

January 8, 2010

Counties and Design-Build

LEGISLATIVE ANALYST'S OFFICE

Pursuant to Section 20133 of the Public Contract Code



Summary

As part of legislation extending design-build authority to county governments, counties were required to report to our office on construction projects that they completed with the design-build delivery method. This report provides a summary of the counties' responses to our office. Although it was difficult to draw conclusions from the reports received about the effectiveness of design-build compared to other project delivery methods, we do not think that the reports provide any evidence that would discourage the Legislature from granting design-build authority to local agencies on an ongoing basis. In doing so, however, we recommend the Legislature consider some changes such as creating uniform design-build statute, eliminating cost limitations, and requiring project cost to be a larger factor in awarding the design-build contract.

Background

Section 20133 of the Public Contract Code authorizes California's county governments to enter into design-build contracts through January 1, 2011 for construction projects over \$2.5 million. In order to help the Legislature evaluate the effectiveness of the design-build process, the law requires counties that completed design-build projects by November 1, 2009 to submit a report to our office. The statute further requires our office to submit a summary of these reports to the Legislature by January 2010. In response to this requirement, our office received reports on 15 design-build projects from nine counties. Of the 15 projects, only five were completed at the time the reports were submitted. Some counties chose to submit information on projects currently in progress in order to provide information on their design-build efforts and demonstrate their support for extending design-build authority to counties beyond January 1, 2011.

The statute requires the counties to report on a number of factors for each of their design-build projects:

- Type of facility.
- Gross square footage of the project.
- Name of the design-build entity awarded the project.
- The estimated and actual project schedule and cost.
- A description of any protests concerning the solicitation or award of the design-build contract.
- An assessment of the prequalification process and criteria.
- An assessment of the effect of withholding 5 percent on the project until completion.
- A description of the Labor Force Compliance Program used and an assessment of the project impact.

- A description of the method used to award the contract and the factors used to evaluate the bids.
- An assessment of the project impact of skilled labor force availability.
- An assessment of limiting design-build to projects with costs greater than \$2.5 million.
- An assessment of the most appropriate uses for the design-build approach.

Limitations of the Reporting Requirement

In general, it was difficult to draw conclusions about the effectiveness of the design-build delivery method from the reports received. As mentioned above, only five of the submitted reports represented finished projects and were able to provide complete information on scheduling, costs, and outcomes. Assessing the effectiveness of design-build from such a small sample size would not be reliable. Additionally, an assessment of design-build would necessarily require a comparison with traditional delivery methods (mainly design-bid-build). Time or cost savings are difficult to verify because there is not a parallel project developed at the same time using design-bid-build.

Summary of County Reports

Below is a summary of the responses received for each of the reporting requirements in the legislation.

Type of Facility and Gross Square Footage. Counties reported using design-build for many types of projects with a large variation in size and scope. The variety of projects included office buildings, a parking garage, medical centers, correctional facilities, a swimming pool, a children’s home, an airport terminal, and fire stations. The gross square footage of these projects ranged from 4,180 to 250,000 square feet.

Project Schedule and Cost. The estimated costs of the design-build projects ranged from \$2.6 million to \$770 million. Of the five completed projects, two projects had final costs that were 5 percent and 16 percent less than their estimated costs. The actual costs of two other projects were approximately the same as the estimated cost, while one project reported actual costs were about 5 percent greater.

There was a similar mix of results for projects schedules, with most projects finishing close to their targeted schedule. The longest delay was an additional three months on a 16-month project. One completed project reported finishing ahead of schedule, requiring 16 months on an 18-month project. Due to the overlap in design and construction phases, proponents typically argue that design-build achieves time savings—and therefore cost savings—compared to traditional delivery methods. It is not possible to determine from the reports, however, if design-build allowed counties to pursue more aggressive schedules than they could have under the more traditional design-bid-build. The reports only compared estimated and actual schedules under the design-build method, without any detail on how the projects’ schedules might have differed under an alternative delivery method.

Protests Concerning the Solicitation or Award of the Contract. Each county reported that they did not receive any written protests concerning the solicitation, bid, proposal, or award of the design-build contract.

An Assessment of the Prequalification Process and Criteria. Statute creates a two step process for awarding the design-build contract. First, design-build contractors must prequalify for the project by meeting minimum requirements set by the county. In the second step, prequalified entities submit formal bids on the project which the county evaluates upon predetermined criteria.

Public Contract Code stipulates some of the criteria that should be used in the prequalification process including previous experience, financial capacity, safety record, evidence of insurance, and previous performance. Most counties reported that they either used the prequalification template developed by the Department of Industrial Relations (DIR) or created their own standard questionnaire based on DIR's criteria. They also reported that the prequalification criteria were sufficient and did not adversely affect the number or quality of bids.

A Description of the Method Used to Award the Contract and the Factors Used to Evaluate the Bids. In the second step of awarding the contract, the legislation requires counties to award the design-build contract to a prequalified firm through (1) a competitive bidding process in which the contract is awarded to the prequalified firm with the lowest responsible bid or (2) a design-build competition based upon best value criteria. Each county used the best value award procedure rather than the lowest responsible bid.

Most counties submitted documentation of the point systems they used to evaluate bids on best value. The most points were usually assigned to architectural design. The statute requires that price, technical design, life cycle costs (which factors in operating costs for the structure), skilled labor force availability, and safety record each account for at least 10 percent of the total weight in the criteria. These five criteria were typically weighted equally at the minimum of 10 percent with the exception of price, which in some cases comprised 20 percent or more of the available points. Some counties reported that life cycle costs were difficult to calculate and confirm, and were often so similar between bids that the requirement did not help to differentiate between proposals. It was also reported that safety record and skilled labor force availability were already evaluated as part of the prequalification process and therefore did not always help to differentiate between applicants at this stage.

An Assessment of the Effect of Withholding 5-Percent Retention on the Project. Counties did not report any problems with retaining 5 percent. A few counties reported that they typically withhold 10 percent, but that 5 percent was manageable for these particular projects.

A Description of the Labor Force Compliance Program and an Assessment of the Project Impact. Each county reported either hiring a third-party consultant to monitor labor force compliance or forming a Project Labor Agreement with a local trades council. Counties did not specify any concerns with the labor compliance provisions of the design-build legislation, as the labor force compliance program is required for all county

projects regardless of delivery method.

An Assessment of the Project Impact of Skilled Labor Force Availability. One county reported that the skilled labor force availability requirement was cumbersome and, in their view, did not lead to a better project outcome. All other counties did not report any concerns with this requirement and stated that skilled labor was readily available.

An Assessment of Limiting Design-Build to Projects With Costs Greater Than \$2.5 Million. Most counties preferred a lower cost threshold for the use of design-build. Some counties reported considering additional projects for design-build, but being unable to proceed because the projects cost less than \$2.5 million. These projects included airport improvements, water treatment facilities, tenant improvements, and mechanical replacements. Suggestions for a new minimum cost were between \$500,000 and \$1.5 million.

An Assessment of the Most Appropriate Uses for the Design-Build Approach. As already discussed, counties used design-build for a variety of projects. Some counties reported that they preferred design-build for simple projects that do not have many unknown variables. However, others used design-build for large, complex projects including correctional facilities and an airport terminal. Although these projects were complex, county officials believed design-build gave them a better opportunity to consider quality in their selection process. Some counties also reported that the design-build delivery method was faster and therefore more appropriate for time sensitive projects. Current law restricts counties use of design-build to buildings and wastewater treatment facilities. Several counties recommended extending the authority to additional infrastructure projects such as solid waste facilities, roads, and transit projects.

LAO Observations and Recommendations

From these reports, it is difficult to find conclusive evidence as to the benefits of the design-build method. Each county, however, expressed support for the design-build process and was pleased with the project outcomes. Their experience tends to support our past findings that design-build can be a useful alternative delivery method. (See, for instance, our 2005 report *Design-Build: An Alternative Construction System*.) Currently, design-build authority for counties expires on January 1, 2011. We do not think that the reports provide any evidence that would discourage the Legislature from granting design-build authority on an ongoing basis to local agencies. However, in any additional extensions of design-build authority, either in limited terms or permanently, we recommend the Legislature make a number of changes as discussed below.

Inclusive, Uniform Statute. Instead of separate legislation providing the design-build authority for different time spans for different groups of state and local entities, as currently exist, we recommend that a single statute be adopted that applies to all public entities providing the same authority and limitations. Creating a uniform standard would help contractors become more familiar with one standard for doing design-build on public works in California.

Reporting Requirements. At this point, design-build authority has been extended to numerous entities for the construction of buildings, wastewater facilities, and transit

projects. If the Legislature chooses to make design-build more available to state and local governments for these types of projects, we are not sure what additional value would be added by continuing the reporting requirements in statute. However, the Legislature may wish to have reporting requirements for extensions of design-build authority to additional types of infrastructure projects, such as the reporting requirements included in the recent extension of design-build authority to a limited number of highway projects.

No Cost Limitations. We recommend there be no maximum or minimum project cost threshold imposed on design-build authority. Design-build could provide additional flexibility for smaller projects in some cases.

Maintain Objectivity and Integrity of Procurement Process. In order to ensure competitive pricing and objective awarding, we recommend that project cost constitute a large factor in awarding the contract. As none of the counties chose to use the competitive bidding option provided in statute, price could have represented as small as 10 percent of the factors considered in awarding the design-build contract. We would recommend increasing the weight of price in the best value criteria to at least 20 percent. To maintain flexibility for counties, the Legislature could reduce or eliminate some of the other best value criteria—currently mandated at 10 percent—which the reports identified as less useful, such as life cycle costs, safety record, and skilled labor force availability. Additionally, the Legislature could provide a third alternative for awarding the contract that provides some of the flexibility of the best value option while maintaining an emphasis on pricing—sometimes called the “two-envelope system.” With this system, the agency follows the same prequalification and request for proposals process as outlined in the current statute. The short list of prequalified contractors then develop a technical proposal, which is submitted in one envelope, with their price in a second envelope. The agency reviews the technical proposals to see if they satisfy its requirements. For those finalists whose technical proposals are satisfactory, the agency opens the second envelopes and the contract is awarded to the proposal having the lowest cost. While we think this could happen under the current statute, the Legislature could be more prescriptive in this regard to ensure such an approach is considered.