

SENATE TRANSPORTATION COMMITTEE

BILL NO: SB 1130

SENATOR KEVIN MURRAY, CHAIRMAN

AUTHOR: scott

VERSION: 2/18/04

Analysis by: Steve Schnaidt

FISCAL:no

SUBJECT:

Transit design-build contracts: extension.

DESCRIPTION:

This bill would extend for 2 years, until January 1, 2007, the authority for transit districts to enter into design-build contracts in which a single contractor or entity would be responsible for both the design and construction phase of a contract.

BACKGROUND:

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 a design-build process has been authorized on a limited basis for specified public entities.

Under the competitive bidding process, the contracting agency advertises a bid request for a project phase that is technically specific, and which precisely defines the product or service to be purchased, and describes any terms, conditions and specifications that must be met. Interested and qualified firms submit a cost figure under seal reflecting the cost amount at which the firm will provide the service or product. The contracting agency then awards the contract to the lowest qualified bidder.

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The request for a proposal for a project or project phase under competitive negotiation is less specific than the competitive bid request and the contracting agency is not required to select the lowest bidder. After the submittal

of the initial bids, the agency confers with those proposers that it deems are most qualified and have submitted the most satisfactory bids. During the negotiations with the qualified proposers, the proposers explain how they intend to meet the performance standards in the request for proposal. The agency then awards the contract to the proposer it concludes will best meet the needs of the agency, considering such factors as "performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, and other similar factors in addition to price in the award of these contracts.

Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis. Under design build, a single contract covers the design and construction of a project with a single company or consortium that acts as both the project designer and builder. The selected firm then arranges all architectural, engineering, and construction services. The designer-builder is responsible for delivering the project at a guaranteed price and schedule based upon performance criteria set by the public agency.

ANALYSIS:

AB 958 (Scott, 2000) enacted provisions authorizing transit operators to use the design-build construction process for transit-related construction projects, according to specified requirements, terms and conditions. A transit operator that uses design-build is required to report to the Legislative Analyst before December 1, 2005 on each public works project procured through that process and completed before November 1, 2005. The authority to use design-build for transit projects sunsets (terminates) on January 1, 2005.

AB 958 did the following:

authorized the use of design-build for transit after an

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agency's evaluation and comparison of the traditional design - bid - build process and the design-build process.

defined and described the authorized design-build process, including a pre-qualification procedure for entities, licensing and credentialing requirements, evidence of capacity and competence and disclosure of any prior wrongdoing regarding safety, labor or related contracting provisions.

required the establishment of a procedure for final selection of the design-build entity, based on specified criteria, including a competitive bidding process, performance competition, judgment as to best value and adherence to certain contract retention proceeds and dispute resolution provisions.

required each transit district using the design-build process to report to the Legislative Analyst on each completed transit project within 120 days of completion as to the positive and negative effects on cost and quality of the project of utilizing the design-build process.

This bill would extend the authorized time period for using the transit design-build process by two years, until January 1, 2007. The authority would be repealed on that date.

COMMENTS:

- 1.The author describes design-build as an innovative and cost effective program where the cost to build is significantly less than if the design and construction portions of the project were done separately instead of being done by the same company. The author believes that the effectiveness of the process merits the extension of design-build's authorized use.
- 2.Proponents of the bill state that design-build allows an agency to expedite projects through the overlap of design and construction activities which, in turn, can result in significant time and cost savings. They contend that the ability to use a "best value" bid authority helps deliver innovative projects and enhances project quality.

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- 3.Opponents of the bill believe that the design-build authority should not be extended until evaluations of the existing pilot programs and use of the authority are completed and delivered. They also argue that if an extension were to be approved, it should exclude any authority for a transit entity to develop a high-occupancy vehicle (HOV) lane project, on the basis that it is a road project rather than a transit project.
- 4.According to the bill's sponsors, there has been little use of the transit design-build authority to date. Apparently, only one project in Orange County has attempted to use the process, although four other jurisdictions are currently contemplating projects that

would use the design-build approach. In Orange County, the State Route 22 freeway widening project has gone forward under design-build to a point, but there were only two bids for the contract and those bids were significantly higher than expected by the project officials in Orange County. It is unknown whether the design-build process, rising construction materials costs, lack of competition or some other factor or combination of factors is responsible for the limited progress on the project to date.

Should transit design-build be extended? The Committee may want to consider whether the general lack of use of the design-build process and the lack of completion or evaluation of the Orange County project merits the extension of the authority. If other projects are undertaken or if the current project proceeds, then there potentially could be information available for analysis by the Legislative Analyst as provided under current law.

It is difficult to assess the results of transit design-build at this point, however, given the modest use of the authority to date.

POSITIONS: (Communicated to the Committee before noon on Wednesday, April 28, 2004)

SUPPORT: California Transit Association
Santa Clara Valley Transportation Authority
Orange County Transportation Authority

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OPPOSED: California State Pipe Trade Council
California State Association of Electrical
Workers
Western States Council of Sheet Metal
Workers
Professional Engineers in California
Government

