

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 956 (Cortese) – As Introduced January 22, 2024

SENATE VOTE: 32-5

SUBJECT: School facilities: design-build contracts

SUMMARY: Removes the sunset on the authority of a school district to utilize design-build contracts for specified public works projects, awarding the contract to either the lowest bid or the best value.

EXISTING LAW:

- 1) Includes legislative findings and declarations acknowledging the success of the design-build method in various agencies, noting benefits such as reduced costs, faster project completion, and innovative design features. States method is authorized for school districts to use but is not necessarily preferred over other procurement methods. (Education Code (EC) 17250.10)
- 2) Defines “design-build” as a project delivery process in which both the design and construction of a project are procured from a single entity. Further defines a “design-build entity” as 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. (EC 17250.15)
- 3) Authorizes school districts, with approval from their governing boards, to procure design-build contracts for projects exceeding one million dollars, with the flexibility to award contracts based on either the lowest bid or the best value. Requires each school district to develop guidelines for a standard organizational conflict-of-interest policy, ensuring compliance with applicable laws. (EC 17250.20)
- 4) Specifies the design-build authority shall remain in effect until January 1, 2025. (EC 17250.55)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Need for the bill. According to the author, “Throughout much of the 20th century, school districts were limited to using the design-bid-build method for constructing schools, which can lead to budget overruns and delays. With design-build, we streamline the process by bringing design and construction teams together from the start, allowing them to collaborate and lock in a guaranteed cost before construction even begins. Beyond saving millions of dollars in school construction expenses, the streamlined design-build process allows schools to be built quicker, giving students faster access to modern, safer learning spaces.”

Design-build. There are two primary construction delivery systems used in the public and private sectors, “design-bid-build” and “design-build.”

Current law requires school districts award construction contracts over \$15,000 to the lowest responsible bidder. Current law also allows contracts for architectural services to be awarded on the basis of demonstrated competence and professional qualifications to be performed at a fair and reasonable price (not necessarily the lowest bidder). In effect, this means that public schools (and most public construction work) have been built using a “design-bid-build” methodology wherein a separate contract is awarded for the design work by an architect and another contract is awarded to the lowest responsible bidder for the construction.

In the 1990s, the state began the enactment of various legislation authorizing state and local entities to use a “design-build” system under specified circumstances. Under this approach, a single contract is awarded to a professional team, a “design-build” entity, to conduct both types of work. Rather than awarding such a contract to the lowest responsible bidder, it may be awarded on the basis of the experience and qualifications of the competitors, or on a determination that a particular competitor provides the best value to the project. AB 1402 (Simitian), Chapter 421, Statutes of 2001, established the authority for K-12 school districts to use the design-build delivery method for projects over \$10 million, and established an initial sunset date of January 1, 2007. The sunset has been extended several times, most recently by AB 1358 (Dababneh), Chapter 752, Statutes of 2015, to January 1, 2025. AB 1358 made other changes including: aligning K-12 design-build statutory requirements with other state and local agency design-build requirements, adding skilled and trained workforce requirements, adding contractor prequalification requirements, and reducing the project cost threshold from \$2.5 million to \$1 million. This bill extends, in perpetuity, the authority of a school district to utilize design-build contracts for specified public works projects.

Legislative Analyst’s Office (LAO) reports related to design-build. According to a 2005 LAO report, *Design-Build: An Alternative Construction System*, the LAO recommended that the state adopt a single statute applying to all public entities, that design-build be available as an option and not a replacement for “design-bid-build” and that no cost threshold be imposed on the authority to use design-build. The LAO also noted that disadvantages of design-bid included a limited assurance of quality control since the building is not typically defined in detail at the time of entering into the contract and a more subjective process for awarding contracts and evaluating qualifications and experience, as well as limited access for small contractors without the range of experience of larger, long-established firms.

According to a 2010 LAO presentation, which included a summary of reports received from California counties that had completed construction projects using the design-build delivery method, although it was difficult to draw conclusions from the reports received about the effectiveness of design-build compared to other project delivery methods, there was no evidence to discourage the Legislature from granting design-build authority to local agencies on an ongoing basis. The LAO also recommended that the Legislature consider creating a uniform design-build statute.

The process for school districts using the design-build procurement. The procurement process for design-build projects involves several steps. First, the school district prepares comprehensive documents detailing the project's scope, estimated costs, and other relevant information, which are crafted by a licensed design professional. These documents exclude long-term operation contracts but may include operations during a training or transition period.

Next, the school district issues a request for qualifications to prequalify design-build entities for evaluation based on criteria such as technical expertise and safety records. Then, a request for proposals is prepared, inviting prequalified entities to submit competitive sealed proposals. For projects using the low bid method, contracts are awarded to the lowest responsible bidder. However, for projects utilizing the best value selection method, proposals are evaluated based on criteria outlined in the request for proposals, including technical expertise, life-cycle costs, and price. Discussions or negotiations may occur, and awards are granted to the design-build entity offering the best value.

The school district publicly announces contract awards and maintains records for external audits. Additionally, a commitment to using a skilled and trained workforce is mandated for all project work, unless certain exceptions are met, ensuring adherence to industry standards and regulations.

Related legislation. AB 1358 (Dababneh), Chapter 752, Statutes of 2015 recasts the provisions of the K-12 design-build delivery method, aligning with other state and local agency design-build statutory requirements. Adds skilled and trained workforce requirements, as well as contractor prequalification requirements. Reduced the project cost threshold from \$2.5 million to \$1 million and extended the design-build authorization sunset from January 1, 2020, to January 1, 2025.

SB 785 (Wolk), Chapter 931, Statutes of 2014, aligns the design-build process for the Department of General Services, the California Department of Corrections and Rehabilitation, and several local agencies.

SB 1509 (Simitian), Chapter 736, Statutes of 2012, extended the sunset for K-12 and CCC authorization to use design-build from January 1, 2014, to January 1, 2020.

SB 614 (Simitian), Chapter 471, Statutes of 2007, reduced the project cost threshold from \$10 million to \$2.5 million and extended the sunset date from January 1, 2010 to January 1, 2014.

AB 127 (Nunez), Chapter 35, Statutes of 2006, extended the sunset from January 1, 2007 to January 1, 2010.

AB 1402 (Simitian), Chapter 421, Statutes of 2001, established the authority for K-12 school districts to use the design-build delivery method for projects over \$10 million. Established an initial sunset date of January 1, 2007.

Arguments in support. The Coalition for Adequate School Housing (CASH) (sponsor) writes, “Design-Build can have a variety of benefits for school construction projects. The delivery method can expedite project construction, which is especially important as schools work to build developmentally-appropriate classrooms for the new universal Transitional Kindergarten grade level. Design-Build can reduce the risk of cost increases resulting from change orders once construction begins by establishing a Guaranteed Maximum Price for each project. This is a particularly useful tool during times of high construction cost escalation, which schools have experienced in recent years. Additionally, Design-Build encourages collaboration between architects/engineers and contractors, and generates creative solutions to unique issues.”

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Office of Education
Associated General Contractors of California
Association of California Construction Managers
Association of California School Administrators
California Association of School Business Officials (CASBO)
California Retired Teachers Association
California's Coalition for Adequate School Housing (CASH)
Design Build Institute of America Western Pacific Chapter
Kern County Superintendent of Schools Office
Los Angeles County Office of Education
Los Angeles Unified School District
San Diego Unified School District

Opposition

None on file

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