

A Step Forward for Public Works Contracting

Design-Build in the Public Sector After the Adoption of SB 785

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I. Introduction

Design-build contracts combine professional design services and construction services into a single contract with the owner. This contracting approach provides a number of efficiencies over the traditional approach of awarding separate contracts for design services and construction, commonly known as the design-bid-build approach. These benefits include greater flexibility in awarding a contract, higher quality work, greater cost certainty, fewer claims, and other benefits discussed in more detail later in this paper.

While design-build has been a common delivery method in private sector construction for several decades, it is still relatively new in the public sector. The legislature first approved design-build authority for public agencies in 2001 with the passage of AB 598, which authorized “transit operators” to award contracts for transit projects of at least \$10 million on a design-build basis. A variety of other statutes followed authorizing other types of public agencies to utilize design-build.

Last year, the legislature revamped design-build authority for public agencies pursuant to SB 785. SB 785, which went in to effect January 1, 2015, repealed most of the existing design-build statutes applicable to different types of agencies,¹ and replaced them with a single statute applicable to “local agencies,” including counties.

This paper will examine the current landscape for design-build contracting on public works projects, including the requirements of SB 785 and how they differ from the

¹ The following design-build statutes were repealed by SB 785: Public Contract Code sections 20209.5020209.14 (transit operators), 20193 (wastewater, solid waste, recycled water), 20133 (counties), 20175.2 (cities), 20688.6 (redevelopment agencies), and 20301.5 (Santa Clara Valley Transportation Authority); Government Code sections 14661 (California Department of General Services), and 14661.1 (California Department of Corrections); and Health and Safety Code section 32132.5 (Sonoma Valley and Marin Health Care Districts). The following design-build statutes were left in place: Education Code sections 17250.10-17250.50 (school districts), and 81700-81708 (community college districts); and Public Contract Code section 10708 (California State University).

previous design-build statute for counties. This paper will also discuss the benefits of design-build, provide observations regarding the prequalification process and the proposal evaluation process, and offer recommendations for creative contracting approaches to achieve successful outcomes on your design-build projects.

II. Rise of Design-Build in the Public Sector

The legislature is obviously becoming more comfortable with design-build as a contracting approach for public agencies, and with good reason. A report published by the California Legislative Analyst's Office ("LAO") in 2010, summarizing the success of 15 design-build projects awarded by counties, made several interesting observations:

- Of 5 completed projects, 2 were completed below estimated costs (5 and 16 percent), 2 projects were completed at the estimated cost, and 1 project was completed approximately 5 percent over the estimated cost.
- Of the 5 completed projects, all finished close to their targeted completion date. One project scheduled for 18 months was completed in 16 months, while the longest delay was 3 months on a scheduled 16-month project.
- Each of the 15 projects was awarded on a "best value" basis, not lowest bidder.
- Each county that submitted a report "expressed support for the design-build process and was pleased with the project outcomes."
- The LAO concluded that the information provided by the counties "did not provide any evidence that would discourage the Legislature from granting design-build authority on an ongoing basis to local agencies."
- Going forward, the LAO also recommended that a single, uniform statute be adopted for all public agencies to standardize the process, and that cost limitations be eliminated altogether.

While somewhat dated, the LAO's report is indicative of a trend toward increased use of design-build by California public agencies. The successful outcomes on design-build projects reported in the LAO's report mirror our own anecdotal experience with positive outcomes on design-build projects in the public sector. Our clients are increasingly willing to try design-build for individual projects, and those that have done so have generally been very pleased. In general, projects are completed more quickly, for similar costs and greater price certainty, and with greater quality and fewer claims.

One such example occurred on a relatively recent design-build project for a Bay Area transit operator that constructed a new bus fuel and wash facility. This was the transit agency's first design-build project. Despite the effort required to develop new contract documents specific to the project, and the relatively small budget of approximately \$5 million, the project was completed on time, on budget, and prompted the General Manager to comment that he does not know why more agencies don't use design-build.

III. Benefits of Design-Build

Those who believe in the value of design-build contracting, including public agencies that have achieved successful project outcomes, tout a variety of benefits over the traditional design-bid-build approach. These benefits include:

- Greater flexibility in the contract award process.
- A single point of accountability (eliminates finger-pointing between designer and contractor).
- Higher quality construction work.
- Fewer change orders.
- Fewer claims.
- Faster project completion.
- Lower project cost.
- Greater cost certainty.
- More opportunity for innovation.

Research has confirmed many of these benefits on private sector projects. According to the seminal study done on this topic in 1998 by Dr. Victor Sanvido and Dr. Mark Konchar² on average design-build projects achieve a 6.1% savings over the same project awarded on a design-bid-build basis. Similarly, design-build projects are delivered 33.5% faster than projects awarded on a design-bid-build basis, and the construction work alone was completed 12% faster. Benefits were also measured in the categories of cost growth (5.2% less than design-bid-build) and schedule growth (11.4% less design-bid-build). At least one other study has come to similar conclusions about the benefits of design-build over design-bid-build with regard to achieving project specific sustainability goals.³

In light of the empirical support for the benefits of design-build in the private sector, the migration of design-build to the public sector seems both logical and inevitable. Counties should at least consider design-build as a project delivery method for projects exceeding \$5 million. Eventually, as in the private sector, design-build could become as common as design-bid-build.

² "Comparison of U.S. Project Delivery Systems," Journal of Construction Engineering and Management November/December 1998, Dr. Mark Konchar and Dr. Victor Sanvido, Pennsylvania State University.

³ See "Influence of Project Delivery Methods on Achieving Sustainable High Performance Buildings: Report on Case Studies," 2010, Commissioned by the Charlies Pankow Foundation and the Design-Build Institute of America.

IV. SB 785: New Design-Build Law for “Local Agencies”

A. Overview of SB 785

The new design-build law adopted pursuant to SB 785 is located in Public Contract Code sections 22160-22169 (“SB 785”). The procedures and substantive provisions are generally similar to the previous design-build statute applicable to counties under now repealed Public Contract Code section 20133. For instance, SB 785 requires that local agencies prequalify proposers before inviting those prequalified proposers to submit proposals in response to an RFP. SB 785 also allows local agencies to award a contract on the basis of the “best value” to the agency, which requires the establishment objective criteria including three statutorily mandated criteria.

SB 785 essentially carried over the same restrictions on the types of projects that can be awarded on a design-build basis that were included in Section 20133. Specifically, for counties, SB 785 can only be used for the:

construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including but not limited to streets and highways, public rail transit, or water resources facilities and infrastructure.

Thus, while the application of SB 785 to “local agencies” gave the initial appearance of a significant broadening of design-build authority, the restrictions on the types of projects still indicates that SB 785 is only an incremental step toward making design-build available for all public works projects. While this is disappointing, the trend is at least continuing in the right direction.

The dollar threshold under SB 785 is set at \$1 million. (Public Contract Code section 22162.) There is, however, no cost threshold for contracts for the acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness, and homeland security efforts. (Public Contract Code section 22162(b).)

There are also some important changes to the design-build requirements under SB 785, which are summarized below.

B. Differences Between SB 785 and Previous Design-Build Statutes

There are several important differences between SB 785 and its previous design-build statutes. First, SB 785 applies more broadly to “local agencies,” which are defined in Public Contract Code section 22161(f) as follow:

- (1) A city, county, or city and county.

(2) A special district that operates wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities.

(3) Any transit district, included transit district, municipal operator, included municipal operator, any consolidated agency, as described in Section 132353.1 of the Public Utility Code, any joint powers authority formed to provide transit service, any county transportation commission created pursuant to Section 130050 of the Public Utilities Code, or any other local or regional agency, responsible for the construction of transit projects.

The fact that SB 785 applies to this broader range of public agencies, in conjunction with the repeal of most previously adopted design-build statutes, will consolidate statutory authority and eliminate inconsistencies between design-build statutes. It should be beneficial to counties in that statutory interpretation issues and contracting approaches can be shared between a larger group of agencies, enhancing their collective wisdom.

SB 785 now requires public agencies to develop guidelines for a “standard organizational conflict of interest policy.” (Public Contract Code section 22162(c).) The guidelines must be “consistent with applicable law, regarding the ability of a person or entity, that performs services for the local agency relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team.” Section 22162(c) does not specify which “applicable law” the guidelines must be consistent with, and there are several laws that should be considered depending on the particular project, origin of funding, and type of public agency making the award. The term “organizational conflict of interest” is not specifically addressed under California statutory laws regarding conflicts of interest, such as Government Code section 1090⁴

⁴ Compliance with Government Code section 1090 should always be considered in conjunction with the drafting of the organizational conflict of interest policy, as some contractors who assist with the pre-award development of the contract would “participate in the making of a contract.” (Government Code §1090.) Moreover, appellate cases have held that independent contractors hired by public agencies can be considered public “officers” under the statute under some circumstances. Specifically, “independent contractors whose official capacities carry the potential to exert considerable influence over the contracting decisions of a public agency may not have personal interests in that agency’s contracts.” (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114.) Most of these cases address the actions of outside legal counsel advising public agencies, and none address an engineering, architectural or design consultants advising a public agency. In most instances, a design firm providing preliminary design services prior to the issuance of an RFP for a design-build project will not be involved in contract award decisions. Accordingly, such firms would probably not be in a position to exert “considerable influence” over a public agency’s contracting decisions such that they would be considered a public “officer” under Government Code section 1090 and trigger those statutory requirements. (See generally *Hub City Solid Waste v. City of Compton* supra, and *California Housing Finance Agency v. Hanover/California Management and* (footnote continued)

or the Political Reform Act. However, there is significant guidance regarding organizational conflicts of interest under federal grant law which must be considered for a variety of different federally funded projects, including transit projects funded by the Federal Transit Administration ("FTA").⁵ The basic concept is that where a firm or contractor has a role in assisting an agency with planning or developing a project during its initial stages, it is barred from competing for subsequent contracts where the firm has a competitive advantage over other proposers or where its prior involvement would impair its objectivity on the project. This could include a consultant preparing an environmental review where additional work might depend on the clearance of the project, or an engineering consultant who might participate on a design-build team after assisting in the development of the initial design concepts. These guidelines should be drafted carefully, and ideally should include a screening process at the outset of the procurement in conjunction with the prequalification process. The earlier organizational conflicts are identified, the better chance a proposer team has of correcting them before it has expended significant time and resources on a proposal. In most cases, counties should consider notifying firms seeking to assist on the initial design work that they will not be allowed to participate in the design-build phase. The potential disqualification of such professionals may impair the an agency's ability to attract qualified consultants to assist in the early design phase, particularly for unique projects requiring specialized skills, as they may prefer to compete for the more lucrative design-build work.

SB 785 now expressly prohibits the award of a contract for design-build-operate services, except for operations during a training or transition period. (Public Contract Code section 22164(a)(2).) Previous design-build statutes were ambiguous on this point, but SB 785 clearly limits contract awards to design-build. As a result, if an agency desires to award a contract that includes an operation component after a new facility is constructed, it must seek other contracting authority, such as under the Infrastructure Financing Act applicable to fee producing infrastructure facilities (Government Code section 5956-5956.10) or the Energy Conservation Contract statutes (Government Code section 4217.10-4217.18.)

During the prequalification process, SB 785 now authorizes local agencies to either pre-qualify proposers or shortlist proposers. This provides useful flexibility in that short-

Accounting Center (2007) 148 Cal.App.4th 682.) Nonetheless, the specific role of the design consultant should be considered carefully in order to confirm that the provisions of Government Code section 1090 are not implicated.

⁵ See the Common Grant Rule issued by the Office of Management and Budget, and implemented by 26 federal departments and agencies (see specific CFR sections for the Department of Energy, Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, and Department of Transportation, etc.); FTA Circular 4220.1F; Section 3(a) of the FTA Master Agreement.

listing allows an agency to determine how many proposers will be allowed to participate in the proposal process after the statements of qualification have been submitted and reviewed. In other words, the agency has the discretion to create a large or small short-list depending on the quality of the qualification statements submitted. This differs from a true prequalification process where an objective qualification standard is established in the Request for Qualifications document, which must then be applied to advance all proposers that have met that standard even if the number of proposers is larger or smaller than ideal.

SB 785 no longer includes a Labor Compliance Program requirement, in contrast to previous design-build statutes. This is not because the legislature is no longer interested in encouraging compliance with Labor Code provisions, but because the enforcement scheme was changed recently pursuant to SB 854. Pursuant to SB 854, all public works contractors performing work on projects over \$1000 must now submit electronic certified payroll records to the California Department of Industrial Relations (“DIR”) automatically for all public works projects within the state. The DIR will review all certified payroll records and monitor for prevailing wage violations, eliminating the need for local agencies to conduct an in-house Labor Compliance Program. Contractors are also obligated to register with the DIR on an annual basis, and submit a registration fee of \$300.

SB 785 includes a new requirement for design-build contractors to provide an “enforceable commitment” to use a “skilled and trained workforce” at the RFQ stage of the process. (Public Contract Code section 22164(c).)

SB 785 only requires that three specific evaluation criteria be considered by an agency in evaluating proposals. (See Public Contract Code section 22164(f).) The following three criteria “shall be weighted as deemed appropriate by the local agency: (A) Price, unless a stipulated sum is specified. (B) Technical design and construction expertise. (C) Life-cycle costs over 15 or more years.” This provision provides significantly more flexibility than the five specific criteria required by previous design-build statutes that were each generally required to comprise 10% of the evaluation criteria.

SB 785 requires that the payment bond be in an amount not “less than the performance bond.” (Public Contract Code section 22165(a).) This language would appear to allow the agency the discretion to require bonds in less than 100% of the total contract amount.

Finally, the agency must issue a written statement in conjunction with the contract award indicating the basis of award. (Public Contract Code section 22164(f)(5).)

V. Prequalification of Proposers

As mentioned above, SB 785 requires that an agency prequalify all proposers before requesting proposals. SB 785 requires that the public agency develop a request for

qualifications (“RFQ”). (See Public Contract Code section 20164(b).) The RFQ must include each of the following elements:

- Basic scope of the project
- Expected cost range
- Methodology that will be used to evaluate proposals
- Procedure for final selection
- Significant factors that agency will consider in evaluating proposals
- Standard template for Statement of Qualifications

The easiest place to start for developing an RFQ is the model Prequalification Questionnaire developed by the California Department of Industrial Relations, specifically developed for design-build projects. The DIR’s Questionnaire includes a section with mandatory pass/fail requirements, as well as scored questions, and a scoring key. These can all be revised and adapted for a particular project. For instance, it is important for the agency to decide which team members it intends to prequalify. Not all team members and subcontractors need to be prequalified, but certainly those that are most important to the success of the project should be.

Prequalification should not be viewed as a one-size fits all process. Often, the prequalification process must be tailored to the particular project to ensure that the bar is set high enough to create a field of qualified proposers, but not so high as to limit competition. In our experience, the agency may benefit from circulating a draft of the prequalification questionnaire for industry review and comment. If specific requirements are too stringent, comments from potential proposers may bring this to light. In some instances, it may be necessary to revise the RFQ or questionnaire after responses are submitted and are deemed to be inadequate. On one recent project, an agency we worked with was initially not able to prequalify any of five interested proposers. After revising the requirements for an audited financial statement and overly stringent licensing requirements and re-issuing the prequalification questionnaire, four of five potential proposers were prequalified. On another recent project we were involved in, requirements that all team members needed specific experience in the United States were relaxed to allow foreign experience, given that many engineering consultants on the design-build teams were based in Europe.

VI. Tailoring the Evaluation Process to Your Project

SB 785 includes some requirements with regard to the proposal evaluation process, including:

- Three specific criteria that must be considered in the evaluation process (as discussed above).
- The RFP must include the basic scope and needs of the project, the estimated cost, the methodology to evaluate proposals (best value or low bid, the significant factors considered in evaluating proposals, the relative weight of those factors,

and any negotiation procedures after proposal submission. (Public Contract Code section 22164(d).)

- The RFP must specify which specific subcontractors must be included in the proposals. (Public Contract Code section 22166.)

In spite of these requirements, agencies still have significant flexibility to create a process that is suited to their particular project. For instance, since only three evaluation criteria are specified, and the weight of those three criteria can be established by the agency, that allows for wide discretion as to what the remaining criteria and weighting will be. For more technically complex projects, more emphasis should be placed on factors such as technical expertise, experience on comparable projects, team qualifications, and qualifications of key subcontractors. For projects that are not particularly technically complex, greater emphasis can be placed on price. Each agency is free to tailor its evaluation criteria to essentially create its own definition of "best value" for each particular project.⁶

Public agencies also have significant discretion with regard to how the proposals must be submitted and evaluated. Variations can include: 1) a single proposal including both price and technical information which are ranked immediately after submission; 2) a "two envelope" process where price is considered only after technical proposals are ranked and short-listed; and 3) an initial technical submittal, followed by price proposals submitted only by short-listed proposers. Each of these approaches is legally viable under SB 785, and each have their merits depending on the goals of the particular procurement.

Finally, public agencies also have significant discretion with regard to discussions, negotiations and Best and Final Offer ("BAFO") procedures after proposal submission. The most common approach is to enter into negotiations with the highest ranked proposer after the proposal evaluation process has been completed. Negotiations can focus on price aspects, scope of services provided, proposer team details, etc., although it is wise for the agency to provide itself latitude in these negotiations in the language of the RFP. Another approach is for the agency to request BAFOs from all short-listed proposers to induce additional competition on price.

⁶ "Best Value" is defined as "a value determined by evaluation of objective criteria that may include, but not be limited to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest costs proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors." (Public Contract Code section 22161(a).)

In short, public agencies have significant flexibility to tailor the proposal evaluation process under SB 785, provided the agency follows the procedures that are set forth in the RFP.

VII. Creative Contracting Approaches

Many creative contracting approaches have been developed on private sector design-build projects, which can be incorporated into a public procurement, including the approaches summarized below (each of which is legally viable under SB 785).

A. Alternative Technical Concepts

Where an owner desires to consider alternatives to its initial conceptual design in an effort to find more innovative and cost effective ways to approach a project, requesting alternative technical concepts ("ATCs") from proposers in conjunction with proposals can be a very useful tool. ATCs have been defined as any concept, submitted by a proposer and accepted by the owner, that differs from the requirements of the RFP and contract documents and results in performance and quality of the end product that is equal to or better than the of the initial conceptual design. Anecdotally, requesting ATCs usually results in at least one improvement over the initial conceptual design, if not several.

There are different ways to approach ATCs in terms of timing of submission, and confidentiality. One approach we have employed on a recent design-build transit project is to require submission of ATCs in advance of proposals. If an ATC is approved by the agency, it may be included with the proposal, with separate pricing for both the initial conceptual design and the ATC design. The approved ATC remains confidential and is not shared with other proposers.

Another approach to ATCs is to invite submission in conjunction with proposals as alternative approaches to the work. This approach saves time in that a separate review process in advance of proposal submission is not required. In addition, the RFP can specify that all rights to the ATCs are owned by the agency, regardless of whether the proposer that submits the ATC is awarded the contract. This is obviously a more aggressive approach to ATCs that some design-build contractors will object to, particularly if no stipend is offered in conjunction with proposal submission. However, because SB 785 is silent on ATCs, each of these approaches is legal and counties are free to consider how ATCs might benefit their project. The results can be very positive.

On a relatively recent project for the seismic retrofit of a public hospital we assisted with, the public agency was able to realize approximately 35% in savings through the incorporation of ATCs submitted by the proposers. The RFP required each of the proposers to submit a proposal based on the design included in the bridging documents, but also allowed proposers to submit alternative proposals based on their own conceptual design (subject to certain project requirements and design criteria set

forth in the bridging documents). Proposers were encouraged to work with their team members to create alternative design solutions. In every case, the alternative conceptual design that the project teams came up with were more economical than the approach in the bridging documents. This resulted in an approximately 23% savings from the design-builder competitors' alternative design solutions. After the best value proposer was selected, the project team (which included the architect, structural engineer, the contractor and the mechanical, electrical and plumbing design-build subcontractors) continued to collaborate with public agency staff to further hone the conceptual design, eventually realizing an additional 12% savings.

B. Bonus for Successful Outcome (the Carrot)

Everyone involved in public works contracting is familiar with liquidated damages, which are ordinarily charged against a contractor on a daily basis in the event that the contractor is late in completing the work. In effect, this provision is a contractual "stick" to motivate the contractor to complete the work on time. Although less common, a contractual "carrot" in the form of a bonus for a successful outcome can also be useful. A bonus can be awarded for just about any achievement on the project that can be measured or confirmed. The most obvious application of a bonus is for early completion of the work, and can be awarded in the form of an amount for each day that the design-build contractor completes work early. Other examples include lump sum bonuses completing a milestone in advance of a specified date, for completing the project with less than a specified number of job related injuries, exceeding specified energy use targets, etc.

Including a bonus for a successful outcome provides an additional benefit in terms of contractor relations. Just adding language to allow for the award of a bonus will demonstrate to the contractor that the agency views the project as a collaborative venture where both parties will ideally succeed, rather than an adversarial "zero sum game" that design-bid-build projects are frequently viewed as. Collaborative contracting principles have expanded significantly over the last ten years in the private sector as owners and contractors realize that the more their respective interests are aligned, the greater the likelihood of success. These principles are encompassed by broader contracting approaches known as Integrated Project Delivery or Lean construction, elements of which are gradually making their way into public works contracting as well.

C. Stipends

Stipends, paid to proposers to defray the cost of preparing their proposals, are common for large scale design-build projects in the private sector. The stipend can be paid to each proposer that submits a fully responsive proposal, or limited to just the short-listed proposers. Depending on the size of the project, they can be as high as several hundred thousand dollars, or even over \$1 million. The reasoning behind paying a stipend is that for large projects, proposers must invest significant time and effort to investigate and evaluate the project, analyze different approaches to performing the

work, assembling a team, and pricing their work. This process is significantly more involved than on a design-bid-build project where the design is fully established, and there are fewer variables to consider. Where ATCs are requested, preparation of a proposal for a design-build project is yet more involved. In order to encourage a sufficient number of experienced and high quality design-build teams to propose on a project, it is sometimes necessary to offer a stipend to defray at least some of the cost of preparing a proposal. According to the Design-Build Institute of America, other benefits of paying a stipend include signaling the intent that the owner is serious about going forward with the project, and encouraging proposers to expend the time, money and resources to provide a more creative and comprehensive solution.⁷

Industry surveys indicate that stipends are frequently set between .01 and .25 percent of the project budget, considering what is required to generate sufficient market interest from the most highly qualified design-build teams.⁸ Without a stipend, owners run a risk of not getting the highest caliber proposers to participate.

Admittedly, stipends are uncommon in the public sector, and in some ways appear to run against public policy goals of public procurement. Paying for proposals seems contrary to protecting public funds and ensuring that they are spent wisely, given the traditional approach of awarding public works projects to the lowest bidder. However, I am unaware of any legal prohibition against stipends paid on public works projects in California, and they are expressly legal in other states, like Washington. In essence, a public agency is paying for high quality proposals that it would not otherwise receive. The stipend can also be tied expressly to ownership of rights to the ATCs, further justifying the value the agency receives from paying the stipend.

Ultimately, whether an agency decides to pay a stipend for proposals depends on the competitive dynamics of the particular project. If there is sufficient interest from quality design-build teams without a stipend, it need not be included. On the other hand, if interest is marginal, a stipend may improve the quality of proposals enough to allow for a successful project.

VIII. Reality Check: Design-Build is Not Ideal for Every Project

Design-build may not be ideal for every project. Thought should be given at the outset of each project to assess whether design-build is the best project delivery method, or whether the benefits are outweighed by one of the few drawbacks. For instance, where an agency seeks close control over design details, design-bid-build may be a better choice, because the agency will be able to monitor, revise and fine tune the design

⁷ "DBIA Position Statement, Use of Stipends," 2010, Design-Build Institute of America.

⁸ "DBIA Position Statement, Use of Stipends," 2010, Design-Build Institute of America.

before the project is put out to bid. Under a design-build project, the agency relinquishes a degree of control over design details in favor of more efficient project delivery and overall quality. Similarly, where an agency wants to keep the initial conceptual designer on board to complete the design, design-build is not an option because organizational conflict of interest rules preclude the initial designer from participating on the final project.

It is also important to note that the prequalification process extends the time to contract award by several months. However, the time spent prequalifying and ranking proposals carefully should be reflected in a higher quality design-build contractor, which should in turn lead to higher quality and more efficient work.

Finally, for those agencies that have not awarded a design-build project in the past, there is obviously a ramp-up required in terms of educating internal staff, management, and council-members as to how the process works. In addition, project team members (owner's representative, project engineer and legal counsel) should be selected carefully to ensure that the project documents are sound. For the agency's first design-build project, additional effort will be required to prepare a new RFQ and RFP that comply with SB 785. Where the size of the project is below a certain dollar threshold (\$5 million), or where the design work is relatively simple and design-build would not result in significant efficiencies, the time and effort involved in the ramp-up may not be worth it.

However, for the right project, design-build can be a significant improvement over design-bid-build, and might well change the way your agency approaches public works projects going forward.

IX. Conclusion

Design-build is becoming a more viable project delivery method for counties and other public agencies in California with each passing year. The number of agencies that have awarded design-build contracts with successful results continues to grow, in conjunction with their collective wisdom. The benefits of design-build for those agencies willing to deviate from the standard design-bid-build approach can be significant: the flexibility of a best value award process, a single point of accountability, higher quality of work, fewer change orders, fewer claims, faster project completion, greater cost certainty, and more innovation. In light of these benefits, and the broader availability of design-build under SB 785, design-build contracting in the public sector should continue to grow.

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