulting in additional time savings and lower project costs. They believe the alternative process is appropriate and most effective for well-defined projects which are environmentally clear, fully funded, and have limited right-of-way acquisition requirements.

4. Opponents of the bill argue that design-build is still in the pilot project, process testing phase and should remain limited in use until results are known. They believe it is premature to expand design-build authority pending the outcome of the review.

Opponents contend that design-build is flawed because it eliminates the public agency's inspection of construction work. They say there is an inherent conflict of interest when one firm is allowed to design, construct and inspect a project. Opponents also charge that the use of private sector consultants is more expensive than using Caltrans engineers, asserting that it costs more than twice as much to contract out Caltrans' engineering work than utilize Caltrans staff to perform the same function.

Opponents believe that the design-sequencing process is a preferable alternative to design-build.

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5. State law currently allows selected state agencies and local governments to use the design-build method. The University of California and the California State University may use the design-build method and schools can use design-build methods for school construction and modernization when spending the \$9.2 billion in bonds from Proposition 1A (SB 50, Greene, 1998). The State Department of General Services is authorized to use the design-build method for at least five design-build projects, valued at over \$10 million, until January 1, 2006 (SB 776, Johannessen, 1998). AB 958 (Scott, 2000) authorized the use of design-build by transit operators until January 1, 2005.
6. A possible drawback of design-build is its potential negative impact on smaller design and construction firms which lack expertise or capabilities in one of the

design-build components and which firms are limited in their ability or are unable to partner with other firms or join consortia to obtain such expertise and compete for the broader and larger design-build contracts.

POSITIONS: (Communicated to the Committee before noon on Wednesday,
April 14, 2004)

SUPPORT: Granite Construction, Inc.
Consulting Engineers and Land Surveyors of
California
Associated General Contractors of California
State Building and Construction Trades
Council

OPPOSED: Professional Engineers in California
Government