

# **FASTER, CHEAPER, BETTER?**

## **HOW COUNTIES USE DESIGN-BUILD CONTRACTING**

The Summary Report  
from the  
Oversight Hearing

Wednesday, January 20, 2010  
State Capitol  
Sacramento, California

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## Table of Contents

	<u>Page</u>
Introduction	1
Staff Findings	1
Opening Remarks	2
The Speakers	3
Legislative Analyst's Briefing	3
County Governments' Reactions and Advice	4
Contractors' Reactions and Advice	6
Labor Organizations' Reactions and Advice	8
Others' Reactions and Advice	10
Legislators' Concluding Remarks	11
Additional Advice	11
Appendix: Briefing Paper & Research Memo	Blue Pages
Appendix: Written Materials	Yellow Pages

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**Faster, Cheaper, Better?**  
**A Legislative Oversight Hearing on**  
**How Counties Use Design-Build Contracting**

On Wednesday, January 20, 2010, the Senate Local Government Committee held an oversight hearing on how counties use the design-build method of contracting for public works. The hearing began promptly at 9:30 a.m. and continued until 11:00 a.m. Held in Room 112 of the State Capitol in Sacramento, the Committee's hearing attracted about 40 people.

Four of the five Committee members participated in the oversight hearing:

Senator Dave Cox, Committee Chair

Senator Christine Kehoe, Committee Vice Chair

Senator Curren D. Price, Jr.

Senator Patricia Wiggins

This report contains the staff summary of what happened at the Committee's hearing [*see the **white** pages*], reprints the Committee staff's briefing paper and an earlier research memo [*see the **blue** pages*], and reproduces the written materials provided by the speakers and others [*see the **yellow** pages*].

Senate staff video-recorded the 90-minute hearing and it is possible to purchase a DVD copy by calling the Senate TV and Video Program at (916) 651-1531.

**STAFF FINDINGS**

When 19 people with strong opinions and firm points-of-view spend 90 minutes telling legislators how to rewrite a state law, it's a daunting task to distill their advice into a few, cogent findings. Nevertheless, after reviewing their hearing notes and reading the speakers' written materials, the Committee's staff reached these findings:

- Broad support exists --- especially among counties --- to repeal the sunset clause and make permanent the state law that allows counties to use the design-build contracting method. One labor group conditionally supports an extension of the sunset clause.

- The Legislative Analyst’s recommendation to eliminate the current \$2.5 million price threshold attracted endorsements from counties and contractors, although one group affiliated with labor interests disagreed.
- The Legislative Analyst’s recommendation to enact a uniform design-build contracting statute that applies to all local governments drew similar support from counties and contractors, although one labor group is opposed.
- Some counties want the Legislature to allow them to use design-build contracting for any capital improvement projects, but labor groups are opposed.
- No consensus exists over how to define the criteria and assign weights for the best-value selection procedures. Most of the Legislature’s debate over the future of the counties’ design-build law will need to focus on controversies over these criteria and weights.
  - While the Legislative Analyst wants legislators to place more emphasis on a project’s cost, contractors disagree and argue that other criteria can be more important.
  - While the Legislative Analyst suggested that state law explicitly allow so-called “two-envelope” bidding, there was disagreement over its usefulness and over the usefulness of the stipulated sum method.
  - Some counties and labor groups disagree about retaining or eliminating consideration of life cycle costs and contractors’ safety records.
  - There is support for a new criterion that asks prospective design-build entities about past violations of state or federal False Claims Acts.
- Because some counties and labor groups disagree about the counties’ faithful observance of state laws that govern the counties’ use of design-build contracts, legislators may wish to consider creating a forum to investigate allegations. Legislators may wish to consider assigning this function to the existing California Uniform Construction Cost Accounting Commission which already investigates allegations regarding misuse of local public works contracts.

## OPENING REMARKS

**Senator Cox**, the Committee Chair, began the January 20 hearing by sketching how the design-build contracting method works. “In my mind,” the Senator said,

“Design-build is just an alternative tool in the toolbox for counties to use.” When design-build contracting isn’t appropriate for a county public works project, county officials can still use the traditional contracting method called design-bid-build. “The Legislature should leave the choice with the county,” declared Senator Cox.

## THE SPEAKERS

The Committee invited 14 people to speak, organized into four panels, based on their general points of view: the Legislative Analyst’s Office, county officials, contractors, and labor organizations. Legislators invited the speakers to provide more written materials to supplement their brief remarks. The witnesses and others whose names are marked with an asterisk (\*) provided written materials. The appendix reprints the speakers’ materials. [*See the yellow pages.*]

### Legislative Analyst’s Briefing

To help legislators review how counties use their design-build powers, state law requires the Legislative Analyst’s Office (LAO) to collect 13 types of information about the counties’ projects and report to the Legislature (Public Contract Code §21033 [l], [m], and [n]). The hearing’s first presentation came from Mark Whitaker, the author of the LAO’s January 8, 2010 report.

Mark Whitaker, Fiscal and Policy Analyst \*  
Legislative Analyst’s Office

Conceding that his report contained “no shocking findings,” **Mark Whitaker** concluded that the information received from the counties was “generally positive.” Because of the small sample size --- just five completed projects --- it was hard to determine savings by comparing design-build with design-bid-build contracts. His “most notable” finding was the wide variety of projects that counties had built. Unlike the LAO’s 2005 report which looked at how counties applied the design-build method to relatively less complex projects, there were complex projects in this sample. All of the projects that Whitaker reviewed used the “best value method” for awarding contracts; none used the lowest-bidder method.

Whitaker gave the legislators three main recommendations:

- Remove the \$2.5 million statutory price threshold.
- Create a single, uniform design-build statute.
- Place more emphasis on cost.

Assigning cost just “ten percent is too small of a weight” for evaluating projects, Whitaker told the Committee, recommending that the law increase the weight of price in the best-value criteria to at least 20%.

Reacting to Whitaker’s reference to the “two-envelope method” of awarding contracts, **Senator Kehoe** asked for further explanation. Whitaker explained that with the two-envelope approach, county officials determine which companies meet the county’s minimum qualifications. Then, from the pool of firms that meet the minimum qualifications, county officials award the design-build contract to the applicant that offers to do the work at the lowest price.

### County Governments’ Reactions and Advice

Following the LAO’s briefing, Senator Cox asked four county officials to give legislators their reactions and advice.

Kanon R. Artiche AIA, County Architect \*  
County of Solano

Hardy Acree, Airports Director \*  
County of Sacramento

Massood Eftekhari, Deputy Public Works Director \*  
County of Los Angeles

Lou Cavagnaro, Assistant Director, General Services \*  
County of San Diego

**Kanon Artiche**, Solano County’s architect, told the Committee that the Solano County Board of Supervisors supports making permanent the statute which allows counties to use design-build contracting. Artiche also spoke in favor of a uniform design-build statute for local governments, for repealing the \$2.5 million price threshold for projects, and for allowing counties to use design-build contracts for all types of capital projects. While Solano County also supports the LAO’s recommendations, state law should not preclude a county’s ability to set a fixed cost for a project and award contracts based on best value. Regarding the so-called two-envelope approach, Artiche told the legislators that adding that method to the state law would be acceptable, provided that it was not a requirement so that counties could evaluate its use on a project-by-project basis. He also endorsed Jeremy

March's recommendation that state law should require counties to ask if design-build entities about violations of the federal or state False Claims Acts, but within a specified time frame of perhaps the last 10 years.

As Director of Airports for Sacramento County, **Hardee Acree** manages the Big Build, an airport expansion that is the largest capital improvement project in his County's history. Calling his experience with design-build contracting "positive," Acree said that it has saved time and money compared to the traditional design-bid-build contracting method. Design-build will save the County 18 months and about \$100 million to \$150 million above the airport expansion project's \$1.1 billion cost, according to Acree. He repeated Senator Cox's reference to design-build as another tool in the tool box. Although he "deeply regrets" not being able to use another alternative contracting method known as "construction manager at risk," Acree encouraged legislators to make the counties' design-build statute permanent.

Los Angeles County's Department of Public Works trained its staff for over a year before undertaking design-build contracting, explained **Massood Eftekhari**, the County's deputy public works director. One result is that the County now has 13 design-build projects underway, worth more than \$700 million. Eftekhari said that his County is also master-planning about \$3 billion of capital improvement projects. Los Angeles County supports eliminating the sunset clause for the counties' design-build statutes and agrees with the LAO's recommendations to eliminate the price thresholds and the project definitions. Eftekhari reported that his County also recommends eliminating the statutory criteria for life-cycle cost analysis and safety records. In addition, the County recommends eliminating the requirement on counties to enforce labor compliance programs on behalf of the State Department of Industrial Relations.

**Lou Cavagnaro**, San Diego County's assistant director, general services, relied on his 15 years of experience with design-build projects. His County has two design-build projects underway; both are county libraries. A third project is in the selection process and a fourth project is contemplated. Cavagnaro told legislators that the design-build method is compatible with another 14 projects that total \$4.6 million. He expects to save 20% compared to using the design-bid-build method. His County concurs that the statute should be permanent and counties should be able to use design-build contracts on projects that cost less than \$2.5 million. Cavagnaro concluded by supporting the use of best value source selection methods, as well as low bidding.



As the county panel concluded, Sacramento County's **Hardee Acree** spoke up and encouraged legislators to keep the statutory criterion for life-cycle cost analysis, directly disagreeing with Los Angeles County's **Massood Eftekhari**.

### Contractors' Reactions and Advice

Having heard from the county representatives, the Committee then turned to a panel of contractors for their reactions and advice.

Seth Boles, Operations Manager \*  
Hensel Phelps Construction Company

Robert J. Close, Vice President \*  
Parsons Brinckerhoff

Barbara Wagner, Senior Vice President \*  
Clark Construction Group

Kevin Dayton, State Government Affairs Director \*  
Associated Builders and Contractors of California

**Seth Boles** is the operations manager for Hensel Phelps Construction Company and he also spoke on behalf of the Associated General Contractors. After 21 years with Hensel Phelps, "the most important common denominator" for design-build projects is that they are "considered successful" by the owners as well as the construction companies. "The best proof is the results," Boles declared. The San Joaquin County administration building is a recent example and "was completed ahead of schedule and under budget." Boles recommended that the Legislature should specifically recognize the stipulated sum approach as an accepted best value selection process option. Disagreeing with the LAO's recommendation to give more weight to the cost component, Boles caused against using the lowest bid as the primary factor in a best value selection process. He said that many other important elements need to be weighed when determining best value.

As a vice president of Parsons Brinckerhoff, **Robert Close** is familiar with a wide range of public works projects both nationally and internationally. Although design-build contracting "does not automatically make a project successful," it can be an important tool for public agencies. Close called criticism of design-build projects "fabricated mis-information, based on selfish political agendas and not the

facts.” He agreed with many of the previous speakers’ recommendations to retain the statutory ability to use design-build methods.

Speaking for the Design/Build Institute of America, **Barbara Wagner** relied on her 25 years of design-build experience with the Clark Construction Group where she is a senior vice president. Wagner told the Senators that there are “no fatal flaws” in the use of design-build projects. Referring to her extensive handouts, she told the Committee that research shows that, on average, design-build is 33% faster in overall delivery, 12% faster in construction, and 5% cheaper in price. There were over 100 bills passed granting or expanding design-build authority in state legislatures during 2009. Her organization agrees with the LAO’s recommendations to make the county design-build statute permanent, to remove price limits, to remove project restrictions, and to enact a single statute. The two-envelope method is OK, Wagner said, as long as the design and technical solutions are properly weighted. Responding to questions from **Senator Kehoe**, Wagner disagreed with the LAO’s recommendation for a two-envelope system because it doesn’t allow for best value procurement. Her association had no view regarding reporting requirements.

**Senator Price** asked the panelists about the participation by small businesses and women-owned businesses in design-build projects. **Barbara Wagner** said that there were no differences in participation between design-bid-build and design-build. **Seth Boles** said that design-build contracting allows firms to reach higher rates of participation because the stipulated-sum approach gives the contractor more flexibility. **Robert Close** said that from the engineering firms’ perspective, under each approach, participation was about the same.

**Kevin Dayton** represented the Associated Builders and Contractors of California on this panel. Dayton told the Committee that his group does not oppose the design-build concept, but it has opposed design-build bills in the past because of three standard provisions that ABC considers unnecessary and disadvantageous to non-union contractors. Nevertheless, he was “optimistic” that objectionable statutory provisions will go away. First, the current labor compliance program will be phased out because of SB 9xx (Padilla, 2009). Second, the LAO has recommended changes to the best value criteria that include the possible elimination of provisions regarding safety records and skilled labor force availability. Dayton criticized the project labor agreement signed as part of the design-build process for the San Joaquin County administration building. His group had difficulty in obtaining public records such as the subcontractors’ bid lists and payroll records. Dayton recommended that future design-build laws ensure public access to those

documents, and submitted specific draft language. After the hearing, Dayton provided the Committee with six other proposed amendments to the design-build statutes.

In response to a question from **Senator Kehoe**, **Kevin Dayton** said that his group has no position on eliminating the statutory sunset or the price threshold. **Senator Cox** asked **Scott Boles**, if price isn't the key to design-build what is? Boles replied that the best value criteria succeed when the design-build team works together to come up with the best project which may not have the lowest price.

### Labor Organizations' Reactions and Advice

Because the legislative discussions about the design-build contracting method involve the county governments, the construction companies, and labor groups, the Committee wanted to hear from labor representatives.

Danny Curtin, Director  
California Conference of Carpenters

Cesar Diaz, Deputy Legislative Director \*  
State Building & Construction Trades Council of California

Ted Toppin, Legislative Director \*  
Professional Engineers in California Government

Murtaza H. Baxamusa, Director of Research & Policy \*  
Center on Policy Initiatives

Willie L. Pelote, Sr., Policy & Legislative Director  
American Federation of State, County and Municipal  
Employees (AFSME), AFL-CIO

Representing union carpenters, **Danny Curtin** said that he supported the LAO's recommendations. He also liked hearing about the stipulated sum approach and the two-envelope approach. Legislators should keep the statute's "flexibility" because picking a design-build team is "a subjective thing." Oversight avoids corruption and graft. Curtin asked legislators to "move the bill now" because working people need the jobs that come from public works projects. Responding to a question from **Senator Cox**, he added that participation in a state-certified apprenticeship program is sufficient to signify a qualified workforce.

**Cesar Diaz** represents the State Building and Trades Council which supports design-building contracting. Diaz referred to the “carefully negotiated language” in the current law which should “ensure the integrity” of the design-build process. He pointed to Sacramento County’s airport expansion as a prime example of the law’s benefits. Diaz told the Committee that his group opposes reducing the requirements for apprenticeship programs, contractors’ safety records, and labor compliance programs because they result in a highly skilled workforce which reduces delays and promotes efficiency.

Taking a self-described “contrary view,” **Ted Toppin** told legislators that the Professional Engineers in California Government doesn’t support design-build contracting for four reasons: (1) design-build laws favor contractors over taxpayers, (2) design-build contracts avoid competitive bids in favor of best-value lump sum bids, (3) the design-build selection process is highly subjective, and (4) design-build methods eliminate public inspection of the public works projects. His group is neutral on extending the sunset clause for the counties’ design-build statute, provided that the Legislature requires expanded objective reporting. Toppin then specifically alleged that Sonoma County’s report to the LAO incorrectly reported the cost of its design-build contract. Toppin also claimed that Stanislaus County officials ignored state law when awarding their design-build contract for a swimming pool, failing to consider cost, life-cycle costs, and safety records, as required by law. Further, Toppin said that Solano County incorrectly reported contract costs and didn’t consider the cost criterion when awarding the contract. He told legislators that PECG opposes the expansion of design-build contracting to other projects and opposes a standard statute. [*Written reactions from Stanislaus County and Solano County appear in the yellow pages.*] **Senator Price** asked Toppin if design-build contracting has “any redeeming social value at all,” to which Toppin replied that state law should follow the approach for state highways that relies on early involvement and inspection.

**Murtaza Baxamusa** is the Center on Policy Initiative’s research and policy director. Acknowledging that design-build contracting can be faster than design-bid-build, Baxamusa noted that it removes public agencies’ control over projects. “You get what you pay for” with design-build contracts, he said, so that repair and maintenance with lots of change orders can be problems. Public officials need to estimate and fund a project’s full costs early. Further, public agencies should not out-source oversight and monitoring, including labor compliance, because inspection is inherently a public responsibility. Because of the higher cost of monitoring

and enforcement, Baxamusa told the legislators that the \$2.5 million price threshold makes sense.

AFSCME's **Willie Pelote** said that he agreed with Ted Toppin and Murtaza Baxamusa because he's interested in protection for public employees. Pelote told legislators that he didn't like what happened with last year's State Budget agreements. He wants to preserve the amount of work that civil service workers traditionally conduct.

### Others' Reactions and Advice

Following the organized panels, Senator Cox called for public comments and five other speakers shared their views with the Committee members.

Richard Markuson, Legislative Advocate  
Western Electrical Contractors' Association

Carlos Mejia, Political Organizer  
AFSCME Council 36

Mark Smith, Legislative Advocate  
American Council of Engineering Companies - California

Joseph Cruz, Director of Government Affairs \*  
California Alliance for Jobs

Thomas Vu, Legislative Advocate  
California Chamber of Commerce

On behalf of the Western Electrical Contractors Association, **Richard Markuson** agreed with both Kevin Dayton and Danny Curtin. Attention should move to the pre-selection period, he said. Markuson agreed with the recommendation for a standardized statute.

**Carlos Mejia**, AFSCME Council 36's political organizer, encouraged legislators to keep the \$2.5 million price threshold in order to protect traditional public sector jobs, especially maintenance workers.

The American Council of Engineering Companies has been a consistent supporter and sponsor of the earlier design-bid bills, according to **Mark Smith**. Smith said

that the contracting method may not be the appropriate tool for every public works project, but the technique belongs in local officials' "arsenal."

**Joseph Cruz** spoke on behalf of the California Alliance for Jobs and told the Committee members that design-build contracts are supposed to create jobs and fill public works needs.

The California Chamber of Commerce is a strong supporter of design-build contracting, said legislative advocate **Thomas Vu**, because of the need to stimulate the economy.

### LEGISLATORS' CONCLUDING REMARKS

When the 19 speakers had finished giving the legislators their advice, **Senator Kehoe** called the Committee's oversight hearing "informative." **Senator Price** said that he would "consider very seriously" what he had heard during the hearing. In concluding the Committee's hearing promptly at 11 o'clock, **Senator Cox** said that his focus would be jobs, declaring that "we need to stabilize this economy."

### ADDITIONAL ADVICE

In addition to those who spoke at the Committee's January 20 oversight hearing, written advice to legislators came from four others.

Jeremy G. March, Author \*

*California Public Contract Law: Basic Principles and Special Requirements*

Philip M. Vermeulen, Legislative Advocate \*

Several contractors' groups

Patricia Hill Thomas, Chief Operations Officer/Assistant Executive Officer\*  
County of Stanislaus

Kanon R. Artiche AIA, County Architect \*

County of Solano

**Jeremy March**, author of *California Public Contract Law: Basic Principles and Special Requirements*, wrote to the Committee to recommend that the Legislature

should require counties to ask design-build bidders about any violations of the federal or state False Claims Acts. March provided specific language for Public Contract Code §21033 (d)(3)(A)(xii).

The Committee received written advice from **Philip Vermeulen** on behalf of his clients the Engineering Contractors' Association, the California Fence Contractors' Association, the Marin Builders' Association, the Flasher/Barricade Association, and the California Chapter of the American Fence Contractors' Association. Vermeulen recommended that inserting "objective" into the statutory definition of "best value" in Public Contract Code §21033 (d)(2)(A)(ii).

Stanislaus County official **Patricia Hill Thomas** wrote in response to the comments at the hearing by PECG's **Ted Toppin** regarding the Stanislaus County's use of design-build contracting for a community swimming pool in the unincorporated town of Empire. In her six-page letter and the three-page appendix which replies to Toppin's points, Hill Thomas acknowledges that one of the County's answers to the LAO's survey was incorrect. She wrote, "Our response erroneously reported the evaluation factors used for the selection of the County's architectural/engineering services for the project, not the evaluation criteria required or used for the design-build construction proposals."

After speaking to legislators at their hearing, Solano County Architect **Kanon R. Artiche** also provided a written response to the comments by PECG's **Ted Toppin** regarding Solano County's use of design-build contracting. Contradicting Toppin, Artiche wrote that the "County complied with the current requirements of the law" for the Vallejo Health and Social Services Building, including weighted values, stipulated sum pricing, life cycle costs, and the statutorily required weighting.

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## Table of Contents

	<u>Page</u>
Introduction	1
LAO's Oversight Report	1
Counties' Public Works Contracts	2
What the LAO Said Five Years Ago	4
What the LAO Says Now	4
Legislators' Choices	5
Timing	
Project Limits	
Contract Procedures	
Qualifications	

The Committee's staff appreciates the help it received from:

- **Helen Ho**, the Committee's Senate Fellow in 2008-09 and author of "Local Agencies and Design-Build Contracting: A Briefing Paper for Legislators and Their Staffs," September 9, 2009.
- **Jeremy G. March**, the author of *California Public Contract Law* (Solano Press Books, 2007).
- **Mark Whitaker** of the Legislative Analyst's Office who wrote *Counties and Design-Build*, January 8, 2010: [www.lao.ca.gov/laoapp/PubDetails.aspx?id=2161](http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=2161)

**Faster, Cheaper, Better?**  
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This briefing paper prepares the members of the Senate Local Government Committee for their January 20, 2010 oversight hearing on how counties use the design-build method of contracting for public works projects.

The Legislature first allowed county governments to use design-build contracting 15 years ago (AB 1717, Cortese, 1995). Today, all counties can use the design-build method to construct buildings and related improvements and county sanitation wastewater treatment facilities that cost more than \$2.5 million (Public Contract Code §20133). However, that statutory authority will automatically terminate on January 1, 2011 (Public Contract Code § 21033 [p]). The *Appendix* reprints the statutory language.

One of the central duties of any legislative body is to review how their statutes work and to determine if legislators should amend those laws. Oversight hearings allow legislators to identify public policy problems and explore statutory solutions. The Committee's January 20 hearing lets legislators review how counties have used their design-build powers, identify any problems, and prepare for new bills that may extend that authority.

**LAO's Oversight Report**

To help legislators review what counties have done with their design-build powers, on January 8, 2010, the Legislative Analyst's Office released *Counties and Design-Build*: [www.lao.ca.gov/laoapp/PubDetails.aspx?id=2161](http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=2161)

The LAO learned that five counties have used the design-build contracting method to complete five projects:

<b><u>County</u></b>	<b><u>Project</u></b>	<b><u>Estimated Costs</u></b>	<b><u>Actual Costs</u></b>
Napa	Parking facility	\$15,200,000	\$15,970,000
San Joaquin	Administration building	\$92,860,000	\$92,727,765
Solano	Health & social services	\$27,799,741	\$27,760,705
Sonoma	Children's home	\$9,152,011	\$7,654,810
Stanislaus	Community swimming pool	\$2,641,125	\$2,500,000

In addition, four counties told the LAO that they have 10 design-build projects underway, but not yet complete:

<u>County</u>	<u>Project</u>	<u>Estimated Costs</u>
Los Angeles	Fire station	\$8,967,000
Los Angeles	Fire station	\$9,464,000
Los Angeles	Medical office building	\$10,800,000
Los Angeles	Park, gym, community center	\$11,500,000
Los Angeles	Historic refurbishment	\$47,794,000
Los Angeles	Hospital	\$322,600,000
Placer	Adult correctional facility	\$79,988,000
Sacramento	Airport terminal	\$770,000,000
San Bernardino	Medical center	\$20,549,817
San Bernardino	Juvenile facility	\$55,600,106

### Counties' Public Works Contracts

The Local Agency Public Construction Act spells out the procedures that local officials must follow when awarding public works contracts (Public Contract Code §20100, et seq.). The Act has historically required public agencies to use the *design-bid-build* method. However, state law allows specified state departments and local agencies to use the alternative *design-build* method.

The *design-bid-build* method is the most widely-used and well-established project delivery method. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. The design phase generally accounts for 5 to 10% of the project's total cost. Once project designs are complete, local officials invite bids from the construction community and award the contract to the lowest responsible bidder. The construction phase makes up the remaining 90 to 95% of the project's total cost.

*Design-bid-build* was a reaction to the favoritism, corruption, and waste associated with public works projects in the 19th century. Ever since contracting reforms formally separated the design and construction phases at the turn of the century, design-bid-build became the traditional procurement method for public agencies. However, some public officials are concerned about the inefficiency of the design-

bid-build method in terms of project cost, schedule, and productivity. They wanted to experiment with alternative project delivery methods.

The *design-build* project delivery method is a popular alternative to design-bid-build. Under design-build, the owner contracts with a single entity to both design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price. The winning “design-build entity,” which can be a single firm, a consortium, or a joint venture, is responsible for completing the design and all construction at the contract’s fixed price.

County officials must follow a four-step *design-build* method:

- Prepare documents describing the project and its specifications.
- Prepare a detailed request for proposals, inviting competitive bids.
- Establish a detailed procedure to pre-qualify design-build entities.
- Establish the procedures to select the design-build entity.

When pre-qualifying design-build entities, officials must collect at least 11 types of information. The design-build entity must list its proposed mechanical subcontractors and licenses. The entity must also report past worker safety violations, contracting problems, contract defaults, license violations, payroll violations, and bankruptcies. The entity must verify this information under oath.

When awarding contracts, county officials must select the design-build entity by using either a competitive bidding process in which the award goes to the lowest responsible bidder, or a “best value competition” in which the officials set the criteria. If officials choose to evaluate bids based on best-value, they must include the following five factors among their criteria and assign a minimum 10% weight to each:

- Price.
- Technical design and construction expertise.
- Life cycle costs over 15 years or more.
- Skilled labor force availability.
- Safety record.

The design-build statute defines “skilled labor force availability” to mean the bidder has an agreement with a registered apprenticeship program, approved by the

California Apprenticeship Council, which has graduated apprentices in each of the preceding five years.

The county must rank the top three responsive bidders and award the contract to the bidder whose proposal was ranked “most advantageous.” When officials announce the award, they must also identify the second and third ranked bidders.

### **What the LAO Said Five Years Ago**

In 2005, the LAO published a review of state and local design-build practices, *Design-Build: An Alternative Construction System*. The Legislative Analyst compared the advantages and disadvantages of the design-build and design-bid-build methods. The report found that the design-build method can be a useful option for some public construction projects. The report also recommended:

- The Legislature should adopt an inclusive, uniform design-build statute that applies to all public entities.
- Design-build should be optional and not replace design-bid-build.
- Contracts for most project costs should be based on competitive bidding.
- State law should ensure access for the greatest number of contractors.
- There should be no cost limitations.
- Design-build contracting should be limited to buildings and related infrastructure.

### **What the LAO Says Now**

In the 2010 review, *Counties and Design-Build*, the LAO offered four observations and recommendations. According to the LAO, the Legislature should:

- Adopt “a single statute ... that applies to all public agencies providing the same authority and limitations.”
- Limit its reporting requirements to new types of infrastructure projects, “such as ... a limited number of highway projects.”
- Eliminate maximum or minimum cost thresholds for design-build projects.
- Make project cost “a larger factor in awarding the [design-build] contract.”

Elaborating on that fourth recommendation, the LAO encouraged the Legislature to explicitly authorize the so-called “two-envelope system” of awarding contracts in which prequalified contractors:

develop a technical proposal, which is submitted in one envelope, with their price in a second envelope ... 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.

### Legislators' Choices

With the January 1, 2011 sunset clause in mind, legislators have already introduced bills. **Senate Bill 879 (Cox)** makes the counties' design-build authority permanent and repeals future reporting requirements. To prepare for acting on the Cox bill and perhaps other measures in the coming months, legislators have several policy choices to consider.

**Timing.** State law has allowed county officials to experiment with the design-build contracting method, repeatedly extending the statute's sunset clause from 2000 to 2006 to 2011.

- ☞ *Should the Legislature allow the current law to sunset on January 1, 2011?*
- ☞ *Should the Legislature extend the sunset clause to January 1, 2016?*
- ☞ *Should the Legislature make the current law permanent?*

**Project Limits.** After considering the LAO's 2005 and 2010 recommendations:

- ☞ *Should the Legislature retain or repeal the \$2.5 million minimum price threshold for county design-build projects?*
- ☞ *Should the Legislature retain or repeal the language that limits county design-build contracts to buildings and related improvements and wastewater treatment facilities?*

**Contract Procedures.** The counties' design-build statute is slightly different from the laws that allow cities and redevelopment agencies to use design-build contracts.

- ☞ *Should the Legislature repeal the separate statutes in favor of a single law that applies to counties, cities, special districts, and redevelopment agencies?*
- ☞ *Should the Legislature explicitly allow the "two-envelope" system?*
- ☞ *Should the Legislature repeal the current requirements for the LAO to report on cities and redevelopment agencies' design-build contracts?*

**Qualifications.** In addition to the LAO's recommendations, the Committee also received specific advice from Jeremy G. March, an attorney and the author of *California Public Contract Law*, regarding the information that county officials should collect as part of their request for proposals. To increase public confidence in counties' design-build contracts, March believes that counties should specifically ask a design-build entity whether it has ever been convicted of --- or admitted to --- violating the federal False Claims Act or the California False Claims Act.

☞ *Should the Legislature require counties to ask design-build entities if they have violated the federal False Claims Act or the California False Claims Act?*

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**Appendix: Public Contact Code §20133**

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars (\$2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) (A) For contracts awarded prior to either the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subparagraph (B), if the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts awarded on or after both the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subparagraph, the board of supervisors shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wages requirements on those projects.

(C) The Department of Industrial Relations may waive the fee set forth in subparagraph (B) if the board of supervisors has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for the board of supervisors if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.



(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment 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.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection. (4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be af-

forded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

- (1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.
- (2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.
- (4) The estimated and actual length of time to complete the project.
- (5) The estimated and actual project costs.
- (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
- (7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

**Senate Committee on Local Government**  
**Senator Patricia Wiggins, Chair**  
**State Capitol, Sacramento, California 95814**  
(916) 651-4115  
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September 9, 2009

**Local Agencies and Design-Build Contracting:**  
**A Briefing Paper for Legislators and Their Staffs**

Each year, a handful of design-build bills move through the Legislature. You or your boss may be asked by a lobbyist to carry a bill that grants design-build authority to a local entity. You or your boss may be preparing to hear a design-build bill in a committee or on the Floor. If this is the first time you've heard of design-build, then you're in luck because this paper was written just for you.

Before you is a brief introduction to design-build contracting and the legislative history of relevant statutes. This paper focuses on local governments' design-build authorizations and only quickly mentions school districts and transit operators. The use of design-build by state agencies, including the State Department of General Services, is beyond this scope of this paper.

**Contracting by local agencies**

In the contracting world, "project delivery method" refers to the contracting agency's method of procuring design and construction services. Design-build is just one of several different project delivery methods.

The Local Agency Public Construction Act spells out the requirements and procedures that local officials must follow when awarding public works contracts (Public Contract Code §20100, et seq.). The Act has historically required public agencies to use the *design-bid-build* method. However, over the past 10 years, the Legislature has allowed specified state departments and local agencies to use the alternative *design-build* method.

**What is *design-bid-build*?**

The *design-bid-build* method is the most widely-used and well-established project delivery method. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. The design phase generally accounts for 5 to 10% of the project's total cost. Once project designs are complete, local officials invite bids from the construction community and award the contract to the lowest responsible bidder. The construction phase makes up the remaining 90 to 95% of the project's total cost.

Design-bid-build was a reaction to the favoritism, corruption, and waste associated with major infrastructure projects in the 19th century. Ever since contracting reforms formally separated the design and construction phases at the turn of the century, design-bid-build became the traditional procurement method for public agencies. However, some public officials are concerned about the efficiency of the design-bid-build method in terms of project cost, schedule, and productivity. For this reason, there is growing interest among local and state agencies to experiment with alternative project delivery methods.

### **What is *design-build*?**

The *design-build* project delivery method is one of the most popular alternatives to design-bid-build. Under design-build, the owner contracts with a single entity to both design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price. The winning “design-build entity,” which can be a single firm, a consortium, or a joint venture, is responsible for completing the design and all construction at the contract’s fixed price.

Proponents say the design-build method can expedite project completion (and, therefore, reduce construction costs) when compared to the design-bid-build method. This advantage occurs in part because design-build allows construction to begin during the design phase. Also, because the designer and contractor are members of the same entity, the contracting agency does not get pulled into time-consuming and costly disputes and lawsuits that often occur between the two parties. Proponents also say that design-build promotes innovative design and construction approaches by giving contractors more flexibility over design, materials, and construction methods.

Design-build is not without its disadvantages. Because the owner does not fully define the project upon entering into a contract, the owner gives up control over design and construction quality. Furthermore, because the designer and builder are on the same team, they share a financial incentive to reduce quality to increase their profits. Critics also say design-build results in more expensive change orders and opens the door to favoritism in the selection process.

### **Which method is better?**

Each project delivery method offers certain advantages and disadvantages and no single method is appropriate for all projects. Experts say the appropriate use of a particular method depends on many factors, including the project budget, schedule, risk allocation, the contracting agency's level of expertise, and the ability of the owner to define the scope of work clearly. On one hand, projects that are relatively simple, like office buildings, and require a quick turn around are ideal design-build candidates. On the other hand, projects with major unknowns in scope, complex environmental or permitting issues, or unresolved third party concerns are not suitable design-build candidates.

## Legislative history

Beginning in the 1990s, the Legislature passed several bills authorizing specified local agencies to enter into design-build contracts to construct public works. The Counties of Alameda, Sacramento, Santa Clara, Solano, and Tulare and the Cities of West Sacramento and Davis were the first local governments permitted to experiment with the design-build method. For several years, the Legislature continued to take a piecemeal approach, adding counties and cities one at a time to the list of those eligible to use the design-build method.

Today, all **counties** can use the design-build method to construct buildings and related improvements and wastewater treatment facilities that cost more than \$2.5 million (Public Contract Code §20133; SB 416, Ashburn, 2007). Similarly, all **cities** can use the design-build method to construct buildings and related improvements worth more than \$1 million (Public Contract Code §20175.2; AB 642, Wolk, 2008). A pilot program also permits cities, counties, and special districts to use the design-build method to construct 20 local wastewater treatment facilities, local solid waste facilities, or local water recycling facilities (Public Contract Code §20193, et seq.; AB 642, Wolk 2008).

Cities and counties have used their design-build authority to construct a variety of buildings, including a juvenile justice center, a children's shelter, a library, county recorder's office buildings, police stations, and a pump station.

The California Constitution gives **charter cities** broad control over their "municipal affairs." The courts have ruled that a city's contracting procedures are a municipal rather than a statewide concern (*Piledrivers' Local Union v. City of Santa Monica* (1984) 151 Cal.App.3d 509; *Smith v. City of Riverside* (1973) 34 Cal.App.3d 529). Therefore, charter cities have the authority to establish their own public contracting rules.

**Redevelopment** officials can use the design-build method for 10 public improvement projects worth more than \$1 million (Public Contract Code §20688.6; SB 4xx, Cogdill, 2009). Redevelopment agencies must submit their projects to the State Public Works Board for approval. The Board maintains a list of approved and denied projects at [www.spwb.ca.gov/redevelopment\\_agency/](http://www.spwb.ca.gov/redevelopment_agency/).

An attempt in 2006 to authorize all **special districts** to use the design-build method (SB 1431, Cox, 2006) died in the Senate Appropriations Committee. The Legislature continues to take an incremental approach towards granting design-build authority to special districts. Table 1 summarizes the legislation authorizing various special districts to use the design-build method.

Bills introduced in the 2009-10 legislative session reflect special districts' growing interest in the design-build method:

- The Metropolitan Water District of Southern California wants to use the design-build method to construct and install solar energy projects (AB 958, Eng, 2009; Status: Governor's Desk).



- Health care districts, which are under pressure to comply with the state’s seismic safety standards, want to use the design-build method (AB 405, Caballero, 2009; Status: Assembly Appropriations Committee, two-year bill).
- Transit operators want an extension of their design-build authority sunset date from January 1, 2011 to January 1, 2015 (AB 729, Evans, 2009; Status: Governor’s Desk).

**Table 1.** Special districts’ design-build authority.

Special district	Authorization	Types of projects
Orange County Sanitation District	SB 645, Correa, 2007	Projects exceeding \$6 million
Santa Clara Valley Trans. Authority	AB 904, Alquist, 1999	Transit stations, park-and-ride lots, maintenance facilities, and office buildings
Santa Clara Valley Water District	AB 674, Dutra, 2001	Projects exceeding \$2.5 million
Sonoma Valley Health Care District	SB 1699, Wiggins, 2008	Hospital or health facility buildings and improvements exceeding \$2.5 million
Transit operators	AB 958, Scott, 2000	Capital maintenance or capacity-enhancing rail projects exceeding \$25 million and non-rail transit projects exceeding \$2.5 million

For a summary of the bills and code sections authorizing local agencies to use the design-build method, see Appendix A.

### Nuts and bolts

State law spells out the criteria and procedures that local officials must follow when using the design-build method. Here are the major provisions for counties, cities, redevelopment agencies, and some special districts:

Authorized projects. State law limits the types and cost of projects that are eligible for local agency design-build contracting. Cities and counties, for example, can use the design-build method for buildings and related improvements, but not for the construction of streets and highways, public rail transit, and water resources facilities. A handful of special districts can use the design-build method for more complex projects. See Appendix A for a summary of the types and cost requirements of projects eligible for design-build contracting.

Prevailing wage enforcement. Labor compliance programs (LCPs) enforce prevailing wage for public agencies that award public work contracts. As a condition of using the design-build method, local agencies must establish LCPs or contract with a third party to operate their LCPs. The State Department of Industrial Relations (DIR) is responsible for the approval and review of LCPs. This requirement doesn’t apply if the local agency or the design-build entity has a collective bargaining agreement that binds all of the contractors performing work on the project. In the contracting world, this form of an agreement is called a “project labor agreement.”

Recently, the Legislature shifted the enforcement of prevailing wage requirements to the DIR (SB 9xx, Padilla, 2009). Local agencies that use the design-build method will not establish LCPs, but instead, they will pay the DIR a fee. The DIR will use the fees to fund its prevailing wage enforcement activities. There is no exemption for local agencies or design-build entities that have entered into project labor agreements. These requirements take effect once the DIR sets up the new fee-supported system. For more information, visit the DIR's LCP webpage: [www.dir.ca.gov/lcp.asp](http://www.dir.ca.gov/lcp.asp).

Method. Local officials must follow a four-step design-build method:

- Prepare documents describing the project and its specifications.
- Prepare a detailed request for proposals, inviting competitive bids.
- Establish a detailed procedure to pre-qualify design-build entities.
- Establish the procedures to select the design-build entity.

When pre-qualifying design-build entities, local officials must collect at least 11 types of information. The design-build entity must list its proposed mechanical subcontractors and licenses. The entity must also report past worker safety violations, contracting problems, contract defaults, license violations, payroll violations, and bankruptcies. The entity must verify this information under oath.

When awarding contracts, local officials must select the design-build entity by using either a competitive bidding process in which the award goes to the lowest responsible bidder, or a “best value competition” in which the local officials set the criteria. If local officials choose to evaluate bids based on best-value, they must include the following five factors among their criteria and assign a minimum 10% weight to each:

- Price;
- Technical design and construction expertise;
- Life cycle costs over 15 years or more;
- Skilled labor force availability; and
- Safety record.

Cities must weigh these five best value factors *equally*. Local agencies' design-build statutes define “skilled labor force availability” to mean the bidder has an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years.

The local agency must rank the top three responsive bidders and award the contract to the bidder whose proposal was ranked “most advantageous.” When local officials announce the award, they must also identify the second and third ranked bidders.

Performance. The winning design-build entity:

- Must be bonded and carry errors-and-omissions insurance that covers its design and architectural services.
- Must adhere to local performance criteria and design standards. Deviations require local officials' written consent.

- May use subcontractors who were not listed in its original bid. The entity must award subcontracts by following a process set by the county or city, including publishing notices and setting deadlines.

If the local agency's bid request required the design-build entity to carry a performance and payment bond, local officials can retain only 5% of the contract.

Evaluation. Because design-build contracting is a relatively new practice in the public sector, legislators want local agencies to report to the Legislative Analyst's Office (LAO) regarding their design-build experiences. The Legislative Analyst, in turn, must report on these design-build experiences to the Legislature by certain deadlines.

In 2005, the Legislative Analyst's Office published a review of state and local design-build practices, *Design-Build: An Alternative Construction System*. The Legislative Analyst compared the advantages and disadvantages of the design-build and design-bid-build methods. The report found that the design-build method can be a useful option for some public construction projects. The report also recommended:

- The Legislature should adopt an inclusive, uniform design-build statute that applies to all public entities.
- Design-build should be optional and not replace design-bid-build.
- Contracts for most project costs should be based on competitive bidding.
- State law should ensure access for the greatest number of contractors.
- There should be no cost limitations.
- Design-build contracting should be limited to buildings and related infrastructure.

This report is available on the Legislative Analyst Office's website:  
[www.lao.ca.gov/laoapp/PubDetails.aspx?id=1218](http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=1218).

The design-build statutes for local agencies also include sunset dates (Table 2). As these statutes expire, local agencies will likely ask the Legislature to extend their design-build authority. At that time, the Legislature may extend the authority, make the authority permanent, or allow the authority to expire by not taking any action.

**Table 2.** Design-build legislation sunset dates

Sunset Date	Agency
None	Santa Clara Valley Transportation Authority
January 1, 2011	Counties Santa Clara Valley Water District Sonoma Valley Health Care District Transit operators
January 1, 2013	Orange County Sanitation District
January 1, 2016	Cities Redevelopment agencies
January 1, 2020	Counties, cities, and special districts (solid waste, water treatment, and water recycling facilities ONLY)

## **2000 Compromise**

The counties' design-build language in current law is the product of a compromise struck in 2000 among local officials, labor groups, and contractors (AB 2296, Dutra, 2000). Local officials wanted the flexibility and potential cost savings offered by design-build contracts. Labor unions wanted to ensure that contractors protected workers' interests. Contractors wanted to be sure that they had fair access to contracts. Since 2000, Legislators have used the counties' design-build language as a template for new design-build authorizations, including cities, redevelopment agencies, and individual special districts' authorizations.

## **Concerns still exist**

Not all parties are fond of the statutes born out of the 2000 compromise.

Non-union contractors believe the statutes give an unfair advantage to union contractors. As a condition of using the design-build method, a local agency must establish a labor compliance program (LCP). However, if the local agency or the design-build entity has entered into a project labor agreement with its contractors and subcontractors, the local agency is exempt from the LCP requirement. Non-union contractors oppose this exemption, arguing that local agencies are more likely to favor union contractors because PLAs are much cheaper to form than LCPs.

The statutes require local agencies to include "skilled labor force availability" as one of their best value factors. Non-union contractors oppose the statutes' definition of "skilled labor force availability," which requires contractors to obtain apprentices exclusively from apprenticeship programs that have graduated apprentices in the preceding five years. Because labor unions mostly control existing apprenticeship programs, non-union contractors believe this language puts them at a disadvantage.

Public agencies' employees typically oppose design-build authorizations because they worry about losing their jobs to private firms. Legislators face opposition from public agencies' employees when they try to authorize design-build contracting for non-building projects. For example, SB 233 (Cox, 2007) unsuccessfully attempted to expand the definition of "project" to include all public improvements, except for streets, roads, and bridges. In the end, the author could only expand the definition to include wastewater treatment facilities.

### Credits

Helen Ho, a Committee Consultant to the Senate Local Government Committee, authored this briefing memo as part of her assignment as a 2008-09 Senate Fellow. Production assistance came from Elvia Diaz, the Committee Assistant.

Careful reading and useful comments improved the final memo. The Committee's staff is grateful to the following people who were generous with their time and expertise:

- Kiana Buss, California State Association of Counties
- Jennifer Klein, Assembly Local Government Committee
- Marianne O'Malley, Legislative Analyst's Office
- Thomas Vu, California Special Districts Association
- Doug Yoakam, Senator Dave Cox's office

### Sources

These materials were helpful in preparing this briefing memo:

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**APPENDIX A:**  
**An Inventory of Local Agencies' Design-Build Statutes**

Local agency	Code section	Related legislation	Sunset date	Types of projects
Cities	<b>PCC §20175.2</b>	AB 642 (Wolk, 2008) SB 645 (Correa, 2007) SB 535 (Runner, 2006) AB 1329 (Wolk, 2005)	January 1, 2016	Buildings and related improvements exceeding \$1 million
Cities, counties, and special districts	<b>PCC §20193, et seq.</b>	AB 642 (Wolk, 2008)	January 1, 2020	Regional and local wastewater treatment facilities, solid waste facilities, and water recycling facilities exceeding \$2.5 million; limit 20
Community college districts	<b>EDC §81700, et seq.</b>	SB 614 (Simitian, 2007) AB 1000 (Simitian, 2002)	January 1, 2014	Community college facilities exceeding \$2.5 million
Counties	<b>PCC §20133</b>	SB 416 (Ashburn, 2007) SB 233 (Cox, 2007) SB 287 (Cox, 2005) AB 1511 (Evans, 2005) AB 2296 (Dutra, 2000)	January 1, 2011	Buildings and related improvements and county sanitation wastewater treatment facilities exceeding \$2.5 million
Orange County Sanitation District	<b>PCC §20785</b>	SB 645 (Correa, 2007)	January 1, 2013	Projects, including public wastewater facilities, exceeding \$6 million
Redevelopment agencies	<b>PCC §20688.6</b>	SB 4xx (Cogdill, 2009)	January 1, 2016	Public improvement projects exceeding \$1 million; limit 10
Santa Clara Valley Transportation Authority	<b>PCC §20301.5</b>	AB 2909 (Asm Trans, 2000) AB 904 (Alquist, 1999)	None	Transit center or station, transit park-and-ride lot, bus and light rail maintenance facility, office building, and the Fremont-South Bay Commuter Rail Project
Santa Clara Valley Water District	<b>PCC §21162</b>	AB 674 (Dutra, 2001)	January 1, 2011	Projects exceeding \$2.5 million
School districts	<b>EDC §17250.10, et seq.</b>	SB 614 (Simitian, 2007) AB 1402 (Simitian, 2001)	January 1, 2014	School facilities exceeding \$2.5 million
Sonoma Valley Health Care District	<b>H&amp;SC §32132.5</b>	SB 1699 (Wiggins, 2008)	January 1, 2011	Buildings and improvements directly related to a Sonoma Valley Health Care District hospital or health facility building exceeding \$2.5 million
Transit operators	<b>PCC §20209.5, et seq.</b>	AB 378 (Duvall, 2008) AB 372 (Nation, 2006) SB 1130 (Scott, 2004) AB 958 (Scott, 2000)	January 1, 2011	Capital maintenance or capacity-enhancing rail projects exceeding \$25 million and non-rail transit projects exceeding \$2.5 million

**APPENDIX B:**  
**An Inventory of Local Agency Design-Build Bills**

**2009**

Bill Number	Author	Status	Subject
AB 263	Miller	Introduced (Asm Trans)	Authorizes the Riverside County Transportation Commission to use D/B for transportation improvements on SR 91
AB 405	Caballero	Asm Appr	Authorizes health care districts to use D/B
AB 729	Evans	Governor's Desk	Extends the sunset date for transit operators' D/B authorization
AB 958	Eng	Governor's Desk	Authorizes metropolitan water districts to use D/B for solar energy systems
AB 1062	Garrick	Introduced (Asm B&P)	Revises the definition of "skilled labor force availability" in public entities' design-build statutes
AB 1063	Garrick	Introduced (Asm B&P)	Revises the definition of "acceptable safety record" in public entities' design-build statutes
AB 1064	Garrick	Introduced (Asm B&P)	Deletes a labor compliance program exemption in public entities' design-build statutes
SB 4xx	Cogdill	<b>Signed</b>	Authorizes various public agencies, including redevelopment agencies, to use D/B for specific projects
SB 9xx	Padilla	<b>Signed</b>	Amends the labor compliance program law and makes conforming changes to public agencies' design-build statutes
SB 43	Alquist	Governor's Desk	Authorizes a JPA, that includes the City of Santa Clara and the City's redevelopment agency, to award a no-bid D/B contract for the construction of a football stadium

**2008**

Bill Number	Author	Status	Subject
AB 387	Duvall	<b>Signed</b>	Exempts transit operators from a \$2.5 million threshold requirement when using D/B to acquire and install security technology
AB 642	Wolk	<b>Signed</b>	Authorizes all cities to use D/B; authorizes cities, counties, and special districts to use D/B for 20 wastewater, solid waste, or water recycling facilities
AB 704	Eng	Failed in SLG	Authorizes metropolitan water districts to use D/B for solar energy systems
AB 2993	Plescica	Introduced	Authorizes metropolitan water districts to use D/B for renewable energy projects
SB 1350	Cedillo	Died in Senate Appr	Authorizes the Los Angeles County Metropolitan Transportation Commission to use D/B for a tunnel closing the gap between I-710 and I-210 in L.A. County
SB 1486	Ducheny	<b>Signed</b>	As a part of enacting the Otay Mesa East Toll Facility Act, authorizes the San Diego Association of Governments (SANDAG) to use D/B for specified state highway projects and facilities
SB 1699	Wiggins	<b>Signed</b>	Authorizes the Sonoma Valley Health Care District to use D/B

## 2007

Bill Number	Author	Status	Subject
AB 1036	Keene	Introduced	Authorizes sanitation districts and levee districts to use D/B
AB 1240	Benoit	Introduced	Extends transit operators' D/B authorization to the Riverside County Transportation Commission
AB 1373	Emmerson	Introduced	Authorizes the San Bernardino Associated Governments (SANBAG) to use D/B for improvements to highways that provide access to emergency service health facilities in San Bernardino County
AB 1499	Garrick	Introduced	Authorizes the Department of Transportation to use D/B for highway construction
SB 56	Runner	Died in Asm Appr	Authorizes state and local transportation entities to use D/B for 10 transportation projects
SB 233	Cox	<b>Signed</b>	Authorizes counties to use D/B for county wastewater treatment facilities
SB 416	Ashburn	<b>Signed</b>	Authorizes all counties to use D/B
SB 442	Ackerman	Failed in Sen Trans	Authorizes the Orange County Transit District to use D/B for a HOV lane
SB 614	Simitian	<b>Signed</b>	Amends school districts and community college districts' design-build statutes: (1) reduces the minimum project cost threshold from \$10 million to \$2.5 million; (2) extends the sunset dates; and (3) authorizes all community college districts to use D/B
SB 645	Correa	<b>Signed</b>	Extends cities' D/B authority to the City of Stanton; authorizes the Orange County Sanitation District to use D/B
SB 683	Runner	Introduced	Authorizes the City of Santa Paula to use D/B for a wastewater treatment plant

## 2006

Bill Number	Author	Status	Subject
AB 372	Nation	<b>Signed</b>	Extends the sunset date for transportation operators' D/B authority from January 1, 2007 to January 1, 2011 and adds new cost requirements
AB 2580	Walters	Died on Asm Floor	Authorizes the Orange County Sanitation District to use D/B
AB 2604	Emmerson	Failed in Asm Trans	Authorizes the San Bernardino Associated Governments (SANBAG) to use D/B for improvements to the interchange of Tippecanoe Avenue and Interstate 10 in the City of San Bernardino
SB 92	Dunn	Died on Asm Floor	Authorizes the Orange County Sanitation District to use D/B
SB 371	Torlakson	Died on Asm Floor	Authorizes certain state and local transportation entities to use D/B for specified highway construction projects; later amended in the Senate Appropriations Committee to only contain intent language
SB 535	Runner	<b>Signed</b>	Extends cities' D/B authorization to the City of Victorville
SB 1026	Kuehl	<b>Signed</b>	Authorizes the LA County Metropolitan Transportation Authority to use D/B for an HOV lane
SB 1431	Cox	Died in Senate Appr	Authorizes all cities, counties, and special districts to use D/B for public improvements



**2005**

Bill Number	Author	Status	Subject
AB 245	Walters	Gut and amend	Authorizes Orange County to use D/B
AB 1329	Wolk	<b>Signed</b>	Authorizes cities in the Counties of Solano and Yolo to use D/B
AB 1511	Evans	<b>Signed</b>	Extends counties' D/B authorization to 6 more counties; lowers minimum project cost threshold; and extends sunset date from January 1, 2006 to January 1, 2010
AB 1699	Frommer	Gut and amend	Authorizes self-help transportation agencies to use D/B for eight state highway construction projects
SB 287	Cox	<b>Signed</b>	Extends counties' D/B authority to 17 more counties

**2004**

Bill Number	Author	Status	Subject
AB 2438	Leslie	Introduced	Extends counties' D/B authority to Placer County solely for the construction of a justice facility
AB 2746	Strickland	Introduced	Extends counties' D/B authority to the Cities of Fillmore and Santa Paula
SB 1793	McPherson	Died in Asm	Authorizes various local transportation authorities to use D/B for highway construction projects. Similar to AB 692 (2003), but applies to different transportation authorities.
SB 1130	Scott	<b>Signed</b>	Clarifies that transit operators may not use D/B for state highway construction or local street and road projects

**2003**

Bill Number	Author	Status	Subject
AB 692	Dutra	<b>Vetoed</b>	Authorizes various local transportation authorities to use D/B for highway construction projects
AB 1267	Runner	Introduced	Extends counties' D/B authorization to San Bernardino County.
SB 908	Denham	Introduced	Extends counties' D/B authority to the Monterey County Water Resources Agency for the construction of the Salinas River Diversion Facility

**2002**

Bill Number	Author	Status	Subject
AB 1000	Simitian	<b>Signed</b>	Authorizes specified community college districts to use D/B
SB 356	Johannessen	Failed in the SLG	Authorizes four cities to use D/B for projects that cost up to \$30 million
SB 1759	Johannessen & Torlakson	<b>Signed</b>	Authorizes four cities to use D/B for projects exceeding \$5 million
SB 1904	Vasconcellos	Died in Asm B&P	Authorizes certain school districts to select design-build entities based upon qualifications, experience, and expertise

**2001**

Bill Number	Author	Status	Subject
AB 674	Dutra	<b>Signed</b>	Extends counties' D/B authorization to Santa Clara Valley Water District
AB 1402	Simitian	<b>Signed</b>	Authorizes school districts to use D/B
AB 1415	Leach	Failed in Asm B&P	Authorizes the City of Brentwood to use D/B
AB 1436	Correa	Failed on Sen Floor	Authorizes a local military base reuse authority to use D/B
SB 127	Johnson	Introduced	Commissions the LAO to conduct a study and report to the Legislature on the appropriateness of expanding the number of local government entities that may use D/B

**2000**

Bill Number	Author	Status	Subject
AB 424	Wildman	<b>Vetoed</b>	Authorizes school districts to use D/B
AB 958	Scott	<b>Signed</b>	Authorizes transit operators to use D/B
AB 2296	Dutra	<b>Signed</b>	Authorizes seven counties to use D/B
AB 2366	Margett	Died in SLG	Establishes an inclusive, uniform D/B statute that authorizes all local agencies to use D/B for general building projects
AB 2909	Asm Trans	<b>Signed</b>	Authorizes the Santa Clara Valley Transportation Authority to use D/B for the Fremont-South Bay Commuter Rail Project
SB 1144	Johannessen	<b>Signed</b>	Extends the D/B authorization sunset date for the Cities of West Sacramento and Davis
SB 2117	Johnson	<b>Vetoed</b>	Authorizes the City of Tustin and the Tustin Community Redevelopment Agency to use D/B for redevelopment projects at the Tustin Marine Corps Air Station

**1999**

Bill Number	Author	Status	Subject
AB 470	Wildman	<b>Vetoed</b>	Authorizes school districts to use D/B
AB 904	Alquist	<b>Signed</b>	Authorizes the Santa Clara Valley Transportation Authority to use D/B for a transit center or station, transit park-and-ride lot, bus and light rail maintenance facility, or office building
AB 1394	Margett	Introduced	Establishes an inclusive, uniform D/B statute that authorizes all public entities to use D/B for general building projects

**1998**

Bill Number	Author	Status	Subject
AB 1136	Wildman	<b>Vetoed</b>	Requires public entities authorized to use D/B to report to the Joint Legislative Audit Committee about their design-build experiences
AB 2044	Goldsmith	Died in Senate Appr	Establishes a uniform D/B statute that authorizes all public entities to use D/B for public works projects

**1997**

Bill Number	Author	Status	Subject
AB 774	Morrow	Introduced	Establishes a uniform D/B statute that authorizes all public entities to use D/B for public works projects

**1996**

Bill Number	Author	Status	Subject
SB 1914	Johannessen	<b>Signed</b>	Extends counties' D/B authority (AB 1717, Cortese, 1995) to the Cities of West Sacramento and Davis

**1995**

Bill Number	Author	Status	Subject
AB 1717	Cortese	<b>Signed</b>	Authorizes five counties to use D/B

**Key:** **ALG** = Assembly Local Government Committee  
**Appr** = Appropriations Committee  
**Asm** = Assembly  
**B&P** = Business & Professions Committee  
**D/B** = design-build project delivery method  
**Introduced** = the bill was never heard in a policy committee  
**Sen** = Senate  
**SLG** = Senate Local Government Committee

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**Written Materials Received by the Committee**  
**“Faster, Cheaper, Better? How Counties Use Design-Build Contracting”**

Mark Whitaker, Fiscal and Policy Analyst  
Legislative Analyst’s Office

Kanon R. Artiche AIA, County Architect  
County of Solano

Hardy Acree, Airports Director  
County of Sacramento

Massood Eftekhari, Deputy Public Works Director  
County of Los Angeles

Lou Cavagnaro, Assistant General Services Director  
County of San Diego

Seth Boles, Operations Manager  
Hensel Phelps Construction Company

Robert J. Close, Vice President  
Parsons Brinckerhoff

Barbara Wagner, Senior Vice President  
Clark Construction Group

Kevin Dayton, State Government Affairs Director  
Associated Builders and Contractors of California

Cesar Diaz, Deputy Legislative Director  
State Building & Construction Trades Council of Calif.

Ted Toppin, Legislative Director  
Professional Engineers in California Government

Murtaza H. Baxamusa, Director of Research & Policy  
Center on Policy Initiatives

Joseph Cruz, Director of Government Affairs  
California Alliance for Jobs

Jeremy G. March, Author  
*California Public Contract Law: Basic Principles and Special Requirements*

Philip M. Vermeulen, Legislative Advocate  
Several contractors' groups

Patricia Hill Thomas, Chief Operations Officer/Assistant Executive Officer  
County of Stanislaus

Kanon R. Artiche, AIA, County Architect  
County of Solano

# LAO

65 YEARS OF SERVICE

January 8, 2009

Hon. Patricia Wiggins, Chair  
Senate Local Government Committee  
Room 4081, State Capitol  
Sacramento, California 95814

Dear Senator Wiggins:

Enclosed is our office's summary of the reports received from county governments that have entered into design-build contracts. This summary is required to be submitted to the Legislature pursuant to Section 20133 of the Public Contract Code.

Sincerely,



Mac Taylor  
Legislative Analyst

Enclosure



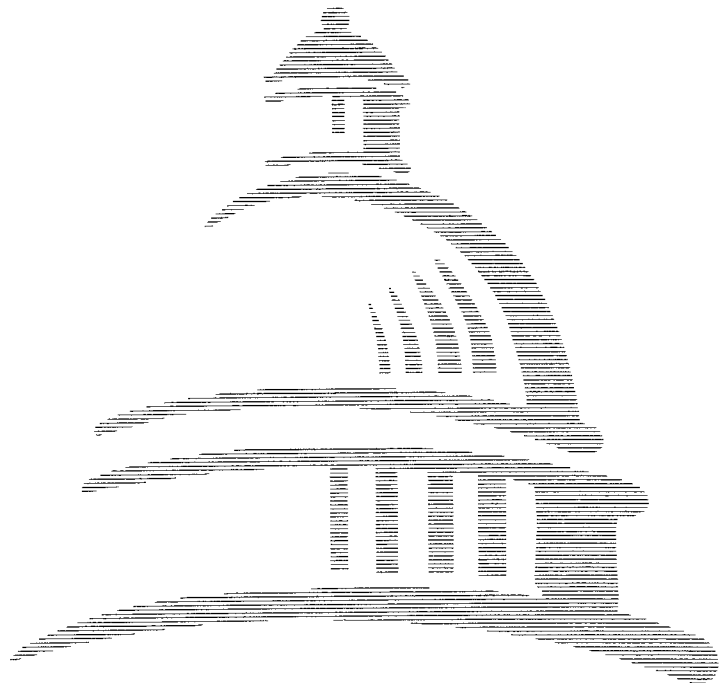
January 8, 2010

# Counties and Design-Build

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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.



January 20, 2010

**California State Senate  
Renewal of Design-Build Legislation for California Counties  
Legislative Oversight Hearing Comments  
Prepared/Presented by Kanon R. Artiche, AIA, Solano County Architect**

1. Good Morning Chairman Cox and members of the Local Government Committee.
2. Thank you for the opportunity to provide information and advice on behalf of Solano County for renewal of legislation that affords California counties the legal authority to use the design-build project delivery method for capital projects currently chaptered in Section 20133 of Public Contract Code.
3. I am Kanon Artiche, Solano County Architect and immediate past President of California Counties Architects and Engineers Association, an educational organization dedicated to improving capital project delivery within California counties. I have been licensed to practice architecture in the State of California for over 25 years and have over 30 years of experience in the design and construction industry beyond my formal education in architecture. I have spent approximately half of my career in the private sector and half in the public sector.
4. Solano County was one of the eight original California counties authorized to use the alternative project delivery method commonly known as design-build when it was initially enacted in 1995. Throughout the years, Solano County has delivered a diverse mix of design-build projects ranging from small tenant improvement projects to the largest capital improvement project in the County's history that consolidated over 15 County departments in a development covering three city blocks that included a six-story, 300,000 gsf Office Building, an adjacent five level parking structure with over 1,000 parking stalls, a separate, free-standing two-story, 43,000 gsf Probation Services building, a Public Plaza and a separate Courtyard, each with water features.
5. On December 8, 2010, the Solano County Board of Supervisors unanimously voted to support renewal of the legislation as part of Solano County's 2010 State Legislative Platform.
6. Recommendations included in the Legislative Analyst's Office's Report include: a) Establishing a single statute for marketplace consistency, b) Limit reporting requirements to new types of infrastructure requirements since history pertaining to the successful use of this delivery method on buildings has been documented, c) Eliminate cost thresholds to utilize design-build, and d) Make project cost "a larger factor in awarding the (design-build) contract" by using the two envelope system; technical proposal sealed in one envelope with price in a separate sealed envelope.
7. In general, Solano County supports the LAO's recommendations but requests that the renewed legislation not preclude a county's ability to set



**California State Senate  
Renewal of Design/Build Legislation for California Counties  
Legislative Oversight Hearing Comments**

January 20, 2010

Page 2 of 3

a stipulated sum or fixed cost for the work and award based on Best Value. This is the methodology that was pioneered by the State on the East End project and has served as a model for counties statewide. Solano County has utilized the Best Value method to define enhancements that improve the operational, quality, schedule, sustainability and community benefits and has successfully delivered projects using this approach and it has been well received by the design and construction community as well as local labor groups.

8. In addition to more traditional benefits of the design-build method, some of which are outlined in the report from the Legislative Analyst's Office such as single-source responsibility, increased project collaboration, cost savings, schedule acceleration and construction input during the design process, this approach has yielded some unique best value enhancements without increasing project cost such as a cooperative educational "Ground Floor" program in which the project was utilized to expose interested students from a local high school to architectural and construction related career paths. Such benefits would not be possible using the traditional design-bid-build method of project delivery.
9. To directly address some of the issues under consideration at today's hearing, Solano County offers the following:
  - *Timing:* Preference to make the current law permanent and extend sunset clause to January 1, 2016 as a fall-back. Legislature should not allow current law to sunset on January 1, 2011. Justification: This method of project delivery affords counties another "tool in the toolbox" to match project needs with an appropriate delivery method.
  - *Project Limits:* Preference is for legislature to repeal the \$2.5 million minimum price threshold for county design-build projects. Justification: Counties have delivered a wide variety of projects of varying size and complexity. Local market conditions and project need should inform the benefits and risk of using the design-build method on a per-project basis.
  - Preference is to repeal the language that limits county design-build contracts to buildings and related improvements and wastewater treatment facilities so that all projects that all capital project types can utilize the design-build method. If repeal is not possible or desirable, then the legislature should retain the language.
  - *Contract Procedures:* Uniform legislation pertaining to the design-build process for counties, cities, and special districts and redevelopment agencies, whether in a single law or in separate laws that contain similar, if not identical provisions, are preferred to facilitate marketplace understanding of the statutory requirements. Within that context, the legislation as currently written provides

**California State Senate  
Renewal of Design/Build Legislation for California Counties  
Legislative Oversight Hearing Comments**

January 20, 2010

Page 3 of 3

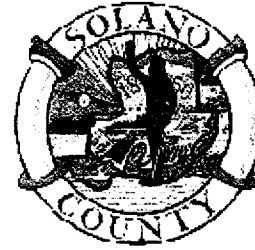
flexibility for the awarding body to implement a legal process tailored to the project and lead agency's needs in a fair, cost effective manner.

- The two envelope system could be added to the proposed legislation but should not be a requirement for each and every project. Counties should have the flexibility to utilize this method on a per-project basis.
- Since legislation pertaining to cities and redevelopment agency use of design-build contracts is more recent and therefore less-established, it may be desirable to continue reporting requirements to amass additional information.
- Qualifications – The legislature should require counties to ask design-build entities if they have violated the federal False Claims Act or the California False Claims Act. It may be desirable to place a time frame in which such violations were reported (e.g. within the last ten years).

10. The design-build delivery system affords an opportunity for California counties to save time and money without compromising quality with a focus on receiving maximum value for public dollars expended. Each project delivery method has its inherent risks, but the risks have proven to be manageable by counties while balancing the interests of the design/construction industry and local labor. Any method that saves time in the current marketplace will provide jobs and stimulate the local and state economy at a time when it is greatly needed. For the reasons previously noted, Solano County supports the renewal of the design-build legislation for use by California counties.



# Solano County Architectural Services



**T R A N S M I T T A L**

Project #: \_\_\_\_\_ 1271  
File Code: \_\_\_\_\_ 0.0

**DATE:** Wednesday, January 20, 2010

**TO:** Senator David Cox, Chair  
*California State Senate Local Oversight Committee  
State Capitol, Room 112*

**FROM:** Kanon R. Artiche, AIA, County Architect  
*Solano County Division of Architectural Services*

**TRANSMITTAL CONTENT:** One (1) copy of Solano County's Report to Legislature per Section 20133 of Public Contract Code. Alternative Procedures on Bidding, dated November 30, 2009 and November 4, 2004 submitted to the State Legislative Analysts Office.

**COMMENTS:** For entry into hearing record.

**TRANSMITTAL SENT VIA:**

- Inter-Office Mail \_\_\_\_\_
- US Mail \_\_\_\_\_
- Hand Delivery on January 20, 2010
- Other

**IF YOU HAVE ANY QUESTIONS REGARDING THIS TRANSMITTAL, PLEASE CALL (707) 784-7908**

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DEPARTMENT OF GENERAL SERVICES

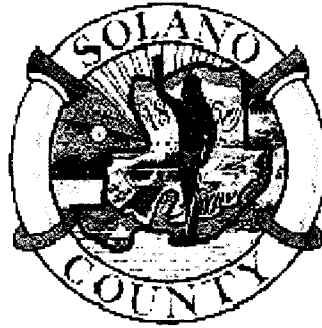
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DIVISION OF ARCHITECTURAL SERVICES

November 30, 2009

State of California  
Legislative Analysts Office  
Mr. Mac Taylor, Legislative Analyst  
925 L Street  
Sacramento, CA 95814

Re: Solano County's Report to Legislature per Section 20133 of Public Contract Code  
Alternative Procedures on Bidding

The following is a report documenting Solano County's experience using the alternative procedures on bidding, also referred to as design-build in this report, as permitted by Section 20133 of Public Contract Code.

**Summary Findings and Recommendations**

On November 30, 2004, Solano County submitted a previous report to the Committees on Local Government of the Senate and Assembly and the Legislative Analysts Office prior to the December 1, 2004 deadline under the version of the legislation that sunset on December 31, 2005. A copy of the previous report is attached for your reference and information pertaining to the Solano County Government Center is amended as follows: Under Item 4, *The Estimated and actual length of time to complete the project*, the Solano County Board of Supervisors approved the Notice of Completion for the project on July 26, 2005. Administrative close-out of the large project was complex, but the design/builders met every contractual milestone of importance to the County. Under Item 5, *The estimated and actual project costs*, the actual design/build cost was \$82,985,843.

The current report covers design/build projects that were completed between November 1, 2004 and November 1, 2009. During this reporting period, the County of Solano has successfully completed the Solano County Government Center project documented in the November 30, 2004 report and has achieved Substantial Completion of a new Health and Social Services (H&SS) Building in Vallejo. While the latter project was not completed by November 1, 2009, this project is nearing completion; the County received a Temporary Certificate of Occupancy for the project on October 14, 2009 and the County began operations within the new building on October 26, 2009. Since the design-build agreement associated

**Report to Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2009

Page 2

with this project was awarded under the current legislation and construction is substantially complete, this report includes information pertaining to the new H&SS Building project.

The four projects documented in the previous reports submitted by Solano County dated August 22, 2000, November 30, 2004 and in fifth project documented in this report have varied in size and technical/logistical complexity over time, illustrating the County's increasing confidence in using the design-build delivery method for capital improvement projects of various sizes, types and complexity. The design-build method has proven to be an effective project delivery method for Solano County, which is evidenced by the following:

- Tangible project and construction cost savings and/or added value realized as a consequence of the best value selection process
- Efficient, on-time project delivery
- Seamless transition from design phase to construction phase
- Lack of claims and rapid issue resolution due to single source responsibility
- No written protest against the County on the solicitation, bid, proposal and award of any project
- Acceptance in local marketplace as evidenced by use of both union and non-union labor to deliver design-build projects at prevailing wage rates and implementation of the design-build delivery method under a Project Labor Agreement
- Administrative efficiency of County's internal management resources
- End user satisfaction while maintaining or improving overall project quality and functionality

A description of the New Health & Social Services Building project in the format stipulated in Section 20133 of Public Contract Code follows.

**SOLANO COUNTY HEALTH & SOCIAL SERVICES BUILDING, VALLEJO, CA**

**1) The type of facility:**

The project was constructed on County owned land at the existing 9.29-acre South County Government Center off of Tuolumne and Virginia Streets near downtown Vallejo. The existing buildings on the site include the Hall of Justice and another existing Health and Social Services (H&SS) building at 355 Tuolumne Street. The new H&SS building was constructed in an area that had been part of the on grade parking lot. The project consists of the construction of a new three-story, 58,000 gross square foot steel frame (with diagonal bracing to resist lateral loads) H&SS Building of Type I construction with concrete slab-on grade/spread footings, concrete floor and roof decks over metal pan, and exterior walls constructed of metal studs with exterior plaster and dual-glazed window wall system. The new H&SS building is located next to the existing three-story 68,000 gross square foot H&SS Building. The new building houses a public health clinic on the first floor and H&SS programs (primarily office space) on the two upper floors. The project also included landscaping and hardscaping improvements to the existing County campus, construction of two new parking lots on Virginia Street (County-owned) and at the Portuguese Center (leased/shared use parking lot adjacent to the project site). Site work around the building included work in the public right of way off Tuolumne Street and Virginia Streets, and an on-site public plaza linking the existing H&SS Building with the new H&SS Building, including public art installations.

**2) The gross square footage of the facility:**

The gross square footage of the New H&SS Building project is approximately 58, 000 gross square feet constructed of three floors of approximately equal size.

**3): The design-build entity who was awarded the project:**

The design-build entity who was awarded the project was John F. Otto, Inc. of Sacramento, CA (General Contractor) in association with TWM Architects of San Rafael, CA (Architect of Record).

**4) The estimated and actual length of time to complete the project:**

Estimated: March 11, 2008 (Award of Design/Build Agreement) to January 26, 2010 (Approval of Notice of Completion by Solano County Board of Supervisors). A total of 566 days were estimated from Award of Design Building Agreement on March 11, 2008 through Substantial Completion on September 28, 2009.

Actual: Final project duration is unknown since project has yet to be completed. A total of 582 days transpired from Award of Design Building Agreement on March 11, 2008 through Substantial Completion on October 14, 2009, an increase of 16 days due to added scope of work to the design/build agreement and long lead time in procuring Heating, Ventilating and Air Conditioning equipment. The County resequenced its moves to accommodate the altered contract time.

**5): The estimated and actual project costs:**

Estimated: \$20,300,000 (Stipulated Sum for Design/Build costs at contract award), \$27,799,741 (Estimated total project cost, including \$959,539 in estimated construction contingency).

Actual: Final actual costs are unknown since project has yet to be completed. \$20,612,350 (Stipulated sum plus approved Change Orders through October 31, 2009. An additional \$400,000 has been budgeted for outstanding Change Order costs. Approved and anticipated Change Orders under negotiation include additional on and off-site improvements, increased utility work, additional security cameras, additional restrooms within the facility, exterior sallyport, energy efficiency and sustainable upgrades, and signage improvements); \$27,760,705 (Estimated total project cost at completion presented to Board of Supervisors on November 10, 2009).

**6): A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including resolution of the protests:**

Not applicable.

**7): An assessment of the prequalification process and criteria:**

The process was successfully accomplished using a two-step procurement process based on a written prequalification, design criteria solicitation. This process was conducted in accordance with the requirements of Section 20133 of the Public Contract Code between September 17, 2008 and March 11, 2009. The first step included pre-qualification of design-build teams which included a mandatory pre-qualification submittal conference. This step in the selection process resulted in a response by five firms. The written information provided by these firms was evaluated by a multi-disciplinary team of County staff and County consultants using pre-established evaluation criteria published in the prequalification solicitation notice. This resulted in a determination that all five of the responding firms met the minimum pre-qualification criteria.



**Report to Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2009

Page 4

These five firms were invited to proceed with the second step of the selection process and to submit a technical proposal that would be evaluated using a best value methodology according to pre-established criteria published in the Request for Proposals (RFP) on December 5, 2007.

Using established County procedures for selecting Design/Build teams, and consistent with the intent of Public Contract Code 20133, a Request for Proposals (RFP) was developed for issue to the pre-qualified Design/Build teams. That RFP included:

1. The Bridging Documents (drawings and technical specifications) prepared by Johnson Fain
2. Submittal of a Technical Proposal including descriptions of key building systems and a Site Development Plan for improvement of the South County Government Center campus
3. The form of Agreement between the County and Design/Builder, that the selected Design/Builder would enter into with the County
4. Design Requirements – written descriptions of the scope of work that the Design/Builder would be contractually obligated to deliver
5. Appendices (which are not contract documents) providing information on site topography, utilities, environmental approvals, building program, and other information for the Design/Builder to use in preparation of their Proposals

The RFP also established a Stipulated Sum of \$20,300,000 for the project, a fixed amount of contract for which the successful Design/Builder will deliver the project described in its Proposal. The RFP also requested a list of "Best-Value Enhancements," elements which the Design/Builders to add to the project within the Stipulated sum. The RFP included a proposed list of enhancements, and also encouraged the Design/Builders to submit additional enhancements in order to deliver best value to the County. A mandatory pre-proposal conference was held on December 13, 2007 and a total of seven Addenda were issued in response to prospective design/builder inquiries. This step included an interim presentation by each firm before County staff and County consultants to confirm that they were appropriately interpreting the bridging documents and a mandatory pre-proposal conference. Proposals were received from four of the five firms (one withdrew when a key staff member proposed for the project resigned). The proposals were initially evaluated by a cross-disciplinary technical review team composed of County staff and County consultants associated with the project. The technical review focused on the technical information in the proposal, team organization and management and best value/quality enhancements based on evaluation criteria published in the RFP. A technical report was provided by the technical review team to a selection panel who met to review the information from the technical reviewers. The selection panel conducted two hour interviews with each prospective design/build team during which each team presented their proposal and the selection panel asked clarifying questions pertaining to the written proposal of each firm. Following interviews, the selection panel reconvened to finalize scoring of each proposal using a standardized proposal evaluation worksheet and make a final selection. The rankings of the proposing firms were published the day following the final deliberations by the selection panel with contract award based on the pre-established best value methodology utilizing criteria published in the RFP. The County provided a modest sum to proposing firms that were not the highest ranked in order to offset costs incurred by the proposing firms during development of the proposals.

**8) An assessment of the impact of retaining 5 percent retention on the project:**

At the design-build entity's request, the County permitted the design-build entity to establish an interest bearing escrow account at an approved bank whose deposits are federally insured. The County is placing the retention monies into this bank account each month in accordance with the approved progress payments. These retention funds are being held until the Notice of Completion is approved by the Board of Supervisors, when they will be released to the design-Build entity. The County and the design-build entity have experienced no adverse impact withholding 5% retention with the exception of the County having to process retention funds to a banking firm each month, which marginally increases the County's administrative workload. The County and the design-build entity have been able to amicably address and resolve project-related issues so that use of retention funds by the County to complete substandard or other work that would ordinarily be performed by the design-build entity has not become an issue.

**9): A description of the Labor Force Compliance program and an assessment of the project impact, where required:**

The County negotiated a project-specific Project Labor Agreement (PLA) with the Napa-Solano Building Trades Council for the New Health and Social Services Building project. The provisions of the PLA provided protection from work stoppages, supported utilization of a local work force and apprentices, clarified benefits for laborers working on the project, clarified wages and hours of work per California Labor Code, and outlined grievance and arbitration procedures. This is the first project that houses County programs and services that is being delivered under a PLA. There have been no issues that have emerged from the PLA implementation and enforcement.

The project followed the requirements of Section 1771 of the California Labor Code, including prevailing wage rate requirements, a labor compliance program with all bid invitations containing appropriate language concerning the project requirements, and a preconstruction conference with the design-build entity with major subcontractors present to discuss federal and state labor law requirements applicable to the contract. Project requirements included that contractors and subcontractors submit certified copies of payroll records. These records were reviewed as needed to verify labor compliance. The project had a small number of requests made by non-profit labor organizations requesting subcontractor information. The County provided the requested information and there were no labor compliance issues that emerged through the project.

**10): A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology:**

See information under the section titled, *An Assessment of the Prequalification Process and Criteria*. The County's Division of Architectural Services, which was responsible for administering the project, supplemented its project management staff by hiring Swinerton Management and Consulting, Inc. (SMC), a private sector project/construction management consultant firm who assisted in preparing the *Request for Qualifications* and the *Request for Proposal*, and Johnson Fain of Los Angeles, CA, who prepared the bridging documents for the project. The County, SMC and Johnson Fain jointly administered the two step solicitation process.

As previously noted, following evaluation of the *Statement of Qualifications* from responding firms using pre-established criteria that was included in the RFQ, a total of five firms were invited to submit bonafide proposals. The proposals were initially reviewed by a Technical Review Team composed of County staff and consultants based on criteria established in the RFP which included:

- Technical design and construction expertise of the teams
- Quality of projects they proposed
- Skilled labor force availability
- Safety record
- Performance enhancements
- Lifecycle costs
- Sustainability/green architecture features
- Energy conservation
- Quality of work place environment
- Enhanced work place communication
- Project enhancements to be included in the Stipulated Sum
- Project schedule

In addition, two primary areas of evaluation were considered, each of equal importance.

*A. – Team Organization and Management:* The degree to which the Design/Builder has responded to the requirements of the Bridging Document criteria, and the manner in which the team is structured to deliver the project in an effective, efficient and collaborative manner. A total of 400 points were possible in the *Team Organization and Management* category.

The Design/Builder's organization and management was evaluated in the following categories and awarded points in each category as follows:

1. Relative Qualifications and Experience of Designated Subcontractors – *100 points*
2. Clarity, completeness, and responsiveness of Building Systems Descriptions to Bridging Document criteria – *100 points*
3. Clarity, completeness, and thoroughness of Design and Construction Management Plan, and conformance to the Bridging Documents, budget and schedule requirements, and contract requirements – *100 points*
4. Ability of the Design/Builder's team to work collaboratively together, and with the County and its consultant team – *100 points*

- Below Average                      0-20 of the available points
- Normal/Expected                    21-40 of the available points
- Above Average                      41-60 of the available points
- Excellent                            61-80 of the available points
- Superior                              81-100 of the available points

*B. Best Value/Quality Enhancements:* The degree to which the design-builder provided operational, functional, sustainability and schedule enhancements as described in the RFP documents, and additional enhancements proposed by the Design/Build teams. Each proposed enhancement was evaluated to determine its clarity, completeness and overall coordination with the project design, construction, and performance goals. The Proposal included a County-proposed list of Enhancements (above the base scope of the project) which

the Design/Builders were encouraged to include in their Proposals. Points were awarded for each item up to a maximum of 20 points per item as follows:

M – Moderate	0-8 points
S – Significant	9-14 points
O – Outstanding	15-20 points

The total possible number of points for the County list of Enhancements was 580 points. Any proposed Enhancements in addition to the County list were scored using the same methodology. Each Design/Builder's total Enhancement point score was multiplied by 400/580, in order to weight the "Best Value" / *Quality Enhancements* section equally with the *Organization and Management* section.

The committee then conducted a two-hour interview of each Design/Build team, in order for each to present its Proposal. Following those interviews, the committee, utilizing the evaluation and scoring methodology described above, completed a diligent and thorough process to score and rank each team. The results of this process determined the following results, ranking the top three Design/Build teams, in order:

1. Otto Construction – 610 points
2. Overaa Construction – 581 points
3. Roebbelen Construction – 450 points

Each design-build team was given the opportunity to present its Technical Proposal to the selection panel. The presentation addressed the qualifications and expertise of the design-builder's designated subcontractors, description of the major building systems, the design-builder's design and construction management plan and a review of enhancements proposed by the design-builder within the stipulated sum. Approximately one hour was allowed for each presentation followed by one hour question and discussion period.

An equation was utilized to adjust the scores to reflect the equal 50% weighting factor for *Team Organization and Management* and *Best Value/Quality Enhancements* noted above. Following deliberations, final scoring was confirmed by each member of the selection panel and entered on a proposal evaluation worksheet which is included in the project record. The rankings of the proposing design-build firms were then published. The design-build agreement was then finalized and signed by the County and the design-builder and approved by the Solano County Board of Supervisors in an open, public meeting on March 11, 2008.

**11): An assessment of the project impact of "skilled labor force availability":**

The County declared its intent to deliver the project under a PLA at the outset of the solicitation process, the responding firms were aware of the business conditions that they would be entering into and could therefore make an informed decision whether they wished to pursue the solicitation. A condition of the Project Labor Agreement required that all laborers except for supervisors above general foreman, which the design-builder could hire at their discretion, would be hired through the local union hiring hall. The PLA did not mandate union membership nor preclude non-union workers from participating as laborers, but the practical effect of the PLA resulted in union laborers hired through the local hiring hall constructing the project. Since the contractor that is part of the design-build entity awarded the contract is a union contractor, this has not posed problems during the course of construction.

Overall, the County considers the construction quality of the project to be high in relation to previous projects and recognized industry standard, although the County and the Design/Builder are evaluating the levelness of the second and third floors in relation to the design criteria including in the bridging documents. The magnitude of the project, coupled with workforce availability due to local market conditions in a downward economic cycle, has made the project an attractive, highly visible project of long duration so it has attracted a highly skilled labor force.

The solicitation process required that the design-build entity list subcontractors associated with the project. The qualifications of these subcontractors were considered in the evaluation of the qualifications of design-build entity. Because the design-build entity was able to assemble a team of qualified subcontractors that the design-build entity had positive, established working relationships with in the past, the County has not experienced adverse issues arising from labor relations or lack of a skilled workforce.

**12) An assessment of the design-build dollar limits on county projects. This shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value method of awarding contracts was not used, due to dollar limitations:**

In the version of the legislation that sunset on December 31, 2000, there was no upper or lower threshold on design-build dollar limits. As noted in the August 28, 2000 report, Solano County successfully delivered projects with limits below the threshold under the current legislation, including projects valued at \$2,282,550 and \$438,213. With the completion of the \$18,233,582 Health and Social Services Headquarters Building with contract award to the lowest responsible bidder, the completion of the \$99,748,160 (total project cost) Solano County Government Center with contract award based on best value, the impending completion of the \$27,760,706 (total estimated project cost) New Health & Social Services Building project, the County has demonstrated, successful experience delivering various-sized projects using alternative methods to bidding.

Based on the County's past experience, assessment of local market conditions and workforce availability which vary over time, as well as the needs and constraints of each individual project, Solano County believes the current threshold to use the design-build delivery method for projects in excess of \$2,500,000 awarded using either the lowest responsible bidder or by best value is a proper threshold to maintain for use of this project delivery method in the future.

**13): An assessment of the most appropriate uses for the design-build approach:**

Solano County places no preconceived limits on the appropriate use of the design-build delivery approach. Solano County attempts to evaluate each individual project and match the project needs with the most appropriate delivery method that can meet the project need. In this manner, the County can balance the risks associated with each method of project delivery available to the County with local market conditions, budget and schedule constraints.

Solano County's past experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have schedule constraints. For instance, the Health and Social Services Headquarters Building (project completed in 2000) schedule was timed to culminate with the expiration of several lease agreements of private office space that

housed Health and Social Services functions that were relocated to the new facility. The project could not have been delivered within the specified time frame if the traditional design/bid/build method were utilized. If the project had not been completed according to a pre-established schedule, then the County would have been exposed to lease holdover costs, thereby increasing the overall project cost.

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have budget and financing constraints. By completing projects in a shorter duration with an assertive but achievable schedule, the County is able to realize cost savings while maintaining project value. A shorter project duration translates into reduced project cost by eliminating costs associated with contractor overhead. Since public entities typically will not fully fund or finance a project unless it is relatively certain that it will be completed, reducing the duration of the project schedule has enabled the County to take advantage of low interest rates available in the marketplace. Every month that interest rates rise has the effect of potentially reducing project scope if the County has a limit associated with financing the project or if increased construction costs in the marketplace erode the County's buying capability. By awarding projects based on best value, the County has experienced an increase in quality in comparison to those that would likely be achieved utilizing the traditional design/bid/build method of project delivery. For instance, the County was able to receive a significant enhancement for the New Health & Social Services Building, including LEED™ certification.

As a practical and political reality, Solano County has experienced that the higher the cost of the project and/or for projects located in a campus setting that is striving for architectural consistency and/or appropriateness, the more interested the Board of Supervisors has been in discerning what the design of the project will look like during the early stages of project development. From this standpoint, the bridging method of design-build allows the policy and decision makers to more fully understand the aesthetic appearance of key project components that are locally sensitive while still maintaining flexibility for the design-build entity so that the economic benefits of the design-build delivery method can be fully realized.

In summary, the County considers the design-build approach as an alternative procedure on bidding to be an excellent project delivery approach that reduces the overall project development schedule and construction cost while maintaining project quality that also provides an added benefit of single source responsibility for both the design and construction. This ultimately translates into reduced change orders and reduces the County's exposure to construction claims. Solano County's experience with the design-build approach demonstrates that it is possible to maintain project quality utilizing design criteria, the bridging method of design/build, contract award based on lowest responsible bidder or on best value in both renovation and new construction projects. In short, it is well-suited for virtually all project types if the local project team has the ability to effectively manage project risks throughout the project delivery process.

Through the County's experience with the design-build approach, the County has been able to successfully deliver projects using a variety of different building materials, occupancy types in buildings containing uses ranging from standard office space to specialized spaces such as hearing rooms and Board of Supervisors meeting chambers which have specialized mechanical, electrical, technological and acoustic needs.

**Report to Legislative Analyst's Office  
Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2009

Page 10

On this basis, Solano County strongly supports continuation of this legislation, maintaining the existing threshold requirements while making this alternative procedure on bidding available to all California Counties.

Respectfully Submitted,



Kanon R. Artiche, AIA  
County Architect

Attachment: Solano County's Report to Legislature per Section 20133 of Public Contract Code Alternative Procedures on Bidding dated November 30, 2004

DEPARTMENT OF GENERAL SERVICES

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DIVISION OF ARCHITECTURAL SERVICES

November 30, 2004

California State Legislature  
Local Government Committee  
Senator Tom Torlakson, Chair  
State Capitol, Room 5061  
Sacramento, CA 95814

Re: Solano County's Report to Legislature per Section 20133 of Public Contract Code  
Alternative Procedures on Bidding

The following is a report documenting Solano County's experience using the alternative procedures on bidding, also referred to as design-build in this report, as permitted by Section 20133 of Public Contract Code.

**Summary Findings and Recommendations**

On August 22, 2000, Solano County submitted a previous report to the Committees on Local Government of the Senate and Assembly prior to the September 1, 2000 deadline under the version of the legislation that sunset on December 31, 2000. A copy of the previous report is attached for your reference.

The current report covers projects that were completed between the August 22, 2000 report and November 1, 2004. During this reporting period, the County of Solano has successfully completed one project that houses functions of the Health and Social Services Department, however, the design-build agreement associated with this project was procured and awarded under the legislation that sunset on December 31, 2000.

Solano County's August 22, 2004 report included reference to another project, the County Administration Center (CAC), which was in the formative stages. This project, which is now referred to as the Solano County Government Center project, includes not only the CAC, but has been expanded to include a 5-level Parking Structure and a free-standing Probation Building. While this project was not completed by November 1, 2004, this project is nearing completion; the County received a Temporary Certificate of Occupancy for the free-standing Probation Building on November 1, 2004 and the CAC on November 12, 2004. An eight phase occupancy sequence for these structures began on November 12, 2004. Formal project completion is scheduled for March 2005. Since the design-build agreement associated with this project was awarded under the current legislation and construction is substantially complete, this report also includes information pertaining to the Solano County Government Center project.



The four projects documented in the August 22, 2000 report and in this report have increased in complexity over time, illustrating the County's increasing confidence in using the design-build delivery method for capital improvement projects of various sizes, types and complexity. The design-build method has proven to be an effective project delivery method for Solano County, which is evidenced by the following:

- Tangible project and construction cost savings and/or added value realized as a consequence of the best value selection process
- Efficient, on-time project delivery
- Seamless transition from design phase to construction phase
- Lack of claims and rapid issue resolution due to single source responsibility
- No written protest against the County on the solicitation, bid, proposal and award of any project
- Acceptance in local marketplace as evidenced by use of both union and non-union labor to deliver design-build projects at prevailing wage rates and implementation of the design-build delivery method under a Project Labor Agreement
- Administrative efficiency of County's internal management resources
- End user satisfaction while maintaining or improving overall project quality and functionality

A summary of the two projects contained in this report is shown in the table that follows:

<b>Project Title</b>	<b>Size Gross Square Feet</b>	<b>Project Type</b>	<b>Total Project Budget</b>	<b>Completion Date</b>
Health and Social Services Headquarters Building, Fairfield, CA	115,000	New Construction	\$18,233,582	December 10, 2002
Solano County Government Center, Fairfield, CA	300,000 (Co. Admin. Center) 325,000 (Parking Garage) 42,500 (Probation Building)	New Construction	\$100,603,927 (estimated)	March 2005 (projected)

A description of the two projects in the format stipulated in Section 20133 of Public Contract Code follows.

**HEALTH AND SOCIAL SERVICES HEADQUARTERS BUILDING, FAIRFIELD, CA**

**1) The type of facility:**

The Health and Social Services Headquarters Building is a freestanding building housing the administrative functions of the County's largest department. The functions administered from this building include Administration, Mental Health, Substance Abuse, Public Health, Adult and Child Services, Employment Services/Solano Works, Eligibility and a Child Care Center for children of County employees with capacity for 60 children. The building was constructed of tilt-up concrete with concrete slab-on-grade foundation, steel-framed second floor, and wood-framed roof structure with composition roofing. Site improvements will include approximately 650 parking stalls, landscaping and hardscaping.

**2) The gross square footage of the facility:**

The gross square footage at design-build contract award was 115,000 gross square feet in two stories. Due to savings accrued through the competitive bidding process, the project size was increased to 122,000 gross square feet in two stories.

**3): The design-build entity who was awarded the project:**

The design-build entity who was awarded the project was John F. Otto, inc., of Sacramento, CA. The design-build entity consisted of John F. Otto, Inc. serving as the General Contractor and HDR Architects of Sacramento, CA serving as the Architect of Record.

**4) The estimated and actual length of time to complete the project:**

Estimated: August 2, 1999 to May 2002 from entitlements through final closeout. 560 days from Notice to Proceed to design-build entity through filing of Notice of Completion.

Actual: August 2, 1999 to December 10, 2002 from entitlements through final closeout. 770 days from Notice to Proceed to design-build entity through final closeout (Schedule extensions were granted by the County since the project scope increased at the County's request. Critical milestones that were identified by the County at the project outset were maintained, such as substantial completion of portions of the project to avoid lease holdover penalties).

**5): The estimated and actual project costs:**

Estimated Total Project Cost: \$17,496,973

Actual Total Project Cost: \$18,443,340 (With County added project scope that increased building size by 7,500 gross square feet, provided additional security devices, upgraded the roof structure to accommodate future solar panels, accommodate an on-site public transit bus drop-off, perform initial seeding of off-site wetlands mitigation, build-out of on-site daycare center tenant improvements, outside play area and playground equipment).

Estimated Cost of Design-Build Agreement: \$13,550,000

Cost of Design-Build Agreement at Award: \$12,655,109

Actual Cost of Design-Build Agreement: \$13,734,368

**6): A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including resolution of the protests:**

None.

**7): An assessment of the prequalification process and criteria:**

The process was successfully accomplished using a two-step procurement process based on a written prequalification, design criteria solicitation. This process was conducted in accordance with the requirements of Section 20133 of the Public Contract Code between June 16, 2000 and October 30, 2000. The first step included pre-qualification of design-build teams, which included publication of legal notices, and a mandatory pre-submittal conference. Seventy-one Requests for Prequalification were issued and the mandatory pre-submittal conference was attended by thirty firms. This step resulted in a written response by six responding firms. The written information provided by these firms was evaluated by a multi-disciplinary team of County staff and County consultants using pre-established evaluation criteria published in the prequalification solicitation notice. These criteria included the firm's past experience, the proposed personnel assigned to the project, the bonding capacity and financial viability of the responding firms, etc. This resulted in a determination that three of the six responding firms met the minimum pre-qualification criteria.

These three firms were invited to proceed with the second step of the selection process, solicitation of design-build bids. This step included a mandatory pre-bid conference and an interim review of the design approach with each prequalified design-builder to confirm they were interpreting the design criteria accurately in relation to the project scope. The County issued five Addenda during the bid process to address bidder questions and further clarify the bid documents. Bids were received from all three firms and opened in a public setting. The bid form consisted of a base bid with unit prices (which were included as a means to fairly negotiate pricing adjustments to the design-build agreement for tenant improvements against a tenant improvement allowance) and two alternate bids (one to provide dual pane windows in lieu of single pane glazing at all exterior windows and one to reduce the size of heating, ventilating and air conditioning zones to a maximum of 1500 gross square feet). The contract award was based on the base bid, an allowance associated with the unit prices, and both alternate bids. This approach proved effective in meeting the goals of the project and producing a successful project that meets County needs. The inclusion of unit pricing to establish a tenant improvement allowance and facilitate negotiations of future change orders proved instrumental in streamlining negotiations since pricing was already pre-established.

**8) An assessment of the impact of retaining 5 percent retention on the project:**

At the design-build entity's request, the County permitted the design-build entity to establish an interest bearing escrow account at an approved bank whose deposits are federally insured. The County placed the retention monies into this bank account each month in accordance with the approved progress payments. These retention funds were held until the Notice of Completion was approved by the Board of Supervisors, when they were released to the design-build entity. The County and the design-build entity have experienced no adverse impact with holding 5% retention with the exception of the County having to process retention funds to a banking firm each month, which marginally increased the County's administrative workload. The County and the design-build entity were able to amicably address and resolve project-related issues so that using retention funds to complete substandard or other work that would ordinarily be performed by the design-build entity never became an issue.

**9): A description of the Labor Force Compliance program and an assessment of the project impact, where required:**

The project followed the requirements of Section 1771 of the California Labor Code, including prevailing wage rate requirements as determined by the Department of Industrial Relations, a labor compliance program with all bid invitations containing appropriate language concerning the project requirements, and a preconstruction conference with the design-build entity with major subcontractors present to discuss federal and state labor law requirements applicable to the contract. Project requirements included that contractors and subcontractors submit weekly-certified copies of payroll records. These records were reviewed as needed to verify labor compliance. The project had a small number of requests made by outside labor agencies asking for subcontractor information, since there were both union and non-union subcontractors working on the project for the design-build entity. The County provided the requested information and there were no labor compliance issues that emerged through the project.

**10): A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology:**

See information under the section titled, *An Assessment of the Prequalification Process and Criteria*. The project was administered using a three-tiered project management committee structure: an Executive Committee, a Steering Committee and Work Groups. The Executive Committee, which was the highest level committee, addressed project-related issues that were outside the original project scope and issues that could not be resolved at a lower committee level. The Executive Committee met on an as-needed basis and consisted of the Board Chair and the County Administrator. The Steering Committee, a multi-disciplinary group of County employees at Senior Management level and above, met monthly to address and resolve project-related issues that fell within the project scope. Various Work Groups, which were composed of technical personnel, met as needed to address technical issues pertaining to the project scope. This three-tiered committee approach proved effective in resolving issues at the lowest level possible while providing an efficient escalation ladder. The County's Division of Architectural Services, which was responsible for administering the project on a day-to-day basis, supplemented its project management staff by hiring URS Construction Services, a private project/construction management consultant firm. The bidding process was based on design criteria documents and an architectural program prepared by the County's consultant architectural firm, Ross Drulis Architects of Sonoma, CA. The County, URS and Ross Drulis jointly administered a bid process based on a lump sum bid, a unit pricing allowance and alternate bids with the lowest responsible and prequalified design-builder awarded the design-build agreement.

**11): An assessment of the project impact of "skilled labor force availability":**

The project utilized a skilled labor force composed of both union and non-union subcontractors. For instance, the key mechanical and electrical subcontractors were non-union firms. They were able to work alongside trade subcontractors that were unionized. Part of the prequalification process required that the design-build entity list subcontractors associated with the project. The qualifications of these subcontractors were considered in the evaluation of the qualifications of design-build entity in the first step of the selection process. Because the design-build entity was able to assemble a team of qualified subcontractors that the design-build entity had positive, established working relationships with in the past, the County experienced no adverse issues arising from labor relations or lack of a skilled workforce.

**12) An assessment of the design-build dollar limits on county projects. This shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value method of awarding contracts was not used, due to dollar limitations:**

In the version of the legislation that sunset on December 31, 2000, there was no upper or lower threshold on design-build dollar limits. As noted in the August 28, 2000 report, Solano County successfully delivered projects with limits below the threshold under the current legislation, including projects valued at \$2,282,550 and \$438,213. With the completion of the \$18,233,582 Health and Social Services Headquarters Building, with contract award to the lowest responsible bidder and the impending completion of the \$100,603,927 Solano County Government Center, with contract award based on best value, the County has demonstrated successful experience delivering various-sized projects using alternative methods to bidding.

Based on the County's past experience, assessment of local market conditions and workforce availability which vary over time, as well as the needs and constraints of each individual project, Solano County believes the restriction to limit the use of the design-build delivery method to projects in excess of \$10 million is a restriction that does not ultimately serve the best interests of Solano County citizens. In order to meet its diverse capital project needs, the County believes that citizens are best served when alternative methods to bidding can be fairly assessed, selected and implemented for projects of all sizes in order to balance the risks associated with various project delivery methods with local market conditions, budget and schedule constraints.

For instance, Solano County's Division of Architectural Services has the capability to develop design criteria documents for small projects in-house. If the County were permitted to utilize this approach, then project delivery schedules could be compressed which in turn translates into economic savings that save local taxpayer dollars. The County was also precluded from considering the use of the design-build method on diverse projects such as the upgrade to the security systems in our Adult Sentenced Detention Facility, various Americans with Disabilities Act retrofit projects (these projects have ready made design criteria established in code and guidelines and are therefore good candidates for the design-build delivery method), a variety of projects at local parks including a new Interpretive Center, and construction of new branch libraries and library renovations

**13): An assessment of the most appropriate uses for the design-build approach:**

Solano County places no preconceived limits on the appropriate use of the design-build delivery approach. As noted in the previous section, the County attempts to evaluate each individual project and match the project needs with the most appropriate delivery method that can meet the project need. In this manner, the County can balance the risks associated with each method of project delivery available to the County with local market conditions, budget and schedule constraints.

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have schedule constraints. For instance, the Health and Social Services Headquarters Building schedule was timed to culminate with the expiration of several lease agreements of private office space that housed Health and Social Services functions that were relocated to the new facility. The project could not have been delivered within the specified time frame if the traditional design/bid/build method were utilized. If the project had not been completed according to a pre-established schedule, then the County would have been exposed to a 25% premium in lease holdover costs, which would have increased the overall project cost and/or forced reduction in programs and services. Use of the design-build method allowed the County to overlap the design-build process with project entitlements so that the site, which was discovered to contain wetlands, could qualify for mitigation under the nationwide permit under the Army Corps of Engineers. This approach enabled the entire project schedule to be streamlined and compressed.

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have budget and financing constraints. By completing projects in a shorter duration with an assertive but achievable schedule, the County is able to realize cost savings while maintaining project value. A shorter project duration translates into reduced project cost by eliminating costs associated with contractor overhead. For instance,

most public entities typically will not fully fund or finance a project unless it is relatively certain that it will be completed. Through the design-build process, the County has been able to avoid severe penalties under the three year rule that is commonly associated with issuance of Certificates of Participation. Under this rule, project funds must be expended within three years of the date of original issuance. The design-build delivery method enables the County to fund the project at the outset of the design-build process, which not only increases the probability of project completion, but allows funds that the County would ordinarily have to front for the design process to be utilized for other projects or for other purposes. This has been especially important as the state has reduced its budget allocation to Counties and has helped enable programs and services in Solano County to be maintained and in some cases expanded.

Also, reducing the duration of the project schedule has enabled the County to take advantage of low interest rates in the current marketplace. With interest rates beginning to rise, every month that interest rates rise has the effect of potentially reducing project scope if the County has a limit associated with financing the project or if increased construction costs in the marketplace erode the County's buying capability.

By awarding projects based on best value, the County has experienced an increase in quality in comparison to those that would likely be achieved utilizing the traditional design/bid/build method of project delivery. For instance, the County was able to receive a significant enhancement to the exterior skin of the Probation Building, which was upgraded from stud framing with an exterior plaster or exterior insulating finishing system to precast concrete at no additional cost to the County. This was achievable due to the economy of scale associated with precast concrete for the entire Government Center project.

As a practical and political reality, Solano County has experienced that the higher the cost of the project and/or for projects located in a campus setting that is striving for architectural consistency and/or appropriateness, the more interested the Board of Supervisors has been in discerning what the design of the project will look like during the early stages of project development. From this standpoint, the bridging method of design-build allows the policy and decision makers to more fully understand the aesthetic appearance of key project components that are locally sensitive while still maintaining flexibility for the design-build entity so that the economic benefits of the design-build delivery method can be fully realized.

In summary, the County considers the design-build approach as an alternative procedure on bidding to be an excellent project delivery approach that reduces the overall project development schedule and construction cost while maintaining project quality that also provides an added benefit of single source responsibility for both the design and construction. This ultimately translates into reduced change orders and reduces the County's exposure to construction claims. Solano County's experience with the design-build approach demonstrates that it is possible to maintain project quality utilizing design criteria, the bridging method of design build, contract award based on lowest responsible bidder or on best value in both renovation and new construction projects. In short, it is well-suited for virtually all project types if the local project team has the ability to effectively manage project risks throughout the project delivery process.

Through the County's experience with the design-build approach, the County has been able to successfully deliver projects using a variety of different building materials, occupancy types in buildings containing uses ranging from standard office space to specialized spaces such as hearing rooms and Board of Supervisors meeting chambers which have specialized mechanical, electrical, technological and acoustic needs. On this basis, Solano County strongly supports continuation of this legislation, relaxing the threshold requirements, and making this alternative procedure on bidding available to all California Counties.

## **SOLANO COUNTY GOVERNMENT CENTER, FAIRFIELD, CA**

### **1) The type of facility:**

The Solano County Government Center project is the largest capital improvement project that will house County programs and services in the County's history as measured by square footage constructed and dollars expended. Based on a master plan of the downtown Fairfield county campus that was approved by the Board of Supervisors on April 10, 2000, The project consists of three major components; a County Administration Center (CAC) with a Public Plaza and a Public Courtyard, an adjacent Parking Structure, and a free-standing Probation Building. This project consolidates 15 County departments housed in 20 separate facilities. The CAC and Probation Buildings are steel-framed structures (moment frame for CAC and diagonal bracing for Probation Building) with concrete floor and roof decks and precast concrete/dual-glazed exterior cladding. The Parking Structure is a hybrid structure of precast concrete, cast-in-place concrete with post-tensioned floors, with exterior precast concrete cladding. All structures are supported by concrete pile foundation system.

### **2) The gross square footage of the facility:**

The gross square footage of the County Administration Center is 300,000 gross square feet with six stories. The Parking Structure contains 325,000 gross square feet with five levels (at grade and above) containing over 1,000 parking stalls. The Probation Building is 42,500 gross square feet with two stories.

### **3): The design-build entity who was awarded the project:**

The design-build entity who was awarded the project was Clark Design-Build of California, Inc. of Oakland, CA. The design-build entity consists of Clark Construction serving as the General Contractor and Kaplan McLaughlin Diaz of San Francisco, CA serving as the Architect of Record.

### **4) The estimated and actual length of time to complete the project:**

Estimated: June 13, 2000 to March 2004 from entitlements through project close-out.

Approximately 850 days from Notice to Proceed to the design-build entity through filing of the Notice of Completion.

Actual: Unknown since project has yet to be completed.

### **5): The estimated and actual project costs:**

Estimated: \$71,157,000 to \$81,831,000

### **6): A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including resolution of the protests:**

Not applicable.

**7): An assessment of the prequalification process and criteria:**

The process was successfully accomplished using a two-step procurement process based on a written prequalification, design criteria solicitation. This process was conducted in accordance with the requirements of Section 20133 of the Public Contract Code between June 7, 2002 and November 19, 2002. The first step included pre-qualification of design-build teams which included a mandatory pre-qualification submittal conference. This step in the selection process resulted in a response by eight firms. The written information provided by these firms was evaluated by a multi-disciplinary team of County staff and County consultants using pre-established evaluation criteria published in the prequalification solicitation notice. This resulted in a determination that five of the eight responding firms met the minimum pre-qualification criteria and were interviewed. Following oral interviews, the firms were re-ranked according to the pre-determined and published evaluation criteria. Among these five, three firms were invited to proceed with the second step of the selection process and to submit a technical proposal that would be evaluated using a best value methodology according to pre-established criteria published in the Request for Proposals (RFP). This step included an interim presentation by each firm before County staff and County consultants to confirm that they were appropriately interpreting the bridging documents and a mandatory pre-proposal conference. Proposals were received from all three firms. The proposals were initially evaluated by a cross-disciplinary technical review team composed of County staff and County consultants associated with the project. The technical review focused on the technical information in the proposal, team organization and management and best value/quality enhancements based on evaluation criteria published in the RFP. A technical report was provided by the technical review team to a selection panel who met to review the information from the technical reviewers. This meeting resulted in a group of seven questions applicable to all proposers that were distributed to each proposer in advance of proposal interviews. Proposers were requested to submit written responses to the seven questions on the day following the oral interviews. Other questions that were specific to a particular proposer were posed by the selection panel during the proposal interviews. The selection panel reconvened after receiving written responses to the seven questions and to finish scoring each proposal using a standardized proposal evaluation worksheet and make a final selection. The rankings of the proposing firms were published the day following the final deliberations by the selection panel with contract award based on the pre-established best value methodology utilizing criteria published in the RFP. The County provided a modest sum to proposing firms that were not the highest ranked in order to offset costs incurred by the proposing firms during development of the proposals.

**8) An assessment of the impact of retaining 5 percent retention on the project:**

At the design-build entity's request, the County permitted the design-build entity to establish an interest bearing escrow account at an approved bank whose deposits are federally insured. The County is placing the retention monies into this bank account each month in accordance with the approved progress payments. These retention funds are being held until the Notice of Completion is approved by the Board of Supervisors, when they will be released to the design-Build entity. The County and the design-build entity have experienced no adverse impact withholding 5% retention with the exception of the County having to process retention funds to a banking firm each month, which marginally increases the County's administrative workload. The County and the design-build entity have been able to amicably address and resolve project-related issues so that use of retention funds by the County to complete



substandard or other work that would ordinarily be performed by the design-build entity has not become an issue.

**9): A description of the Labor Force Compliance program and an assessment of the project impact, where required:**

The County negotiated a project-specific Project Labor Agreement (PLA) with the Napa-Solano Building Trades Council for the Solano County Government Center project. The provisions of the PLA provided protection from work stoppages, supported utilization of a local work force and apprentices, clarified benefits for laborers working on the project, clarified wages and hours of work per California Labor Code, and outlined grievance and arbitration procedures. This is the first project that houses County programs and services that is being delivered under a PLA. There have been no issues that have emerged from the PLA implementation and enforcement.

The project followed the requirements of Section 1771 of the California Labor Code, including prevailing wage rate requirements, a labor compliance program with all bid invitations containing appropriate language concerning the project requirements, and a preconstruction conference with the design-build entity with major subcontractors present to discuss federal and state labor law requirements applicable to the contract. Project requirements included that contractors and subcontractors submit certified copies of payroll records. These records were reviewed as needed to verify labor compliance. The project had a small number of requests made by non-profit labor organizations requesting subcontractor information. The County provided the requested information and there were no labor compliance issues that emerged through the project.

**10): A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology:**

See information under the section titled, *An Assessment of the Prequalification Process and Criteria*. The County's Division of Architectural Services, which was responsible for administering the project, supplemented its project management staff by hiring URS Construction Services, a private project/construction management consultant firm who assisted in preparing the Request for Qualifications and the Request for Proposal, and Johnson Fain of Los Angeles, CA, who prepared the bridging documents for the project. The County, URS and Johnson Fain jointly administered the two step solicitation process. As previously noted, following evaluation of the Statement of Qualifications from responding firms using pre-established criteria that was included in the RFQ, a total of three firms were invited to submit bonafide proposals. The proposals were initially reviewed by a Technical Review Team composed of County staff and consultants based on criteria established in the RFP which included:

- Technical design and construction expertise of the teams
- Quality of projects they proposed
- Skilled labor force availability
- Safety record
- Performance enhancements
- Lifecycle costs
- Sustainability/green architecture features

**Report to Legislature and Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2004

Page 11

- Energy conservation
- Quality of work place environment
- Enhanced work place communication
- Long term economic benefit due to both passive and active energy systems
- Project schedule

In addition, two primary areas of evaluation were considered, each of equal importance.

*A. – Team Organization and Management:* The manner in which the design-build entity has structured its team to deliver the project in an effective, efficient and collaborative manner. This included the relevant expertise of the designated subcontractors, the clarity and completeness of the description of proposed building systems, the design-builder's project/construction management plan, the ability to meet budget and schedule requirements, and the ability to work collaboratively with the County and its consultant team. A total of 600 points were possible in the *Team Organization and Management* category. Each category was evaluated and awarded points up to a maximum of 200 points as follows using the scoring ranges listed below:

1. Relative Qualifications and Experience of "Designated" Subcontractors – 200 points
2. Relative Responsiveness of Proposed Building Systems to Bridging Document Criteria – 200 points
3. Relative Clarity and Thoroughness of Design and Construction Management Plan – 200 points

- |  |                                 |
|--|---------------------------------|
| <input type="checkbox"/> Below Average   | 0-80 of the available points    |
| <input type="checkbox"/> Normal/Expected | 81-110 of the available points  |
| <input type="checkbox"/> Above Average   | 110-140 of the available points |
| <input type="checkbox"/> Excellent       | 141-170 of the available points |
| <input type="checkbox"/> Superior        | 171-200 of the available points |

*B. Best Value/Quality Enhancements:* The degree to which the design-builder provided operational, functional, sustainability and schedule enhancements as described in the RFP documents. Each proposed enhancement was evaluated to determine its clarity, completeness and overall coordination with the project design, construction, and performance goals. Points were awarded for each item up to a maximum of 20 points per item as follows:

- |                 |                                  |
|-----------------|----------------------------------|
| M – Moderate    | 40%-60% of the available points  |
| S – Significant | 61%-80% of the available points  |
| O – Outstanding | 81%-100% of the available points |

A technical report was prepared and provided to the selection panel. Questions regarding clarifications of each design-build proposal were reviewed with the selection panel and forwarded by e-mail to each of the three firms. A written response to seven specific questions was requested and the balance of the questions relating to a particular firm was addressed during the interviews. Oral interviews with a duration of two hours per firm were conducted for all three firms on the same day.

Each design-build team was given the opportunity to present its Technical Proposal to the selection panel. The presentation addressed the qualifications and expertise of the design-

builder's designated subcontractors, description of the major building systems, the design-builder's design and construction management plan and a review of enhancements proposed by the design-builder within the stipulated sum. Approximately one hour was allowed for each presentation followed by one hour question and discussion period.

Following the design-build interviews, the selection panel conducted preliminary scoring of the proposals. The following day the selection panel received the written responses to the questions from each firm and scoring was finalized. The scoring was conducted based on information in each proposal, input from the Technical Review Team and the information gleaned during the interviews.

An equation was utilized to adjust the scores to reflect the equal 50% weighting factor for *Team Organization and Management* and *Best Value/Quality Enhancements* noted above. Following deliberations, final scoring was confirmed by each member of the selection panel and entered on a proposal evaluation worksheet which is included in the project record. The rankings of the proposing design-build firms were then published. The design-build agreement was then finalized and signed by the County and the design-builder. The Board of Supervisors delegated signatory authority to the County Administrator through previous Board action. Staff then briefed the Board in public session regarding the selection and award process and formally introduced the project's design-builder to the Board of Supervisors.

**11): An assessment of the project impact of "skilled labor force availability":**

The County declared its intent to deliver the project under a PLA at the outset of the solicitation process, the responding firms were aware of the business conditions that they would be entering into and could therefore make an informed decision whether they wished to pursue the solicitation. A condition of the Project Labor Agreement required that all laborers except for supervisors above general foreman, which the design-builder could hire at their discretion, would be hired through the local union hiring hall. The PLA did not mandate union membership nor preclude non-union workers from participating as laborers, but the practical effect of the PLA resulted in union laborers hired through the local hiring hall constructing the project. Since the contractor that is part of the design-build entity awarded the contract is a union contractor, this has not posed problems during the course of construction. The County considers the construction quality of the project to be high in relation to previous projects and recognized industry standard. The magnitude of the project, coupled with workforce availability due to local market conditions, has made the project an attractive, highly visible project of long duration so it has attracted a highly skilled labor force.

The solicitation process required that the design-build entity list subcontractors associated with the project. The qualifications of these subcontractors were considered in the evaluation of the qualifications of design-build entity. Because the design-build entity was able to assemble a team of qualified subcontractors that the design-build entity had positive, established working relationships with in the past, the County has not experienced adverse issues arising from labor relations or lack of a skilled workforce. The project's design-builder, however, has noted that it would be desirable to be relieved naming specific subcontractors but submit a group of qualified subcontractors. Then, when the design is finalized, work would be bid in a competitive manner among the previously named subcontractors to provide competitive pricing. The design-builder has informed the County that by listing a single subcontractor for each trade before design has been completed, the design-builder has little

ability to negotiate pricing since the subcontractor knows that it will be performing the work. Under a contract award based on a stipulated sum, this creates a hardship for the design-builder and ultimately for the County if the design-builder experiences undue financial hardship.

**12) An assessment of the design-build dollar limits on county projects. This shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value method of awarding contracts was not used, due to dollar limitations:**

In the version of the legislation that sunset on December 31, 2000, there was no upper or lower threshold on design-build dollar limits. As noted in the August 28, 2000 report, Solano County successfully delivered projects with limits below the threshold under the current legislation, including projects valued at \$2,282,550 and \$438,213. With the completion of the \$18,233,582 Health and Social Services Headquarters Building with contract award to the lowest responsible bidder and the impending completion of the \$100,603,927 Solano County Government Center with contract award based on best value, the County has demonstrated, successful experience delivering various-sized projects using alternative methods to bidding.

Based on the County's past experience, assessment of local market conditions and workforce availability which vary over time, as well as the needs and constraints of each individual project, Solano County believes the restriction to limit the use of the design-build delivery method to projects in excess of \$10 million is a restriction that does not ultimately serve the best interests of Solano County citizens. In order to meet its diverse capital project needs, the County believes that citizens are best served when alternative methods to bidding can be fairly assessed, selected and implemented for projects of all sizes in order to balance the risks associated with various project delivery methods with local market conditions, budget and schedule constraints.

For instance, Solano County's Division of Architectural Services has the capability to develop design criteria documents for small projects in-house. If the County were permitted to utilize this approach, then project delivery schedules could be compressed which in turn translates into economic savings that save local taxpayer dollars. The County was also precluded from considering the use of the design-build method on diverse projects such as the upgrade to the security systems in our Adult Sentenced Detention Facility, various Americans with Disabilities Act retrofit projects (these projects have ready made design criteria established in code and guidelines and are therefore good candidates for the design-build delivery method), a variety of projects at local parks including a new Interpretive Center, and construction of new branch libraries and library renovations

**13): An assessment of the most appropriate uses for the design-build approach:**

Solano County places no preconceived limits on the appropriate use of the design-build delivery approach. As noted in the previous section, the County attempts to evaluate each individual project and match the project needs with the most appropriate delivery method that can meet the project need. In this manner, the County can balance the risks associated with each method of project delivery available to the County with local market conditions, budget and schedule constraints.

**Report to Legislature and Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2004

Page 14

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have schedule constraints. For instance, the Health and Social Services Headquarters Building schedule was timed to culminate with the expiration of several lease agreements of private office space that housed Health and Social Services functions that were relocated to the new facility. The project could not have been delivered within the specified time frame if the traditional design/bid/build method were utilized. If the project had not been completed according to a pre-established schedule, then the County would have been exposed to lease holdover costs, thereby increasing the overall project cost.

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have budget and financing constraints. By completing projects in a shorter duration with an assertive but achievable schedule, the County is able to realize cost savings while maintaining project value. A shorter project duration translates into reduced project cost by eliminating costs associated with contractor overhead. Since public entities typically will not fully fund or finance a project unless it is relatively certain that it will be completed, reducing the duration of the project schedule has enabled the County to take advantage of low interest rates in the current marketplace. With interest rates beginning to rise, every month that interest rates rise has the effect of potentially reducing project scope if the County has a limit associated with financing the project or if increased construction costs in the marketplace erode the County's buying capability. By awarding projects based on best value, the County has experienced an increase in quality in comparison to those that would likely be achieved utilizing the traditional design/bid/build method of project delivery. For instance, the County was able to receive a significant enhancement to the exterior skin of the Probation Building, which was upgraded from stud framing with an exterior plaster or exterior insulating finishing system to precast concrete at no additional cost to the County. This was achievable due to the economy of scale associated with precast concrete for the entire Government Center project.

As a practical and political reality, Solano County has experienced that the higher the cost of the project and/or for projects located in a campus setting that is striving for architectural consistency and/or appropriateness, the more interested the Board of Supervisors has been in discerning what the design of the project will look like during the early stages of project development. From this standpoint, the bridging method of design-build allows the policy and decision makers to more fully understand the aesthetic appearance of key project components that are locally sensitive while still maintaining flexibility for the design-build entity so that the economic benefits of the design-build delivery method can be fully realized.

In summary, the County considers the design-build approach as an alternative procedure on bidding to be an excellent project delivery approach that reduces the overall project development schedule and construction cost while maintaining project quality that also provides an added benefit of single source responsibility for both the design and construction. This ultimately translates into reduced change orders and reduces the County's exposure to construction claims. Solano County's experience with the design-build approach demonstrates that it is possible to maintain project quality utilizing design criteria, the bridging method of design build, contract award based on lowest responsible bidder or on best value in both renovation and new construction projects. In short, it is well-suited for virtually all project

**Report to Legislature and Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**  
November 30, 2004  
Page 15

types if the local project team has the ability to effectively manage project risks throughout the project delivery process.

Through the County's experience with the design-build approach, the County has been able to successfully deliver projects using a variety of different building materials, occupancy types in buildings containing uses ranging from standard office space to specialized spaces such as hearing rooms and Board of Supervisors meeting chambers which have specialized mechanical, electrical, technological and acoustic needs. On this basis, Solano County strongly supports continuation of this legislation, relaxing the threshold requirements, and making this alternative procedure on bidding available to all California Counties.

Respectfully Submitted,



Kanon R. Artiche, AIA  
County Architect



CHAIRMAN COX, MEMBERS OF THE COMMITTEE, GOOD MORNING MY NAME IS HARDY ACREE AND I AM DIRECTOR OF AIRPORTS FOR THE SACRAMENTO COUNTY AIRPORT SYSTEM.

I WANTED TO THANK YOU FOR GIVING ME THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND SPEAK TO THE BENEFITS THAT HAVE ACCRUED TO SACRAMENTO COUNTY BY HAVING DESIGN BUILD AS A TOOL IN OUR TOOL BOX WHILE DESIGNING AND CONSTRUCTING THE LARGEST CAPITAL IMPROVEMENT PROJECT IN SACRAMENTO COUNTY'S HISTORY, KNOWN AS THE BIG BUILD.

OUR DESIGN BUILD PROJECT REMAINS A WORK IN PROGRESS, BUT OUR EXPERIENCE TO DATE HAS BEEN VERY POSITIVE. HERE ARE A FEW FAST FACTS TO HELP SET THE TABLE. OUR PROJECT INCLUDES:

- 670,000 SQUARE FEET FOR THE LANDSIDE TERMINAL AND AIRSIDE CONCOURSE
- 19 AIRCRAFT CONTACT GATES INCLUDING A NEW INTERNATIONAL ARRIVALS FACILITY AND FEDERAL INSPECTION STATION WITH 400 PASSENGERS PER HOUR PROCESSING CAPABILITY
- A DUAL TRACK AUTOMATED PEOPLE MOVER SHUTTLE SYSTEM CONNECTING THE LANDSIDE TERMINAL WITH THE AIRSIDE CONCOURSE
- TWO LEVEL ACCESS ROADWAY AND CURBSIDES
- \$1.1 BILLION WITH A \$770 MILLION HARD CONSTRUCTION AND SPECIAL SYSTEMS BUDGET
- EXPECTED OPENING DATE IS 4<sup>TH</sup> QUARTER OF 2011



AND WHILE EVERY PROJECT IS DIFFERENT, MOST HAVE MANY SIMILARITIES. EVERY PROJECT ALSO HAS ELEMENTS THAT LEND THEMSELVES TO BEING BEST PERFORMED USING ONE DELIVERY METHOD OR ANOTHER. EVEN THE TRADITIONAL DESIGN BID BUILD HAS APPLICATIONS AND IS AT TIMES THE PREFERRED APPROACH TO AN ALTERNATIVE DELIVERY METHOD SUCH AS DESIGN BUILD OR CONSTRUCTION MANAGER AT RISK (CMR).

IT IS IMPORTANT TO NOTE THAT IF THE COUNTY HAD USED THE TRADITIONAL DESIGN-BID-BUILD METHOD, WE WOULD HAVE ADDED 18 MONTHS TO THE PROGRAM AND ESTIMATE THAT THE PROJECT COST COULD HAVE BEEN AN ADDITIONAL \$200,000 TO \$300,00 PER DAY, OR ABOUT \$100,000,000 TO \$150,000,000 ABOVE THE \$1.1 BILLION.

I CAN NOT OVERSTATE THE IMPORTANCE OF HAVING DESIGN BUILD AVAILABLE TO SACRAMENTO COUNTY. WE DEEPLY REGRET NOT HAVING CMR IN THE TOOL BOX AS WELL. IT IS HARD TO COMPREHEND HOW THIS PROJECT WOULD HAVE COME TOGETHER WERE IT NOT FOR DESIGN BUILD. THERE IS NO DOUBT IN MY MIND, WERE IT NOT FOR THE BENEFITS OF DESIGN BUILD TO REALIZE A SAVINGS OF TIME AND MONEY, THE COST AND CONSTRUCTION TIMEFRAME FOR THIS PROJECT WOULD HAVE MADE IT PROHIBITIVE.

WE STRONGLY ENCOURAGE YOU TO NOT ONLY RENEW THIS ENABLING LEGISLATION, WE ASK THAT YOU ELIMINATE THE

SUNSET PROVISION ALL TOGETHER AND MAKE THE PROVISION FOR DESIGN BUILD PERMANENT.

LASTLY, FAILING TO EXTEND DESIGN BUILD WILL PUT SACRAMENTO INTERNATIONAL AT A COMPETITIVE DISADVANTAGE BECAUSE OUR COMPETITORS ARE NOT SO ENCUMBERED. THE COST OF DEVELOPING INFRASTRUCTURE WITHOUT DESIGN BUILD WILL BE HIGHER AND THAT ADDITIONAL COSTS WILL BE PASSED ALONG TO OUR CUSTOMERS, THE AIRLINES AND THE TRAVELING PUBLIC. OURS IS BUT A SMALL PIECE IN THE GRAND SCHEME OF THINGS, ESPECIALLY IF YOU CONSIDER THE STATEWIDE IMPACT ON CONSTRUCTION JOBS IF DESIGN BUILD IS NOT AVAILABLE. THIS WILL SIGNIFICANTLY INCREASE THE COST OF INFRASTRUCTURE DEVELOPMENT IN CALIFORNIA THEREBY MAKING IT LESS COMPETITIVE WITH OTHER STATES.

AGAIN, THANK YOU FOR GIVING ME THE OPPORTUNITY TO SPEAK IN SUPPORT OF ALTERNATIVE DELIVERY METHODS, INCLUDING DESIGN BUILD.



## DESIGN-BUILD LEGISLATIVE HEARING

The County of Los Angeles has a very active capital projects program, and we have implemented a major shift in our program to utilizing the authority granted in Section 20133 of the Public Contracts Code. Of the 16 projects presented in the Legislative Analyst's Office report, six of them were Los Angeles County projects. Including these six projects, we have a total of 13 projects in various phases of implementation using this authority with a total value of more than \$700 million. Among these is the renovation of Martin Luther King Jr. Medical Center. We support the recommendations of the LAO's report, and encourage the Legislature to continue its support of the Design-Build method of contracting.

In addition to our general support of the LAO's recommendations such as eliminating the "sunset clause" for the authority, we offer the following specific recommendations:

1. Eliminate any limitation on the size of project that can use Design-Build.
2. Eliminate restrictions on the types of projects that can use Design-Build.
3. Eliminate the mandate that the following criteria be evaluated as part of the best-value selection process for every project:
  - life cycle cost analysis,
  - safety record, and
  - skilled labor force availability
4. Eliminate the requirement that local agencies enforce a Labor compliance Program on behalf of the Department of Industrial Relations as a condition of using Design-Build.

Many local agencies have, or are in the process of, successfully implementing Design-Build projects. Based on this collective experience, this project delivery method has shown great usefulness for public projects, and has been widely embraced by the design and construction communities. The changes recommended above would allow local agencies greater discretion and flexibility in how they implement design-build projects to meet the needs of their local communities, while maintaining the Legislature's general control of contracting State-wide.



The Senate Local Government Committee  
Hearing on  
How Counties Use Design-Build Contracting  
January 20, 2010

**Introduction**

Lou Cavagnaro, P.E.  
County of San Diego, Assistant Director for Department of General Services  
Register Professional Engineer in California  
Professional involvement with Design Build (DB) delivery for over 15 years

**Ongoing Design Build Projects**

The County of San Diego has two capital projects – libraries at Fallbrook and Ramona CA – currently underway using the Design Build delivery method. We completed the selection process, using the Best Value alternative for each project. The designs for both projects have also been completed and construction has commenced with completion scheduled for December 2011.

A third capital project is in the initial stage of selection of the Design Build entity. This project is for the replacement of housing at the San Pasqual Academy that was destroyed in the 2007 firestorm.

An additional capital project, a new Sheriff Station at Rancho San Diego, pending funding, will also be accomplished by Design Build – subject to the extension of legislative authority.

**Use of Design Build for small projects**

Fellow panel members have addressed the successful use and demonstrated benefits of using Design Build for large projects. I concur with their comments. I would like to turn to the potential use of Design Build for projects below the current \$2.5 million threshold.

The County of San Diego is recommending the current threshold for use of Design Build be eliminated in order to allow for expanded use of this tool.

We have reviewed our 2010/2011 construction program and have tentatively identified 14 projects at an overall budget of approximately \$4.6 million that are compatible with the use of the Design Build delivery method. In these situations, the use of Design Build would expedite contract award and completion of the projects while reducing staff costs. A comparison of the Design Build method with the Design Bid Build delivery method indicated upwards of a 20% reduction in delivery of the projects as well as a reduction in staff costs which can be achieved using Design Build. The quality of end product would remain high.

The use of the Design Build delivery method on projects below the current threshold affords smaller and developing companies, both in the design and construction industries, the opportunity to gain experience in this method and be more competitive for larger size projects in the future.

We encourage and support the continual use of Best Value Source Selection methods as well as low bid. Project specific needs should determine the method of pricing used, allowing for optimum use of the Design Build tool.



SPEAKING NOTES FOR 1/20/2010 LEGISLATIVE OVERSIGHT HEARING;

GOOD MORNING SENATORS AND THANK YOU FOR THE OPPORTUNITY TO SPEAK ABOUT THE DESIGN BUILD DELIVERY METHOD.

MY NAME IS SETH BOLES AND I AM AN OPERATIONS MANAGER FOR HENSEL PHELPS CONSTRUCTION COMPANY. I AM ALSO CO. CHAIR FOR THE SANTA CLARA BOARD OF DIRECTORS CHAPTER OF THE ASSOCIATION OF GENERAL CONTRACTORS, I AM A MEMBER OF THE AGC'S LEGISLATIVE COMMITTEE AND HAVE ALSO EARNED THE DESIGNATION OF DESIGN BUILD PROFESSIONAL WITH THE DESIGN BUILD INSTITUTE OF AMERICA.

IN MY 21 YEARS WITH HPCC I HAVE HAD THE OPPORTUNITY TO WORK ON NUMEROUS DESIGN BUILD CONSTRUCTION PROJECTS IN CALIFORNIA. AMONG THEM HAVE BEEN DESIGN BUILD PROJECTS WITH THE STATE OF CALIFORNIA, THE COUNTIES OF ALAMEDA AND SAN JOAQUIN, THE SAN MATEO COMMUNITY COLLEGE DISTRICT AND THE CITIES OF SACRAMENTO AND SAN JOSE. OUR NORTHERN CALIFORNIA DISTRICT AND OUR COMPANY AS A WHOLE HAS HAD EXPERIENCE ON MANY MANY OTHER DESIGN BUILD PROJECTS AS WELL.

THE MOST IMPORTANT COMMON DENOMINATOR FOR THESE PROJECTS WAS THAT THEY ARE ALL CONSIDERED SUCCESSFUL PROJECTS BY THE OWNERS, HENSEL PHELPS AND ALL STAKE HOLDERS.

I IMAGINE ONE OF THE GOALS OF THE STATE 15 YEARS AGO WHEN DESIGN BUILD LEGISLATION WAS FIRST APPROVED WAS TO EXPERIMENT WITH A NEW DELIVERY METHODS FOR CONSTRUCTION PROJECTS WITH THE HOPE OF REALIZING A HIGHER SUCCESS RATE THAN THAT BEING EXPERIENCED WITH THE MORE TRADITIONAL DESIGN BID BUILD METHOD. EXPEDITED SCHEDULES, LESS LITIGATION, MORE SATISFIED STAKE HOLDERS, BETTER VALUE FOR THE DOLLAR, ETC...

DESIGN BUILD IS A BETTER DELIVERY METHOD THAN DESIGN BID BUILD. I BELIEVE THE BEST PROOF IS THE RESULTS.

FOR HENSEL PHELPS THE SUCCESS OF THESE PROJECTS IS MEASURABLE AND UNDENIABLE. ALL HAVE BEEN COMPLETED WITHIN BUDGET, ON TIME AND WITHOUT CLAIM. MANY HAVE BEEN UNDER BUDGET AND AHEAD OF SCHEDULE. THE DEPARTMENT OF EDUCATION BLOCK 225 PROJECT WAS COMPLETED ON BUDGET AND 10 MONTHS EARLY, THE RECENTLY COMPLETED SAN JOAQUIN ADMINISTRATION BUILDING WAS COMPLETED AHEAD OF SCHEDULE AND UNDER BUDGET, THE RECENTLY



COMPLETED HOSPITAL ADDITION AT THE SAN QUENTIN STATE PRISON WAS COMPLETED WELL AHEAD OF SCHEDULE AND WITHIN BUDGET. THESE ARE JUST A FEW EXAMPLES. THERE ARE MANY OTHERS

SPECIFIC TO SUGGESTED CHANGES IN THE CURRENT LEGISLATION I WOULD RECOMMEND SPECIFICALLY RECOGNIZING THE STIPULATED SUM APPROACH IN THE BEST VALUE SELECTION PROCESS. MANY OF THE ABOVE PROJECTS MENTIONED UTILIZED THE STIPULATED SUM APPROACH AND I BELIEVE IT IS THE BEST WAY TO GET THE MOST OUT OF THE DESIGN BUILD PROCESS.

I DO NOT BELIEVE THAT ADDING MORE WEIGHT TO THE COST COMPONENT OF THE SELECTION PROCESS IS AN IMPROVEMENT.

A CAREFULLY DETERMINED STIPULATED SUM COMBINED WITH THE BEST VALUE SELECTION PROCESS SEEMS TO CONSISTENTLY DELIVER THE BEST RESULTS FOR ALL THE STAKE HOLDERS.

THANK YOU AGAIN FOR YOUR TIME AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

Peter;

Above are the speaking notes I used for my testimony this morning. I have some additional comments that I would like to share.

- I made a comment that Senator Cox questioned about the concept of the cost based selection going fundamentally against what I believe design build is trying to achieve. I would like to expand a little on this as I don't want the record to inaccurately reflect what the comment was meant to describe. In short I think if we go too far in using price as the primary selection criteria we risk taking the opportunity away from the selection committees of these projects to truly select the best value solution. A longer explanation follows.
- The idea of design build is the idea that allows a process to take place in which the owner participates in the evolution of the design solution while at the same time gaining the benefit of a contractors input into the most cost effective approach for construction. The process also allows the owner to shed the ultimate liability for the design which greatly reduces the opportunity for change orders due to design deficiencies. Alleged design deficiencies are often the basis for litigation on unresolved changes in the design bid build process. Regardless of whether the selection of the design build contractor is thru a competitive bid process or a best value selection, the very nature of the design build process is to bring a better value for the dollar to the owner. The value is best measured with the end result. Did the owner feel like their participation in collaboration with a design build entity in a design build process allowed for the development of a

better design solution? Did the owner feel that their utilization of the design build process allowed the project to get designed and constructed in a more expedited fashion? Did the owner feel like the design build experience was less fraught with unresolved design issues, and cost issues and owner liability issues? In all, did the owner feel like the design build process delivered the best overall value?

- I would argue that the best way to achieve the best value at the end of the day is to utilize a best value proposal evaluation process that takes all important factors into consideration. I agree that price should be a component of that final evaluation, either thru some weighted best value cost component, or thru the achievement of the stipulated sum. However, to have that best value selection decision solely based on price, or have price so heavily weighted that it outweighs who everyone on the judging committee has determined will truly deliver the best design, the best team, the least changes, the most confidence and upon final completion the best overall value, risks eroding part of what I believe design build promises to deliver. GIVING THE OWNER A PROCESS WITHIN WHICH A DESIGN BUILD PARTNER CAN BE SELECTED THAT WILL ULTIMATELY DELIVER THE BEST VALUE PROJECT FOR THE CLIENT.
- I have attached a copy of the best value selection criteria that was used for a recent DGS design build stipulated sum procurement. This will give the committee an idea of all the very important elements that are considered and scored as part of a best value selection process.
- I would also recommend that the committee consider the experiences that people within DGS have had on design build projects. DGS is one of the most qualified users of design build that I have been in contact with.

#### TIMING:

- I believe the legislation should be either extended to 2016 to allow insure another look at evolving the language or just make the law permanent.

#### PROJECT LIMITS:

- I don't see a reason to have a 2.5 million dollar threshold
- I don't see a reason to limit the type of projects that are constructed using the design build process

#### CONTRACT PROCEDURES:

- It makes sense that there is a single statute and not a different one for different governing bodies
- I don't think the two envelope system would offer an improvement to some of the existing best value selection approaches that have already been developed and proven successful.
- I think that if the decision is made to extend the legislation in lieu of making it permanent than there is a benefit to some level of reporting that can be used to better judge the success of the legislation when 2016 comes onto the horizon.

QUALIFICATIONS:

- I would defer to the AGC regarding a position on the False Claims Act issue. Certainly it has never been a limiting factor for Hensel Phelps.

SMALL BUSINESS PARTICIPATION:

A question was asked by Senator Price regarding the experience of the panel regarding the opportunity for increased participation of SBE/DVBE/SDBE in design build procurements versus the typical design bid build process. Hensel Phelps experience has been that on most design build procurements the design builders subcontracting plan is a graded component of the best value evaluation process. This opportunity/challenge to create a superior plan, for Hensel Phelps, has always been met with great success. We have had record participation levels on most projects where the subcontracting plan was part of the best value evaluation criteria. The ability to achieve this level of success is driven in part by the flexibility and control of the process that design build allows. Our ability to break subcontractor work scopes down into manageable pieces in the bid packages really helps. The scopes and associated contract amounts are then more in line with the capacities of our smaller subcontractors. We would not have that flexibility on a hard bid job. Specific data is available upon request. Some noteworthy projects that fall into this category are the block 225 east end design build project, the Alameda County Juvenile Detention Facility, and the recently procured design build California Veterans Home in Fresno.

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least ten percent (10%) of the amount of the Stipulated Sum. No proposal will be considered unless one of the forms of Proposer's security is enclosed therewith. If Proposer's security is a "Bidder's Bond," it must be executed on the form provided in Section 004300.

**F TECHNICAL PROPOSALS AND PROPOSAL INTERVIEWS – POINT SCORING SYSTEM (10,000 POINTS)** – The total points available for scoring will be 10,000 points. Technical Proposals will consist of 8,000 points and the Proposal Interview will consist of 2,000 points of the total 10,000 point scoring system. See below for additional information.

**G TECHNICAL PROPOSALS (8,000 POINTS)** - The Project Proposal shall be responsive to the requirements set forth in the Proposal Submission Requirements, Section 004100, and the following:

1. **CRITICAL SUCCESS FACTORS:** Critical Success Factors (CSF) are those issues that the Client Agency (CDVA) and the State Project Team (DGS and its project consultants) have agreed are essential to the success of this Project, and are the core essence of the Contractor's responsibility. It is essential that the Contractor be responsive to the CSF and use the CSF as a guide in both the development of the response to the RFP, and in the design and construction of the new Fresno Veterans Home:
  - a) Create a new California Veterans Home that responds to Members' desires and needs providing an environment that reflects the comforts of home, providing the highest quality of life with dignity and positive self-image, and by the nature of the design, nurtures the human spirit of the Members and the staff.
  - b) Create a built environment that is stress-free, secure, safe, reliable, consistent, easy to access, and responsive to Members' needs in every way, as well as meet the needs of operators/staff.
  - c) The average age of the Members ranges from 70 to 85 years, with the youngest members being commonly 62 years of age. Exceptions to this are younger disabled Veteran residents. Create a built environment that mitigates the aging characteristics that include frailties and the major decline of sight, hearing, mobility and cognitive skills. Generally, members are male, however, an increasing female veteran population, plus the ability to house wives of male veterans demand that either male or female occupants must be comfortable and accommodated in the new facility.
  - d) Meet the contracted design and construction schedule and deliver required completed documents to State on time to meet federal requirements for funding.
  - e) Meet or exceed the five percent (5%) minimum participation goal set for the Disabled Veterans Business Enterprise program for this Project.

- f) Create a Project that is energy efficient. Achieve a LEED® v.2.2 “Silver” or higher certification from the USGBC and use sustainable design elements and construction practices.
- g) Create a Project design that has a positive aesthetic impact on the local community of Fresno. Continue public outreach efforts during design and construction to maintain good community relations.
- h) Provide a Project design that gives a positive impression to the surrounding Veterans’ communities. Join in the State’s outreach efforts during design and construction to maintain good relations with Veterans’ groups and representatives.
- i) Thoroughly commission new systems to ensure efficient and reliable operation.
- j) Systematically furnish all required warranties, operation and maintenance manuals, and record documents and quickly close out Project with no defects.
- k) Have fun.

**2. PASS / FAIL MANDATORY REQUIREMENTS:**

- a) CERTIFICATION of Stipulated Sum (004100).
- b) Design/Build Team Confirmation (004100).

**3. GENERAL REQUIREMENTS (500 POINTS)**

**a) EXECUTIVE SUMMARY (250 POINTS)**

Prepare an Executive Summary of the Project describing the Proposer’s general approach to the design and construction. Place special emphasis on the Critical Success Factors (CSF) listed above and the unique design and construction strategies or ideas your team will bring to ensure a memorable and stress-free facility care for seniors, and an interior design that portrays a warm, comfortable environment of living.

**b) FORMAT AND ORGANIZATION (250 POINTS)**

Prepare the proposal in an organized manner where one can navigate easily through all proposed materials. Utilize a Table of Contents with divider tabs to distinguish sections of the Proposal. Clearly identify and describe all proposed enhancements and their effect on the RFP requirements. Scoring will consider not only content, but readability, organization, format and coordination with other parts of the Proposal.

#### 4. DESIGNATED SUBCONTRACTORS (800 POINTS)

- a) **DESIGNATED SUBCONTRACTORS (400 POINTS)** - Submit a list of the Designated Subcontractors consisting of the five (5) subcontractor trades identified by the State with the option for the Proposer to list up to two (2) additional subcontractors of the Proposer's choice. (All subcontractors not designated by or performed by the Proposer's team shall be competitively bid and awarded by the Proposer's team.) Refer to Government Code § 14661 and Section 004100, Proposal Submission Requirements. The Proposal will be considered non-responsive if the Proposer fails to list the five Designated Subcontractors.
- b) **DESIGNATED SUBCONTRACTORS DVBE INCENTIVE (400 POINTS)** – In regard to the Designated Subcontractors noted above, an additional **80 points** per Designated Subcontractor will be awarded for Designated Subcontractors listed who are also certified Disabled Veterans Business Enterprises (DVBEs) up to a total of **400 points** (maximum of any five of the seven Designated Subcontractors). (Refer to Section 004100 and identify the Subcontractors who are also certified DVBE.)

#### 5. PROPOSED DESIGN (3,700 POINTS)

##### a) ARCHITECTURAL (1,500 POINTS)

Prepare documents listed below to depict the Proposers architectural design in response to the State's requirements. The submittal requirements listed below are minimum requirements. Proposer may submit additional materials in the Project Proposal. Additional materials submitted by the Proposer may or may not be reviewed by the State at the State's sole discretion. Internet links to websites are not permitted. The minimum submittal requirements are as follows:

- 1) **Design Narrative:** Written description of the design approach for the Project. Design approach shall address the following topics: architectural composition as it relates to the site and the various functions of the facility; what makes the design particularly residential, personal, and inviting for Members and visitors; incorporation of universal design concepts; architectural materials palette for interiors and exteriors, and proposed eldercare way-finding design concepts. Design narrative may include diagrams, graphic illustrations, conceptual sketches and ideas, exhibits, and photographic images. 8½" x 11" Format.
- 2) **Building Program Report:** Spreadsheet format indicating all proposed program spaces, size of areas and rooms, and other square footages as compared to the required building space program and square footages of the Project. Deviations from the required building program square footages are to be clearly

highlighted. 8 ½" x 11" Format. Any additions to the State's issued Performance Specifications are to be clearly noted.

- 3) **Conceptual Design Plans:** Prepare conceptual design plans that illustrate the character (design theme for the Project), including conceptual drawings and preliminary additional Performance Criteria as necessary to describe the Architect's design intent.
- i) **Site Plan:** 1/20 = 1'-0" Scale (minimum). Overall site plan including the size and locations of the proposed elements, (including parking at 1/16" = 1'-0" scale). Provide conceptual drawings to assure visual unity between landscaped and hardscaped areas, and building forms with vehicular and pedestrian access.
  - ii) **Floor Plans:** 1/16" = 1'-0" Scale (minimum) overall floor plans of the proposed building. Plans are to indicate room names and usable square footages of rooms/areas. Enlarged floor plans of critical rooms/areas such as bedrooms and toilet layouts showing clearances (drawn at ¼" scale). Scaled "block" and "bubble" diagrams of the proposed design are not a fulfillment of the submittal requirements, but may be submitted as additional reference material.
  - iii) **Wayfinding Concepts:** Provide narrative and illustrations demonstrating eldercare wayfinding concepts and Proposer's unique approach to address memory challenged residents.
  - iv) **Roof Plans and Narrative Descriptions:** 1/16" = 1'-0" Scale (minimum) overall roof plan indicating mechanical equipment and roof access. Provide a narrative description of the proposed roof system(s).
  - v) **Exterior Building Elevations:** 1/16" = 1'-0" Scale (minimum) exterior north, south, east, and west elevations of the Project. Elevations are to denote major elements of the proposed Project and building materials. Enlarged elevations of critical elements are encouraged. Include all exterior building characteristics, including but not limited to building form, surface materials, color, texture, and architectural detailing.
  - vi) **Overall Building Sections:** 1/16" = 1'-0" Scale (minimum) east-west and north-south overall building sections of each building, including sections on: a) Typical Bedroom, b) Dining Room and dining areas, c) Main Lobby/Reception, d) Office Area, e) Promenade. Enlarged building sections of critical elements are encouraged.
  - vii) **Exterior and Interior Wall Systems and Sections:** ¾" = 1'-0" Scale (minimum) typical wall sections through each of the following: a) front of house, b) back of house, and c) Member

interior versus exterior use areas. Provide narrative description of proposed wall systems.

viii) **One (1) study model** in 1:60 scale to be retained by the State. (To be submitted by winning Proposer only after award.)

ix) **Architectural Renderings:** Three (3) 30" x 40" (minimum) colored renderings of three (3) views of the proposed Project. Perspective views are to be: 1) the full exterior view of the entry into the new facility, 2) the lobby and reception area, and 3) the promenade area. Renderings may be computer generated in color. Additional perspectives of the proposed Project are at the discretion of the Proposer. These renderings shall be submitted as part of the Proposal and shall be used as part of the interview presentation.

**b) STRUCTURAL (200 POINTS)**

1) Structural system design narrative summarizing key structural design concepts and approach. Describe unique design features, unique structural technologies, sustainability features and best value for the State.

2) Prepare documents at 1/16"= 1'-0" Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposer's design for the structural system, including conceptual foundation plans, typical floor framing plans, and any specialty details.

**c) MECHANICAL AND ENERGY MANAGEMENT SYSTEMS (350 POINTS)**

1) Mechanical and Energy Management System design narratives summarizing key design concepts including proposed unique design features, sustainability features, energy conservation, quality of the environment and best value for the State

2) Prepare documents at 1/16"= 1'-0" Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposer's mechanical system design, including facility HVAC, and other general concept diagrams.

**d) PLUMBING AND FIRE PROTECTION SYSTEMS (250 POINTS)**

1) Plumbing and Fire Protection System design narratives summarizing key design concepts including proposed unique design features, sustainability features, energy conservation, quality of the environment and best value for the State



- 2) Prepare documents at 1/16"= 1'-0" Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposers plumbing and fire protection system design, including general concept diagrams.

**e) ELECTRICAL SYSTEMS (350 POINTS)**

- 1) Electrical systems design narrative summarizing key electrical design concepts and approach including proposed unique design features, sustainability features, energy conservation and best value for the State.
- 2) Prepare documents at 1/16"= 1'-0" Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposers electrical distribution systems design, including electrical single line diagrams.

**f) LOW VOLTAGE SYSTEMS (350 POINTS)**

- 1) Security/Fire Alarm and Data Communications. Provide a narrative description and illustrations of the proposed systems and approach. Describe the unique features, sustainability features, energy conservation for the best value for the State.
- 2) Nurse Call and other healthcare systems. Provide a narrative description and illustration of the proposed design and how the systems integrate with other systems such as beds, TVs and other types of furniture and building features.
- 3) Prepare documents at 1/16"= 1'-0" Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposers conceptual designs.

**g) SITE CIVIL AND UTILITIES SYSTEMS (200 POINTS)**

- 1) Provide a narrative description and where applicable, conceptual drawings of the proposed civil engineering design and approach, including the proposed unique design features, conformance with Standard Urban Storm Water Mitigation Plan, sustainability features and energy conservation for the best value for the State.
- 2) Prepare conceptual Site Utility Plans with points of connection including: Sanitary Sewer, Domestic and Fire Water, Storm Drain, Gas and Electrical services.


**h) LANDSCAPING (500 POINTS)**

- 1) Provide a narrative description and conceptual landscape plans of the proposed landscape design and approach, including planting areas, lighting, recreation areas, site furnishings and other features as proposed. Describe proposed unique design features,

sustainability features, energy conservation, quality of the work environment and **Best Value** features for the State.

- 2) Prepare documents at <sup>1" = 30'</sup> ~~4/16" = 1'-0"~~ Scale (minimum) (drawings, sketches, descriptions and other detail as required) to depict the Proposers conceptual designs.

*Not Used*  
**6. LIFE CYCLE COST ANALYSIS (250 POINTS)**

-  a) ~~Submit a Life Cycle Cost (LCC) analysis of proposed systems describing the Proposer's approach for evaluating alternatives and developing cost effective designs, systems and components as part of sustainable design. Life cycle benefit analyses shall be shown as present value amounts using a 5.5% discount rate, 20-year life cycle period, 3% energy costs escalation rate, 3% personnel/staff escalation rate and 2% maintenance cost escalation rate.~~

**7. SUSTAINABLE DESIGN (500 POINTS)**

- a) Refer to Chapter 16, Sustainability, for additional RFP requirements. Prepare documents (matrix, narrative, outlines and other detail as required) to depict the Proposer's LEED® credits. The information required shall focus on the following elements, including but not limited to:
- 1) A self-rated LEED® evaluation that identifies all achievable "yes" credits and potential "maybe" credits for achieving the minimum LEED® - NC v2.2 Silver certification. Consideration should be given to points potentially being lost during the design and construction process to achieve the minimum.
  - 2) Identify key players who are responsible for designing, implementing and documenting each LEED® credit attempted.
  - 3) Describe, through narrative, the approach that shall be taken to achieve each of the LEED® credits the Contractor is proposing. Provide RFP Document references for each credit. Provide additional drawings and/or materials necessary to describe the strategy. Provide additional Performance Criteria and Concept drawings required for achieving LEED® credits if they are not provided in the RFP Performance Criteria. Hard and soft calculations which demonstrate the level of energy efficiency, as well as a statement regarding the Proposers' experience in using such programs.
  - 4) Describe the internal process the team shall implement as well as the documentation that the team shall propose to include as part of the final submittal to the USGBC.

- 5) Identify if the project credits shall be submitted as one final submittal to the USGBC or if the team shall choose to submit Design Credits and Construction Credits separately.
- 6) Identify the LEED® Accredited Professional, their experience with LEED® Certified projects and describe in detail the role this individual shall play on the Contractor
- 7) Outlines and narratives for the following documents: Construction Waste Management Plan and an Indoor Air Quality Management Plan.
- 8) A strategy for working with the Commissioning Authority to achieve whole building, LEED® Commissioning.

#### **8. DRAFT PROJECT MANAGEMENT PLAN (350 POINTS)**

- a) Submit a draft Project Management Plan responding to the information required in the Request for Proposal, Section 008700, Management Plan Information and Requirements. The draft Project Management Plan shall include: (in no particular order):
  - 1) Communication Plan, including:
    - i) Proposer's Organization and Lines of Communication.
    - ii) Electronic Communications, including requirements for a Project website.
    - iii) Meetings and Conferences Plan.
  - 2) Contract Administration and Procedures Plan, including:
    - i) Overall approach to the design and construction phases.
    - ii) Cost and Schedule Control with approach on how design target estimates will be met during the construction phase and how critical completion milestones will be met.
  - 3) Local Community / Veterans Community Outreach Plan.
  - 4) Quality Assurance / Quality Control Plan.
  - 5) Closeout and Commissioning Plan.

#### **9. SMALL BUSINESS/DVBE UTILIZATION PLAN (400 POINTS)**

- a) The Proposal shall include a Small Business/DVBE Utilization Plan fully outlining the Proposer's commitment to meet or exceed the goals established to promote and facilitate participation of certified Small Businesses and certified Disabled Veteran Business Enterprises (DVBE). The requirements of the Small Business/DVBE Utilization

Plan are contained in Sections 002120 and 008710, Small Business/DVBE Utilization Plan. Note that the DVBE goal for this project has been established to meet or exceed 5%, rather than the normally required 3% goal. Disabled Veteran Business Enterprise participation is extremely important to the California Department of Veterans Affairs and DVBE participation to create and build the new Veterans Home is greatly encouraged by both the CDVA as well as the Office of the Governor. The Utilization Plan shall delineate the Proposer's means and methods to **succeed** in finding and contracting with DVBE's and Small Businesses. An important part of the Utilization Plan will be the Recovery Plan details, shown as a means to improve a DVBE plan that may be failing to meet its goal. The Utilization Plan and DVBE Recovery Plan shall be scored in comparison to the other two Design-Build Team's proposal efforts, means and methods for the same item. Include a DVBE Utilization Recovery Plan – Also See Section 008710.

10. **PRELIMINARY SCHEDULE (750 POINTS):** (Refer to Section 013200 – Progress Schedules and Reports and Section 007300, Supplementary Conditions.) Submit a Preliminary Schedule that defines major activities and milestones for the Project including but not limited to:

a) Design Schedule (Include the following, but not limited to: State, DSA, SFM and Regulatory Reviews):

- 1) Space Planning Discussions
- 2) Material Selection Discussions
- 3) 35% Construction Documents – System Confirmation/Basis of Design period and Critical USDVA Milestone.
- 4) 50% Construction Documents period.
- 5) 95% Construction Documents period.
- 6) 100% Construction Documents period and Critical USDVA Milestone.

b) Construction Schedule:

- 1) Construction Schedule Approval
- 2) Site Mobilization
- 3) Earthwork
- 4) Site Utilities
- 5) Building construction

- i) Foundation
- ii) Framing
- iii) Roofing
- iv) Exterior Wall and Finishes
- v) Mechanical
- vi) Electrical
- vii) Interior Finishes
- viii) FFE and Modular Systems Furniture Installation
- ix) Commissioning
- x) Certification of Completion
- xi) Certification of Occupancy

<sup>1,000</sup> <sup>△</sup>  
**11. ENHANCEMENTS (750 POINTS)**

- a) The Performance Criteria identified in the RFP documents are derived from the Fresno Veterans Home's minimum functional and operational requirements. To obtain the best value for the Stipulated Sum, the Proposers are encouraged to submit enhancements to the RFP. All enhancements shall be of high quality. All enhancements are to be uniquely identified in the Project proposals with detailed explanations of their benefits to the State (including Home members as applicable).
- b) LEED<sup>®</sup> NC v2.2 Silver Rating is a minimum requirement of the Project and an item shall not be considered an enhancement if it is utilized to meet the LEED<sup>®</sup> NC v2.2 Silver minimum requirement regardless of the item's enhancement of the Performance Criteria.
- c) The RFP represents the minimum requirement of the Project and an item shall not be considered an enhancement if it is utilized to meet an "or equal" requirement.
- d) For each enhancement, submit the following:
  - 1) A unique enhancement identification number.
  - 2) A narrative description of the enhancement.
  - 3) A list of benefits to the state.
  - 4) Affected RFP section references and changes (if applicable).

My name is Robert Close and I am a Vice President with Parsons Brinckerhoff, an international engineering firm with 14,000 employees worldwide. Parsons Brinckerhoff has performed roadway, transit and building design/build projects all over the world and throughout the United States.

The bottom line is that the design build procurement method is a well established and important tool for government agencies to get their projects delivered. It is, and should be, one of the tools available to all public agencies.

Using this tool does not automatically make a project successful. Success of any project is dependent on the abilities and the resources of people administering and working on the project.

As the report points out, this tool has many advantages. With it a project can generally be delivered much faster, such as the year saved on the SR 22 project or the 18 months saved on the Eastern Toll Road both in Orange County. It can also achieve savings through innovation due to the collaboration between the designer and the contractor as they are a team and work together from the start of design to project completion. Innovation saved tens of millions of dollars on the Pasadena Gold line project, not counting millions more save by rapid design and construction changes to meet changing field conditions. The combination of innovations and time savings can and do add up to significant dollar savings.

As throughout the United States, there have already been many successful design/build projects in California and any discussions that they are not (such as been said of the SR 125 and the SR 91) is fabricated mis-information, based on selfish political agendas and not the facts. While a design/build project is primarily a private endeavor, The public agency is responsible and state and/or city and county government employees can and will be involved in these projects.

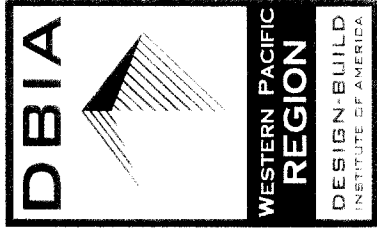
All of the necessary public protections are in place for this project delivery method, just as they are for the design bid build method. Public agencies moving forward with a project should have control of that project and should have the authority to decide how to deliver that project to the public - throughout every stage of its development. To decide otherwise is disingenuous and insulting to those public officials responsible for delivering the projects.

Design/build legal authorization should not only be in place for local governments, but there should be a common authority for all agencies in California and for all types of public works.

Thank you.



# Design/Build Institute of America



*Report to:*  
Legislative Oversight Hearing on How  
Counties Use Design/Build Contracting  
Senator Dave Cox, Chair

- Contents:*
- DBIA Fact Sheet / Best Practices
  - Design/Build Research
  - Design/Build Essentials
  - Design/Build Legislation

January 20, 2010



## Design/Build Legislation

If used properly, according to its best practices, Design-Build greatly accelerates project delivery and provides greater cost certainty earlier in the process. Design-Build legislation passed **with appropriate language** will enable state and local agencies to deliver projects faster and to spend available dollars more wisely, to the benefit of California's taxpayers.

**Design-Build should be widely available to California counties, cities, special districts, and redevelopment agencies, and to ensure success, those agencies should have the ability to implement Design-Build's best practices in their procurements and contracts.**

*"We could not have met the President's and Governor's economic stimulus initiatives had we not had the design-build option. This program has been extremely beneficial." (Florida DOT)*

*"This project would not have been possible without design-build project delivery." (Alameda Corridor Transportation Authority)*

SR 22 – Garden Grove Freeway: Using the Design-Build delivery method, OCTA successfully completed the project 3 to 5 years sooner than if the traditional design-bid-build approach had been utilized.



Carmen Dragon Elementary School, Antioch, California: Completed with \$1.5 million in cost savings and 2.5 months faster than similarly constructed schools. This was the first project completed under AB1402 (California law allowing Design-Build to be used for schools).



Design-Build has grown from 5% of nonresidential construction in 1985 to approximately 45% today.

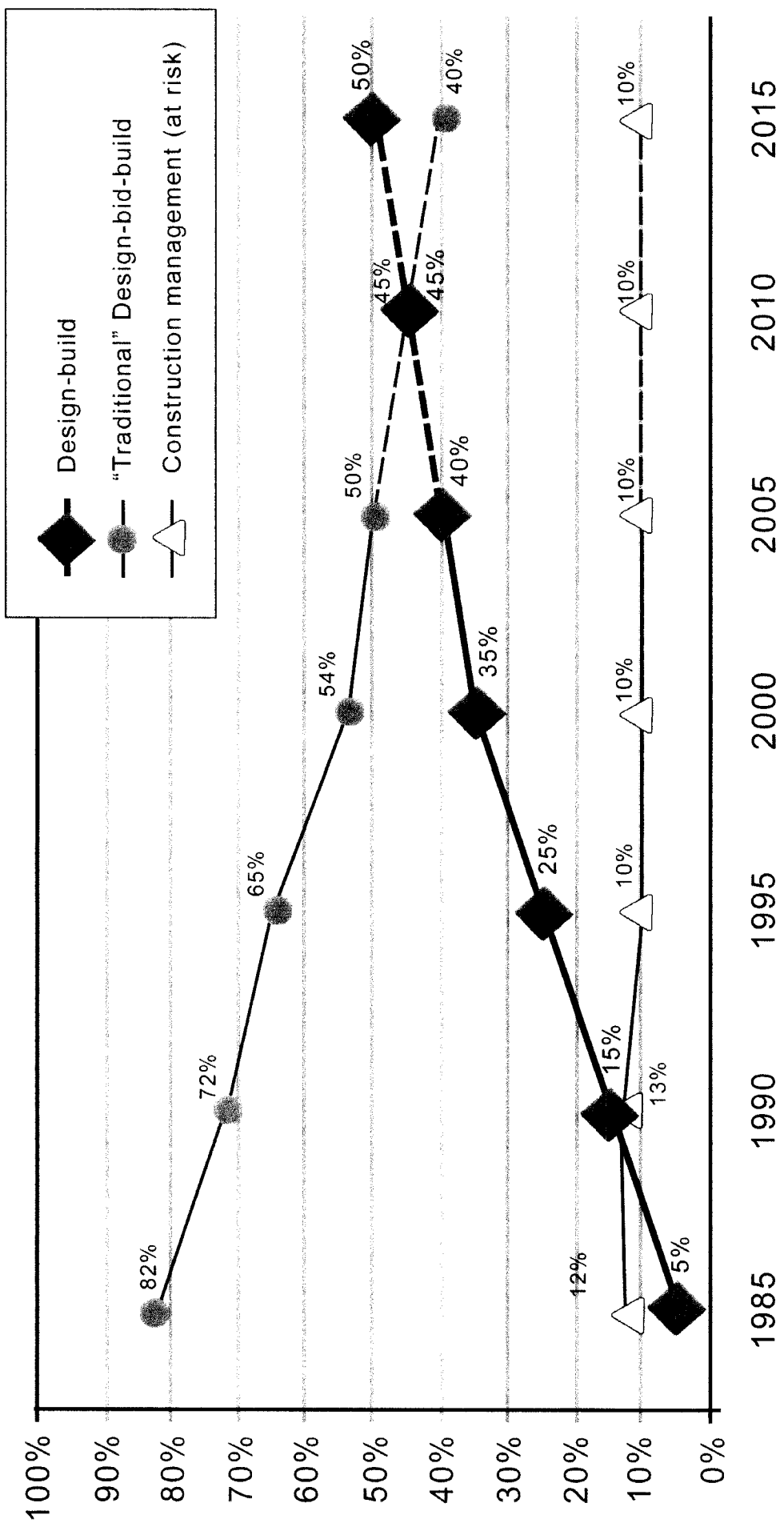
## DBIA Best Practices / Recommendations

1. Allow use of a "best value" or "qualifications based" selection process
2. Allow the contracting agency flexibility to determine, on a project-by-project basis, which selection criteria are most appropriate
3. Allow the contracting agency to determine the weightings for the selection criteria
4. Allow the contracting agency to delegate full responsibility for project design to the design-builder
5. Allow the use of stipends for Design/Build procurement
6. Allow counties, cities, special districts and redevelopment agencies wide use of design/build without restrictions for size, cost, or schedule. Another tool in the tool box.

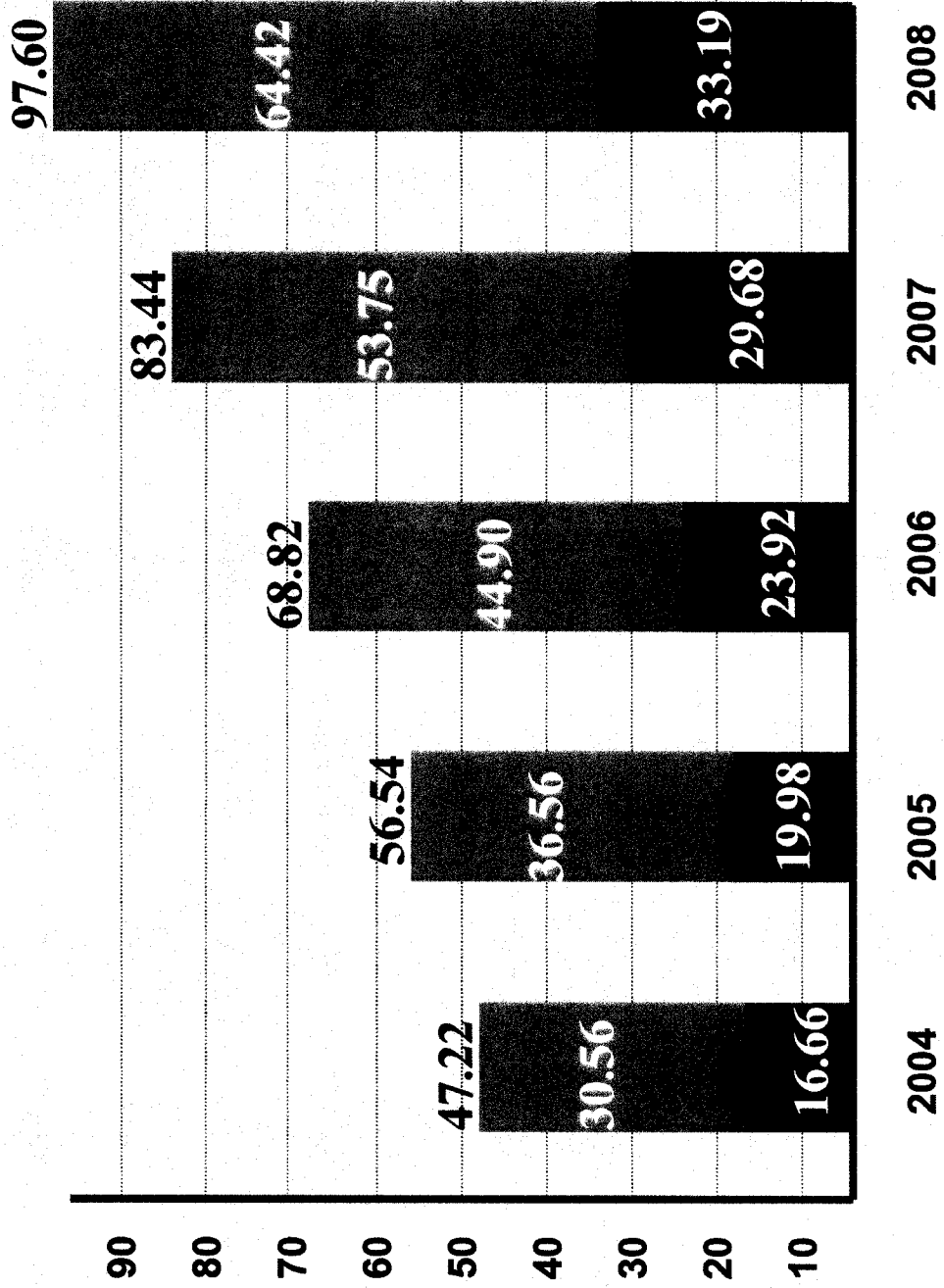
Design-Build is a project delivery method that allows the project owner to select a single entity to provide both design and construction services. This approach can result in faster project delivery, cost savings, and improved risk management. Design-Build is a project delivery method that allows the project owner to select a single entity to provide both design and construction services. This approach can result in faster project delivery, cost savings, and improved risk management.



## Non-Residential Design and Construction in the United States



# Total Revenue: Design-Build



■ = INTERNATIONAL REVENUE



Source: Engineering News Record, Computed from ENR Top 100 Firms Ranking

# Design-Build Performance

(Comparison of Design-Build vs. CM-at-Risk vs. Design-Bid-Build)

**6%**

**12%**

**33%**

**Higher quality**

*SOURCE: Construction Industry Institute (CII)/Penn State Research comparing 351 projects ranging from 5K to 2.5M square feet. Projects were of various types and from various industries.*



# Research Study

CONSTRUCTION INDUSTRY  
INSTITUTE - PENN STATE

- 351 Projects
- 5K to 2.5M S.F.
- Various types/Industry sectors
- Compared performance between
  - D-B-B, CM at Risk, and D-B
- Performance evaluated Cost, Schedule, Quality areas

# Schedule Comparison

(CIVPerM State Study)



**Traditional Delivery**



**25%  
Reduction**

**Bridged Design-Build**



**35%  
Reduction**

**Design-Build Criteria**

# Project Delivery Comparison

(CI/Perm State Study)

	COMPARISONS			
	Design-Build vs. Design-Bid-Build	CM@R vs. Design-Bid-Build	Design-Build vs. CM@R	Level of Certainty
Unit Cost	<b>6.1% lower</b>	<b>1.6% lower</b>	<b>4.5% lower</b>	<b>99%</b>
Construction Speed	<b>12% faster</b>	<b>5.8% faster</b>	<b>7% faster</b>	<b>89%</b>
Delivery Speed	<b>33.5% faster</b>	<b>13.3% faster</b>	<b>23.5% faster</b>	<b>88%</b>
Cost Growth	<b>5.2% less</b>	<b>7.8% more</b>	<b>12.6% less</b>	<b>24%</b>
Schedule Growth	<b>11.4% less</b>	<b>9.2% less</b>	<b>2.2% less</b>	<b>24%</b>

**PREVIOUS STUDIES OF DESIGN-BUILD COST/SCHEDULE REDUCTIONS -  
VERTICAL INFRASTRUCTURE (Buildings)**

**Previous Studies of Design-Build  
Cost / Schedule Reductions  
Vertical Infrastructure – (Buildings)**

	<b>Number of Projects or Agencies in Sample</b>	<b>% Reduction in Contract Cost Relative to D-B-B</b>	<b>% Reduction in Contract Duration Relative to D-B-B</b>
<b>Vertical Infrastructure - Buildings</b>			
J. Bennett, E. Potheary & G. Robinson, <i>Designing and Building a World-Class Industry</i> , University of Reading Design and Build Forum Report, Centre for Strategic Studies in Construction, Reading, United Kingdom, 1996.	330	13%	30%
Victor Sanvido & Mark Konchar, <i>Selecting Project Delivery Systems: Comparing Design-Bid-Build, Design-Build, and Construction Management at Risk</i> , The Project Delivery Institute, State College, PA., 1999.	351	6%	33%
<i>Design-Build 101: Basics of Integrated Service Delivery</i> , Design-Build Institute of America/American Institute of Architects Professional Design-Build Conference, Chicago, Illinois, October 14, 1998.	DOD	14%	18%
<i>Design-Build 101: Basics of Integrated Service Delivery, DBIA</i>	GSA	3%	N/A
<i>Design-Build 101: Basics of Integrated Service Delivery, DBIA</i>	NAVFAC 1	12%	15%
<i>Design-Build 101: Basics of Integrated Service Delivery, DBIA</i>	Vet Admin	0%	28%
Linda N. Allen, <i>Comparison of Design-Build to Design-Bid-Build as a Project Delivery Method</i> . Master's thesis, Naval Postgraduate School, Monterey, CA., December 2001.	NAVFAC 2	18%	60%



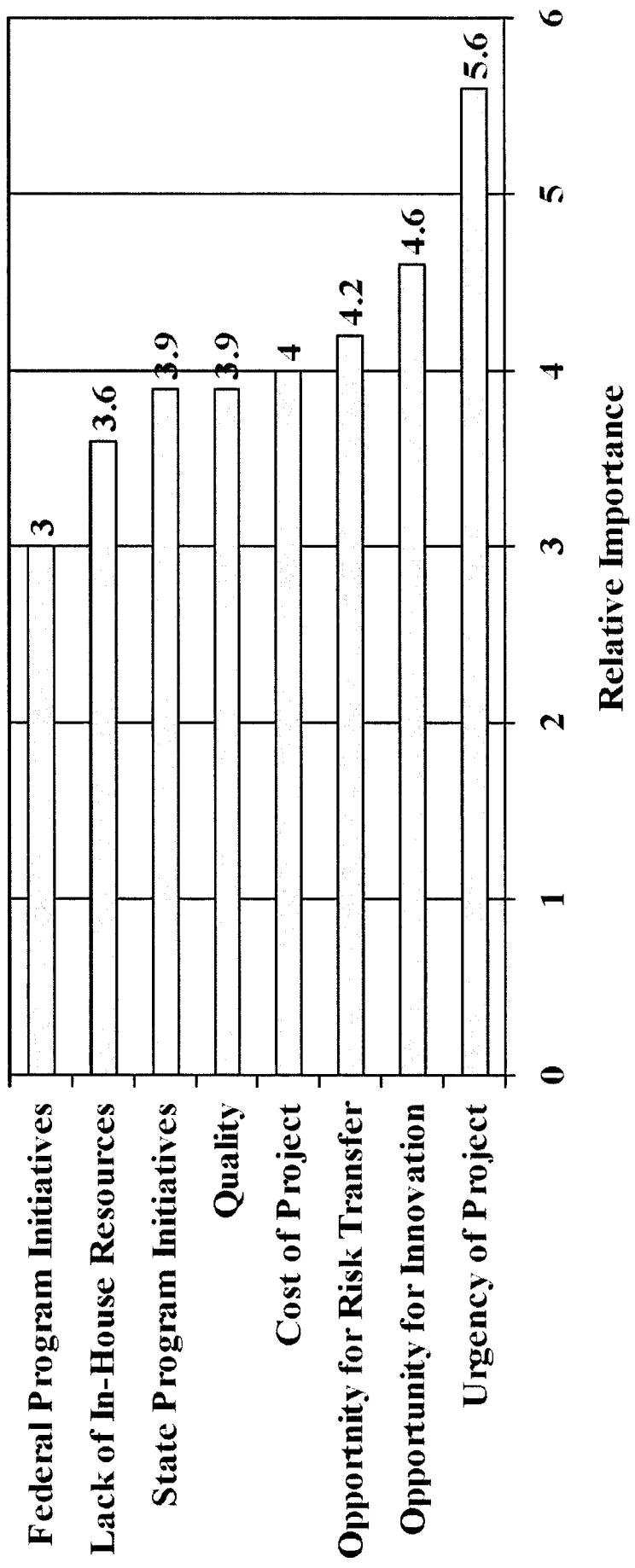
# PREVIOUS DESIGN-BUILD STUDIES COST/SCHEDULE REDUCTIONS - TRANSPORTATION INFRASTRUCTURE

## Previous Design-Build Studies Cost / Schedule Reductions Transportation Infrastructure

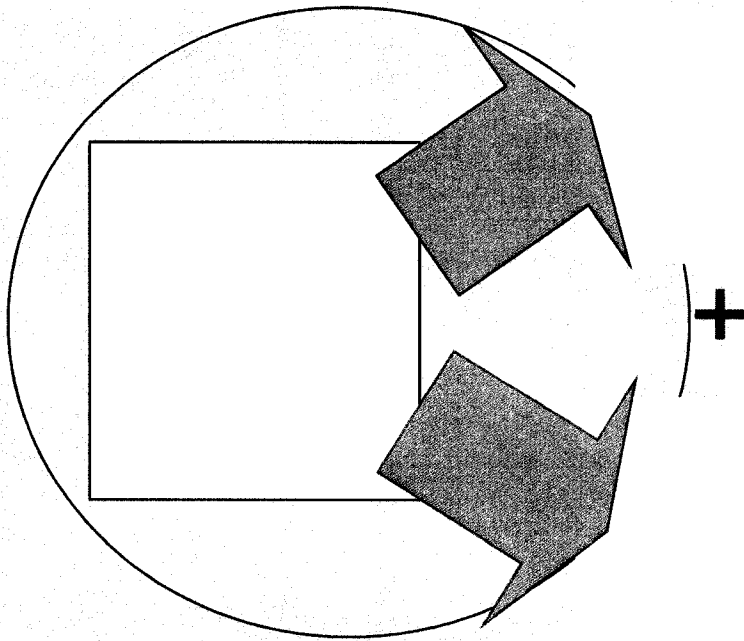
	Number of Projects or Agencies in Sample	% Reduction in Contract Cost Relative to D-B-B	% Reduction in Contract Duration Relative to D-B-B
<b>Horizontal Infrastructure - Highways</b>			
Illinois DOT Study by SAIC, 2002	11 states	3 of 11 states reported lower cost	10 of 11 states reported shorter duration
New York State DOT Design-Build Practice Report, 2002	9 agencies	5 of 9 agencies reported lower cost	9 of 9 agencies reported shorter duration
Arizona DOT Study: Design-Build vs. Design-Bid-Build - Comparing Cost and Schedule. Jim Erzen, Ron Williams, and Debra Brisk, TRB Paper 2004.	13	4%	22%
Ralph Ellis, Zahar Herbsman, & Ashish Kumar, <i>Evaluation of the Florida Department of Transportation's Pilot Design/Build Program</i> , University of Florida, College of Engineering, Gainesville, FL, August 1991.	11	11%	36%
Washington State DOT Study. Design-Build Pilot Project Evaluation: A Measurement of Performance for the Process, Cost, Time, and Quality - SR500 Thurston Way Interchange. Dr. Keith Molenaar, University of Colorado, Boulder, CO, January 2003.	1	-23%	16%
Jim Erzen and Tom Feeney, <i>Contractor Led Quality Control and Quality Assurance Plus Design-Build: Who is Watching the Quality?</i> Transportation Research Board Paper, 2000 Annual Meeting, Washington, D.C., January 2000.	1	N/A	30%
<i>Bulk of Ambitious \$1.6 Billion Design-Build Job Complete</i> , Engineering News Record, May 14, 2001, Page 13. (Utah I-15 Design-Build Project)	1	0%	9%
ODOT Experience on Six Design-Build Projects, Ohio Department of Transportation, Columbus, OH, 1999.	6	Lower administrative costs; little/no change orders or claims	Significant time savings

**RELATIVE IMPORTANCE OF FACTORS CONSIDERED IN DECIDING WHETHER TO USE DESIGN-BUILD**

Relative Importance of Factors Considered in Deciding Whether to Use Design-Build



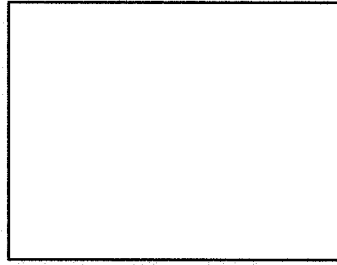
# The "Old" Way – Design-BID-Build



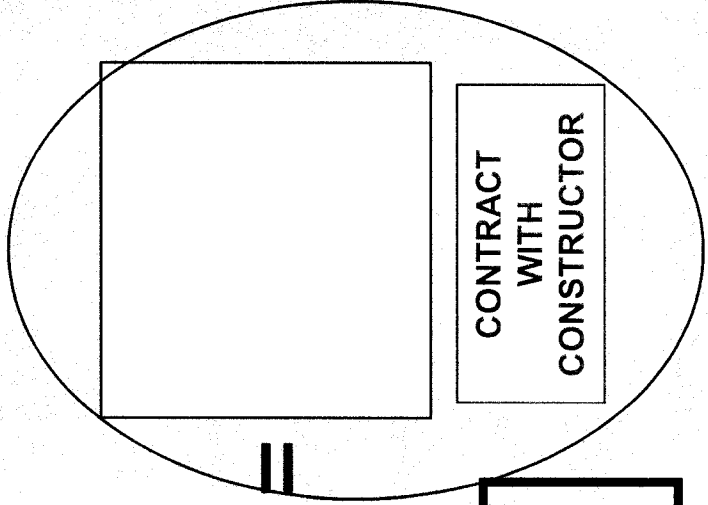
CONTRACT WITH ARCHITECT

## Design-Bid-Build

Two contracts are used to accomplish design and construction.



THIS IS WHERE THE COST COMPETITION TAKES PLACE



CONTRACT WITH CONSTRUCTOR

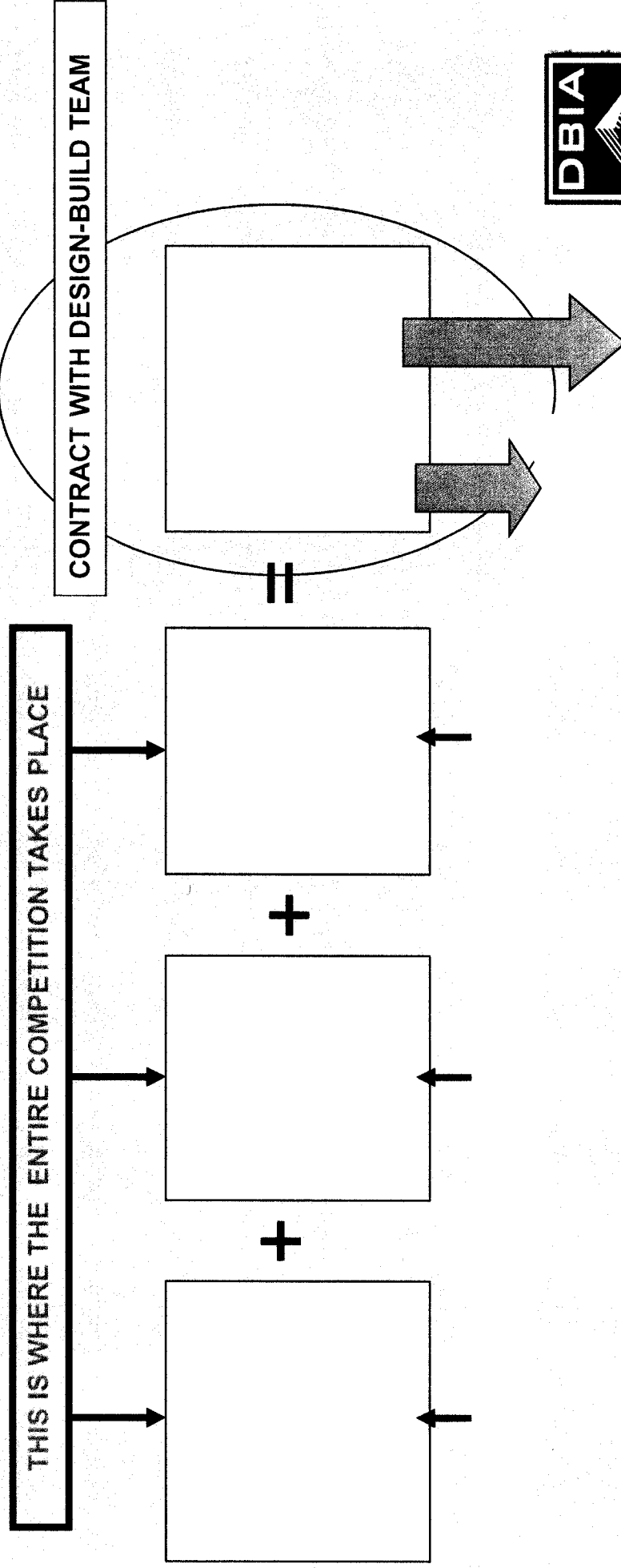


Emphasis on Compliance: **You are buying a Product**

# The "New" Way – Design-Build

## Design-Build...

a single contract is used to accomplish design and construction.



Emphasis on Behavior: **You are buying a Service**



# Design-Build Meets Your Requirements





By Richard Thomas

WITH THE STATE LEGISLATIVE session nearly over, it is already clear that 2009 will be a historic year. In the history of design-build, there has never been such a successful year in legislative terms. One hundred bills granting or expanding design-build authorization passed in state legislatures this year. This figure surpasses a previous high of 82 in 2005. What is remarkable, however, is not the number of bills that passed, but rather the high percentage of bills that passed — at 62 percent.

The high success rates of 2001 and 2003 can be attributed to the fact that so many owners were just discovering design-build; to them it was a relatively new delivery method and they were excited about the potential that it promised, particularly at the state level. By 2009, design-build had matured; nearly all states now have design-build authority of some kind and this is reflected in the type of legislation being proposed. Only 52 percent of the design-build legislation today aims to expand state authority. Legislation dealing with state design-build authority was primarily focused on transportation. In January of 2009, 12 states still did not have authority for DOT projects. That number fell by half by October, as six states passed new legislation allowing design-build authority. In contrast, 48 percent of the design-build legislation in 2009 was focused on granting local design-build authority. City, county and regional governments were eager to get design-build authority to use design-build on their diverse portfolio of projects.

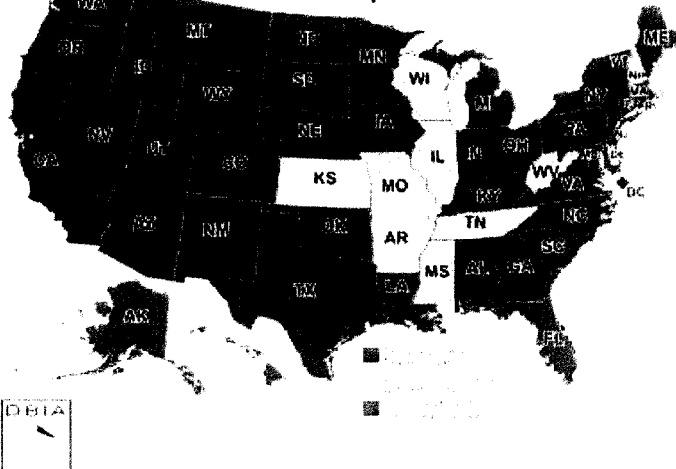
Some bills gave local governments project-specific design-build authority or for a limited number of projects, but other bills were quite broad in the authority granted, allowing them to use design-build on virtually any type of project they chose. Most of the local legislation focused on buildings, but the types were quite diverse; everything from schools and health clinics to stadiums and courthouses. There is also a growing trend toward local design-build use on local water/wastewater and transportation projects. A full third of the successful local design-build bills, however, were focused in those areas.

Year	Bills Introduced	Bills Passed	Percent Passed
2001	49	30	61%
2002	143	52	36%
2003	127	66	52%
2004	159	35	22%
2005	250	82	33%
2006	199	64	33%
2009	160	100	62%

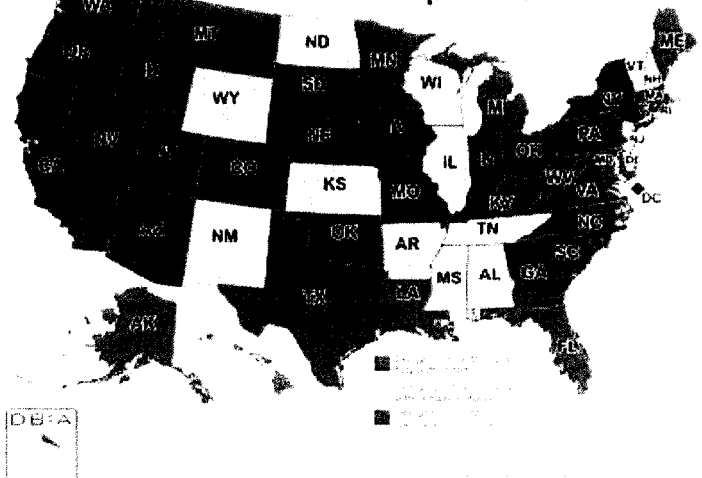
Looking forward to 2010, these design-build growth trends are likely to continue, particularly at the local level. With federal and state governments focused on greater sustainability and efficiency, we can expect growth in the design-build building and water/wastewater sectors as our infrastructure ages and our demands increase. It appears that design-build is moving into a new era. Owners today are less inclined to talk about design-build potential; instead they focus on design-build's results. We have over two decades of exceptional projects, and the more the design-build story is told, the more owners want to have that design-build tool in their toolbox.

*Richard Thomas is DBIA's vice president of advocacy and external affairs.*

2008 Design-Build State Authority for Transportation

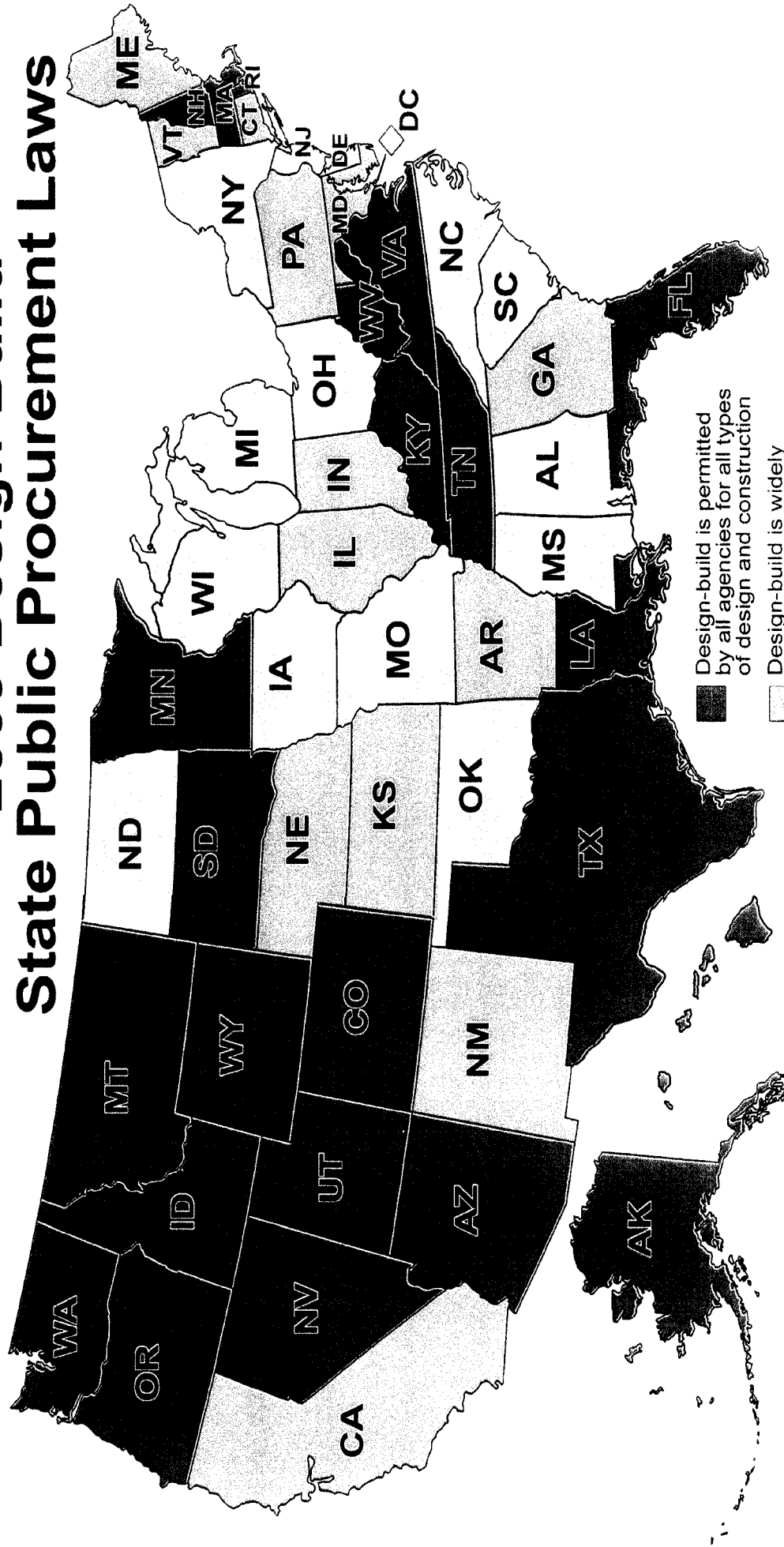


2009 Design-Build State Authority for Transportation



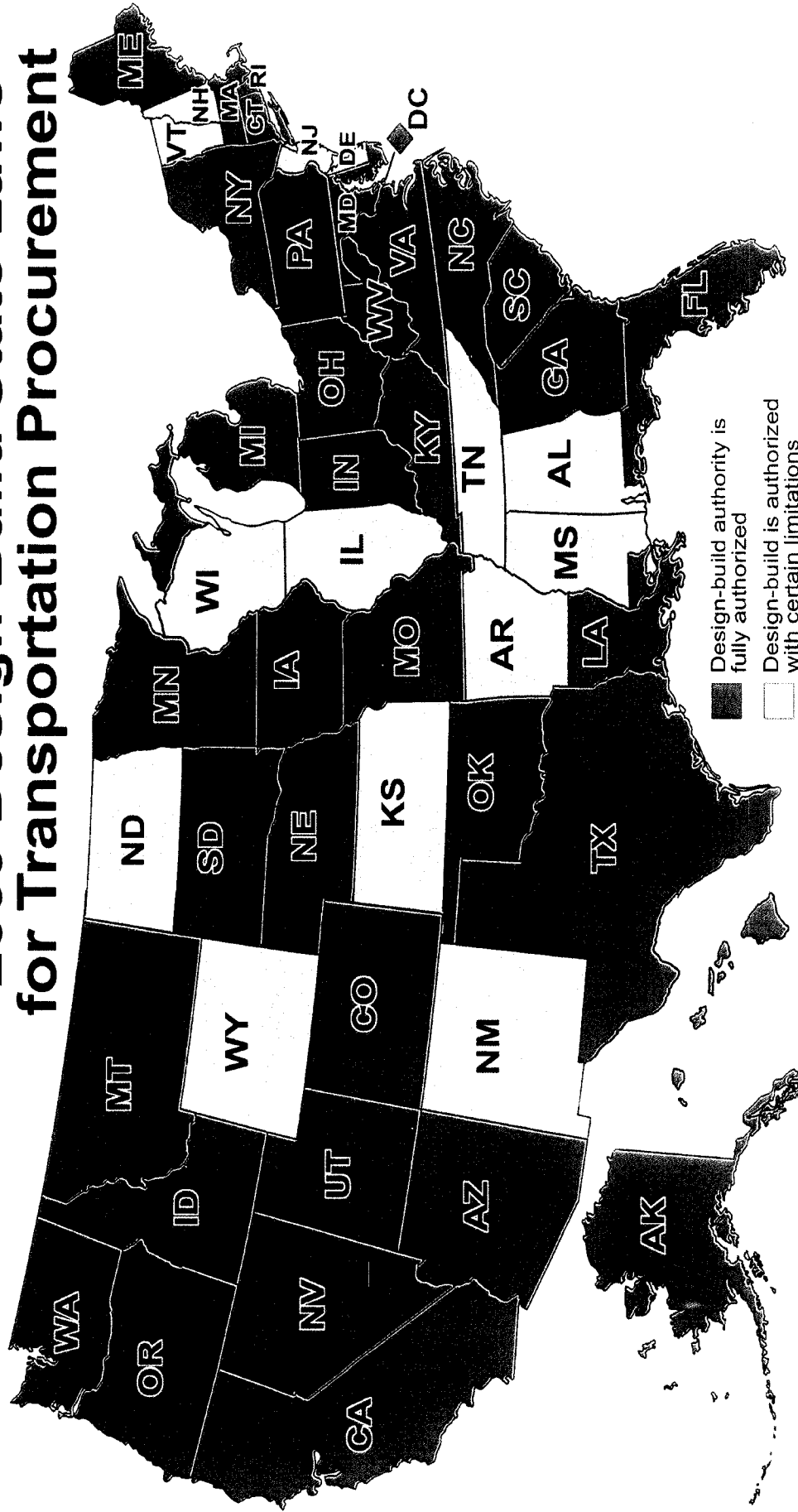
# 2009 Design-Build State Public Procurement Laws

## 2009 Design-Build State Public Procurement Laws



\* Certain states allow design-build procurement by case law.

# 2009 Design-Build State Laws for Transportation Procurement



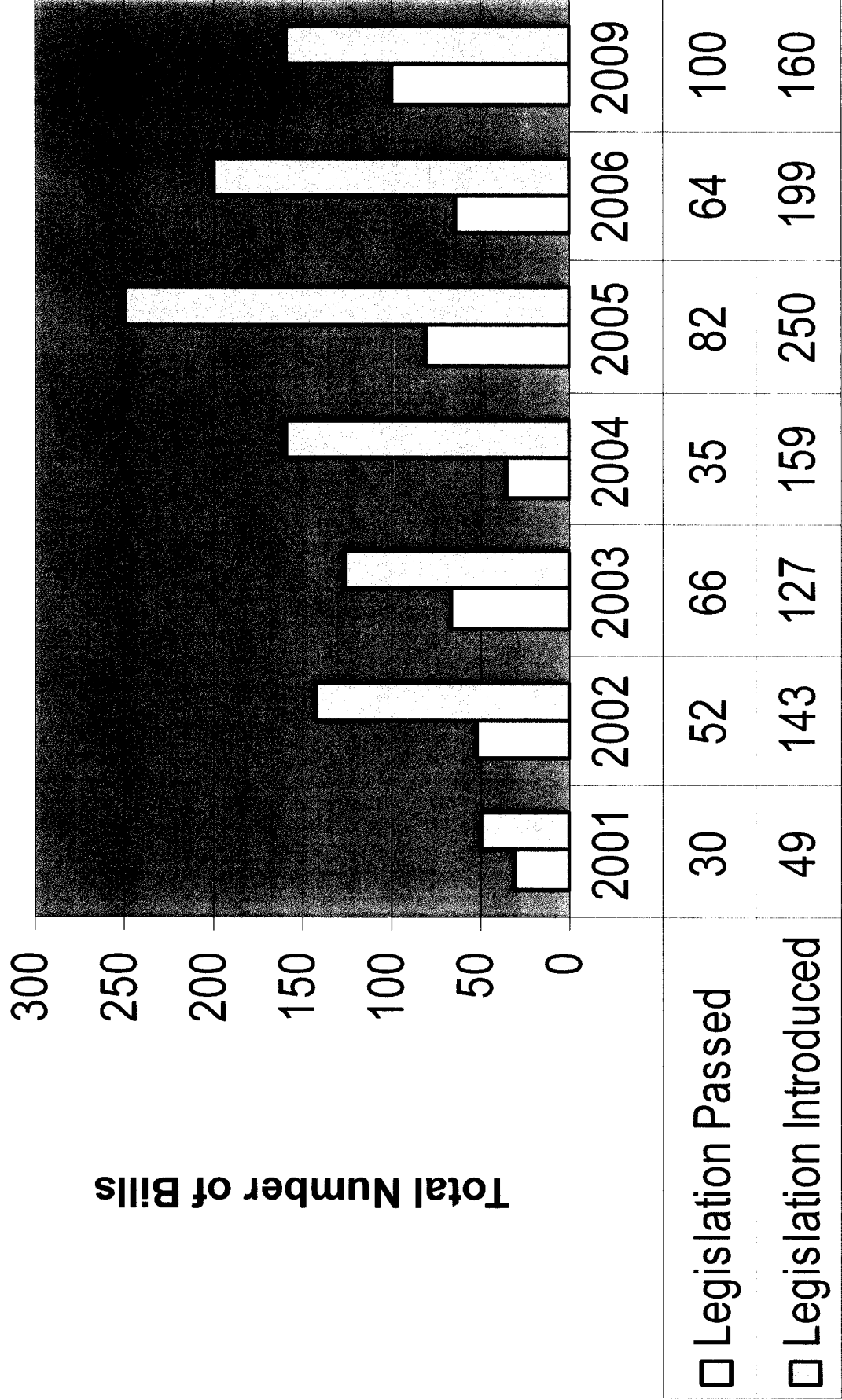
- Design-build authority is fully authorized
- Design-build is authorized with certain limitations
- Design-build is not specifically authorized \*



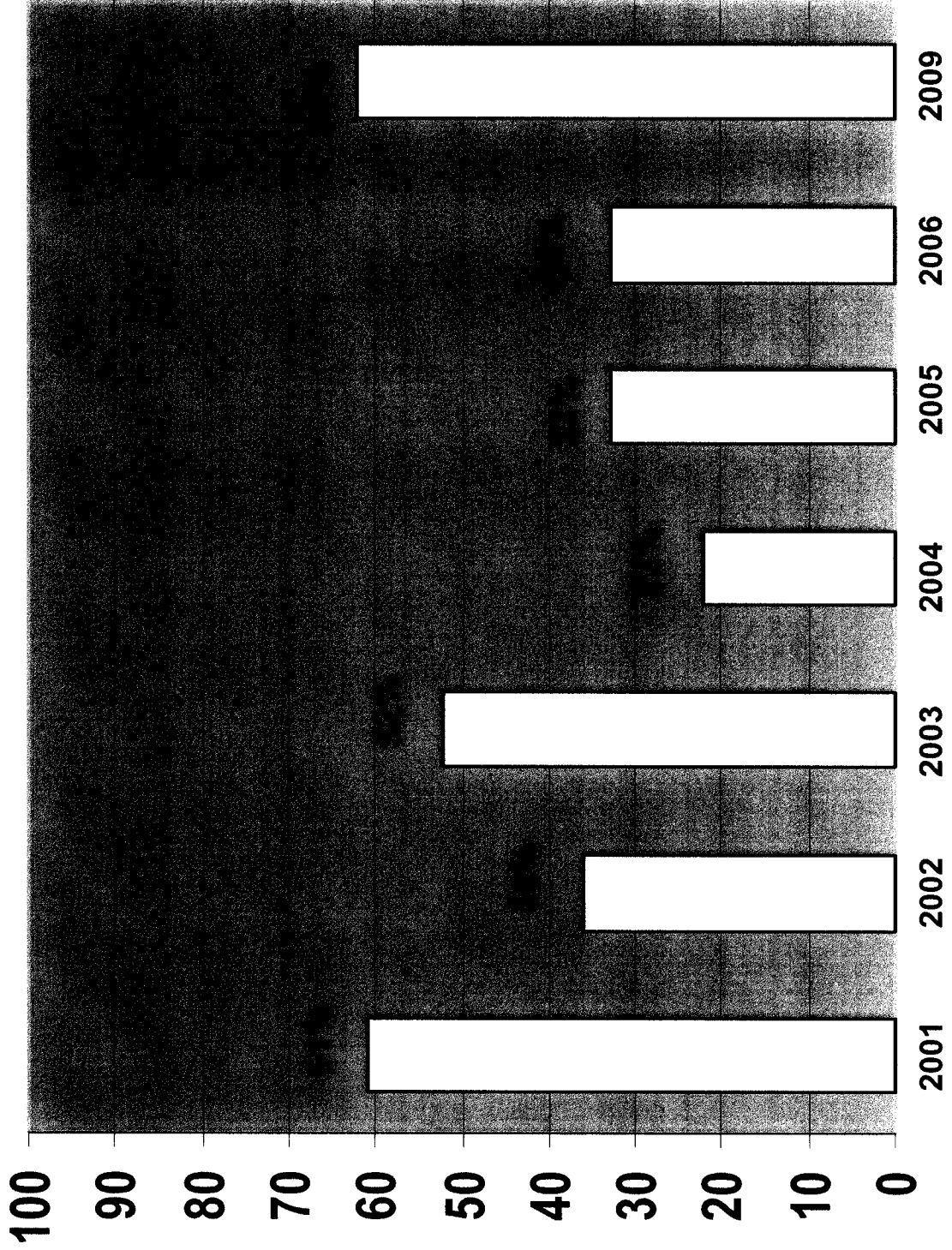
\* Certain states allow design-build procurement as a result of case law



# DB Legislation Introduced & Passed in 2009

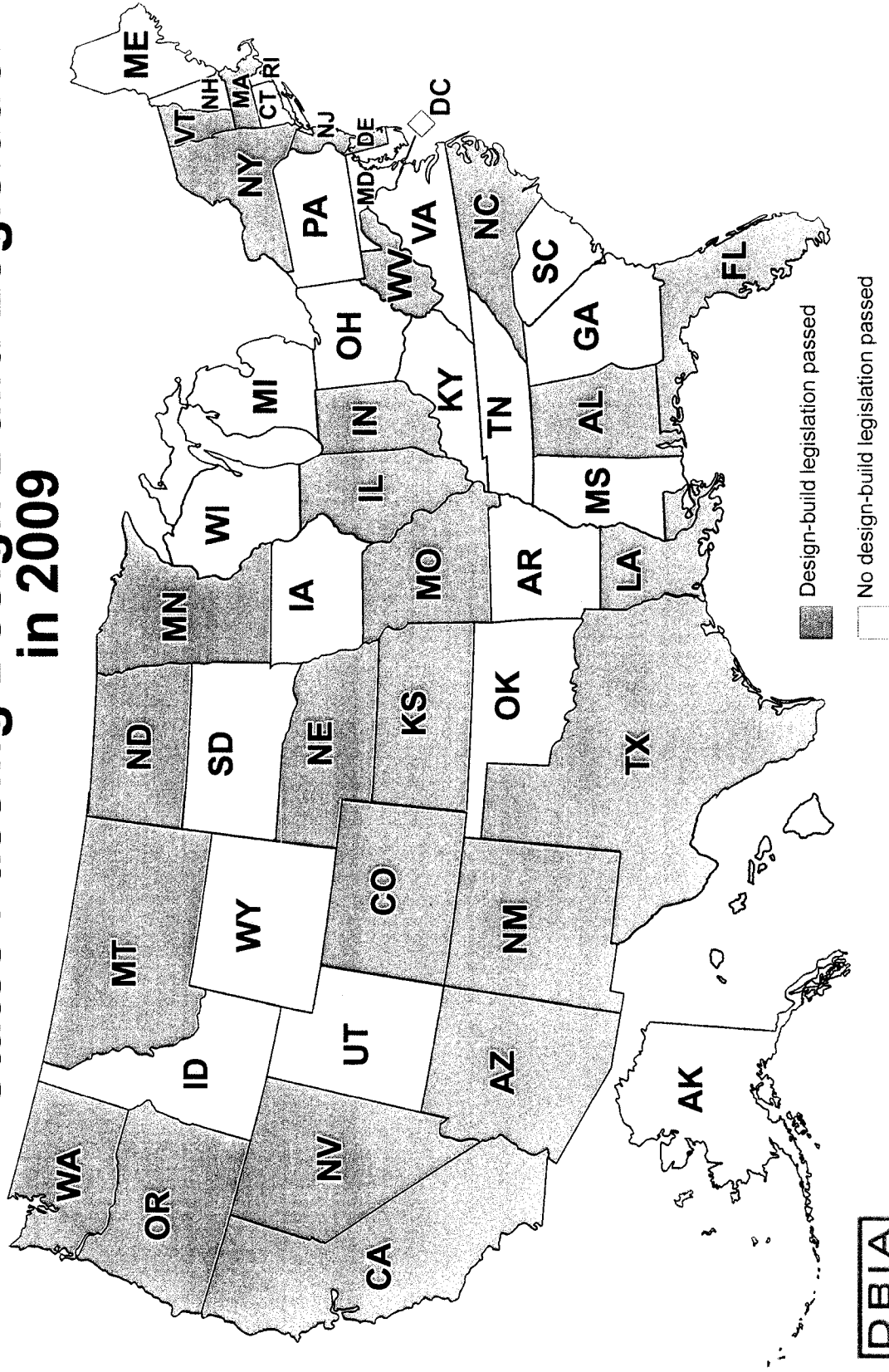


# Percentage of Design-Build Bills Passed 2001-2009



2001	→	61%
2002	→	36%
2003	→	52%
2004	→	22%
2005	→	33%
2006	→	33%
2009	→	62%

# States Passing Design-Build Legislation in 2009



## Notable Design-Build Legislation in 2009

### ALABAMA

HB 217 Authorizes the new Alabama Toll Road Bridge and Tunnel Authority, full authority to enter into design-build, design-build-operate, design-build-operate-maintain contracts.

### ARIZONA

HB 2396 Allows Public Private Partnerships on Transportation Projects; they can be design-build, design-build-maintain, design-build-operate-maintain, or design-build-finance-operate-maintain agreements.

HB 2332 Grants design-build authority for school districts for renewable energy and energy saving projects.

### CALIFORNIA

SB 1699 Design-Build Authority granted to the Santa Clara Redevelopment Authority to build the \$937 million San Francisco 49er Stadium, a QBS project.

SB 4 Allow Public-Private Partnerships on Transportation projects.

SB 9 Deals with labor issues on design-build projects.

AB 729 Extends the design-build repeal date on transit projects from 2011 to 2015  
AB 958 Authorizes metropolitan water districts to use design-build on a solar energy project. This was vetoed by Governor Schwarzenegger due to the onerous reporting requirements for design-build.

SB 1699 Authorizes the Sonoma Valley Healthcare District to use design-build for construction of a hospital.

### COLORADO

SB 108 Authorizes Public-Private Partnerships for transportation projects on state and local projects, design-build is permitted as the project delivery method.

## **DELAWARE**

- SB 190 Authorizes design-build for the construction of the Kent County Courthouse.
- HB 52B Authorizes design-build for the Department of Corrections, and expands the DOTs design-build authority from 7 to 12 projects.

## **FLORIDA**

- HB 1021 Authorized FDOT to meet a goal of 25% of its projects delivered using design-build by 2014 in order to add capacity.
- SB 2666 Authorizes the design-build delivery method to be used on educational facilities.

## **ILLINOIS**

- HB 372 Repeals design-build sunset provisions.
- SB 2009 Authorizes design-build authority for State Universities for energy conservation construction projects.
- HB 2409 Authorizes the North Shore Sanitary District design-build authority.
- HB 3986 Grants design-build authority to the Chicago Park District.
- SB 1609 Repeals design-build sunset provisions.
- HB 61 Grants design-build authority to local governments for building construction

## **INDIANA**

- HB 1033 Grants design-build authority to all political subdivisions and agencies for biomass facilities and energy conservation measures.

## **KANSAS**

- SB 485 Grants design-build and CM-at-Risk authority to counties for building construction.

## **LOUISIANA**

HB354 Extends sunset provisions to July of 2010 for any public structure for homeland security, criminal justice and hurricane recovery projects.

HB 833 Authorizes design-build, design-build-operate, and design-build-finance-operate contracts for Coastal Protection and Restoration Authority for flood control, coast protection and restoration projects.

SB 351 Authorizes design-build on DOT projects.

## **MASSACHUSETTS**

SB 2024 Authorizes Public-Private-Partnerships for transportation projects using the design-build-operate and maintain, and the design-build-finance-operate-maintain project delivery methods.

SB 2087 Created the new Department of Transportation with design-build authority.

HB 4139 Authorizes project labor agreements on design-build projects

HB 4129 Authorizes design-build authority on the University of Massachusetts bio-processing plant in Falls River.

## **MINNESOTA**

HB 1308 State design-build authority to local governments for 10 project transportation pilot program.

HB 2086 Direct MNDOT to use design-build on High-speed rail projects.

## **MISSOURI**

HB 359 The Missouri DOT is permitted to use design-build on up to 2% of its projects up from a 3 total projects.

## **MONTANA**

HB 181 Design-build authority is granted to cities, counties, school districts, airports, and sewer districts.

## **NEBRASKA**

LB 478 The State Board of Education is authorized to enter into design-build contracts for the construction, renovation, repair, or replacement of school buildings, including school buses.

## **NEVADA**

SB 245 Creates regional transportation authorities and permits the use of private partnerships for transportation and related projects.

## **NEW MEXICO**

SB 345 Grants design-build authority for all ARRA projects.

SB 221 Specifies design-build to be used for the construction of the main Capitol Campus in Santa Fe.

## **NEW JERSEY**

AB 4048 State and County Colleges are granted authority to enter into design-build public-private partnership contracts.

## **NEW YORK**

AB 157 Authority granted to State Universities to use design-build for building projects.

## **NORTH CAROLINA**

HB 772 The City of Huntersville is granted design-build authority for buildings, parking, roads, streets, bridges or any other type of construction project.

HB 2468 Iredell County and the City of Mooresville granted design-build authority for the construction of buildings, drains, kennels, and watering systems.

## **NORTH DAKOTA**

SB 2147 Authorized the North Dakota DOT to complete the two design-build pilot projects.

**OREGON**

HB 1589 Authorizes design-build to be used on ten Department of Corrections projects.

**TEXAS**

SB 882 Regional Toll Authorities are authorized to give stipends on design-build projects over \$50 million.

**VERMONT**

HB 438 VDOT is authorized to use design-build for 4 projects in FY 2010.

**WASHINGTON**

HB 1197 Requires the Capitol Projects Advisory Board develop design-build guidelines and establishes certification requirements and other requirements for public bodies requesting authority to use design-build.

SB 5768 Authorizes design-build authority for SR 99 (Alaskan Way Viaduct)

HB 6298 City of Winthrop authorized to use design-build in the construction of a bike path

**WEST VIRGINIA**

HB 2753 The West Virginia DOT is authorized to expand its design-build pilot program from 3 to 13 projects by June 30 of 2011, and may spend up to \$50 million per year for an aggregate of \$150 million over three years.





Statement of Kevin Dayton  
State Government Affairs Director  
Associated Builders and Contractors of California

**Faster, Cheaper, Better?**  
**A Legislative Oversight Hearing on**  
**How Counties Use Design-Build Contracting**

9:30 to 11:00 a.m.  
Wednesday, January 20, 2010  
State Capitol, Room 112

Like the Governor and most members of the legislature, Associated Builders and Contractors of California supports design-build as a construction delivery system for our state and local governments. This might be a surprise to legislators who see ABC opposing almost every design-build authorization bill since 2000.

As we know, design-build authorization language in the Public Contract Code and Education Code includes various weighted factors that public entities can use in a “best value” method to determine which bidder wins the job. The winning bidder is not necessarily the bidder with the lowest cost.

This desirable flexibility, unfortunately, has subjected the design-build process to certain unnecessary provisions in laws that authorize the use of design-build. To be blunt, these provisions are meant to put unions and union contractors at an advantage in bidding. One provision is actually an enticement for local governments to require all of their contractors on a design-build project to sign a union agreement.

We believe these provisions can lead to reduced bid competition, increased costs of construction, a less safe job site for workers, and restricted opportunities for workers to learn a trade on-the-job. And they are totally unnecessary.

In this legislative session, ABC of California sponsored three bills that simply would have removed or replaced the objectionable and unnecessary language.

Assembly Bill 1062 would have removed language that penalizes design-build entities in the prequalification process that intend to request apprentices from state-approved programs with less than five straight years of graduates. This puts contractors at a disadvantage who have an agreement with recently-approved programs that are mathematically incapable of having five straight years of graduates. The language would have been replaced with a requirement that the design-build entity simply indicate the state-approved program from which it intends to request apprentices.

Assembly Bill 1063 would have removed language that allows a contractor with a poor safety record to be “acceptable” if it is part of an alternative dispute resolution program that by law is restricted to contractors in a collective bargaining agreement or project labor agreement. ABC of California believes that all design-build entities should have a decent safety record, without exceptions.

Assembly Bill 1064 would have eliminated language that allows local agencies to exempt themselves from a labor compliance program requirement if they have a project labor agreement in place. ABC does not see any reason why a project labor agreement negates the need for labor compliance. In addition, such language creates an artificial argument that a project labor agreement would “save money” by relieving the local agency of a state mandate.

These bills were all defeated on party-line votes in the Assembly Business and Professions Committee last week, on January 12. Nevertheless, ABC of California is optimistic that the three objectionable provisions in design-build authorization laws will soon be gone.

First, the exemption from a labor compliance program if contractors are required to sign a project labor agreement with unions will soon be moot, as the current system of labor compliance will eventually be phased out because of Senate Bill x2 9, signed into law last year.

Secondly, we note with approval that the Legislative Analyst’s report recommends that the Legislature could reduce or eliminate some of the other best value criteria – currently mandated

at 10 percent – which the counties identified as less useful or even cumbersome, including safety records and skilled labor force availability. Perhaps these provisions could be eliminated in a single uniform design-build authorization law that would apply to all public entities.

We note that the evaluation of apprenticeship program graduation rates to indicate skilled labor availability is absurd, as by definition apprentices are not fully skilled and such a measurement is irrelevant to the availability of skilled labor. A more useful measurement at this time would be the unemployment rate in the construction industry, and it is surely no surprise to ABC of California that all of the counties reported that skilled labor was readily available.

We would also like to comment on our observations and experiences with a specific county design-build project – the San Joaquin County Administration Building. All contractors on this project were required to sign a Project Labor Agreement with construction unions, and county staff admitted at a meeting of the San Joaquin County Board of Supervisors on July 3, 2007 that the union agreement was imposed because of the relevant provision in the state’s design-build authorization law for counties.

Because of this Project Labor Agreement, our organization was interested in some of the characteristics of the project, in particular to evaluate union claims that the Project Labor Agreement would ensure local contractor participation and contractor compliance with labor laws. As a result, we filed Public Records Act requests with the county at various times to obtain subcontractor bid lists and certified payroll records.

We had a lot of difficulty obtaining the records, because county officials repeatedly claimed that records were in the possession of the design-build entity and they couldn’t provide them. We received such statements as “Since this is private bidding, the contractor is not providing the amounts of the bids to us. He is only giving us the name of the low bidder and who bid it” and “the County is unable to comply with your request, as it seeks a document which is not presently within the County’s possession, custody or control” and “the County is unable to comply with your request, as it seeks a document which is not presently in the possession of the County.”

The legislature should take note that it is granting counties and other public entities an exemption from the state's traditional competitive bidding laws in order to promote the design-build bidding procedure. We must all admit that using best value criteria to determine winning bids introduces a higher degree of subjectivity into the bidding process, and for this reason there is a new opportunity available for favoritism, fraud, and corruption in public contracting.

Section 100 of the Public Contracting Code states explicitly that the purpose of the code is (a) to clarify the law with respect to competitive bidding requirements, (b) to ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds, (c) to provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices, and (d) to eliminate favoritism, fraud, and corruption in the awarding of public contracts. In order to fulfill these objectives, ABC of California recommends that future laws authorizing design-build include a specific mechanism for insuring the public has reasonable and timely access to public records requests, as required by law.

ABC of California also recommends that the legislature continue to direct the Legislative Analyst to evaluate the use of design-build, with more attention paid to transparency and the details of how contractors and subcontractors are selected. We groan at the egregious case in 2004 of the University of New Mexico giving bidders additional points on their best value scores if they donated to the athletic department! The biggest threat to the future of design-build in this state is an expensive high-profile project that is found to be riddled with cronyism and corruption. Accountability of public entities to the Legislative Analyst may reduce the chances of such a case occurring.

Labor Code 1720.5

Copies of lists of contractors, subcontractors, bidders, bid awards regarding the project shall be submitted to the awarding body within 10 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Government Code \_\_\_\_ (Public Records Act).



**Detwiler, Peter**

**From:** Julianne Broyles [JBroyles@caladvocates.com]  
**Sent:** Thursday, January 28, 2010 9:28 AM  
**To:** Detwiler, Peter  
**Subject:** FW: Six Proposals for Design-Build Authorization Amendments - for Peter Detwiler

Hi Peter – below is the information promised by Kevin Dayton on the design build issue from the ABC perspective. Thank you again for taking the time to meet with us. I appreciated it so much!

Please let me know if there is anything else you need on this. Best regards, Juli

**From:** Kevin Dayton [mailto:dayton@abc-cal.org]  
**Sent:** Wednesday, January 27, 2010 8:29 PM  
**To:** Julianne Broyles  
**Subject:** Six Proposals for Design-Build Authorization Amendments - for Peter Detwiler

### **Three Non-Controversial Proposed Amendments**

#### **1. Ensure public has access to documents such as certified payroll records, subcontractor lists, etc.**

Copies of lists of subcontractors, bidders, and bid awards regarding the project shall be submitted by the design-build entity to the awarding body within 10 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Government Code Sections 6250-6270.

Certified payroll records shall be provided by the design-build entity to the awarding body within ten days of a request from the public under Labor Code Section 1776(b)(3).

#### **2. Clarify when the prevailing wage rates are applicable to subcontractors on the design-build project**

The prevailing wage rate for subcontractors who bid and perform work on a design build project shall be determined by the earlier of the following: the date the bid is accepted in writing by the design-build entity, or the first day the subcontractor performs work on the project, or the date of any official bid opening conducted by the design-build entity.

#### **3. Ensure accountability of a design-build entity to the public to minimize corruption and cronyism**

An existing agency or commission or a new commission shall have the responsibility of reviewing design-build projects to ensure bids are being awarded under

### **Three Controversial Proposed Amendments**

#### **1. Labor Compliance Exemption When a Project Labor Agreement is in Effect - DELETE**

If a [government entity] elects to proceed under this section, the [government entity] shall establish and enforce, for design-build projects, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. ~~This requirement shall not apply to any project where the [government entity] or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.~~

ABC of California does not object to the requirement that an entity using design-build establishes a labor compliance program (LCP). ABC of California DOES object to the exemption immediately following this requirement: "This requirement shall not apply to any project where the city or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects."

Note that "a collective bargaining agreement or agreements that bind all of the contractors performing work on the project" is the definition of a Project Labor

ABC of California is not aware of any credible argument as to why there is no need for a labor compliance program if there is a PLA in place. We have evidence

ABC's local chapters have seen this exemption used as a selling point by unions to encourage local governments to adopt PLAs. The claim is that PLAs will save

#### **2. Penalties in Prequalification for Using New Apprenticeship Programs - AMEND**

"Skilled labor force availability" means ~~that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council that has graduated apprentices in the preceding five years.~~ *a commitment to training the future construction workforce of California through apprenticeship as required by Labor Code 1777.5. The design-build entity shall provide the [government entity] with the name, address, and phone number of the apprenticeship program or programs approved by the Chief of the Division of Apprenticeship Standards from which it intends to request the dispatch of apprentices for use on the design-build contract.*

Cities that use design-build are required to prequalify design-build entities through a prequalification questionnaire [Section 20175.2(d)(3)(A)] that includes at

Four problems with this language:

1. Apprenticeship programs cannot provide evidence of a skilled labor workforce, because apprentices are by definition not fully skilled. So the current language in the Public Contract Code doesn't make sense. The state requirement to train apprentices on public works projects is meant to provide a comprehensive and government-regulated training regimen of classroom instruction and on-the-job training to the future construction workforce of California.
2. The Chief of the Division of Apprenticeship Standards approves apprenticeship programs, not the California Apprenticeship Council.

01/28/2010



3. A design-build entity will be unfairly penalized in the prequalification process for having an agreement with a state-approved apprenticeship program that has not operated long enough to have five years of graduates. For example, a new electrical apprenticeship program would have to operate for five years to get its first graduate (in a five-year program) and then four years beyond that to reach five years of graduates, for a total of nine years. The Chief of the Division of Apprenticeship Programs continues to approve new programs as the need increases for more workers in the California construction trades.
4. An agreement requires the consent of all parties. If an apprenticeship program declines to make an agreement with a design-build entity (for example if a union refuses to make an agreement with a non-union contractor), the entity will be penalized in the prequalification process for the actions of another party.

Unlike the language now in law, the substitute language we propose conforms to the Labor Code and reflects the language in the model prequalification questionnaire developed in 2000 by the California Department of Industrial Relations under the authority of AB 574 (1999).

**3. Exemption from an Acceptable Safety Record if the Contractor Uses an Alternative Dispute Resolution Program Only Available to Contractors with Union Agreements - DELETE**

*For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, ~~or if the bidder is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.~~*

This language should also be removed, as by law an alternative dispute resolution system is only available to a contractor or contractors that have a collective bargaining agreement with unions [see Labor Code Section 3201.5(a)], and it should not be used in itself as a basis to exempt a bidder from having a good safety record.

Kevin Dayton  
State Government Affairs Director  
Associated Builders and Contractors of California  
(916) 439-2159

**Detwiler, Peter**

**From:** Cesar Diaz [cdiaz@sbctc.org]  
**Sent:** Wednesday, February 03, 2010 12:02 PM  
**To:** Detwiler, Peter  
**Subject:** RE: Design-build for counties

Peter,  
Thank you. Yes, please include the following points:

Construction work has two faces. It can provide stable, middle-class careers or without standards or proper enforcement of state laws, provide temporary, hazardous, dead-end jobs.

- Apprenticeship programs strengthen communities by providing career paths and consistent health insurance for people from various backgrounds, including the disadvantaged or formerly incarcerated. Quality programs also benefit the building industry by reducing workplace injuries, reducing turnover and providing a motivated and well-trained workforce.
- 82% of California's approved programs are joint labor-management programs established through collective bargaining. Those programs produce almost all (92%) of the state's apprenticeship graduates.
- The joint labor-management programs are more successful than unilateral management programs at removing barriers to graduation and therefore have much higher completion rates. Policies are needed that encourage and support successful apprenticeship programs. These include local hiring requirements, resources for support services, and using the public contracting process to set and enforce standards.

These points were taken from the Center for Policy Initiatives study attached to this email. Thank you.  
Cesar

**From:** Detwiler, Peter [mailto:Peter.Detwiler@SEN.CA.GOV]  
**Sent:** Tuesday, February 02, 2010 9:12 AM  
**To:** dcurtin@cwnet.com; Cesar Diaz; wpelote@afscme.org; richard@pacificadvocacygroup.com; carlos@afscme36.org; Mark Smith; jcruz@rebuildca.org; thomas.vu@calchamber.com  
**Subject:** Design-build for counties

Danny Curtin, California Conference of Carpenters  
Cesar Diaz, State Building & Construction Trades Council  
Richard Markuson, Western Electrical Contractors Association  
Carlos Mejia, AFSCME Council 36  
Mark Smith, ACEC  
Joseph Cruz, California Alliance for Jobs  
Thomas Vu, California Chamber of Commerce

You spoke at the Senate Local Government Committee's January 20 oversight hearing on how counties use

design-build contracting. I'm writing the summary report which I plan to finish this week. In the summary, we will reprint the speakers' written statements along with a staff summary of what we heard. We'll mail a copy of the summary report to everyone who spoke, including you.

Unlike other speakers, you didn't have a written statement.

If you have something in writing (a statement, charts, graphs, drawings, etc.) that you want us to reprint, please let me know by **tomorrow, Wednesday, February 3.**

Thanks for your help and cooperation. Best wishes.

- Peter

\*\*\*\*\*

Peter M. Detwiler, Staff Director  
Senate Local Government Committee  
State Capitol, Room 5046  
Sacramento, California 95814  
(916) 651-4115 office  
(916) 322-0298 fax  
peter.detwiler@sen.ca.gov

# CONSTRUCTION APPRENTICESHIP PROGRAMS

## CAREER TRAINING FOR CALIFORNIA'S RECOVERY



### KEY FINDINGS

- Construction work has two faces. It can provide stable, middle-class careers or temporary, hazardous, dead-end jobs.
- Apprenticeship programs strengthen communities by providing career paths and consistent health insurance for people from disadvantaged backgrounds. They also benefit the building industry by reducing workplace injuries, reducing turnover and providing a motivated and well-trained workforce.
- Most apprenticeship programs in California (82%) are joint labor-management programs established through collective bargaining. Those programs produce almost all (92%) of the state's apprenticeship graduates.
- The joint labor-management programs are more successful than unilateral management programs at removing barriers to graduation and therefore have much higher completion rates.
- Local policies are needed that encourage and support successful apprenticeship programs. These include local hiring requirements, resources for support services, and using the public contracting process to set and enforce standards.
- With a proven record of success in producing a skilled workforce, apprenticeship programs provide the best means to train workers in the skills needed for the new green economy.

### EXECUTIVE SUMMARY

The current economic downturn has caused vast unemployment in California's construction industry. In the year ending in June 2009, the state lost almost a fifth (18.6%) of its construction jobs, the greatest percentage among all major industries.<sup>1</sup> Getting workers back on the job is crucial to getting the California economy back on its feet.

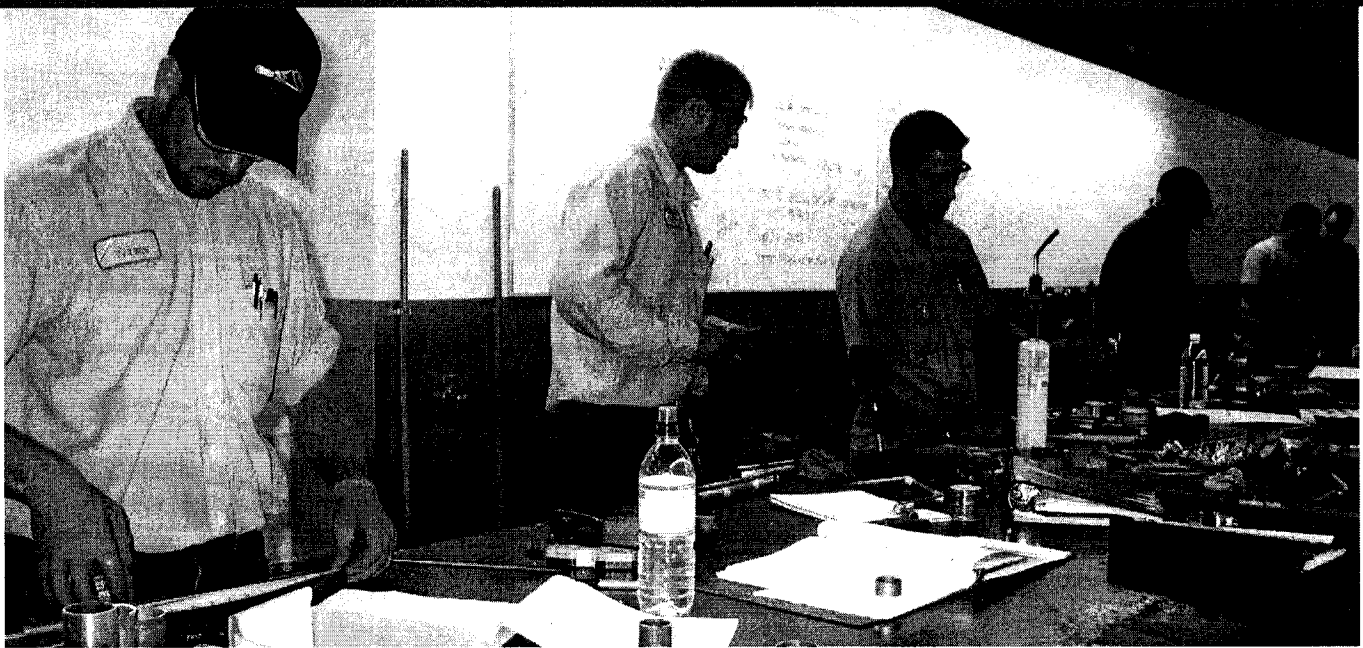
Yet, increased employment is not enough for an equitable recovery. The construction industry's historically good jobs have been depleted by the squeeze on the middle-class over the past 30 years. And the industry is shifting to a green economy, with a focus on new skills, in response to climate change and high energy costs. As the economy revives, new construction jobs must include middle-class career paths and training in skills for the green economy.

As this report demonstrates, building trades apprenticeship programs provide the best model to keep the construction industry on the high road and provide high-quality jobs, to the benefit of the industry, the workers and the greater community.

<sup>1</sup> California Employment Development Department, Labor Market Division. 2009. California Employment Highlights for July 2009. Current Employment Statistics (CES) Program.

## TABLE OF CONTENTS

- 1 Executive Summary and Key Findings**
- 3 Economic Trends**
  - Shifting to the Green Economy
- 4 The Truth about Construction**
  - Construction is Hazardous
  - Construction Jobs are Low-Wage, Temporary and Lack Benefits
- 5 Registered Apprenticeships: The Basics**
  - How Apprenticeship Differs From Other Training
- 6 The Value of Apprenticeships**
  - The Value for Industry
    - Healthcare and Pension Benefits*
    - Worker Safety*
  - The Value for Workers
    - Wages and Career Stability*
    - Paying Prevailing Wage Strengthens Families*
- 10 Apprenticeships Succeed Because Labor and Management Work Together**
  - The Vast Majority of California's Apprenticeship Programs are Joint Labor-Management
  - Joint Programs Have More Graduates and Higher Completion Rates
- 11 Barriers to Program Completion**
  - Dropouts
  - Worker Story: Iron Woman
  - Poaching
- 14 Necessary Policies to Support Apprenticeship Programs**
  - Career Ladders – Pathways out of Poverty
    - Recruitment and Case Management*
    - Soft Skills*
    - Hard Skills*
    - Careers*
    - Case Study: Los Angeles Unified School District "We Build"*
  - Local Hire Requirements
  - Good Jobs in the Green Economy
    - Weatherization Pre-Apprenticeships*
  - Worker Story: From apprentice to contractor
- 17 Summary**
- 17 Recommendations**
- 18 Appendix: Work Descriptions and Enrollment Requirements for Southern California  
Joint Labor-Management Apprenticeship Program Occupations**



## ECONOMIC TRENDS

An historical look at the middle-class shows that as worker productivity increases, wages also increase. Between 1947 and 1979, worker productivity and income doubled together. Since the 1980s, however, incomes have grown only a quarter as much as worker productivity. Since 2000, middle-class families have experienced a nearly 4% decline in real income while productivity has increased 18.5%.<sup>2</sup>

The disconnect between wages and productivity means that the benefits of increased productivity have not been shared equally. In fact, half of overall economic growth from 1993 to 2007 went to the top 1% of incomes. In the boom times of 2000-2007, the top 1% of incomes captured two-thirds of the economic growth.<sup>3</sup>

Besides family-supporting wages, a good, middle-class job encompasses employer-provided health insurance, pensions, paid vacation and holidays, sick leave and family leave, a safe and healthy workplace, some degree of employment security and opportunities for advancement.<sup>4</sup> The history of “good jobs” over the last three business cycles (1980s, 1990s, and first half of 2000s) shows a sharp deterioration in the provision of benefits.<sup>5</sup> For the years 1979-2006, the share of jobs with employer-provided health insurance declined 5.3% and those with employer-provided pensions declined 6.4%.<sup>6</sup>

Rebuilding the middle class will require reconnecting worker productivity with compensation through the creation and support of good jobs.

### Shifting to the Green Economy

The new, green economy is changing the face of construction, with new types of jobs using new technologies and innovations on current practices. Solar panel installation or energy efficiency auditing are examples of new green jobs that build on skills that trained and qualified construction workers have had for years.

#### Definition:

#### Green jobs

Jobs with family-supporting wages and benefits, in fields that contribute significantly to preserving or enhancing environmental quality.<sup>7</sup>

<sup>2</sup> Middle Class Task Force (MCTF). The Vice President of the United States. 2009. *The American Recovery and Reinvestment Act: Helping Middle Class Families*.

<sup>3</sup> Saez, Emmanuel. 2009. Striking it Richer: The Evolution of Top Incomes in the United States. Updated version of an article which appeared in *Pathways Magazine*. Stanford Center for the Study of Poverty and Inequality, Winter 2008, 6-7.

<sup>4</sup> Definition taken from Schmitt, John. 2007. *The Good, the Bad, and the Ugly: Job Quality in the United States over the Three Most Recent Business Cycles*. Center on Economic and Policy Research (CEPR) and Sarah White and Jason Walsh. 2008. *Greener Pathways: Jobs and Workforce Development in the Clean Energy Economy*. Center on Wisconsin Strategy (COWS), The Workforce Alliance and The Apollo Alliance.

<sup>5</sup> Schmitt, John. 2007. *The Good, the Bad, and the Ugly: Job Quality in the United States over the Three Most Recent Business Cycles*. Center on Economic and Policy Research (CEPR).

<sup>6</sup> Schmitt, op cit.

<sup>7</sup> White, Sarah and Jason Walsh. 2008. *Greener Pathways: Jobs and Workforce Development in the Clean Energy Economy*. Center on Wisconsin Strategy (COWS), The Workforce Alliance and The Apollo Alliance.

THE CONSTRUCTION INDUSTRY HAS THE HIGHEST CONCENTRATION OF CONTINGENT WORKERS...AND THE LOWEST RATE OF EMPLOYER-PROVIDED HEALTH COVERAGE AMONG CALIFORNIA'S NON-FARM INDUSTRIES.

## THE TRUTH ABOUT CONSTRUCTION

The construction industry in California has two faces: the first is a high-road industry with family-sustaining wages, healthcare and pension benefits, safe working conditions, career stability and opportunity for advancement. The other is a low-road industry with low pay, no benefits, dangerous conditions and frequent periods of unemployment.

According to a study by the Construction Industry Institute, both contractors and workers report the same issues with recruitment and retention: unsafe job sites, insufficient wages and benefits, impermanency of employment, poor working conditions and poor treatment of employees.<sup>8</sup>

### Construction is Hazardous

In 2007, the construction industry nationally accounted for 20% of workplace deaths and 10% of all workplace injuries and illnesses.<sup>9</sup> California, Texas and Florida account for more than 25% of all non-fatal construction injuries and illnesses resulting in lost work days nationally.<sup>10</sup>

The total cost of death and injury in the U.S. construction industry is estimated at nearly \$13 billion (in 2002 dollars).<sup>11</sup> On average, when a construction worker dies, the overall loss is estimated to be \$4 million and a non-fatal injury that results in lost workdays costs approximately \$42,000.<sup>12</sup>

### Construction Jobs are Low-Wage, Temporary and Lack Benefits

In 2005, more than 120,000 construction workers in California were in occupations that paid less than \$30,000 per year based on the weekly wage.<sup>13</sup> In addition, many construction workers are not employed year-round, resulting in a much lower actual annual income.

Typically on construction projects, a worker's skill set may be needed only during certain phases, resulting in lay-offs, unemployment and loss of benefits. The construction industry has the highest concentration of contingent workers – defined as workers who do not have an implicit or explicit contract for on-going employment – of any non-farm industry in California.<sup>14</sup> Contingent workers are twice as likely as permanent workers to report household or family income less than \$27,000 a year and are much less likely to have employment-based healthcare or pensions.<sup>15</sup> The lower a worker's educational attainment, the higher the incidence of contingent work.

In 2005, at the height of the building boom, the construction industry had the lowest rate of employer-provided health coverage among California's non-farm industries – only 35%.<sup>16</sup> The construction industry accounted for 15% of the state's chronically uninsured, with only 7.3% of the workforce.<sup>17</sup> More than a quarter (27%) of construction workers were uninsured for the entire year while more than 40% were uninsured at least part of the year.<sup>18</sup>

<sup>8</sup> Construction Industry Institute. 2000. *Attracting and Maintaining a Skilled Workforce*. Research Summary 135-1.

<sup>9</sup> Occupational Injuries and Illnesses: Industry Data and Census of Fatal Occupational Injuries, 2007. Source: Bureau of Labor Statistics.

<sup>10</sup> Samuel W. Meyer and Stephen M. Pegula. 2004. *Injuries, Illnesses, and Fatalities in Construction, 2004*. <http://www.bls.gov/opub/cwc/print/sh20060619ar01p1.htm>

<sup>11</sup> CWPR- The Center for Construction Research and Training. 2007. *The Construction Chart Book*, 4th ed. Sect. 48.

<http://www.cpwrt.com/pdfs/CB%204th%20Edition/Fourth%20Edition%20Construction%20Chart%20Book%20final.pdf>

<sup>12</sup> CWPR, op cit.

<sup>13</sup> Weekly wages and monthly employment for Construction Industry in 2005. Source: California Employment Development Department, Labor Market Information Division. Quarterly Census of Employment and Wages (QCEW).

<sup>14</sup> California Employment Education Department. 2006. *Contingent Workers Bolster California Work Force*. <http://www.labormarketinfo.edd.ca.gov/article.asp?ARTICLEID=626>

<sup>15</sup> Contingent and Alternative Employment Arrangements, February 2005. Source: U.S. Bureau of Labor Statistics. <http://www.bls.gov/news.release/History/conemp.txt>

<sup>16</sup> BLS, op cit.

<sup>17</sup> Center on Policy Initiatives (CPI). 2009. *Construction: Working Without a Healthcare Net*. [http://www.onlinecpi.org/downloads/ConstructionReport\\_webversion.pdf](http://www.onlinecpi.org/downloads/ConstructionReport_webversion.pdf)

<sup>18</sup> CPI, op cit.

## REGISTERED APPRENTICESHIP: THE BASICS

Apprenticeship is a combination of on-the-job training and related instruction in which workers learn the practical and theoretical aspects of a highly skilled occupation.<sup>19</sup> The apprentice works side-by-side with a journeyworker to attain demonstrable competency in the craft.<sup>20</sup> Apprenticeships are time-intensive and require high standards of performance.

Oversight of registered programs is provided directly by the U.S. Department of Labor for 25 states and through state-approved agencies in the other 25 states.<sup>21</sup>

### How Apprenticeship Differs From Other Training

The strict legislative regulation over apprenticeship programs creates a unique immersion training system and sets it apart from others, such as paid internships. The apprentice and the program sponsor sign an apprenticeship agreement, which contains

the terms and conditions of the employment and training of the apprentice.<sup>22</sup> Included in the agreement is the graduated wage scale to be paid to the apprentice throughout the program, the required hours and skills learned in on-the-job training and related technical instruction and performance standards.<sup>23</sup>

A registered apprenticeship program must meet government-mandated standards of quality and quantity of instruction.<sup>24</sup> Further, the sponsor must provide adequate and safe equipment and facilities, and safety training for apprentices on the job and in related instruction. Most apprenticeship programs require 3-5 years of training with between 2,000 and 8,000 hours of on-the-job training and 144 hours of related technical instruction.<sup>25</sup> Advancement depends on the apprentice's work record and progress in related instruction.<sup>26</sup>

An apprenticeship graduate has completed a specified minimum number of on-the-job training hours and related technical instruction hours, and has demonstrated competency in the skills and knowledge necessary for work at the highest standards.<sup>27</sup> Each program evaluates apprentices regularly, usually every 6 or 12 months, with both on-the-job performance assessments and written exams. Wage increases and continuation in the program depend on successful demonstration of competency.<sup>28</sup>

Apprentices emerge from the programs proficient in safety and environmental laws and regulations, first aid and CPR, mathematics, drafting, blueprint reading and other sciences connected with the trade.<sup>29</sup> Often included is training in diversity, sexual harassment, personal development, environmental remediation and jobsite management.<sup>30</sup>

<sup>19</sup> U.S. Department of Labor. *Apprenticeship*. <http://www.dol.gov/dol/topic/training/apprenticeship.htm>

<sup>20</sup> California Apprenticeship Coordinators Association. *Apprenticeship: Pathways to Success*. <http://www.calapprenticeship.org/>

<sup>21</sup> Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population. [http://www.urban.org/UploadedPDF/411907\\_registered\\_apprenticeship.pdf](http://www.urban.org/UploadedPDF/411907_registered_apprenticeship.pdf)

<sup>22</sup> 29 CFR 29 "Labor Standards for the Registration of Apprenticeship Programs." Code of Federal Regulations.

<sup>23</sup> 29 CFR 29, op cit.

<sup>24</sup> 29 CFR 29, op cit.

<sup>25</sup> U.S. Department of Labor. *Apprenticeship FAQs*. <http://www.doleta.gov/OA/faqs.cfm>

<sup>26</sup> California Apprenticeship Coordinators Association. *Apprenticeship: Pathways to Success*. <http://www.calapprenticeship.org/>

<sup>27</sup> U.S. Department of Labor, Employment and Training Administration. *At-a-glance: Three Approaches to Apprenticeship Completion*. [http://www.doleta.gov/OA/pdf/Three\\_Approaches\\_Apprenticeship\\_Program\\_Completion.pdf](http://www.doleta.gov/OA/pdf/Three_Approaches_Apprenticeship_Program_Completion.pdf)

<sup>28</sup> U.S. Department of Labor, Employment and Training Administration. *At-a-glance: Three Approaches to Apprenticeship Completion*. [http://www.doleta.gov/OA/pdf/Three\\_Approaches\\_Apprenticeship\\_Program\\_Completion.pdf](http://www.doleta.gov/OA/pdf/Three_Approaches_Apprenticeship_Program_Completion.pdf)

<sup>29</sup> California Department of Industrial Relations, Division of Apprenticeship Standards. *Minimum Industry Training Criteria*. <http://www.dir.ca.gov/DAS/mitc.htm>

<sup>30</sup> California Department of Industrial Relations, Division of Apprenticeship Standards, op cit.



**TABLE 1:**  
**Apprenticeship Program Requirements for Selected Crafts**  
*Top 10 crafts sorted by total number of apprentices graduated from programs*

Craft	Years	On-the-job hours	Classroom hours/year
Carpentry	4	4,800	144
Electrician, Residential	3	4,800	160
Commercial/Industrial	5	8,000	160
Plumbing	4	7,200	200
Operating Engineer	4	6,000	144
Sheetmetal	4	6,500	160
Laborer	2	3,000	216
Painting & Decoration	3.5	7,000	114
Roofers	3.5	4,000	144
Plumbing	4	7,200	200
Air conditioning & refrigeration	5	7,500	216
Carpet, Linoleum & Soft Tile	4	6,400	160

Source: California Department of Industrial Relations, Division of Apprenticeship Standards. Minimum Industry Training Criteria. <http://www.dir.ca.gov/DAS/mitc.htm>

**THE VALUE OF APPRENTICESHIPS**

Apprenticeship programs benefit the entire community by providing good wages, health insurance and career stability for disadvantaged community residents. The stringent training also helps ensure high quality public works projects and cost containment by decreasing turnover, workplace accidents and lost productivity.

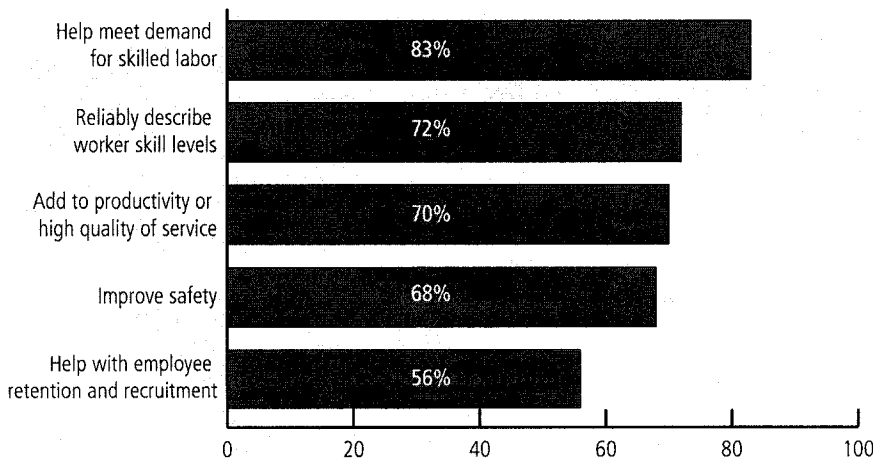
**The Value for Industry**

Apprenticeship programs provide skilled workers trained to employer specifications, and lead to reduced turnover, improved

on-the-job safety and higher quality results, according to a study commissioned by the U.S. Department of Labor.<sup>31</sup>

The value of apprenticeship training is extolled by the Construction Users Roundtable (CURT), comprised of some of the largest companies in the U.S., including Boeing, Procter & Gamble, General Electric, and the U.S. Army Corps of Engineers. CURT recommends that end users or owners require the contractors working for them to commit to training programs as a prequalification for doing business.<sup>32</sup>

**FIGURE 1: PROGRAM SPONSORS REPORT THAT APPRENTICESHIPS:**



Source: Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population.

<sup>31</sup> Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population. [http://www.urban.org/UploadedPDF/411907\\_registered\\_apprenticeship.pdf](http://www.urban.org/UploadedPDF/411907_registered_apprenticeship.pdf)

<sup>32</sup> Construction Users Roundtable. 2004. *Confronting the Skilled Workforce Challenge*. White Paper 401.

APPRENTICESHIPS LEAD TO CAREERS WITH HIGHER AVERAGE WAGES AND PROMOTE JOB STABILITY THROUGH SKILL CERTIFICATION AND PORTABILITY

**The Value for Workers**

Most apprenticeship programs provide good jobs from the beginning, with fair wages, family healthcare benefits, a pension plan, paid sick days, a safe work environment and employment stability. Program completion secures these advantages for an entire career.

**Wages and Career Stability**

Apprenticeships lead to careers with higher average wages and promote job stability through skill certification and portability. Apprentice wages start out as a percentage of the journeyworker hourly rate, significantly higher than minimum wage, and increase regularly as competency is demonstrated.<sup>33</sup>

As Table 2 demonstrates, apprentices in San Diego County begin at a basic hourly rate equal to more than \$28,000 per year. Program graduates make a basic hourly wage equating to nearly \$60,000 annually.

Moreover, a certificate of completion signifies attainment of nationally and globally recognized skills.<sup>34</sup> With the portability of credentials a worker can move between projects and employers with a documented set of skills on their resume, thereby facilitating the hiring process and ensuring the correct pay rate commensurate with skill level.

Many apprenticeship programs have formal agreements with 2- and 4-year colleges and universities which offer credits for the education received.<sup>35</sup> A worker can use accumulated credits to pursue a college degree later in life, facilitating transition to another career, if desired.

**TABLE 2:**

**Apprenticeship Basic Hourly Wage Increase Schedule, San Diego County, California, Q1 2009\***

*Wage increases dependent upon successful completion of training segments*

Years in Program	Part of year (1/2)	Carpenter, Commercial	Electrician, Inside Wireman	Plumber, Pipefitter, Steamfitter
		Wage level per 600 on-the-job training hours	Wage level per 800 on-the-job training hours	Wage level per 1,600 on-the-job training hours
1	1st	\$14.54	\$14.54	
	2nd	\$16.15	\$15.99	\$16.65
2	1st	\$19.38	\$17.45	
	2nd	\$21.00	\$18.90	\$19.97
3	1st	\$22.61	\$20.36	
	2nd	\$24.23	\$21.81	\$23.30
4	1st	\$25.84	\$23.99	
	2nd	\$29.07	\$25.45	\$26.63
5	1st	—	\$28.35	
	2nd	—	\$29.81	\$29.96

\*Source: California Department of Industrial Relations, Division of Apprenticeship Standards, Public Works Apprentice Wage Sheets. <http://www.dir.ca.gov/DAS/PWAppWage/PWAppWageList.asp>

<sup>33</sup> California Department of Industrial Relations data for end of 2008. *Apprentice wage determinations* <http://www.dir.ca.gov/DAS/PWAppWage/wage/08237400pdf?VarWageld=08237400> and *Prevailing Wage determinations* <http://www.dir.ca.gov/dlsr/PWD/Determinations%5CSanDiego%5CSD-023-102-4.pdf>

<sup>34</sup> U.S. Department of Labor. *Registered Apprenticeship: A Solution to the Skills Shortage*. [http://www.doleta.gov/atels\\_bat/pdf/fsfront.pdf](http://www.doleta.gov/atels_bat/pdf/fsfront.pdf)

<sup>35</sup> California Department of Industrial Relations, Department of Apprenticeship Standards. *Educators home page*. <http://www.dir.ca.gov/das/educators.htm>

## PAYING PREVAILING WAGE STRENGTHENS FAMILIES

California and many other states require that contractors pay Prevailing Wage on public projects, but cities can selectively opt out. For example, the City of San Diego requires prevailing wage only on projects worth more than \$10 million, and the City of Vista recently voted to abandon prevailing wage completely.<sup>38</sup> Prevailing wage requirements invest in communities by providing good wages and benefits, and protect taxpayers from the hidden costs of supporting the uninsured and the working poor.<sup>39</sup>

In California, the Department of Industrial Relations reviews the wages and compensation paid to workers in the local area and sets the local prevailing wage at the level most commonly paid to workers in each classification.<sup>40</sup> Prevailing wage is also required for apprentices.<sup>41</sup>

As Table 3 illustrates, prevailing wage creates middle-class jobs by determining the amount of employer contributions to worker benefit funds, including health insurance, pension, holidays and vacation, and training.

Prevailing wage requirements:

- Do **not** increase cost, because workers who earn more are more productive. Also, workers are safer, lowering worker's compensation costs.<sup>42</sup>
- Increase rates of health coverage and self-sufficient retirement through pensions.<sup>43</sup>
- Improve worker safety by encouraging better training and use and retention of experienced workers.<sup>44</sup>
- Encourage minority participation in apprenticeship programs, creating pathways out of poverty for local workers.<sup>45</sup> States with prevailing wage laws have nearly 20% more minorities in construction apprenticeships than states that do not require prevailing wage.<sup>46</sup>

### Definition:

#### Prevailing Wage

Contractors bidding on construction built with public subsidy must compensate all workers on the project equally, based on their occupational classification.<sup>36</sup> Federal prevailing wage was created in 1931 by the Davis-Bacon Act, "specifically to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels."<sup>37</sup>

## Healthcare and Pension Benefits

Many apprenticeship programs give workers access to health coverage and pension benefits, and when the program sponsor is part of a multiemployer trust, workers have benefits portability between jobs.<sup>47</sup> Without that structure, the frequent job changes in construction can result in loss of health insurance and pensions, which generally are accessed through employers in the United States.

Multiemployer plans are created through collective bargaining. With this structure, 83% of unionized construction workers had job-based health coverage compared to only 48% in the nonunion sector of the industry in 2005.<sup>48</sup> Unionized workers are also 23% to 54% more likely to be in employer-provided pension plans.<sup>49</sup>

<sup>36</sup> California State Labor Code, Div. 2, Part 7, Chp. 1, Sec. 1771.

<sup>37</sup> U.S. Department of Labor. 2002. *Prevailing Wage Resource Book*, 11/2002. <http://www.wdol.gov/docs/WRB2002.pdf>

<sup>38</sup> Tenbroeck, Craig. Vista: Unions seek to overturn prevailing wage ruling. North County Times. June 30, 2009. and City of San Diego Council Resolution R-298185. A Resolution rescinding Resolution No. R-251555; and authorizing the advertisement of certain public works municipal affair projects as subject to state prevailing wage requirements. Adopted July 14, 2003.

<sup>39</sup> Fiscal Policy Institute. 2006. *The Economic Development Benefits of Prevailing Wage*. <http://www.fiscalpolicy.org/EPI%20Prevailing%20Wage%20Brief%20May%2006.pdf>

<sup>40</sup> California State Labor Code, Div. 2, Part 7, Chp. 1, Sec. 1773.

<sup>41</sup> California State Labor Code, op cit., Sect. 1777.5(b).

<sup>42</sup> Mahalia, Nooshin., 2008. *Prevailing Wages and Government Contracting Costs: A Review of the Research*. Economic Policy Institute (EPI), Briefing Paper 215. <http://www.epi.org/publications/entry/bp215/>

<sup>43</sup> Petersen, Jeffery S. 2000. Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws. *Industrial Relations*. Vol. 39, No. 2.

<sup>44</sup> National Alliance for Fair Contracting (NAFC). 2003. *In Defense of Prevailing Wage Laws: Studies and Reports by The Experts*. [http://www.lecet.org/Clearinghouse\\_Public/LECET/NAFC/in\\_defense\\_of\\_prevailing\\_wage\\_laws.pdf](http://www.lecet.org/Clearinghouse_Public/LECET/NAFC/in_defense_of_prevailing_wage_laws.pdf)

<sup>45</sup> NAFC, op cit.

<sup>46</sup> Philips, Peter Ph.D. 1999. *Kentucky's Prevailing Wage Law: It's History, Purpose and Effect*. University of Utah.

<sup>47</sup> Philips, op cit.

<sup>48</sup> CWPR- The Center for Construction Research and Training. 2007. *The Construction Chart Book*. 4th ed. Sect. 26. <http://www.cpwpr.com/pdfs/CB%204th%20Edition/Fourth%20Edition%20Construction%20Chart%20Book%20final.pdf>

<sup>49</sup> Mishel, Lawrence and Matthew Walters. 2003. *How unions help all workers*. Economic Policy Institute (EPI). Briefing paper #143. [http://www.epi.org/publications/entry/briefingpapers\\_bp143/](http://www.epi.org/publications/entry/briefingpapers_bp143/)

**Table 3**  
**Prevailing Wage: Hourly Wage & Employer Contributions for Selected San Diego County Apprentices**  
*Year Two of Program*

	Basic Hourly Wage	Employer Contributions					Total Hourly Wages
		Health & Welfare	Pension	Vacation/Holiday	Training	Other	
Carpenter	\$21.00	\$3.95	\$2.91	\$3.30	\$0.42	- 0 -	\$31.58
Electrician, Inside Wireman	\$18.90	\$5.12	\$2.83	- 0 -	\$0.56	\$0.16	\$27.57
Plumber/Pipefitter/Steamfitter	\$19.97	\$6.02	\$0.31	\$1.79	\$0.32	\$0.39	\$28.80
Operating Engineer	\$28.55	\$7.95	\$5.05	\$2.82	\$0.56	\$0.17	\$45.19
Sheet Metal	\$19.33	\$3.42	\$2.63	- 0 -	\$0.68	\$0.46	\$26.52
Laborer	\$19.01	\$4.26	\$0.39	\$2.62	\$0.64	\$0.30	\$27.22
Painter	\$14.21	\$4.60	\$0.15	\$0.30	\$0.34	\$0.67	\$20.27
Roofer	\$16.02	\$4.76	\$1.62	- 0 -	\$0.10	\$0.20	\$22.70
Heating, Ventilation & Air Conditioning**	\$19.62	\$6.38	\$1.13	- 0 -	\$0.70	\$0.25	\$28.08
Carpet	\$20.01	\$6.00	\$0.94	\$0.23	\$0.45	\$0.15	\$27.78

\*Source: California Department of Industrial Relations, Division of Apprenticeship Standards, Public Works Apprentice Wage Sheets, Q1 2009

<http://www.dir.ca.gov/DAS/PWAppWage/PWAppWageList.asp>

\*\*Los Angeles and Orange counties

A SURVEY OF 8,000 CONSTRUCTION LABORERS IN WASHINGTON FOUND THAT HEALTH AND SAFETY TRAINING DECREASED THE LIKELIHOOD OF WORKERS' COMPENSATION CLAIMS BY 12%.

**Worker Safety**

Safety training is highly effective in preventing workplace accidents and injuries, which saves money. A survey of 8,000 construction laborers in Washington found that health and safety training decreased the likelihood of workers' compensation claims by 12%. Among workers ages 16-24, there were 42% fewer claims.<sup>52</sup>

Apprenticeships in the building trades provide certified and coordinated instruction in building and earthquake codes, environmental laws and safety, including hazardous materials handling and remediation.<sup>53</sup> Minimum apprenticeship training for all crafts must include safety instruction provided on-the-job and in the classroom.<sup>54</sup> In California, most crafts require first aid, CPR, tools and materials safety.<sup>55</sup>

**Definition:**

**Multiemployer trust**

A benefits plan that covers the workers of two or more unrelated companies in accordance with a collective bargaining agreement.<sup>50</sup> In industries where seasonal or irregular employment and high labor mobility are common, like construction, few workers would qualify under a single company's plan due to eligibility requirements.<sup>51</sup>

<sup>50</sup> Employment Benefit Research Institute (EBRI). 2009. *Fundamentals of Employee Benefit Programs*. 6th ed. <http://www.ebri.org/publications/books/index.cfm?fa=fundamentals>

<sup>51</sup> EBRI, op cit.

<sup>52</sup> Xiuwen Dong, Pamela Entzel, Yuring Men, Risanna Chowdury, and Scott Schneider. 2004. Effects of Safety and Health Training on Work-related Injury Among Construction Laborers. *Journal of Occupational & Environmental Medicine*. 46(12), pp. 1222-1228.

<sup>53</sup> California Department of Industrial Relations, Department of Apprenticeship Standards. *Minimum Industry Training Criteria*. <http://www.dir.ca.gov/das/mitc.htm>

<sup>54</sup> 29 CFR 29 "Labor Standards for the Registration of Apprenticeship Programs." Code of Federal Regulations.

<sup>55</sup> California Department of Industrial Relations, Department of Apprenticeship Standards. *Minimum Industry Training Criteria*. <http://www.dir.ca.gov/das/mitc.htm>

**APPRENTICESHIPS SUCCEED BECAUSE LABOR AND MANAGEMENT WORK TOGETHER**

Due to the resources required to adequately train workers, the structure of sponsorship plays an important role in the success of the program. Apprenticeship programs can be sponsored by a single employer, a group of employers or a group of employers in cooperation with labor. Sponsors plan the training, review apprentice progress, maintain the records of appropriate progress and pay for the program.<sup>56</sup> The total cost can be \$40,000 to \$200,000 per apprentice, depending on the trade and length of apprenticeship.

The sponsor must have the ability to hire and train apprentices in a real work environment. If the sponsors don't provide steady work, the apprentices have fewer opportunities to earn wages and thereby remain in the program.

**The Vast Majority of California's Apprenticeship Programs are Joint Labor-Management**

**Table 4:  
Advantages of joint labor-management apprenticeship programs**

California State Certified Apprentice Programs	Number of Programs		Number of Graduates (Individuals) 2002 - 2007	
	Joint Labor-Mgmt	Unilateral Mgmt	Joint Labor-Mgmt	Unilateral Mgmt
Asbestos Workers	2	none	186	none
Boilermakers	1	none	62	none
Bricklayer	3	2	110	16
Carpentry	25	3	4,449	337
Carpet, Linoleum & Soft Tile	2	1	330	2
Cement Masons	3	none	520	none
Drywall / Lather	9	2	1,904	none
Electrical & Electronic	29	9	4,362	1,110
Elevator	2	none	617	none
Engineer	4	3	2,026	13
Glazier & Glass Workers	6	none	437	none
Heating, Ventilation & Air Conditioning	8	2	532	246
Iron & Steel Workers	8	none	2,116	none
Laborers	8	2	1,540	56
Lineman	1	2	324	37
Millwright	2	none	185	none
Painting & Decorating	5	4	1,033	66
Plasterers	4	none	294	none
Plumbing	29	6	2,769	306
Roofers	7	2	618	115
Sheet Metal	9	2	1,654	114
Surveyor	2	none	482	none
Tile Layer/Setter	8	none	976	none
<b>Total</b>	<b>177</b>	<b>40</b>	<b>27,526</b>	<b>2,418</b>
<b>Percentage</b>	<b>82%</b>	<b>18%</b>	<b>92%</b>	<b>8%</b>

Source: California Department of Industrial Relations, Division of Apprenticeship Standards dataset, April 2009.

Joint labor-management (joint) programs sponsor the majority of apprenticeship programs offered in California and graduate the vast majority of apprentices. The sponsorship structure, meaning whether the sponsor is joint or unilateral management, is a key component to the strength of a program. Cooperation and a shared commitment to training unite employers and workers to create the success of joint programs.

In California, 217 registered programs train apprentices in 23 trades. Joint labor-management programs provide 82% of those programs and offer training in all trades. In 10 trades, only joint programs are offered.

**Definitions:**

**Sponsor**

Any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

**Joint labor-management (joint)**

Composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s)

**Unilateral**

An apprenticeship program sponsor without a bona fide collective bargaining agent.

Source: Code of Federal Regulations, 29 CFR 29 "Labor Standards for the Registration of Apprenticeship Programs."

<sup>56</sup> 29 CFR 29 "Labor Standards for the Registration of Apprenticeship Programs." Code of Federal Regulations.

**Joint Programs Have More Graduates and Higher Completion Rates**

Ninety-two percent (92%) of California's nearly 30,000 apprenticeship graduates in 2002-2007 were from joint labor-management programs (Figure 2). Since program completion is what secures middle-class career wages and benefits, the ability of apprentices to succeed is vital.

Completion rates in joint programs are higher because they are more established and better funded, according a Government Accountability Office report.<sup>57</sup> Joint apprenticeship training trusts are funded through collective bargaining, meaning that member workers agree

to have a small part of their paycheck deposited by the employer into the trust.

**Definition:**

**Completion rate**

The percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within one year of the projected completion date.

Joint labor-management programs use a multi-employer structure, with several signatory contractors, to keep apprentices fully employed

to fulfill their on-the-job training hours. Joint programs generally take responsibility for placing apprentices with employers, rather than requiring the apprentices to look for work and experience intermittent unemployment. Through local chapter affiliation and portability agreements, apprentices in joint programs keep their benefits and are more likely to find work in other areas with another local.<sup>58</sup>

Ninety-five percent (95%) of women and 92% of people of color graduating from apprenticeship programs are in joint labor-management programs (Figure 3 and Figure 4).<sup>59</sup>

Joint labor-management sponsored apprenticeship programs have a significantly higher completion rate (49%) than unilateral programs (33%) across the board. In many of the largest trades, the joint program completion rates are 20-30% higher than unilateral programs (Figure 5, Page 12).<sup>60</sup>

**BARRIERS TO PROGRAM COMPLETION**

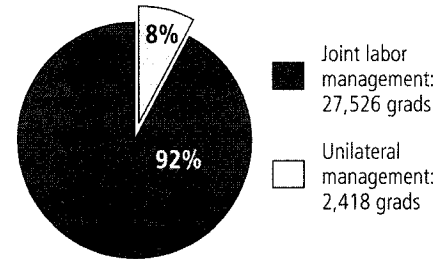
Program sponsorship has two main challenges: failure to complete the program and the loss of a trained worker to another employer, or "poaching."<sup>61</sup> These problems increase the cost of training and threaten continuation of the programs.

**Dropouts**

Apprenticeship programs are rigorous. It is full-time, physically

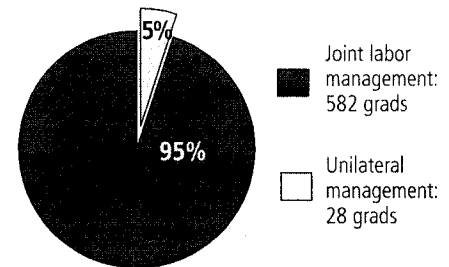
**FIGURE 2: TOTAL GRADUATION**

California Construction Apprenticeship Programs Individual Completions by All Persons 2002-2007



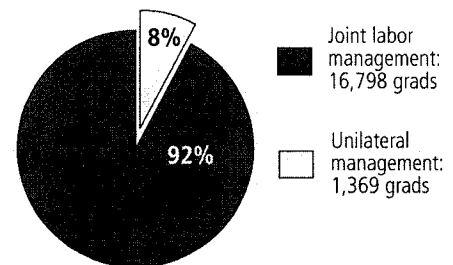
**FIGURE 3: WOMEN GRADUATES**

Apprenticeship Program Completions by Women in California, 2003-2008 (Individuals)



**FIGURE 4: MINORITY GRADUATES**

Apprenticeship Program Completions by Minorities in California, 2003-2008 (Individuals)



Source for above figures: California Department of Industrial Relations, Division of Apprenticeship Standards dataset, April 2009.

<sup>57</sup> Government Accountability Office (GAO). 2005. *Registered Apprenticeship Programs: Labor Can Better Use Data to Target Oversight*. Report to Congressional Requesters. <http://www.gao.gov/new.items/d05886.pdf>

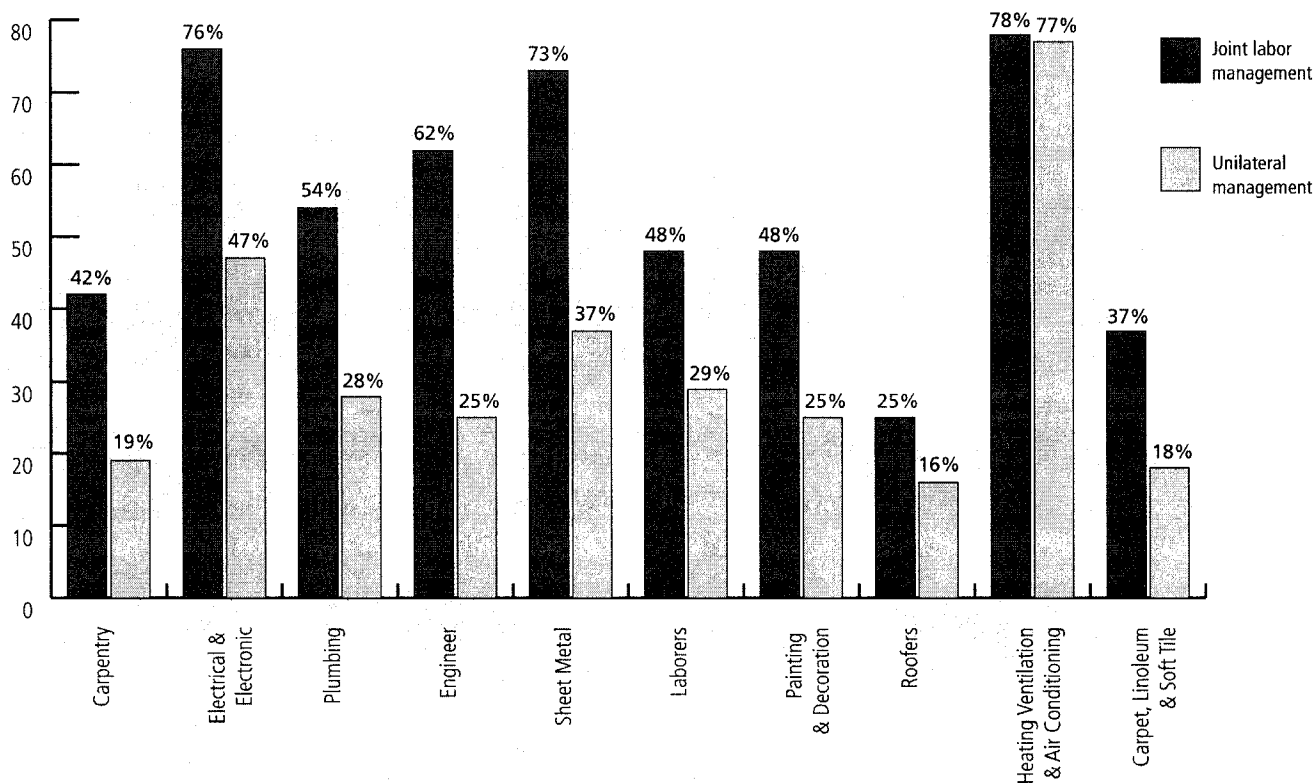
<sup>58</sup> GAO, op cit.

<sup>59</sup> Apprenticeship dataset received from the California Department of Industrial Relations, Division of Apprenticeship Standards, April 2009.

<sup>60</sup> Apprenticeship dataset, op cit.

<sup>61</sup> Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population. [http://www.urban.org/UploadedPDF/411907\\_registered\\_apprenticeship.pdf](http://www.urban.org/UploadedPDF/411907_registered_apprenticeship.pdf)

**FIGURE 5: CALIFORNIA CONSTRUCTION APPRENTICESHIP PROGRAMS COMPLETION RATE BY CRAFT, 2002-2007**  
 Top 10 crafts by number of graduates. Completion rate weighted average



Source: California Department of Industrial Relations, Division of Apprenticeship Standards dataset, April 09

Methodology: Most data used in this report come from the California Department of Industrial Relations, Division of Apprenticeship Standards. One dataset listed individual program completions by sponsor for gender and ethnicity and was received at the end of March 2009. The other dataset listed program completions by sponsor for all persons and was received mid-April 2009. Weighted averages were created by multiplying total intake of apprentices for each sponsor for 2002-2007 by average completion rate after the 1st year. The results for each sponsored program within each trade were added together. This total was then divided by total average annual intake rate to find the weighted average for each trade by type of sponsor.

demanding work, with classroom instruction and studying after work or on weekends. It can be difficult to juggle time commitments or manage the stress of constant training challenges and evaluations. An apprentice needs both personal commitment and a support system to be successful. This is even more critical if the apprentice comes from an at-risk background.

Social service or support programs within the community can help apprentices succeed by providing needed additional services, such as substance abuse or mental health counseling, childcare, or small loans for reliable transportation. Using assessments and case management to assist apprentices in identifying personal barriers to success and then connecting them to support services can address many of the reasons for dropping out.<sup>62</sup>

**The most commonly cited reasons for non-completion of a program were:<sup>63</sup>**

- 36% – personal reasons (family needs, mental health or substance abuse problems, physical illness or legal issues).
- 32% – performance problems on the job or in the classroom.
- 30% – gained craft certificate or took another job before completion.

<sup>62</sup> The Apollo Alliance, et al. 2008. *Green-Collar Jobs in America's Cities: Building Pathways Out of Poverty and Careers in the Clean Energy Economy*. <http://apolloalliance.org/downloads/greencollarjobs.pdf>

<sup>63</sup> Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population. [http://www.urban.org/UploadedPDF/411907\\_registered\\_apprenticeship.pdf](http://www.urban.org/UploadedPDF/411907_registered_apprenticeship.pdf)

## WORKER STORY: Iron Woman

"I was working in retail and was tired of it. I wanted a career and something that would keep me outside, healthy and happy," says 28-year old ironworker Mariko Preston. "I began training in ironworking in New Orleans but was looking to get out. Katrina helped with that."

Following Hurricane Katrina, Preston was evacuated by the American Red Cross to San Diego. She approached the staff at Ironworkers Local 229, she remembers. "They said OK. Show us what you got."

Five years later, Preston is a journey-level iron worker with comprehensive welding certifications and on-the-job experience in welding for infrastructure like highways, bridges and dams and for skyscrapers.

A 5'3" African-American woman, Preston says, "I work smarter, not harder. Being a woman in the trades, it's hard enough, especially as an ironworker, to go out on the job and think you are going to get paid as much as the next guy. When I'm in the union, I know that they have to treat me fairly, and we are all going to get paid the same."

And Preston credits her joint labor-management apprenticeship with teaching her more in a few years than she ever would have learned as a nonunion worker.



## Poaching

The loss of a trained worker to another employer, known as "poaching," can lead to underinvestment in an employer's workforce.<sup>64</sup> In order to maximize profits in the short-term, some contractors may choose to hire others' apprentices or journeyworkers rather than make the long-term investment to sponsor their own training programs.<sup>65</sup>

The focus on selecting the lowest bidder for construction projects can exacerbate "poaching." When bidding, contractors may cut training costs to reduce total overhead as much as possible and win the work. This fierce pressure to contain labor costs and undercut the competition encourages employers to poach workers from other contractors rather than incur the costs of training.<sup>66</sup>

Joint labor-management programs report less concern with dropouts and "poaching."<sup>67</sup> Steady work, higher wages and health insurance may resolve many of the personal reasons for dropping out of a program. A steady paycheck at a family-sustaining level may allow workers to pay for childcare or other assistance, while health insurance provides treatment for physical illness, substance abuse or mental health issues.

Joint programs pool their training costs and resources, creating a "fair playing field" among union contractors, thereby negating the disincentive to provide training and the incentive to poach.<sup>68</sup>

<sup>64</sup> Organization for Economic Co-operation and Development (OECD). 1994. *The OECD Jobs Study: Facts, Analysis, Strategies*. <http://www.oecd.org/dataoecd/42/51/1941679.pdf>

<sup>65</sup> Kotler, Fred. 2009. *Project Labor Agreements in New York State: In the Public Interest*. Cornell University Industrial and Labor Relations School, Cornell University.

<sup>66</sup> Kotler, op cit.

<sup>67</sup> Lerman, Robert, Lauren Eyster and Kate Chambers. 2009. *The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective*. The Urban Institute on Labor, Human Services and Population. [http://www.urban.org/UploadedPDF/411907\\_registered\\_apprenticeship.pdf](http://www.urban.org/UploadedPDF/411907_registered_apprenticeship.pdf)

<sup>68</sup> Kotler, Fred. 2009. *Project Labor Agreements in New York State: In the Public Interest*. Cornell University Industrial and Labor Relations School, Cornell University.



**NECESSARY POLICIES TO SUPPORT APPRENTICESHIP PROGRAMS**

The success of apprenticeship programs in creating middle-class careers depends on supportive public policies. Effective policy options include funding the programs and support services, requiring contractors to pay prevailing wage and hire apprentices on more projects, and enacting responsible contracting standards.

**Definition:**

**Responsible contracting policies**

Prohibit public contracting with employers who violate workplace, tax or other laws. They can also provide a mechanism to favor employers who provide good jobs – good wages and benefits, a safe workplace – and comply with workforce standards.<sup>69</sup>

**Career Ladders - Pathways out of Poverty**

A career ladder or pathway out of poverty is a succession of training and support systems that prepare workers for a series of jobs with increasing skill requirements and compensation, providing a bridge from unemployment or dead-end jobs into middle-class careers.<sup>70</sup> Career ladders focus on community members who traditionally face multiple

barriers to employment – low-income, people of color, women, unemployed, homeless, ex-offender, returning veterans or those lacking a high school diploma or GED.

A comprehensive career pathway links job seekers, employers, community organizations, educational institutions and the workforce development system, creating “wrap-around” services.<sup>71</sup> Apprenticeship is a key step.

**Recruitment and Case Management**

Community-based organizations and workforce development providers help connect community members with career pathway programs. They provide skills assessments, identify participant needs and coordinate support services. Some community members need case management assistance along the entire pathway out of poverty. Case management assistance is often necessary for ex-offenders or youth, those with a history of substance abuse, or to help low-income people remain qualified for assistance until they become stably employed.<sup>72</sup>

**Soft Skills**

Nonprofit organizations and community colleges provide soft skills, including job hunting skills, workplace etiquette, communication skills, conflict management, as well as assistance with obtaining a driver’s license or GED.<sup>73</sup>

**Hard Skills**

Nonprofit organizations, labor unions and employers provide the actual on-the-job skills training for careers through pre-apprenticeship and apprenticeship programs.<sup>74</sup>



*Adapted from The Apollo Alliance, et al. 2008. Green-Collar Jobs in America’s Cities: Building Pathways Out of Poverty and Careers in the Clean Energy Economy.*

<sup>69</sup> Sonn, Paul K. and Tsedeye Gebreselassie. 2009. The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services. National Employment Law Project (NELP). [http://nelp.3cdn.net/1c667861b98867e7\\_1dm6brs8l.pdf](http://nelp.3cdn.net/1c667861b98867e7_1dm6brs8l.pdf)

<sup>70</sup> Mitnik, Pablo and Matthew Zeidenberg. 2007. *From Bad to Good Jobs? An Analysis of the Prospects for Career Ladders in the Service Industries*. Center on Wisconsin Strategy (COWS). [http://www.cows.org/about\\_publications\\_detail.asp?id=399](http://www.cows.org/about_publications_detail.asp?id=399), and The Apollo Alliance, et al. 2008. *Green-Collar Jobs in America’s Cities: Building Pathways Out of Poverty and Careers in the Clean Energy Economy*. <http://apolloalliance.org/downloads/greencollarjobs.pdf>

<sup>71</sup> The Apollo Alliance, et al. 2008. *Green-Collar Jobs in America’s Cities: Building Pathways Out of Poverty and Careers in the Clean Energy Economy*. <http://apolloalliance.org/downloads/greencollarjobs.pdf>

<sup>72</sup> The Apollo Alliance, et al, op cit.

<sup>73</sup> The Apollo Alliance, et al, op cit.

<sup>74</sup> The Apollo Alliance, et al, op cit.

## Careers

Graduates of apprenticeship programs become journeyworkers. With increasing experience and continuing education, many later

become foremen, supervisors or contractors.

### Definition:

#### Pre-apprenticeship

A program that provides contextualized training in the basic skills used in the building trades and prepares students for entrance into an apprenticeship program. Many programs train on smaller and less complex construction projects, such as a model structure on the program site, or in residential weatherization of community homes.

None of this is cheap. Providing the diverse services necessary for moving an at-risk community member to self-sufficiency requires resources. Some funds come from government programs and others through nonprofit or charitable organizations.

Regardless, programs like these need both policy and financial support, especially in today's economy.

## Local Hire Requirements

On-the-job training is the main component of the apprenticeship system. Each apprentice must stay fully employed to complete their program on time. Therefore, a shortage of jobs limits the availability of apprenticeships for community residents.

Local hire policies provide local jobs and also incentivize the creation of career ladders by moving community members into apprenticeship programs and into middle-class careers. Local hire policies require that a certain number of journeyworkers and apprentices who are residents of the local area to be employed on development projects. Many local hire policies also require a set participation rate by "at-risk" residents or living in poverty. Local hire is a concrete mechanism to ensure that the investment of public funds into the community helps low-income residents.<sup>75</sup>

A successful example of local hire policies in action, the City of Los Angeles implemented local hire after an audit of the 1996 City Hall renovation project showed that less than 2% of project work hours were performed by local residents.<sup>79</sup> The City's Department of Public Works now requires that 30-40% of project hours be performed by City residents. Because of that policy, \$41.5 million has been reinvested in the City through the estimated wages and benefits paid to 2,600 local residents and 2,300 apprentices employed on nine Public Works projects.<sup>80</sup>

## CASE STUDY: Los Angeles Unified School District "We Build"

Since 1999, the Los Angeles Unified School District (LAUSD) has strived to use local district residents to perform at least 50% of total hours worked on bond projects. The local-hire policies cover over \$27.1 billion dollars of bond funds, the largest school construction project in the nation. Through diligent, innovative administration and community partnerships, 33% or 19,509 local residents have been employed on LAUSD projects, as of March 2009.<sup>75</sup>

Due to the size and scope of the bond projects, LAUSD has created an internal department to facilitate local hire and community partnerships, called We Build. We Build connects community members with pre-apprenticeship training through both the LAUSD Division of Adult and Career Education Training Centers and the nonprofit Century Community Training Program. Completion of the pre-apprenticeship program places workers in a competitive position to enter union apprenticeship programs and be employed by contractors working on bond construction projects.<sup>76</sup>

The Century Community Training Program is one example of an organization providing "wrap around" services. Trainees receive hands-on experience building on-site model structures where they learn the basics of several trades, including concrete pouring, residential plumbing and electrical systems, reinforcing iron setup and basic framing. Daily physical agility and endurance-building exercises help prepare trainees for the physical demands of construction. Classroom instruction includes shop math, written test-taking, blueprint reading and OSHA 10-hour safety certification. Trainees also receive case management services and job placement assistance, with 85% of graduates entering union apprenticeship programs.<sup>77</sup>

<sup>75</sup> Los Angeles Unified School District. *We Build*. <http://www.laschools.org/contractor/webuild/> and "We Build" Program Update & UCLA Labor Center Study Summary. Facilities Committee Report. March 5, 2009. Received from We Build program upon request.

<sup>76</sup> Los Angeles Unified School District. *We Build*. <http://www.laschools.org/contractor/webuild/>

<sup>77</sup> Information from the Century Community Training Program website. <http://www.centurycommunitytraining.org/>

<sup>78</sup> Kathleen Mulligan-Hansel, PhD. 2008. *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*. Partnership for Working Families. <http://www.communitybenefits.org/downloads/Making%20Development%20Work%20for%20Local%20Residents.pdf>

<sup>79</sup> City of Los Angeles Bureau of Contract Administration, Project labor agreement documents posted online. [http://bca.lacity.org/index.cfm?nxt\\_body=local\\_hiring.cfm](http://bca.lacity.org/index.cfm?nxt_body=local_hiring.cfm)

<sup>80</sup> Manny Perez, 2009. *Local Hire in the City of Los Angeles*. City of Los Angeles, Department of Public Works, Bureau of Contract Administration. Presentation to the San Diego Unified School Board, January 2009.

## Good Jobs in the Green Economy

The green economy is large and growing rapidly. According to the American Solar Energy Society, renewable energy and energy efficiency generated \$970 billion in revenues and 8.5 million jobs in 2006.<sup>81</sup> By 2030, ASES estimates that 1 in 4 U.S. workers will have jobs involving renewable energy or energy efficiency.<sup>82</sup>

With that much of our economy at stake, policy decisions are needed today to ensure high-road, middle-class careers for the future. Increasing numbers of state and local governments and agencies are addressing climate change through requiring buildings to be certified "green" and to increase use of renewable energy. The City of Los Angeles, for example, does both. All new buildings over 50,000 square feet must be LEED certified, City buildings over 7,500 square feet must be retrofitted to LEED Silver standards and the Los Angeles Department of Water and Power has an aggressive solar incentive program.<sup>83</sup>

Achieving maximum energy efficiency requires a "whole-building" approach and correct construction and installation.<sup>84</sup> Industry analysts recommend certification of contractors as a means to ensuring proper installation.<sup>85</sup>

Apprenticeship training already incorporates green skills and provides the workforce certified in these skills. Together with a strong foundation in skills of the trades, apprenticeship graduates already are well prepared for most green economy jobs.

For example, solar electric systems require electrical training and licensing, and solar water systems require training in plumbing.<sup>86</sup> Apprentices in the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (UA) learn how to be green plumbers.<sup>87</sup> In the 32-hour, LEED-approved course, apprentices receive training in water conservation technologies such as gray, recycled and wastewater treatment; solar hot water systems; reducing the energy consumption of heating and cooling appliances, and performing energy and water audits.

## Weatherization Pre-Apprenticeships

For the last 32 years, the Department of Energy Weatherization Assistance Program (WAP) has helped low-income families permanently reduce their energy bills by making their homes more energy efficient.<sup>88</sup> Basic construction skills are used to address comprehensive energy usage, water consumption and related health and safety improvements. Weatherization workers seal leaks, replace or repair windows, add insulation and repair duct work, upgrade heating and ventilation appliances, and install water-saving devices, among other tasks.<sup>89</sup>

Since weatherization uses the same basic skills as many of the construction crafts, it is a perfect fit for pre-apprenticeship programs. Community-based organizations and the Laborer's International Union of North America (LIUNA) are creating programs to train community members in weatherization as a pathway into apprenticeships and out of poverty.<sup>90</sup> Moreover, the American Recovery and Reinvestment Act (ARRA) includes commitments to weatherizing 1 million homes and requires payment of federal prevailing wage to workers.<sup>91</sup> Combining ARRA funds for the WAP program with pre-apprenticeship programs will provide good jobs at an early stage of the pathway out of poverty.



The Green Training Trailer is a mobile classroom that travels nationwide teaching union apprentices the latest in green technologies in the plumbing, heating and mechanical trades.

## Definition:

### Leadership in Energy and Environmental Design (LEED):

A green building certification system providing third-party verification that a building or community was designed and built using strategies aimed at improving performance and stewardship of resources and sensitivity to their impacts.<sup>92</sup>

<sup>81</sup> Bedzec, Roger. 2007. *Renewable Energy and Energy Efficiency: Economic Drivers for the 21st Century*. American Solar Energy Society (ASES). <http://www.ases.org/images/stories/ASES-JobsReport-Final.pdf>

<sup>82</sup> Bedzec, op cit.

<sup>83</sup> City of Los Angeles, *EnvironmentLA. New Green Building Program*. <http://www.lacity.org/lead/environmentla/greenbuilding/newgreenbuilding.htm> and City of Los Angeles. *Green Retrofit and Workforce Program Ordinance*. Administrative Code, Div. 7, Chp. 3, Art. 5.

<sup>84</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy. Building Technologies Program. *Commercial Buildings*. [http://www1.eere.energy.gov/buildings/commercial/whole\\_building\\_approach.html](http://www1.eere.energy.gov/buildings/commercial/whole_building_approach.html) and U.S. and Green Building Council. *LEED Rating Systems*. <http://www.usgbc.org/displaypage.aspx?CMSPageID=222>

<sup>85</sup> Choi Granade, Hannah, et al. 2009. *Unlocking Energy Efficiency in the U.S. Economy*. McKinsey and Company. [http://www.mckinsey.com/client-service/electricpower/naturalgas/us\\_energy\\_efficiency/](http://www.mckinsey.com/client-service/electricpower/naturalgas/us_energy_efficiency/)

<sup>86</sup> Op Cit. and Pollin, Robert, Heidi Garrett-Peltier, James Heintz and Helen Scharber. 2008. *Green Recovery: A Program to Create Good Jobs and Start Rebuilding a Low-Carbon Economy*. Center for American Progress (CAP) and Political Economy Research Institute (PERI). [http://www.americanprogress.org/issues/2008/09/pdf/green\\_recovery.pdf](http://www.americanprogress.org/issues/2008/09/pdf/green_recovery.pdf)

<sup>87</sup> GreenPlumbers, USA. *Green Plumbers Course Information*. <http://www.greenplumbersusa.com/training-accreditation/course-information/#climatecare>

**WORKER STORY: From Apprentice to Contractor**

Electrical contractor Andre Johnson credits his apprenticeship training as the most valuable factor in his growing business success. "In the apprenticeship, I learned about all aspects of the electrical trade – from residential to commercial, from tenant improvements to motor controls."

Johnson, 38, spent time in San Diego during his service in the Air Force during the first Gulf War, and knew this was where he wanted to plant roots. He later returned to San Diego to raise his family and work in the electrical industry.

Johnson began his electrical apprenticeship with IBEW in 1995. After completing the program, he worked as a journey-level electrician and then progressed to foreman with San Diego-based Robinson Electric. Gaining experience and business acumen along the way, he then started Johnson Electric in the summer of 2006.

Johnson now employs local electricians and apprentices, and provides health care and retirement benefits, proving that a small business can provide family-sustaining careers and succeed.

"It is important to employ apprentices and make sure they are mentored and supported and learn all the aspects of the trade, so they can take their careers in whatever direction they want to go," Johnson said.

"It is not easy to start your company, but I did it," he said. "Now, young apprentices see me, and see that they could own a company one day, too."



**SUMMARY**

Completion of apprenticeship programs creates household self-sufficiency rather than a reliance on taxpayer-supported services. Construction workers are also consumers and taxpayers, so their wages and benefits are reinvested in the community as bills and mortgages are paid, local shops are patronized and workers have the time and health to participate in church, schools and other civic associations. Creating more local jobs for apprentices is the key to a strong local community. Rebuilding the economy means creating and supporting high-road, good jobs through policies that train and reward workers for their productivity.

**RECOMMENDATIONS**

1. State and federal "related technical instruction" funding for apprenticeship programs should increase, and funding should be provided for pre-apprenticeship and support services programs.
2. Projects receiving government subsidy should employ apprentices from registered programs at the highest allowed ratio for all trades.
3. Projects receiving government subsidy should utilize local hire policies that target low-income and/or disadvantaged workers through quality state-certified apprenticeship programs with a proven history of graduating apprentices.
4. Public contracting should give preference to responsible contractors and apprenticeship programs that provide health-care and pension benefits and OSHA safety training certifications.
5. Public contracting should utilize policies that reduce reliance on public assistance and that provide economic benefits to the community.

<sup>88</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy. *Weatherization Assistance Program*. <http://apps1.eere.energy.gov/weatherization/>  
<sup>89</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy. *Weatherization Assistance Program Technical Assistance Center. Core Competencies Document*. <http://www.waptac.org/sp.asp?id=1818>  
<sup>90</sup> Laborer's International Union of North America. *LIUNA Builds America*. <http://www.liunabuildsamerica.org/weatherize> and *MAAC Project. Green Career Opportunities*. <http://www.maacproject.org/Weatherization%20Trainee%20Program>  
<sup>91</sup> *Recovery.gov. The Act*. <http://www.recovery.gov/?q=content/act> and U.S. Department of Energy, Energy Efficiency and Renewable Energy. *Weatherization Assistance Program*. <http://apps1.eere.energy.gov/weatherization/>  
<sup>92</sup> U.S. Green Building Council. *Intro – What LEED Is*. <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988>

**APPENDIX: WORK DESCRIPTIONS AND ENROLLMENT REQUIREMENTS FOR SOUTHERN CALIFORNIA JOINT LABOR-MANAGEMENT APPRENTICESHIP PROGRAM OCCUPATIONS**

TRADE	DESCRIPTION OF WORK	REQUIREMENTS
<b>Allied Workers</b>	Applying thermal insulation to pipes, ducts, boilers, vessels, etc., throughout the commercial and industrial industries.	Min. 18 yrs. old, H.S. diploma or GED, certified copy of birth certificate, CA ID, & SS card. Must pass math, English, & physical.
<b>Boilermakers</b>	Build & repair boilers, tanks, pipelines & refineries	Min. 18 yrs old, H.S. diploma or GED. Drug test.
<b>Bricklayers/ Stonemasons</b>	Build with masonry materials, bricks, blocks, stone, & marble.	Min. 18 yrs. old, CA ID & SS card. Drug test.
<b>Carpenters</b>	Erect wood framework in buildings, build forms for concrete, CA erect partitions, studs, joists, & rafters.	Min. 17 yrs. old w/ parental consent, good physical condition, & mechanical aptitude necessary. Also, CA ID & SS card. Drug test.
<b>Carpenter - Acoustic Installer</b>	Installs a variety of factory produced systems & construction material in commercial buildings & public structures.	Same as for Carpenter listed above. Drug test.
<b>Cement Mason</b>	Finishes concrete surfaces of floors, walls, streets, driveways, sidewalks, curbs, & gutters & sets forms & screens for all of the above. Assists in preparation & grading for pouring & removal of old concrete. Operates troweling machines & grinders.	Min. 18 yrs. old, H.S. diploma or GED, good physical condition, CA ID, & SS card. Drug test.
<b>Drywall Finisher</b>	Prepares drywall surfaces for painting. Individual must sand, prepare, tape, & do touch-up using hand applied operations or machine applied systems.	Min. 17 yrs. old w/ parental consent, CA ID, & SS card. Must have good physical condition & no fear of heights. Drug test.
<b>Drywall Lather</b>	Erects wood or metal framing, fastens metal studs, metal lath, & drywall with tie wires, screws, nails, clips, & staples. Work is mostly indoors & in high places.	Same as for Finisher above and needs to have good mechanical aptitude. Drug test.
<b>Electrical</b>	Apprentices perform all aspects of electrical/telecommunication wire tasks in commercial, industrial, & residential construction.	Min. 18 yrs. old, H.S. diploma or GED, CA ID, SS card, & good physical condition. Must show proof of successful completion of 1 yr. of H.S. algebra or 1 semester college algebra & provide sealed transcripts. Must have reliable transportation. Math & aptitude exam given and drug test.
<b>Elevator Constructors</b>	Install & maintain elevators.	Min. 18 yrs. Old. H.S. diploma or GED. Aptitude test & personal interview.
<b>Floor Covering</b>	Apprentices learn to prepare sub-flooring & install new, resilient flooring & carpet installation.	Min. 18 yrs. old, CA ID, SS card & good physical condition. Drug test.
<b>Glazing</b>	Requires the use of hand tools, electric drills, electric metal saws, & glass polishing equipment. Also requires blueprint reading, layout work, handling, cutting, & processing glass of all sizes. Work is at various heights on ladders & scaffolds.	Min. 18 yrs. old, H.S. diploma or GED, Calif. ID, SS card, & good physical condition. Applicants should not have blood clotting issues. Drug test.
<b>Ironworker</b>	Apprentices are employed in four related segments of the trade: Structural Ironworker, Reinforcing Ironworker, Ornamental Ironworker, or Riggers & Machine Movers.	Min. 18 yrs. old, H.S. diploma or GED, CA. ID, SS card, & good physical condition. Must have own reliable transportation. Drug test.
<b>Laborers</b>	Support service for concrete, asphalt, landscape, pipelines, masonry & mining.	Min. standard evaluation & good physical condition. Drug test.

# CONSTRUCTION APPRENTICESHIP PROGRAMS: CAREER TRAINING FOR CALIFORNIA'S RECOVERY

TRADE	DESCRIPTION OF WORK	REQUIREMENTS
<b>Landscape &amp; Irrigation Fitters</b>	Apprentices acquire proficiency in layout, installation, and testing of irrigation systems. Also requires use of hand tools, power tools, and construction equipment related to the trade.	Min. 18 yrs. old, H.S. diploma or GED and good physical condition. Drug test.
<b>Millwright:</b>	Apprentices install & perform maintenance on machinery in factories & on precision work in nuclear power plants.	Min. 18 yrs. old, good physical condition, and mechanical aptitude necessary. Drug test and physical exam.
<b>Operating Engineer:</b>	Apprentices are heavy equipment operators & mechanics for major projects using rock, gravel, sand, or dredging operations.	Min. 18 yrs. old, H.S. diploma or GED, and strong physical condition. Must pass 3 part test: verbal, mechanical & math skills. Drug test.
<b>Painter</b>	Apprentices prepare surfaces & apply paint working on floors, walls, ceilings, & equipment in & outside of buildings. Paint is usually applied via brushes, spray guns, or rollers.	Min. 17 yrs. old w/ parental consent, and good physical condition. Transportation required. Drug test.
<b>Pile Driver</b>	Apprentices work in the early states of construction by driving metal, concrete, or wood pilings into the earth for base foundation.	Min. 17 yrs. old w/ parental consent, good physical condition, and mechanical aptitude necessary. Drug test.
<b>Plasterer</b>	Apprentices gain knowledge, skills, & techniques required for the plastering industry. Skills include: applications of scratch & brown coats, finish coats, as well as maintenance & operation of equipment, machine applied plaster & acoustic materials.	Min. 17 yrs. old w/ parental consent, functional reading writing, and math skills required. Also, must not have fear of heights or hard physical labor. Drug test.
<b>Plaster Tender</b>	Tending plasterers in all aspects of interior & exterior plaster, fireproofing & EIFS applications, scaffold building, pump & mixer operation of forklifts & other mechanical equipment.	Min. 18 yrs. Must have a CA drivers license, SS card & reliable transportation. Physical agility, oral interview & drug test.
<b>Plumber &amp; Pipefitter</b>	Apprentices learn all aspects of plumbing and pipefitting for commercial, industrial, and residential construction.	Min. 18 yrs. old, H.S. diploma or GED w/ sealed transcripts, valid photo ID, and birth certificate. Must pass aptitude test at community college & drug test.
<b>Roofers</b>	Installation of all types of roofing including slate, tile, & composition. Also includes waterproofing.	Min. 18 yrs. old, valid photo ID, ss card, and ability to lift 100 lbs. Functional reading, writing, and math skills needed. Drug test.
<b>Sheet metal</b>	Apprentices lay out, cut, form, fabricate, assemble, & install sheet metal items. This trade works from blueprints, lays out the work, cuts and forms the metal, then welds, bolts, rivets, and solders as required.	Min. 18 yrs. old, H.S. diploma or GED, and good physical condition. Must pass community college math test & drug test.
<b>Surveyor</b>	Surveyors use advanced math to determine the proper location of property lines and various field & construction survey work. Measure elevations & distances for preparation of maps showing land surfaces, boundaries, & legal descriptions of property.	Min. 18 yrs. old, H.S. diploma or GED, strong algebra and geometry skills, and good physical condition. Must pass algebra & geometry test & drug test.
<b>Teamster</b>	Driving rock trucks, water trucks, flatbeds, semi tractor trailer & dump trucks.	Min. 18 yrs. for warehouse/commerical vehicle. Min. 20 yrs. for a class A or B license driving position. Drug test.
<b>Tile Setters</b>	Preparation and installation of tile.	Min. 18 yrs.

Source: San Diego Building & Construction Trades Council. 2008. Apprenticeship Matrix. <http://www.sdbctc.org/Apprenticeship.html>



# CONSTRUCTION APPRENTICESHIP PROGRAMS

CAREER TRAINING FOR CALIFORNIA'S RECOVERY

SEPTEMBER 2009

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The Center on Policy Initiatives is a nonprofit research and advocacy organization formed in 1997 to address issues affecting working people. Through research, advocacy, public education and coalition-building, CPI promotes policy solutions that guarantee access to quality healthcare, ensure development meets community needs, and combat economic inequality.



**Senate Local Government Committee  
Faster, Cheaper, Better?  
A Legislative Oversight Hearing on  
How Counties Use Design-Build Contracting  
Wednesday, January 20, 2010**

Written Testimony of Ted Toppin, Legislative Director, Professional Engineers in California Government (PECG)

Chairman Cox and Members:

Thank you for the invitation to this oversight hearing and for the opportunity to share the Professional Engineers in California Government's public policy objections to the use of design-build procurement for public works project delivery.

Design Build Favors Contractors over Taxpayers and Safety

Design-build is a procurement method that favors large contractors over the interests of taxpayers and public safety.

Design-Build is not a new concept. The committee's background memo alludes to it, but the fact is design-build is the procurement method used by governments throughout the 19th and early 20<sup>th</sup> centuries. After decades of corruption, patronage and waste using this method, reformers throughout the United States instituted laws requiring competitive bidding and public agency oversight and inspection of public works.

So what we have here is a failed contracting practice that has been rebranded with a catchy new name – design-build. Nevertheless, the method still hurts taxpayers and public safety.

Design-Build Eliminates Competitive Bidding

Design-build eliminates competitive bidding and replaces it with a highly subjective best-value lump sum bid. This greatly increases costs because contractors don't know exactly what they will be building and what it will cost. So their lump sum proposals are inflated to absorb that risk. Change orders drive up costs further because circumstances arise during construction when a contract is awarded before design is complete.

Competitive bidding was put in place for public works contracts years ago because it ensures public agencies get a qualified contractor at the best price for taxpayers. That is why independent polling shows that eighty to ninety percent of taxpayers believe it should be used for all government contracts. It should also be noted that competitive bidding



contracts are a particularly good deal for taxpayers right now – with bids for public works projects coming in at ten, twenty and thirty percent below estimates. That saves taxpayers millions of dollars, and frees resources for additional projects and the creation of more jobs.

#### Design-Build Highly Subjective

Competitive bidding helps to prevent corrupt contracting practices. The fact that the counties' design-build authority (and other design-build statutes) is ripe for abuse is not disputable. The qualification criteria are highly subjective and can be manipulated to select a preferred contractor and in the end a small group of individuals are responsible for picking winners and losers of huge public contracts.

While we might like to think that we are beyond corruption, patronage, and pay-to-play practices in public works contracting, there is no evidence to support that conclusion and, unfortunately, there never will be.

#### Design-Build Eliminates Public Inspection

Design-build also eliminates public oversight and public inspection of public works. Under design-build there is self—inspection. The design-build consortium or contractor inspects and signs off on their own work. How does the public know that a project is safe and built to the required standards? Under design-build, we have to take the contractor's word for it.

PECG believes strongly that public oversight and inspection are essential to ensuring the safety and long-term viability of our public works. The public inspector is accountable to the public. Under design-build, the private inspector is responsible to his shareholders and his business partners – not public safety. There is absolutely no incentive to do what is required or necessary if it hurts profits.

#### PECG Neutral on Extension of County Authority – Provided it Contains Sunset, Additional Reporting Requirements

In time, the flaws in design-build will become apparent to the public – just as it did in the early 20th century. For that reason, PECG is neutral on the extension of the county design-build authority, provided it includes a sunset and an expanded reporting requirement. As the LAO notes “it is difficult to find conclusive evidence as to the benefits of the design-build method” from information provided by the counties. The LAO report does not provide enough details or a large enough sample size to warrant establishing design-build as a permanent delivery method.

What really needs to be done is an independent analysis of design-build projects – not self reporting by public agencies. We cannot expect public agencies to say a project was late or cost too much. And we need look no farther than the projects reviewed for the LAO report.

A quick search of the internet reveals that on March 20, 2007, the Sonoma County Board of Supervisors approved a \$7.2 million design-build contract for the Valley of the Moon Children's Home. Yet, the County reports in its submission to the LAO that the Home was to cost \$9.2 million. The county reports that they brought the project in under budget at \$7.6 million. On its face, however, the project was \$450,000 over the original design-build contract.

The Stanislaus County swimming pool – according to the County – came in under budget at \$2.5 million. A review of the County's webpage reveals a 2005 cost estimate for the pool of \$1.335 million. Perhaps there is an explanation, but I think it is fair to ask what doubled the price of the pool? It is also very clear from the County's report to the LAO that they ignored the law in awarding this contract. They admit in their submission that they did not consider cost, life-cycle or safety record as required by PCC 20133, but created their own best-value analysis that didn't include those criteria.

Solano County reports to the LAO that their new social service building came in on budget at \$27 million. For whatever reason, local news reports put the building cost at \$38 million. Solano County's submission to the LAO includes a description of the criteria used in awarding the contract. They, too, ignored an important requirement of PCC 20133 in their best value calculations. The county didn't consider cost at all.

#### PECG Opposes Expansion to Other Projects, Entities

PECG is opposed to the expansion of design-build authority to other project areas or entities. In the last year, design-build has been extended to wastewater facilities, redevelopment agencies, state buildings and correctional facilities, local streets and roads and state highways. The Legislature should let those projects proceed before contemplating new authorizations.

#### PECG Opposes One-Size-Fits-All Statutory Authorization

PECG is also opposed to the extension of a one-size-fits-all design-build authorization as recommended by the LAO. This approach is short-sighted and it would be a mistake to undo countless negotiated agreements among stakeholders – including agreements reached in last February's budget deal – seeking uniformity that simply does not fit.

Design-build proponents have spent millions branding design-build as a faster, cheaper, innovative procurement tool. There is no evidence to support those conclusions in the

LAO's report or elsewhere. What we are left with is a failed contracting practice that does not serve the interest of taxpayers and does not ensure the safety and long-term viability of public works.

Thank you for this opportunity.

DEPARTMENT OF GENERAL SERVICES

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DIVISION OF ARCHITECTURAL SERVICES

November 30, 2009

State of California  
Legislative Analysts Office  
Mr. Mac Taylor, Legislative Analyst  
925 L Street  
Sacramento, CA 95814

Re: Solano County's Report to Legislature per Section 20133 of Public Contract Code  
Alternative Procedures on Bidding

The following is a report documenting Solano County's experience using the alternative procedures on bidding, also referred to as design-build in this report, as permitted by Section 20133 of Public Contract Code.

**Summary Findings and Recommendations**

On November 30, 2004, Solano County submitted a previous report to the Committees on Local Government of the Senate and Assembly and the Legislative Analysts Office prior to the December 1, 2004 deadline under the version of the legislation that sunset on December 31, 2005. A copy of the previous report is attached for your reference and information pertaining to the Solano County Government Center is amended as follows: Under Item 4, *The Estimated and actual length of time to complete the project*, the Solano County Board of Supervisors approved the Notice of Completion for the project on July 26, 2005. Administrative close-out of the large project was complex, but the design/builder met every contractual milestone of importance to the County. Under Item 5, *The estimated and actual project costs*, the actual design/build cost was \$82,985,843.

The current report covers design/build projects that were completed between November 1, 2004 and November 1, 2009. During this reporting period, the County of Solano has successfully completed the Solano County Government Center project documented in the November 30, 2004 report and has achieved Substantial Completion of a new Health and Social Services (H&SS) Building in Vallejo. While the latter project was not completed by November 1, 2009, this project is nearing completion; the County received a Temporary Certificate of Occupancy for the project on October 14, 2009 and the County began operations within the new building on October 26, 2009. Since the design-build agreement associated

with this project was awarded under the current legislation and construction is substantially complete, this report includes information pertaining to the new H&SS Building project.

The four projects documented in the previous reports submitted by Solano County dated August 22, 2000, November 30, 2004 and in fifth project documented in this report have varied in size and technical/logistical complexity over time, illustrating the County's increasing confidence in using the design-build delivery method for capital improvement projects of various sizes, types and complexity. The design-build method has proven to be an effective project delivery method for Solano County, which is evidenced by the following:

- Tangible project and construction cost savings and/or added value realized as a consequence of the best value selection process
- Efficient, on-time project delivery
- Seamless transition from design phase to construction phase
- Lack of claims and rapid issue resolution due to single source responsibility
- No written protest against the County on the solicitation, bid, proposal and award of any project
- Acceptance in local marketplace as evidenced by use of both union and non-union labor to deliver design-build projects at prevailing wage rates and implementation of the design-build delivery method under a Project Labor Agreement
- Administrative efficiency of County's internal management resources
- End user satisfaction while maintaining or improving overall project quality and functionality

A description of the New Health & Social Services Building project in the format stipulated in Section 20133 of Public Contract Code follows.

## **SOLANO COUNTY HEALTH & SOCIAL SERVICES BUILDING, VALLEJO, CA**

### **1) The type of facility:**

The project was constructed on County owned land at the existing 9.29-acre South County Government Center off of Tuolumne and Virginia Streets near downtown Vallejo. The existing buildings on the site include the Hall of Justice and another existing Health and Social Services (H&SS) building at 355 Tuolumne Street. The new H&SS building was constructed in an area that had been part of the on grade parking lot. The project consists of the construction of a new three-story, 58,000 gross square foot steel frame (with diagonal bracing to resist lateral loads) H&SS Building of Type I construction with concrete slab-on grade/spread footings, concrete floor and roof decks over metal pan, and exterior walls constructed of metal studs with exterior plaster and dual-glazed window wall system. The new H&SS building is located next to the existing three-story 68,000 gross square foot H&SS Building. The new building houses a public health clinic on the first floor and H&SS programs (primarily office space) on the two upper floors. The project also included landscaping and hardscaping improvements to the existing County campus, construction of two new parking lots on Virginia Street (County-owned) and at the Portuguese Center (leased/shared use parking lot adjacent to the project site). Site work around the building included work in the public right of way off Tuolumne Street and Virginia Streets, and an on-site public plaza linking the existing H&SS Building with the new H&SS Building, including public art installations.

**2) The gross square footage of the facility:**

The gross square footage of the New H&SS Building project is approximately 58, 000 gross square feet constructed of three floors of approximately equal size.

**3): The design-build entity who was awarded the project:**

The design-build entity who was awarded the project was John F. Otto, Inc. of Sacramento, CA (General Contractor) in association with TWM Architects of San Rafael, CA (Architect of Record).

**4) The estimated and actual length of time to complete the project:**

Estimated: March 11, 2008 (Award of Design/Build Agreement) to January 26, 2010 (Approval of Notice of Completion by Solano County Board of Supervisors). A total of 566 days were estimated from Award of Design Building Agreement on March 11, 2008 through Substantial Completion on September 28, 2009.

Actual: Final project duration is unknown since project has yet to be completed. A total of 582 days transpired from Award of Design Building Agreement on March 11, 2008 through Substantial Completion on October 14, 2009, an increase of 16 days due to added scope of work to the design/build agreement and long lead time in procuring Heating, Ventilating and Air Conditioning equipment. The County resequenced its moves to accommodate the altered contract time.

**5): The estimated and actual project costs:**

Estimated: \$20,300,000 (Stipulated Sum for Design/Build costs at contract award), \$27,799,741 (Estimated total project cost, including \$959,539 in estimated construction contingency).

Actual: Final actual costs are unknown since project has yet to be completed. \$20,612,350 (Stipulated sum plus approved Change Orders through October 31, 2009. An additional \$400,000 has been budgeted for outstanding Change Order costs. Approved and anticipated Change Orders under negotiation include additional on and off-site improvements, increased utility work, additional security cameras, additional restrooms within the facility, exterior sallyport, energy efficiency and sustainable upgrades, and signage improvements); \$27,760,705 (Estimated total project cost at completion presented to Board of Supervisors on November 10, 2009).

**6): A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including resolution of the protests:**

Not applicable.

**7): An assessment of the prequalification process and criteria:**

The process was successfully accomplished using a two-step procurement process based on a written prequalification, design criteria solicitation. This process was conducted in accordance with the requirements of Section 20133 of the Public Contract Code between September 17, 2008 and March 11, 2009. The first step included pre-qualification of design-build teams which included a mandatory pre-qualification submittal conference. This step in the selection process resulted in a response by five firms. The written information provided by these firms was evaluated by a multi-disciplinary team of County staff and County consultants using pre-established evaluation criteria published in the prequalification solicitation notice. This resulted in a determination that all five of the responding firms met the minimum pre-qualification criteria.

These five firms were invited to proceed with the second step of the selection process and to submit a technical proposal that would be evaluated using a best value methodology according to pre-established criteria published in the Request for Proposals (RFP) on December 5, 2007.

Using established County procedures for selecting Design/Build teams, and consistent with the intent of Public Contract Code 20133, a Request for Proposals (RFP) was developed for issue to the pre-qualified Design/Build teams. That RFP included:

1. The Bridging Documents (drawings and technical specifications) prepared by Johnson Fain
2. Submittal of a Technical Proposal including descriptions of key building systems and a Site Development Plan for improvement of the South County Government Center campus
3. The form of Agreement between the County and Design/Builder, that the selected Design/Builder would enter into with the County
4. Design Requirements – written descriptions of the scope of work that the Design/Builder would be contractually obligated to deliver
5. Appendices (which are not contract documents) providing information on site topography, utilities, environmental approvals, building program, and other information for the Design/Builder to use in preparation of their Proposals

The RFP also established a Stipulated Sum of \$20,300,000 for the project, a fixed amount of contract for which the successful Design/Builder will deliver the project described in its Proposal. The RFP also requested a list of "Best-Value Enhancements," elements which the Design/Builders to add to the project within the Stipulated sum. The RFP included a proposed list of enhancements, and also encouraged the Design/Builders to submit additional enhancements in order to deliver best value to the County. A mandatory pre-proposal conference was held on December 13, 2007 and a total of seven Addenda were issued in response to prospective design/builder inquiries. This step included an interim presentation by each firm before County staff and County consultants to confirm that they were appropriately interpreting the bridging documents and a mandatory pre-proposal conference. Proposals were received from four of the five firms (one withdrew when a key staff member proposed for the project resigned). The proposals were initially evaluated by a cross-disciplinary technical review team composed of County staff and County consultants associated with the project. The technical review focused on the technical information in the proposal, team organization and management and best value/quality enhancements based on evaluation criteria published in the RFP. A technical report was provided by the technical review team to a selection panel who met to review the information from the technical reviewers. The selection panel conducted two hour interviews with each prospective design/build team during which each team presented their proposal and the selection panel asked clarifying questions pertaining to the written proposal of each firm. Following interviews, the selection panel reconvened to finalize scoring of each proposal using a standardized proposal evaluation worksheet and make a final selection. The rankings of the proposing firms were published the day following the final deliberations by the selection panel with contract award based on the pre-established best value methodology utilizing criteria published in the RFP. The County provided a modest sum to proposing firms that were not the highest ranked in order to offset costs incurred by the proposing firms during development of the proposals.

**8) An assessment of the impact of retaining 5 percent retention on the project:**

At the design-build entity's request, the County permitted the design-build entity to establish an interest bearing escrow account at an approved bank whose deposits are federally insured. The County is placing the retention monies into this bank account each month in accordance with the approved progress payments. These retention funds are being held until the Notice of Completion is approved by the Board of Supervisors, when they will be released to the design-Build entity. The County and the design-build entity have experienced no adverse impact withholding 5% retention with the exception of the County having to process retention funds to a banking firm each month, which marginally increases the County's administrative workload. The County and the design-build entity have been able to amicably address and resolve project-related issues so that use of retention funds by the County to complete substandard or other work that would ordinarily be performed by the design-build entity has not become an issue.

**9): A description of the Labor Force Compliance program and an assessment of the project impact, where required:**

The County negotiated a project-specific Project Labor Agreement (PLA) with the Napa-Solano Building Trades Council for the New Health and Social Services Building project. The provisions of the PLA provided protection from work stoppages, supported utilization of a local work force and apprentices, clarified benefits for laborers working on the project, clarified wages and hours of work per California Labor Code, and outlined grievance and arbitration procedures. This is the first project that houses County programs and services that is being delivered under a PLA. There have been no issues that have emerged from the PLA implementation and enforcement.

The project followed the requirements of Section 1771 of the California Labor Code, including prevailing wage rate requirements, a labor compliance program with all bid invitations containing appropriate language concerning the project requirements, and a preconstruction conference with the design-build entity with major subcontractors present to discuss federal and state labor law requirements applicable to the contract. Project requirements included that contractors and subcontractors submit certified copies of payroll records. These records were reviewed as needed to verify labor compliance. The project had a small number of requests made by non-profit labor organizations requesting subcontractor information. The County provided the requested information and there were no labor compliance issues that emerged through the project.

**10): A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology:**


See information under the section titled, *An Assessment of the Prequalification Process and Criteria*. The County's Division of Architectural Services, which was responsible for administering the project, supplemented its project management staff by hiring Swinerton Management and Consulting, Inc. (SMC), a private sector project/construction management consultant firm who assisted in preparing the *Request for Qualifications* and the *Request for Proposal*, and Johnson Fain of Los Angeles, CA, who prepared the bridging documents for the project. The County, SMC and Johnson Fain jointly administered the two step solicitation process.



As previously noted, following evaluation of the *Statement of Qualifications* from responding firms using pre-established criteria that was included in the RFQ, a total of five firms were invited to submit bonafide proposals. The proposals were initially reviewed by a Technical Review Team composed of County staff and consultants based on criteria established in the RFP which included:

- Technical design and construction expertise of the teams
- Quality of projects they proposed
- Skilled labor force availability
- Safety record
- Performance enhancements
- Lifecycle costs
- Sustainability/green architecture features
- Energy conservation
- Quality of work place environment
- Enhanced work place communication
- Project enhancements to be included in the Stipulated Sum
- Project schedule

NOTE: Solano County failed to consider "cost" as required by Public Contract Code 20133



In addition, two primary areas of evaluation were considered, each of equal importance.

A. – *Team Organization and Management*: The degree to which the Design/Builder has responded to the requirements of the Bridging Document criteria, and the manner in which the team is structured to deliver the project in an effective, efficient and collaborative manner. A total of 400 points were possible in the *Team Organization and Management* category.

The Design/Builder's organization and management was evaluated in the following categories and awarded points in each category as follows:

1. Relative Qualifications and Experience of Designated Subcontractors – 100 points
2. Clarity, completeness, and responsiveness of Building Systems Descriptions to Bridging Document criteria – 100 points
3. Clarity, completeness, and thoroughness of Design and Construction Management Plan, and conformance to the Bridging Documents, budget and schedule requirements, and contract requirements – 100 points
4. Ability of the Design/Builder's team to work collaboratively together, and with the County and its consultant team – 100 points

- Below Average                      0-20 of the available points
- Normal/Expected                    21-40 of the available points
- Above Average                      41-60 of the available points
- Excellent                              61-80 of the available points
- Superior                                81-100 of the available points

B. *Best Value/Quality Enhancements*: The degree to which the design-builder provided operational, functional, sustainability and schedule enhancements as described in the RFP documents, and additional enhancements proposed by the Design/Build teams. Each proposed enhancement was evaluated to determine its clarity, completeness and overall coordination with the project design, construction, and performance goals. The Proposal included a County-proposed list of Enhancements (above the base scope of the project) which

**Report to Legislative Analyst's Office**  
**Solano County's Report on Section 20133 of Public Contract Code**

November 30, 2009

Page 7

the Design/Builders were encouraged to include in their Proposals. Points were awarded for each item up to a maximum of 20 points per item as follows:

M – Moderate	0-8 points
S – Significant	9-14 points
O – Outstanding	15-20 points

The total possible number of points for the County list of Enhancements was 580 points. Any proposed Enhancements in addition to the County list were scored using the same methodology. Each Design/Builder's total Enhancement point score was multiplied by 400/580, in order to weight the "Best Value" / *Quality Enhancements* section equally with the *Organization and Management* section.

The committee then conducted a two-hour interview of each Design/Build team, in order for each to present its Proposal. Following those interviews, the committee, utilizing the evaluation and scoring methodology described above, completed a diligent and thorough process to score and rank each team. The results of this process determined the following results, ranking the top three Design/Build teams, in order:

1. Otto Construction – 610 points
2. Overaa Construction – 581 points
3. Roebbelen Construction – 450 points

Each design-build team was given the opportunity to present its Technical Proposal to the selection panel. The presentation addressed the qualifications and expertise of the design-builder's designated subcontractors, description of the major building systems, the design-builder's design and construction management plan and a review of enhancements proposed by the design-builder within the stipulated sum. Approximately one hour was allowed for each presentation followed by one hour question and discussion period.

An equation was utilized to adjust the scores to reflect the equal 50% weighting factor for *Team Organization and Management* and *Best Value/Quality Enhancements* noted above. Following deliberations, final scoring was confirmed by each member of the selection panel and entered on a proposal evaluation worksheet which is included in the project record. The rankings of the proposing design-build firms were then published. The design-build agreement was then finalized and signed by the County and the design-builder and approved by the Solano County Board of Supervisors in an open, public meeting on March 11, 2008.

**11): An assessment of the project impact of "skilled labor force availability":**

The County declared its intent to deliver the project under a PLA at the outset of the solicitation process, the responding firms were aware of the business conditions that they would be entering into and could therefore make an informed decision whether they wished to pursue the solicitation. A condition of the Project Labor Agreement required that all laborers except for supervisors above general foreman, which the design-builder could hire at their discretion, would be hired through the local union hiring hall. The PLA did not mandate union membership nor preclude non-union workers from participating as laborers, but the practical effect of the PLA resulted in union laborers hired through the local hiring hall constructing the project. Since the contractor that is part of the design-build entity awarded the contract is a union contractor, this has not posed problems during the course of construction.

Overall, the County considers the construction quality of the project to be high in relation to previous projects and recognized industry standard, although the County and the Design/Builder are evaluating the levelness of the second and third floors in relation to the design criteria including in the bridging documents. The magnitude of the project, coupled with workforce availability due to local market conditions in a downward economic cycle, has made the project an attractive, highly visible project of long duration so it has attracted a highly skilled labor force.

The solicitation process required that the design-build entity list subcontractors associated with the project. The qualifications of these subcontractors were considered in the evaluation of the qualifications of design-build entity. Because the design-build entity was able to assemble a team of qualified subcontractors that the design-build entity had positive, established working relationships with in the past, the County has not experienced adverse issues arising from labor relations or lack of a skilled workforce.

**12) An assessment of the design-build dollar limits on county projects. This shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value method of awarding contracts was not used, due to dollar limitations:**

In the version of the legislation that sunset on December 31, 2000, there was no upper or lower threshold on design-build dollar limits. As noted in the August 28, 2000 report, Solano County successfully delivered projects with limits below the threshold under the current legislation, including projects valued at \$2,282,550 and \$438,213. With the completion of the \$18,233,582 Health and Social Services Headquarters Building with contract award to the lowest responsible bidder, the completion of the \$99,748,160 (total project cost) Solano County Government Center with contract award based on best value, the impending completion of the \$27,760,706 (total estimated project cost) New Health & Social Services Building project, the County has demonstrated, successful experience delivering various-sized projects using alternative methods to bidding.

Based on the County's past experience, assessment of local market conditions and workforce availability which vary over time, as well as the needs and constraints of each individual project, Solano County believes the current threshold to use the design-build delivery method for projects in excess of \$2,500,000 awarded using either the lowest responsible bidder or by best value is a proper threshold to maintain for use of this project delivery method in the future.

**13): An assessment of the most appropriate uses for the design-build approach:**

Solano County places no preconceived limits on the appropriate use of the design-build delivery approach. Solano County attempts to evaluate each individual project and match the project needs with the most appropriate delivery method that can meet the project need. In this manner, the County can balance the risks associated with each method of project delivery available to the County with local market conditions, budget and schedule constraints.

Solano County's past experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have schedule constraints. For instance, the Health and Social Services Headquarters Building (project completed in 2000) schedule was timed to culminate with the expiration of several lease agreements of private office space that

housed Health and Social Services functions that were relocated to the new facility. The project could not have been delivered within the specified time frame if the traditional design/bid/build method were utilized. If the project had not been completed according to a pre-established schedule, then the County would have been exposed to lease holdover costs, thereby increasing the overall project cost.

Solano County's experience with the design-build approach demonstrates that this delivery method is appropriate for projects that have budget and financing constraints. By completing projects in a shorter duration with an assertive but achievable schedule, the County is able to realize cost savings while maintaining project value. A shorter project duration translates into reduced project cost by eliminating costs associated with contractor overhead. Since public entities typically will not fully fund or finance a project unless it is relatively certain that it will be completed, reducing the duration of the project schedule has enabled the County to take advantage of low interest rates available in the marketplace. Every month that interest rates rise has the effect of potentially reducing project scope if the County has a limit associated with financing the project or if increased construction costs in the marketplace erode the County's buying capability. By awarding projects based on best value, the County has experienced an increase in quality in comparison to those that would likely be achieved utilizing the traditional design/bid/build method of project delivery. For instance, the County was able to receive a significant enhancement for the New Health & Social Services Building, including LEED<sup>TM</sup> certification.

As a practical and political reality, Solano County has experienced that the higher the cost of the project and/or for projects located in a campus setting that is striving for architectural consistency and/or appropriateness, the more interested the Board of Supervisors has been in discerning what the design of the project will look like during the early stages of project development. From this standpoint, the bridging method of design-build allows the policy and decision makers to more fully understand the aesthetic appearance of key project components that are locally sensitive while still maintaining flexibility for the design-build entity so that the economic benefits of the design-build delivery method can be fully realized.

In summary, the County considers the design-build approach as an alternative procedure on bidding to be an excellent project delivery approach that reduces the overall project development schedule and construction cost while maintaining project quality that also provides an added benefit of single source responsibility for both the design and construction. This ultimately translates into reduced change orders and reduces the County's exposure to construction claims. Solano County's experience with the design-build approach demonstrates that it is possible to maintain project quality utilizing design criteria, the bridging method of design/build, contract award based on lowest responsible bidder or on best value in both renovation and new construction projects. In short, it is well-suited for virtually all project types if the local project team has the ability to effectively manage project risks throughout the project delivery process.

Through the County's experience with the design-build approach, the County has been able to successfully deliver projects using a variety of different building materials, occupancy types in buildings containing uses ranging from standard office space to specialized spaces such as hearing rooms and Board of Supervisors meeting chambers which have specialized mechanical, electrical, technological and acoustic needs.



Stanislaus Capital Projects  
825 12<sup>th</sup> Street, Modesto, CA 95354  
Phone: (209) 525-4380 Fax: (209) 525-4385

# TRANSMITTAL

**TO: Legislative Analyst's Office  
925 L Street, Suite 1000  
Sacramento, CA 95814**

**SUBJECT: EMPIRE COMMUNITY SWIMMING POOL**

**DATE: 9/22/09**

We are sending you  X  attached      under separate cover the following material:

<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Change Order	<input type="checkbox"/> Specifications
<input type="checkbox"/> Copy of Letter	<input type="checkbox"/> Plans	<input type="checkbox"/> Computer Printout
<input type="checkbox"/> Prints	<input type="checkbox"/> Samples	<input type="checkbox"/> Updates

COPIES	DATE	DESCRIPTION
1		State Report for the Regional Water Safety Training Center - Empire Community Swimming Pool (Public Contract Code Section 20133)

**REMARKS:**

For your use.

COPIES: Don Phemister  
Randy Cavanagh  
File AP 2.1.1(257)  
File AP 13.19

SIGNED:   
Elsa Biedenweg



STATE REPORT  
STANISLAUS COUNTY  
REGIONAL WATER SAFETY TRAINING CENTER -  
EMPIRE COMMUNITY SWIMMING POOL

*Updated September 3, 2009*

**1. Type of project.**

Community swimming pool and play pool with building for office, restrooms, equipment and mechanical rooms, storerooms, and future concession for pre-packaged food and drinks. The facility offers recreational swimming and swimming lessons to the public.

**2. The gross square footage of the project.**

Main Pool: 2,625 Square feet  
Play Pool: 1,555 Square feet  
Building: 2,794 Square feet  
Landscaping: ±12,000 Square feet

**3. The design-build entity that was awarded the project.**

Diede Construction, Inc.  
P.O. Box 1007  
Woodbridge, California 95258

**4. The estimated and actual length of time to complete the project.**

Start: 9/12/08	Estimated: 9 months
Completion: 6/12/09	Actual: 9 months

**5. The estimated and actual project costs.**

Estimated:	Actual:
\$2,641,125.00	\$2,500,000.00

**6. A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.**

None

**7. An assessment of the prequalification process and criteria.**

We used the Best Value criteria. Two teams submitted final proposals and were interviewed twice by a selection committee. The final decision, although difficult, was supported by our criteria.

**8. An assessment of the effect of retaining 5% retention on the project.**

5% retention was a concern to the County, which always withholds 10% retention. The County was fortunate to have a good contractor, which made additional retention unnecessary. We are not sure we will be so fortunate in the future.



**9. A description of the Labor Force Compliance Program and an assessment of the project impact, where required.**

Our consultant was able to keep all the subcontractors in line and within the requirements of the Wage Laws. Our consultant was Parsons Brinckerhoff Construction Services, Inc., Ms. Katie Rich. There was no negative impact on this project and no delays.

**10. A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.**

Best value was used. The factors to evaluate the teams were; 1. Ability, capacity and skill (10 pts.), 2. Type of work needed by the county (10 pts.), 3. Ability to meet schedule (10 pts.), 4. Character, integrity, reputation, judgement, and efficiency. (10 pts.), 5. Satisfactory performance of similar work (10 pts.). Total 50 pts. this method was very effective in determining the best qualified firm to provide the services for the County.

**11. An assessment of the project impact of "skilled labor force availability."**

The project only had a small impact on the "skilled Labor Force availability" as the majority of work involved the pools and pool play structure and their associated equipment and surrounding landscape.

**12. An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.**

The County would prefer a lesser dollar limitation. The decision to use design build is not driven by the size of the project but by other factors such as schedule, cost control, quality, etc.

**13. An assessment of the most appropriate used for the design-build approach.**

Appropriate use is a combination of factors that must be evaluated in context with other project delivery systems. Other factors may include control, schedule and quality of the project. In this particular project our overriding factor was limited funding and the design build approach guaranteed project within the allowable funding.

**NOTE: Stanislaus County failed to consider "cost," "life cycle costs," or contractor "safety record" as required by Public Contract Code 20133.**



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## MEMORANDUM

DATE: January 20, 2010

TO: Senate Committee on Local Government

FROM: Murtaza H. Baxamusa, Ph.D.  
Center on Policy Initiatives

SUBJECT: Minimum thresholds in the use of design-build contracts

---

This memorandum addresses the issue of institutional checks and balances with regard to design-build contracting.

The advantages cited by proponents of design-build (D-B) include the flexibility in contractor selection criteria, a faster delivery schedule, and a predictable price. However, the same procedural and institutional mechanisms that drive the D-B vehicle faster and cheaper, also lead to lesser control by the public sector owners once the bid is awarded.

Review of academic literature and published case-studies on the topic of design-build contracting suggests a cautionary approach that includes keeping size and type criteria for design-build contracts.

- US Department of Transportation's *Design-Build Effectiveness Study* (2006) cites studies that claim that D-B could undermine the inherent checks and balances between design and construction teams.
- In the seminal book on this subject *Design-Build for the Public Sector* (2003) Michael Loulakis cautions that an owner needs to determine that all the benefits of D-B can be achieved on their project. The public sector cannot blindly accept that D-B will always be faster than other methods.
- Massachusetts Office of Inspector General issued *A Report on the Design and Construction of the University of Massachusetts Computer Science Center* (2001) concluding that the D-B approach was not appropriate for that project.

It should also be noted that D-B suffers from the same shortcomings as all other vehicles for privatized procurement. These include complex realities in Elliott's Sclar's *You Don't Always Get What You Pay For* (2001) that range from incomplete contract specifications

to incalculable transaction costs. A comparative review of D-B with traditional contracting on the Thurston Way project in Washington found that D-B as expensive as traditional contracting, once all production and transaction costs were included.<sup>1</sup>

In addition, public agencies will need to more accurately predict costs at the front-end, even before design and environmental review. Surveys indicate the early cost estimate methods seem insufficient to truly determine a project budget and to request funding for that project.<sup>2</sup> Put in perspective, public works construction across the US suffers from systematic cost under-estimation problems.<sup>3</sup>

Finally, the issue of performance needs to be addressed upfront. Some studies suggest benchmarking the performance of D-B contracts with time, cost, quality and functionality variables.<sup>4</sup> These can be used to evaluate the programmatic success or failure of the vehicle for individual jurisdictions and types of projects.

All these institutional checks and balances call for a **minimum size threshold (\$2.5 million) and limited project types in D-B contracting**, where the following can be achieved:

- (1) An upfront investment of time and resources in clearly defining project deliverables and estimated costs;
- (2) A thorough two-level selection process with best-value criteria that screen out unreliable bidders as well as potentially costly risks; and
- (3) Performance benchmarking and oversight, including labor compliance.

Sincerely,



---

**Murtaza H. Baxamusa, Ph.D. AICP**

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<sup>1</sup> Jan Whittington and David Dowall. 2006. "Transaction-Cost Economic Analysis of Institutional Change toward Design-Build Contracts for Public Transportation" in *IURD Working Paper Series*, 2006-09.

<sup>2</sup> Murat Ciraci and Deniz Ayse Polat. 2009. "Accuracy Levels of Early Cost Estimates, in Light of the Estimate Aims" in *Cost Engineering*; 51:2.

<sup>3</sup> Bent Flyvbjerg, Mette K. Holm and Seren L. Buhl. 2002. "Underestimating Costs in Public Works Projects: Error or Lie?" in *Journal of the American Planning Association*, 68:3.

<sup>4</sup> Edmond W.M. Lam, Albert P.C. Chan and Daniel, and W.M. Chan. 2007. "Benchmarking the performance of design-build projects" in *Benchmarking: An International Journal*, 14:5.



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[www.rebuildca.org](http://www.rebuildca.org)

**Advocate for the Heavy Construction Industry**

February 3, 2010

Senator Dave Cox  
Senate Local Government Committee  
State Capitol, Room 5046  
Sacramento, California 95814

Senator Cox,

California's 10-year transportation capital needs are estimated to be over \$125 billion.

We all know that there is no silver bullet that will solve California's infrastructure finance problems. However, new and innovative ways to finance, design, build, operate and maintain transportation facilities must be part of our state's solution.

The California Alliance for Jobs supports the design build concept as a viable transportation delivery method. Design build projects are likely to be delivered on a shorter procurement timetable, as the bid stage for design is cut out, while having the design and construction teams better integrated also allows for a more efficient construction process, eliminated many overruns and delays.

Public works projects are for most construction contractors and employees the "only game in town". The construction industry has been hit very hard by the current economic downturn and the collapse of residential and commercial building markets. While the statewide unemployment number has inched upwards to 12% for all sectors, the construction trades are hemorrhaging with unemployment numbers that range from 25%-30% statewide.

Getting the construction industry working is key to helping jump start our states economy. Every \$1 billion invested in infrastructure generates \$5 billion in economic activity and 18,000 jobs. Much of this economic activity is put immediately to work -- as contracts are awarded, contractors begin purchasing equipment and materials, hiring workers, paying payroll, and generating sales and income taxes to state and local governments.

Sincerely,

Joseph R. Cruz

Director of Government Affairs

Associated  
General Contractors  
of California

Operating Engineers  
Local Union #3

Engineering and  
Utility Contractors  
Association

Northern California  
District Council  
of Laborers

Association of Engineering  
Construction Employers

Northern California  
Carpenters Regional  
Council



**Detwiler, Peter**

---

**From:** Jeremy March [jeremygordonmarch@yahoo.com]  
**Sent:** Sunday, November 22, 2009 1:10 PM  
**To:** Detwiler, Peter  
**Subject:** PCC 20133 (design-build contracts) : Proposed Sec. 20133(d)(3)(A)(xii) (requiring information re False Claims Act violations in response to prequalification questionnaire)

Dear Peter:

First, thank you again for giving me a chance to suggest improvements to Public Contract Code Sec. 20133. I would have contacted you sooner, except that I was waiting to get input from some of my colleagues (mostly fellow my adjunct lecturers at the USC School of Civil and Environmental Engineering, but also some construct project managers and others affiliated with that school) as to what proposed revisions might or might not be controversial.

I have carefully reviewed the materials you sent me, including the excellent background memo by Helen Ho. I have also done some research of my own, briefly reviewing the legislative history of Sec. 20133 and the details of some lawsuits arising under this section; comparing Sec. 20133 to several of California's other design-build statutes; and reviewing design-build laws in thirty-nine other states.

Based on the above, and based on my discussions with some of my colleagues, **I believe Sec. 20133 can be (usefully and noncontroversially) amended to require counties to ask whether design-build entities seeking contracts under this section have ever been found to have submitted (or have admitted to having submitted) claims to Federal, State or local agencies in violation of the Federal or State False Claims Acts.** I believe this change would boost public confidence in the public-contracting process.

My proposed amendments, along with the necessary background, are set forth in detail below. [I wasn't completely sure, though, what "format" I was supposed to use for my suggestions; you had E-mailed me a memo, dated 10/10/08, explaining how to submit proposals to the 2009 Local Government Omnibus Bill. That memo had included a form titled "Proposed Item : Local Government Omnibus Act of 2009" which contained several specific questions. I've tried to use the same format in explaining and drafting my proposed amendment. The questions from the 2009 questionnaire are set forth below in boldface (with italics in original); my answers are set forth underneath each question in plain text. If you would like my input in some other format, just let me know and I'd be happy to oblige.]

Again, thank you for this opportunity. If you have any questions or comments, please feel free to call me at (310) 339-2868 (cell) or E-mail me at [jeremygordonmarch@yahoo.com](mailto:jeremygordonmarch@yahoo.com)

Sincerely,

Jeremy G. March, Esq.

11/23/2009

**Proposed Item**

**Local Government Omnibus Act of 2010**

**Requested by:** Jeremy G. March, Esq.

4143 Regal Oak Drive

Encino, CA 91436

(310) 339-2868 (cell)

[jeremygordonmarch@yahoo.com](mailto:jeremygordonmarch@yahoo.com)

**Topic:** Proposed amendments to California Public Contract Code Sec. 20133 (design-build contracts) to ensure greater integrity in design-build contracting

**You want to *amend/repeal/add* which code section(s)?** I want to amend Public Contract Code Sec. 20133 by adding a new Sec. 20133(d)(3)(A)(xii) [which would immediately follow existing Sec. 20133 (d)(3)(A)(xi)].

**The *current law* was enacted (or last amended) by which bill number, author, and year?** Cal. Pub. Cont. Code Sec. 20133 was added by Stats. 2000, c. 595 (AB 2296), Sec. 1. It was last amended by Stats. 2009-2010, 2<sup>nd</sup> Ex. Sess., c. 7 (SB 9), Sec. 14, effective 5/21/09.

**What's the problem that requires your proposed amendment? *Please describe.*** Sec. 20133 should be amended to require government contractors to further assure public agencies that they can be trusted to perform design-build contracts without submitting false claims for money – by making them specify whether they or their officers, owners, etc. have ever been found or have admitted to have submitted any such false claims. This amendment will increase public confidence in the government contract process.

As currently written, Sec. 20133 authorizes counties to use design-build contracting for certain buildings and county sanitation wastewater treatment facilities. Sec. 20133(a) requires such contracts to be awarded using either the lowest responsible bidder or by best value; and Sec. 20133(d)(3) requires

counties to establish a detailed questionnaire to prequalify design-build entities for participation in such projects.

This questionnaire, as currently mandated by Sec. 20133(d)(3), requires a design-build entity to provide only limited information regarding whether they can be trusted to properly carry out their duties under public works contracts. For example, Sec. 20133(d)(3)(x) requires that the questionnaire ask about certain settled suits or claims between the owner of a public works project and any member of the design-build entity – but the questionnaire need *not* ask whether any member of the design-build entity was ever determined to have submitted a false claim to a Federal, California, or local agency, in violation of the False Claims Acts – despite the fact that such false claims cost California and U.S. taxpayers millions of dollars each year.

**What does your proposed amendment do? Please describe.** Proposed Sec. 20133(d)(3)(A)(xii) requires counties, in preparing their standard questionnaires for prequalifying design-build entities, to ask whether the entity or any of its members, owners, officers, or managing employees were ever found by a court of competent jurisdiction to have submitted, or formally admitted to having submitted, any claims to Federal, state or local agencies in violation of the Federal or California False Claims Acts.

**Has this proposal been tried in the past? Which bill number, author, and year?** Not to my knowledge.

**Which groups or agencies will be interested? What did they say when you talked to them about your proposal? Please list the names of the people you talked to.** Three main groups will be affected by the proposed amendment: County governments seeking to award design-build contracts for buildings and county sanitation wastewater treatment facilities; design-build entities (and members thereof) seeking to bid on such contracts; and individuals and businesses whose tax payments fund such contracts.

Persons asked to provide input on above proposal to ask firms about prior False Claims Act violations - and also asked to provide input on additional proposal (now withdrawn) to bar firms from receiving state-funded design build contracts if they had committed False Claims Act violations. I submitted, to several of my colleagues affiliated with the Viterbi (USC) School of Civil and Environmental Engineering, an “expanded” version of the above proposal. The “expanded” version, like the present version, required counties to ask whether design-build entities seeking contracts under this section have ever been found to have submitted (or have admitted to having submitted) claims to Federal, State or local agencies in violation of the False Claims Acts. However, the “expanded” version would also have prohibited State-funded design-build contracts from being awarded to any such firms.

I received responses from the following individuals:



Paul Giorgio, LEED, AP Project Executive, Swinerton Management and Consulting

Marc Glasser, PSP, Project Controls Manager, Jacobs Engineering

Sean L. Leonard of S.L. Leonard & Associates

Dana Sherman, Esq.

Here are summaries of their comments. The first paragraph below concerns their comments regarding my proposal that the questionnaire ask about false claims violations. The second paragraph below concerns their comments regarding a further proposal of mine (which I have not submitted to you and have withdrawn from consideration as probably too controversial) that false claims violators be barred from receiving State-funded design-build contracts.

Comments on my (current) proposal to require counties to ask design-build firms about prior False Claims Act violations. Two of the above individuals asked how a county could ensure that large companies (say, a firm with 50,000 or so employees worldwide) complied with the new requirements. One of these individuals noted that many firms must regularly confirm, in business ethics statements, any knowledge they have of violations or improper occurrences. He added, however, that it is difficult for public agencies to verify such statements. A third individual suggested that a firm's answer (regarding whether it had ever been found to have submitted or admitted to having submitted a false claim) should be weighted and scored as part of the county's questionnaire. One individual suggested that the county questionnaire might want to ask several different questions, seeking this information on a local, regional, and national basis.

Comments on my "additional" proposal (now withdrawn) to bar firms from receiving state-funded design build contracts if they had previously been found to have made, or admitted to have made, false claims. Two of these individuals suggested that it might be overly harsh (and could attract opposition from design and construction firms) if the bill prohibited firms from bidding on design-build contracts if they had been found to have submitted false claims. One individual noted that some firms that had been found to have submitted a false claim might have implemented reforms (organizational, administrative, or billing system changes) designed to prevent future false claims. Another individual suggested that architectural and construction firms could well oppose a bill that imposed a bar on firms receiving contracts if they had made false claims in the past. This individual also noted that such a bar might have the unintended effect of coercing design or construction firms to settle doubtful false claims suits against them – for fear that if they lost the suits, they would end up barred from receiving state-funded design-build contracts. This individual further suggested that it might make more sense to have a record of false claims be a factor (perhaps a weighted factor) in whether the firm would receive a contract, but not an absolute bar. This individual also suggested that any bar imposed on firms should only last for a limited period of time (say, three years) but should not last forever. Finally, this individual also asked what would happen to firms which had not been found (or admitted) to have made false claims at the time they filled out the questionnaire – but were subsequently found to have made, or admitted to having

made, such claims.

Effect of the comments on my proposal. Based on the above comments, I still think it is useful (and noncontroversial) to require counties to ask design-bid firms whether they have been found to have made, or admitted to have made, claims in violation of the False Claims Acts. However, I agree with my colleagues that a bar on awarding contracts to such firms might be too controversial for the Omnibus Bill.

Effect of the comments on my proposal regarding the questionnaire. First, based on my nearly eighteen years' experience as an attorney (most of which was spent representing government agencies), I do not think verification is necessarily going to be a problem. Many public agencies require questionnaires to be signed under penalty of perjury. (Virtually all evidence submitted to courts must likewise be submitted under penalty of perjury). Perjury is punishable by imprisonment for up to four years [see California Penal Code Secs. 118 and 126]. This threat alone would discourage most contractors from making a false statement that could easily be disproved by checking public court dockets for records of suits and judgments against the contractor. Any county that was concerned about contractors putting false information on questionnaires could greatly decrease that danger by requiring that the questionnaires be signed under penalty of perjury. Many counties (and other public agencies) already do require that many of their questions, applications, etc. be filled out under penalty of perjury. Thus, I still do not think it is necessary to amend Sec. 20133 to impose such a requirement.

Second, I agree with my colleagues who suggested that such violations should be considered by the counties along with other factors (the firm's other qualifications, problems, etc.) Some counties might find it useful to weight "local" violations of the False Claims Acts (say, false claims brought in the past against that particular county or neighboring counties) more strongly than false claims against state or Federal agencies. However, I believe it should be up to each county whether, and if so by how much, to weight False Claims Act violations in general or how to weight "local" violations as opposed to state or federal ones. (After all, Sec. 20133, as currently written, allows each county to draft its own questionnaire). Thus, I am not sure that it would necessarily be useful to add language requiring that this factor (or any other factors) be "weighted" in any particular manner.

Finally, my colleagues have convinced me that a contractor who specifies on the questionnaire that they have been found to have violated, or admitted to have violated, the False Claims Act should be given an opportunity to explain any extenuating circumstances (for instance, if they believe they lost the False Claims Lawsuit because of the malpractice of their attorney, or because they did not have enough money to properly defend it, because the judge or jury was biased, etc., they should have a chance to explain that.)

Effect of the comments on my (additional, and now withdrawn) proposal to bar contractors from receiving state-funded design build contracts if they had been found to have submitted or admitted to

having submitted false claims. I still think that it would increase public confidence in the government-contracting process if such firms were barred – at least for a few years - from receiving any state-funded design build contracts. However, my colleagues have convinced me that any such proposal would likely be controversial, so I decided not to submit to you this part of my proposal (if you're interested in hearing more, however, please let me know).

***Please attach the specific language that you request.***

Based on my research and on the comments I received from my colleagues, I propose the following amendments (language to be added is underlined):

Sec. 20133(d)(3)(A)(xii) would be added, to read as follows:

Any instance in which the entity, or any of its members, owners, officers, or managing employees, was ever determined by a court of competent jurisdiction to have submitted, or legally admitted (for purposes of a settlement agreement, criminal plea or otherwise) to having submitted:

(a) any claim to any public agency or official in violation of the federal False Claims Act, codified at Sections 3729 et seq. of Title 31 of the United States Code; or

(b) any claim to any public agency or official in violation of the California False Claims Act, codified at California Government Code Sections 12650 et seq.

Information provided pursuant to this subsection (xii) shall include, but need not be limited to, the name and number of any case filed, the court in which it was filed, and the date on which it was filed. The entity may also, if it so chooses, provide further information regarding any such instance, including but not limited to any mitigating or extenuating circumstances, that the entity wishes the county to consider.

Thank you for allowing me to participate in this process. If you have any questions or comments, or would like me to provide further input on this (or any other) statute, please call me at (310) 339-2868 (cell) or E-mail me at [jeremygordonmarch@yahoo.com](mailto:jeremygordonmarch@yahoo.com)

Sincerely,

Jeremy G. March, Esq.



# PHILIP M. VERMEULEN

## GOVERNMENTAL RELATIONS

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January 19, 2010

The Honorable Dave Cox, Chair  
Senate Local Government Committee  
State Capitol  
Sacramento, CA 95814

### **Re: Recommendations For Improvements to the Design/Build Laws**

Dear Senator Cox:

On behalf of my clients, the Engineering Contractors' Association, the California Fence Contractors' Association, the Marin Builders' Association, the Flasher/Barricade Association, and the California Chapter of the American Fence Contractors' Association, please be advised that we have one strong suggestion to improve the existing definition of Best Value that is contained in all of the design/build statutes.

Specifically, we would recommend that "Best Value" be amended in the design build laws so that the word "**objective**" would be inserted into (d)(2)(A)(ii) so it will read:

"Significant objective factors which the city (or other public entity) reasonably expects to consider in evaluating proposals, including cost or price and all non-price related factors."

Here is how it would look:

(c) As used in this section:

- (1) "Best value" means a value determined by objectives relative to price, features, functions, and life-cycle costs.
- (2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.
- (3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed

contracting, architectural, and engineering services, as needed, pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, but does not include streets and highways, public rail transit, or water resource facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The city shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the city's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the city to assist in the development of the project-specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

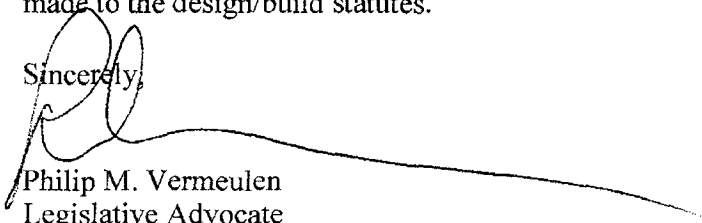
(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals, and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant **OBJECTIVE** factors which the city reasonably expects to consider in evaluating proposals, including cost or price and all non-price related factors.

We thank you for the opportunity to provide comments on improvements that can be made to the design/build statutes.

Sincerely,



Philip M. Vermeulen  
Legislative Advocate

Cc: Committee Members and Staff



**CHIEF EXECUTIVE OFFICE**

**Richard W. Robinson**  
Chief Executive Officer

**Patricia Hill Thomas**  
Chief Operations Officer/  
Assistant Executive Officer

**Monica Nino-Reid**  
Assistant Executive Officer

**Stan Risen**  
Assistant Executive Officer

February 4, 2010

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The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
State Capitol Room 5046  
Sacramento, CA 95814

Attn: Peter Detwiler

Dear Chairman Cox:

Thank you for the opportunity to respond to testimony received by the Senate Local Government Committee Legislative Oversight Hearing on How Counties Use Design-Build Contracting. Stanislaus County has a successful history of delivering quality, cost-effective and efficient public facilities within stringent timelines and budgets. Stanislaus County has successfully used both the design-bid-build and the design-build method of project delivery on recent projects—in strict and full accordance with all of the provisions of the law.

Recently, we were provided a copy of testimony presented by Ted Toppin, Legislative Director, Professional Engineers in California Government to the Senate Local Government Committee dated January 26, 2010. We are not familiar with Mr. Toppin, nor did he contact us to get the facts about Stanislaus County's experience with Design-Build projects. Apparently, Mr. Toppin chose to testify about a recent Stanislaus County project without obtaining the full record and facts. As a result, it is important to set the record straight on this matter, and we appreciate the opportunity to do so.

**Response to Testimony of Mr. Ted Toppin, Legislative Director of the Professional Engineers in California Government**

The testimony received from Mr. Ted Toppin included serious of fact. Quick research of public documents shows that Stanislaus County followed the requirement of law in every detail pursuant to completion of this important community project.

Mr. Toppin stated that "The Stanislaus County swimming pool – according to the County – came in under budget at \$2.5 million. A review of the County's webpage reveals a 2005 cost estimate for the pool of \$1.335 million. Perhaps there is an explanation, but I think it is fair to ask what doubled the price of the pool?" If Mr. Toppin had researched this question, he would have found that the project did not double in price, and was in fact delivered per the final scope of the project in strict accordance with all legal requirements.



The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
February 4, 2010  
Page 2

For context, we would like to tell you a little history of this important community project. The Empire pool project was undertaken by volunteers and advocates in this small community following the tragic drowning deaths of three young brothers in the Tuolumne River in 2003.

A heartfelt local community initiative began with the involvement of the boys' classmates, Empire schools, the local irrigation districts and a Stanislaus County Sheriff's Deputy to raise awareness of water safety. The community realized the need to develop a community swimming pool as an alternative for children to swimming in the dangerous rivers and irrigation canals in the area. Stanislaus County joined this unique community partnership effort to develop a plan, seek funding and to develop the facility.

Mr. Toppin's reference of the 2005 project cost of \$1.335 million was an early on estimate for the pool project, prior to the development of the full project scope and plan by the project architect.

While everyone involved wanted to provide a safe place for children to swim, the community and the County realized that the project needed to be more than a swimming and wading pool, but rather a Regional Water Safety Training Center. Stanislaus County issued a Request for Proposals for Architectural and Engineering Design Services to assist the partners with the development of the plan concept in August, 2006. Based on the recommendations of the County's conceptual design architectural/engineering firm, and as with community input, the full project scope was defined and the actual project budget was established at \$2,641,125 on August 15, 2006. All of the partners, including the community pledged to raise funds to provide for the new Regional Water Safety Training Center.

The full project scope and budget now provided for elements such as relocation of drainage and irrigation infrastructure, systems that would overcome the lack of water and sanitary sewer services in this unincorporated community, and design elements recommended by the design professionals to include splash water play features, an office, concessions area, and landscaping and picnic area adjacent to the pool. The revised concept for the pool was reviewed and approved by the County Board of Supervisors. The agenda item including the recommendations, fiscal impact, policy considerations and discussion are available on the County's website at [www.co.stanislaus.ca.us/BOS/Agenda/2006/20060815/B06.pdf](http://www.co.stanislaus.ca.us/BOS/Agenda/2006/20060815/B06.pdf).

*The final project budget of \$2,641,125 was established by the Board of Supervisors prior to the issuance for the Request for Proposals by the Design-Build entities on December 18, 2007.*

Mr. Toppin continues his testimony by stating, "It is also very clear from the County's report to the LAO that they ignored the law in awarding this contract. They admit in their submission that they did not consider cost, life-cycle or safety record as required by PCC 20133, but created their own best-value analysis that didn't include those criteria."

*Stanislaus County did not ignore the law and, in fact, followed the requirements of law precisely in the procurement of design-build services.*

The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
February 4, 2010  
Page 3

Had Mr. Toppin contacted Stanislaus County to inquire about his concern prior to providing his testimony, we would have directed him to the Board of Supervisors' actions, the Request for Proposals and the Evaluation Criteria provided in the public record and available on the Stanislaus County Web site: <http://www.stancounty.com/board/index.shtm>.

With regard to this statement, we have found that one of our answers to the LAO Survey to Counties on Design-Build Projects was incorrect. The LAO's Question #10 asked for a description for the method used to award the contract, and the factors (and scoring system) used to evaluate the responses if a "best value" method was used. Our response erroneously reported the evaluation factors used for the selection of the County's architect/engineering services for the project, not the evaluation criteria required or used for the design-build construction proposals. The architect assisted the County in defining the general project concept, schedule and cost by evaluating the project objectives, the specific site and other criteria.

*The criteria for evaluation and recommendation of the selected design-build entity is well documented in the public record and completely consistent with the requirements and law.*

Stanislaus County issued a Request for Statements of Qualifications from Design-Build entities on February 26, 2007, and two firms submitted qualifications. On December 18, 2007, the Stanislaus County Board of Supervisors authorized the issuance of a Request for Design-Build Proposals to both qualified entities, and the County received design-build proposals from both on January 30, 2008. Board of Supervisors' agenda item B-11 on December 18, 2007 (<http://www.stancounty.com/bos/agenda/2007/20071218/B11.pdf>) clearly identifies the RFP evaluation criteria on page 4:

- |           |   |
|-----------|---|
| Factor 1: | Price                                     |
| Factor 2  | Technical Design & Construction Expertise |
| Factor 3  | Life Cycle Costs Over 15 Years            |
| Factor 4  | Skilled Labor Force Availability          |
| Factor 5  | Acceptable Safety Record                  |

This selection criteria was also clearly defined in the Design-Build Project Manual, Section 19 "Evaluation Factors" submitted to the pre-qualified proposals with the Request for Proposals. Both teams submitting design-build proposals were interviewed and the teams were evaluated based on the Evaluation Criteria defined in the Project Manual.

The Board of Supervisors awarded the design-build contract to the recommended contractor on May 20, 2008 and, again, the selection process and evaluation criteria were once again publically described in detail on page 8 of the agenda item. No protest to the award was filed with the County. (<http://www.stancounty.com/bos/agenda/2008/20080520/B10.pdf>)

The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
February 4, 2010  
Page 4

### **Design-Build Process In Stanislaus County**

Stanislaus County has found the design-build process to be an effective and useful means of project delivery for selected types of projects. Both the design-bid-build and the design-build process have inherent advantages and disadvantages, and Stanislaus County finds that the specific needs and circumstances of each project must be evaluated and the best project delivery method should be selected on a case-by-case basis. Some primary considerations include:

- The construction schedule
- Project cost control and containment
- Complexity of the project design and construction plan
- Need to review design and bids prior to construction funding

Design-build offers the County the opportunity to evaluate factors, called out in the laws that are paramount to a project's successful delivery. Although the lowest cost to the taxpayers is essential, the design-build process allows other important factors to be considered in addition to the actual construction cost. The consideration of the life cycle, safety, construction expertise to prevent errors and costly change orders are all key factors to the real cost of each public project.

Design-build offers the potential to expedite the construction schedule by allowing for the "fast tracking" of phases of work for some projects. Site preparation and off-site improvement work and pre-ordering of long lead items can be completed while the final design details for the project construction are being completed. This overlapping can shorten the overall project schedule in many cases, which provides for reductions in project administration and overhead costs.

Control over project cost is another benefit of design-build project delivery. The design-build process allows the owner to capitalize on the contractors proposing team's best ideas for enhancing the project amenities, reducing construction costs and delivering the project within a guaranteed "turn key" contract price. Use of this strategy requires that the owner has strict control over quality of the project using well-defined specifications and performance criteria.

Projects which have highly complex design elements, very specific technical performance needs or which are otherwise complicated to construct are generally not well suited candidates for the design-build process. In these projects, the owner must retain strict control over each phase of construction, the quality of the project or control of the site – design-bid-build affords a greater level of project control.

The funding strategy for some projects also requires that incremental reviews of the design, bidding and construction occur sequentially during the project delivery. Design-bid-build provides the additional sequential approval process needed for these projects.

We are convinced that this process effectively protects project quality and can be used to minimize life cycle costs. A traditional design-bid-build process requires that the original design

The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
February 4, 2010  
Page 5

of the project include provisions for minimizing operational and maintenance costs and durability of the facility. The design must be completed prior to the involvement of the builder and does not capture the builder's experience in the best possible construction techniques and use of materials or, at the least, any such changes would have to occur by subsequent change order at an increased cost.

Nothing within the design-build process circumvents quality-control or safety monitoring. Code review and life-safety inspection requirements are no less stringent using design-build than in a design-bid-build project. Specialty inspections, including geotechnical and structural requirements are identical in both project delivery methods. Stanislaus County also hires third party independent quality control inspection services to assure that the project is constructed per the plans, specifications, building codes and contract conditions.

In summary, Stanislaus County believes that the design-build project delivery method is equally or even more competitive than the design-bid-build process and should be available to Counties as a project delivery option. Design-build can encourage competition and innovation in selected projects and save taxpayers funds. Counties should have the ability to determine which delivery method best meets the project's needs and taxpayers best interests. While the design-build method is not for every project, it should remain a viable option when appropriate.

On June 12, 2009, the Community of Empire along with the County of Stanislaus and the Project Partners celebrated the successful completion of this project with a dedication ceremony like none other. From the tragic death of the three young brothers came an effort that has been hailed as a unique partnership, with funds from the State of California, the County of Stanislaus, private donors and proceeds from apple and pencil sales and spaghetti feeds---this community in our County came together and made a difference! Below is a picture of the surviving brothers who were the first to slash in the new Regional Water Safety Training Center and the following week, scores of children had signed up for the first swimming lessons, provided by our Police Activities League.

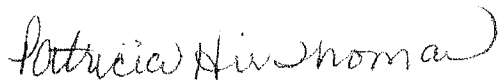


The Honorable Dave Cox  
State Senator  
Chair, Senate Local Government Committee  
February 4, 2010  
Page 6

A brief history of the Regional Water Safety Training Center – Empire Community Pool Project is attached for your review in Attachment A. Stanislaus County is extremely pleased with the success of the project, its value to the community and the taxpayers. The design-build approach was a key factor in this projects success.

We would be happy to provide additional documentation or answer any questions you may have. Thank you again for the opportunity to set the record straight.

Sincerely,



Patricia Hill Thomas  
Chief Operations Officer/  
Assistant Executive Officer

cc: Karen Lange, Peterson Consulting  
Paul Yoder, Peterson Consulting

## Attachment A

### **Regional Water Safety Training Center - Empire Community Pool Project A Brief Summary**

#### **Fiscal**

The project budget for the Regional Water Safety Training Center - Empire Community Pool Project was approved at \$2,641,125. The estimated cost of the first three years of operating and maintenance costs along with the first full year of swimming lessons and recreation programs were estimated to cost \$220,000, for a grand total cost of \$2,861,125. This project was funded by a \$1,000,000 grant from the State of California Urban Parks and Healthy Communities 2002 Resources Bond Act; \$1,000,087 from the Tobacco Tax Fund, previously identified for use on this project; \$496,038 in Public Facility Fees; a \$200,000 grant from the Stewardship Council and \$165,000 of local donations (amount collected to date and held in the Stanislaus Foundation) from the community to support the project and its future operations and program costs. The funding plan included the donation of in-kind labor and materials for pool plaster and flatwork. The Empire community has collected approximately \$165,000 in cash contributions for this project and is continuing to actively continuing their fundraising for ongoing operational costs.

#### **Original Project Scope- Budget**

On September 19, 2005, the State of California Urban Parks and Healthy Communities Program notified the Stanislaus County Parks and Recreation Department that the grant of \$1,000,000 had been awarded to Stanislaus County for the Empire Community Swimming Pool Project. The award lead the Department to hire Aquatic Design Group to further evaluate the pool program and community needs and to prepare a more specific site plan that would confirm the grant application scope of work.

In addition to creating a more specific site plan, County staff from both the Department of Parks and Recreation and the Chief Executive Office scheduled public meetings at Teel Middle School in coordination with the Empire Municipal Advisory Council (MAC), Empire Union School District and the Empire Pool Fundraising Committee to receive input on programs and the design elements most desired by the community. The results of this evaluation process and community input lead to a proposed change in the scope of work for the community project.

On July 25, 2006, the State of California formally approved the County's request to change the scope of the Empire Community Swimming Pool Projection.

On August 15, 2006, the Board approved a more refined design, established through community meetings. As a result, the original proposed *construction estimate* increased from \$1,335,000 to \$1,905,000. The original estimate was based on schematic drawings, without a developed program, for submission of the State Grant application. Further study into the project using consultant numbers based on similar pool projects under construction at that time, cost projections were refined to reflect more accurate construction estimates.

## **A Community Driven Solution**

In July 2003, the tragic drowning of three Empire youths in the Tuolumne River, just south of the town of Empire, led to the realization of a local need for a community swimming pool. The central goal of the community swimming pool was to provide a facility for youth to receive swimming instruction and to develop a strategy to deter youth from the dangers of rivers and canals. A grassroots effort began shortly thereafter and brought together local community stakeholders for the common purpose of raising enough funds to assist with the financing of a community swimming pool in the Town of Empire. The Empire Pool Committee was formed under the auspices of the Stanislaus Community Foundation for the purposes of beginning the fund raising campaign for this project.

On November 2, 2004, the Board of Supervisors authorized the Department of Parks and Recreation to submit a grant application to the State of California Urban Parks and Healthy Communities Program for the Empire Community Swimming Pool Project. The State Urban Parks and Healthy Communities Program is funded under the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002. The application for the Empire Community Swimming Pool Project was submitted for the maximum grant amount of \$1,000,000.

On October 3, 2006, the Board of Supervisors approved the selection of Aquatic Design Group as the architect for the Empire Community Swimming Pool Project. In addition, the Chief Executive Officer was authorized to negotiate and execute an architectural design contract with Aquatic Design Group and to explore and implement the option of Design-Build as the project delivery system if that system is more beneficial to the project and to request pre-qualifications of Design-Build firms.

## **Design Build Construction Contract Award**

On May 20, 2008, the Stanislaus County Board of Supervisors awarded the Design-Build Construction Contract for the Regional Water Safety Training Center - Empire Community Pool Project to Diede Construction, Inc., of Lodi, California. Under the Design - Build Project Delivery System, the County hired an Architect I Engineer to prepare concept drawings and performance specifications. The County's Architect for this phase could not submit a proposal for the final design team, but remained as a consultant to the County to ensure the quality of the project was met. The Design - Build approach also required the preparation of a Labor Compliance Program pursuant to 1771.5 of the Labor Code.

## **Design-Build Pre-Qualification and Evaluation Factors**

The pre-qualification of contractors and preparation of a Request for Proposals that included basic scope, cost range, method of evaluation, and importance of factors by weight were established. Also required was the establishment of a selection procedure for pre-qualified Contractors according to statutory criteria, either lump sum or best value.

The selection was based on the five factors listed in the Request for Proposals. The five factors of evaluation were: 1) Price (base design and construction); 2) Technical Design and

Construction expertise; 3) Life Cycle Costs over 10 years; 4) Skilled Labor Force availability; 5) Acceptable Safety Record.

The County was challenged to make a selection as both Contractors were well qualified and each of the finalists brought valuable information during the selection interviews. The proposal from Diede Construction, Inc. of Lodi, California received the highest number of points under the pre-determined evaluation process. Deductive alternates were taken during the bid process to provide cost savings opportunities. The alternates that were recommended for selection as part of the construction award, included pool plastering, painting, landscaping and flatwork completion

The concept developed from this effort was to construct a facility that now serves the entire region by providing a safe place for children to learn to swim and have local recreational swim opportunities. The Empire Community Pool was developed as a Regional Water Safety Training Center to serve County residents in Empire and all the surrounding areas.

- The Board approved the award of the Design-Build contract with Diede Construction, Inc. as authorized by Public Contract Code 20123.

The project was completed well within the project budget and approved funding and there were no changes to the contract time.

The Regional Water Safety Training Center- Empire Community Pool was dedicated on June 12, 2009 in a public dedication ceremony and was opened for public use on June 13, 2009.







DIVISION OF ARCHITECTURAL SERVICES |  
DEPARTMENT OF GENERAL SERVICES

February 4, 2009

Peter M. Detwiler, Staff Director  
Senate Local Government Committee  
State Capitol, Room 5046  
Sacramento, California 95814

re: Response to Remarks by Mr. Ted Toppin, Director, Professional Engineers in California Government during Legislative Oversight Hearing on *How Counties Use Design-Build Contracting*

Dear Mr. Detwiler:

Thank you for the opportunity to provide clarifying information to be included in the Senate Committee on Local Government's summary report pertaining to remarks made during the Hearing on January 20, 2010 held in the State Capitol, Room 112. The Hearing was held the Senate considers renewal of the authority for California counties to utilize *Alternative procedure on bidding Design-build projects* currently chaptered in Section 20133 of *Public Contract Code*. During his remarks in the segment of the Hearing agenda titled *Labor Organizations' Reactions and Advice*, Mr. Toppin indicated that he had reviewed Solano County's report submitted to the Legislative Analyst's Office on November 30, 2009 and had concluded that Solano County didn't comply with the design-build law by failing to consider "cost" and "life cycle costs" as factors. Solano County complied with the current requirements of the law during its solicitation process for procurement of a design-build entity for a new Vallejo Health and Social Services Building in Vallejo that was conducted by Solano County complies with the current requirements of the law based on the following:

- The design/build contract award was based on weighted values using pre-established scoring criteria which were declared to prospective bidders during the solicitation process.
- The cost or price was set using a stipulated sum with best value enhancements which represented 50% of the total points available for the criteria contained in the County's *Request for Proposals (RFP)*.
- The life cycle costs were included in the RFP section pertaining to *Clarity, Completeness and Responsiveness of Building Systems Descriptions to Bridging Document Criteria* which represented 12.5% of the total points available for the criteria contained in the *RFP*.
- These totals exceed the 10% minimum required for cost/price and life cycle costs required in Article (d)(4)(B)(i) of Section 20133 of *Public Contract Code*.

Since the segment for *County Governments' Reactions and Advice* preceded Mr. Toppin's remarks, Solano County appreciates the opportunity to provide this response for inclusion in the Committee's summary report.

Respectfully Submitted,

  
Kanon R. Artiche, AIA  
Solano County Architect



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