

# Design-Build for Public Works Projects

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# Agenda

1. The Baseline: Design-Bid-Build
2. New Design-Build Statutes Under SB 785
3. Overview of Design-Build Process
4. Advantages of Design-Build
5. Changes under SB 785
6. Suggested Approaches
7. Conclusion



# The baseline: Design-Bid-Build (DBB)

- Must award to lowest bidder, can't select best or most preferable contractor
- Can't negotiate the contract terms
- Contract docs must be complete before advertisement for bids





# Many challenges with DBB

- Poor construction quality
- Costs are frequently higher than original bid
- More claims
- Adversarial relationship between agency, designer and contractor





# Design-Build





# New Design Build Statutes: SB 785

- SB 785 was signed by the Governor on September 30, 2014, went in to effect on January 1, 2015
- Legislature's goal was to consolidate authority and eliminate inconsistencies between DB statutes
- The statutory framework for DB contracts is very similar, but there are some important differences
- New statutes located in PCC sections 22160-22169 (local agencies) and 10187-10196 (state agencies)





# New Design Build Statutes: SB 785

Local Agencies Covered	Eligible Projects
<b>City, county, city and county</b>	Buildings; improvements related to buildings; county sanitation wastewater treatment facilities; park and recreation facilities; regional and local wastewater treatment facilities, solid waste facilities, and water recycling facilities PCC section 22161(g)(1)
<b>Special district</b> that operates wastewater, solid waste, water recycling or fire protection facilities	Regional or local wastewater treatment, solid waste, water recycling or fire protection facilities
<b>Transit district</b>	Transit capital project





# SB 785 repealed these statutes

- **PCC 20175.2 (cities)**
- PCC 20193 (wastewater, solid waste, recycled water)
- PCC 20133 (counties)
- Gov. Code 14661 (CA Dept of General Services)
- Gov. Code 14661.1 (CA Dept of Corrections)
- Health and Safety Code 32132.5 (Sonoma Valley and Marin Health Care Districts)
- PCC 20688.6 (Redevelopment Agencies)
- PCC 20301.5 (Santa Clara Valley Transportation Authority)
- PCC 20209.5-20209.14 (transit operators)







# Overview of DB Process

- Must prequalify all DB entities first
- RFP process follows prequalification
- Can award to lowest bidder or on a “**best value**” basis
- Best value award must establish objective criteria for award
- Significant advantages with using DB on larger/complex projects





# Advantages of Design-Build

- **“Best value” award: value based selection**
- Single point of accountability
- Eliminates finger-pointing between contractor and A/E
- Fewer change orders
- Fewer conflicts/claims





# Advantages of Design-Build

- Faster project completion
- Lower project cost





# Recent report highlights successes of Design-Build approach

- LAO published report in 2010 regarding 15 design-build projects awarded by counties
- 5 projects were completed at time of report
- 2 of 5 completed projects below cost estimates; 2 projects at estimate; 1 was 5% over
- all 5 projects completed close to targeted completion date (longest delay of 3 months on 18 month project)
- all 15 awarded on “best value” basis
- each county supports DB going forward





# Academic study regarding Design-Build came to similar conclusions

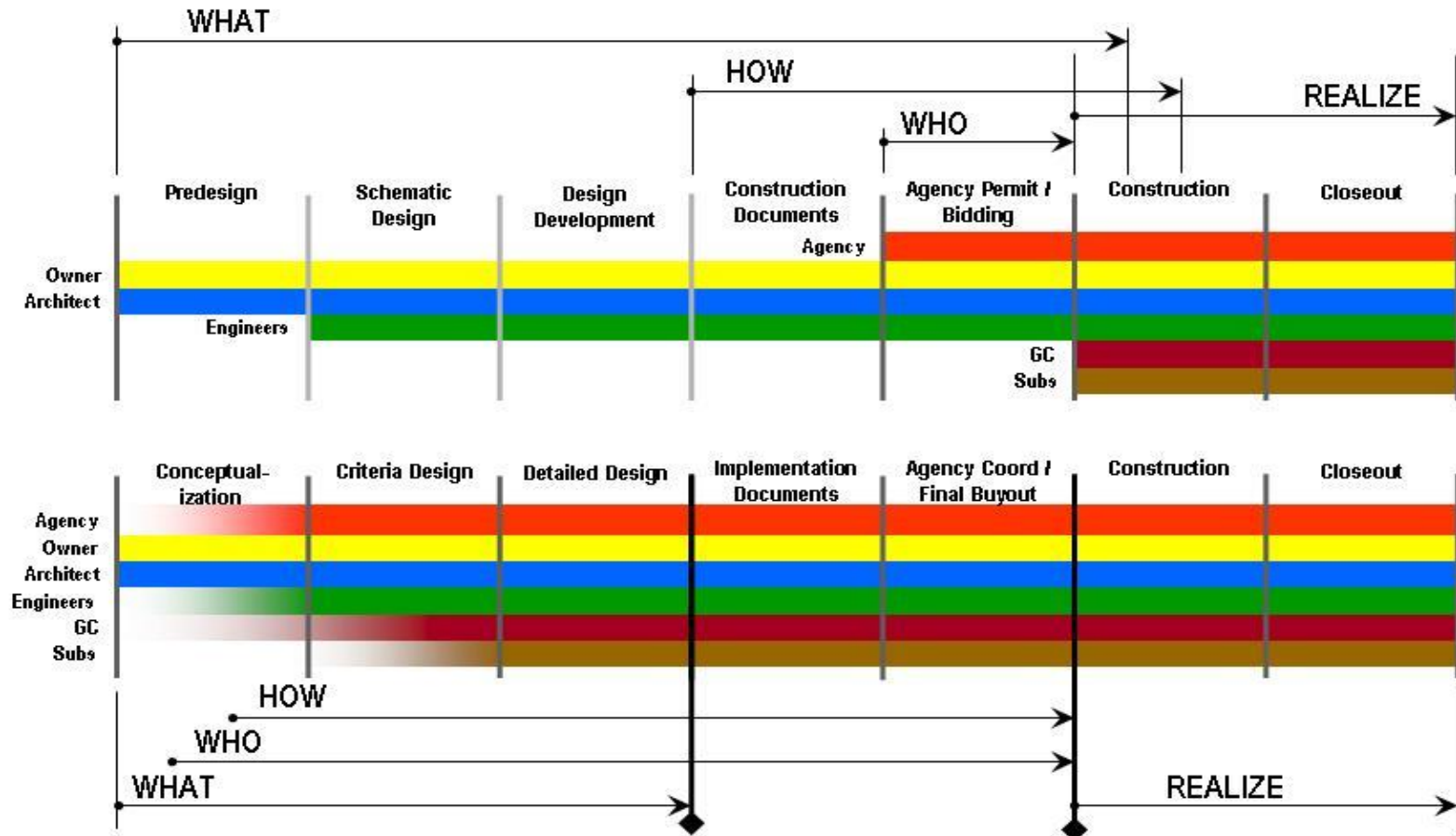
- 1998 study by Dr. Victor Sanvido and Dr. Mark Konchar, “Comparison of U.S. Project Delivery Systems”
- On average:
  - DB projects achieve a 6.1% savings over projects awarded on a DBB basis
  - DB projects are delivered 33.5% faster than projects awarded on a DBB basis, with construction work alone completed 12% faster
  - DB projects experienced 5.2% less cost growth
  - DB projects experienced 11.4% less schedule growth



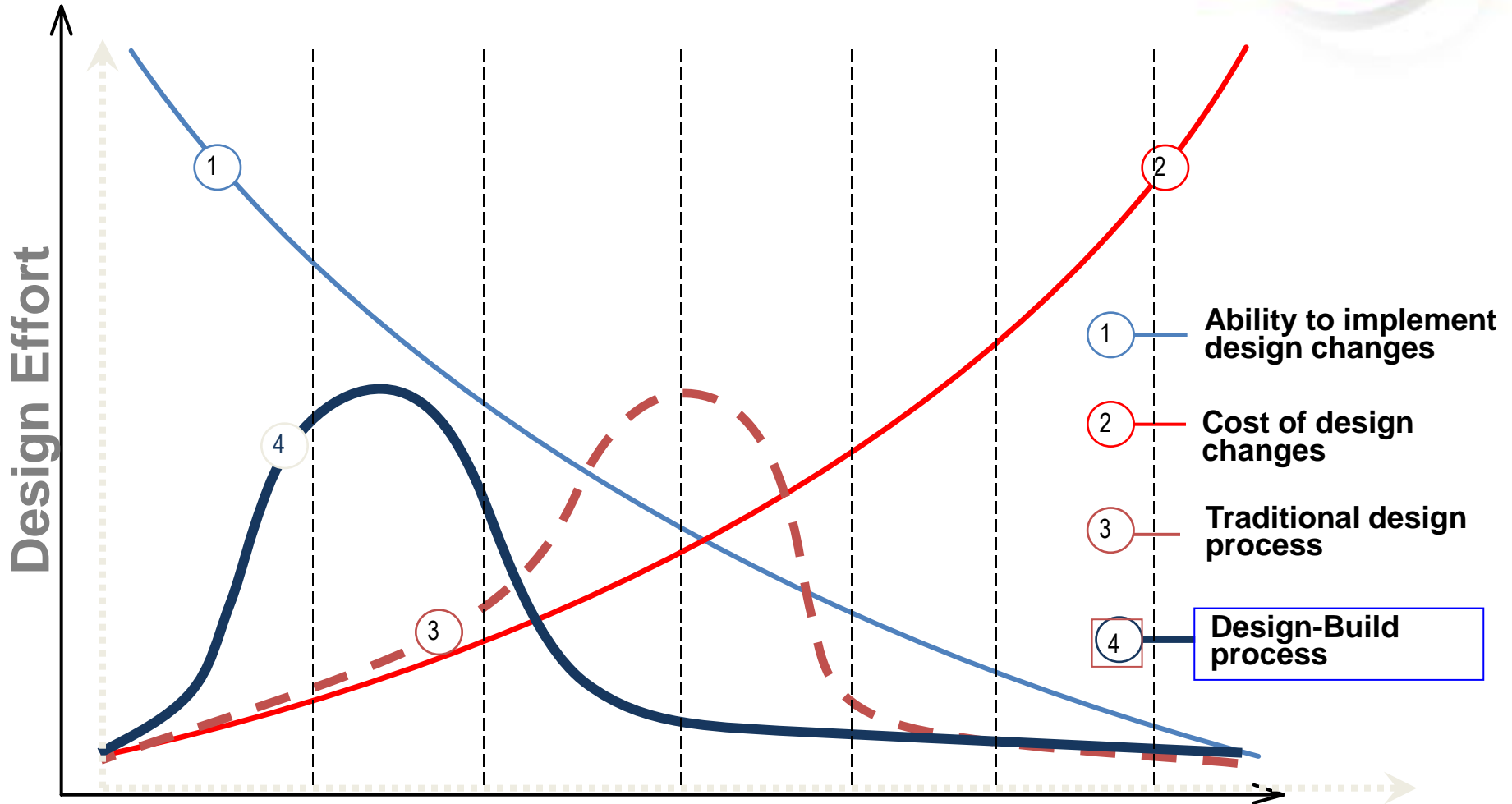
# Early Involvement of Subs



## Accelerating Engagement



# Early Involvement of Subs



Project Progress

Graphic originated by Patrick MacLeamy, FAIA



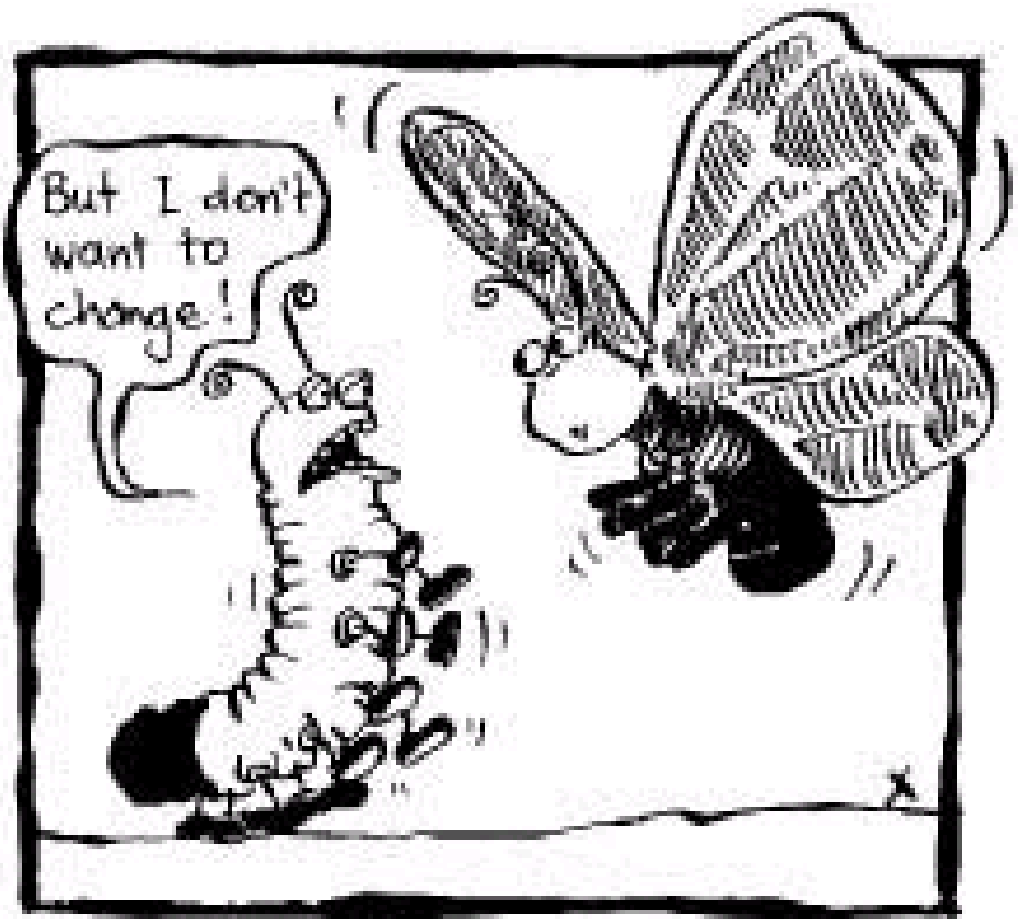


# Design-Build also has some (minor) disadvantages

- Agency has less control over details of design
- Pre-qualification requirement extends contract award process
- Initial designer can't propose for the design-build contract
- For those agencies that have not tried design-build, there may be a hurdle to overcome in terms of expertise, and willingness to try a new approach









# Changes Under SB 785

- \$1 million threshold to use DB authority
- Requires awarding authority to develop guidelines for organizational conflicts-of-interest in connection with DB projects
- Prohibits design-build-**operate** contracts
- Agency may now **pre-qualify** OR **shortlist** proposers for the RFP stage





# Changes Under SB 785

- **NO LABOR COMPLIANCE PROGRAM REQUIREMENT:** no requirement to pay the DIR for compliance monitoring services, or to operate an in-house LCP
- **BUT,** requires enforceable commitment from DB entities to use a “skilled and trained workforce” (22164(c))
- No requirement to prepare a report to the LAO regarding success of project





# Changes Under SB 785

- Only three evaluation factors specified instead of five (22164(f))
- Payment bond must not be less than performance bond (22165(a))
- Agency must issue a written decision supporting contract award (22165(e)(5))





# Changes Under SB 785

- Payment bond can't be less than performance bond
- Errors and omissions insurance required for “design elements of the project”
- Guidelines required re: organizational conflicts of interest
  - This will preclude A/E working on preliminary design from submitting a proposal for the contract
- Retention of progress payments is limited to 5% (same as other public works projects)





# Suggested Approaches

- Don't take bridge design too far
- Maintain flexibility in pre-qualification requirements
  - Adjust requirements to the project: higher bar for larger/complex projects, lower bar for small more straight-forward projects
  - Conduct industry outreach for feedback on pre-qualification questionnaire
  - May have to amend pre-qualification questionnaire depending on response





# Suggested Approaches

- Consider a stipend or honorarium for all proposers that submit during the RFP phase
  - This will likely increase participation
  - Result in better proposals
  - Result in higher quality firms participating
  - Can be tied to ownership of alternative concepts





# Suggested Approaches

Use “best value” award process whenever possible:

- Tailor evaluation criteria to the specific needs for your project
- Emphasize those criteria that are most necessary for a successful outcome
- Required factors: 1) price; 2) technical design & construction expertise; 3) life cycle cost over 15 years
  - \*\*no percentage specified







# Suggested Approaches

- Maintain fairness and transparency in evaluation and contract award process
  - Establish clear and objective procedures
  - Stick to those procedures
  - Use normal RFP best practices





# Suggested Approaches

- Consider requesting alternative technical concepts (ATCs)
  - Make clear that agency owns rights to ATCs and designs submitted
  - Ownership of ATCs can be tied to stipend
  - Alternate approach: agree to keep unused ATCs confidential and return to proposers





# Suggested Approaches

- Establish procedures for interviews, negotiations and Best and Final Offers
- Assemble the right project team:
  - Initial designer/architect
  - Owner's representative/Project Manager is very important to coordinate all efforts
  - Legal counsel





# Conclusion

- DBB can have significant disadvantages
- Design-Build presents a very useful alternative for larger/complex projects that is likely to produce a successful outcome
- Key benefits: cheaper, faster, fewer claims, fewer delays, early involvement of subs
- Each project must be evaluated separately
- **“Don’t know why more agencies aren’t using design-build.” – GM of local transit agency**

