

# CLIENT NEWS BRIEF

## New Law Consolidates and Amends Design-Build Requirements

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To consolidate and amend the numerous design-build statutes for certain public agencies that have been enacted over many years, the Legislature passed Senate Bill (SB) 785 in 2014, with some elements becoming effective January 1, 2015. This law repealed existing design-build statutes for cities, counties, waste and recycling facilities, the Santa Clara County Transit District, the Los Angeles County Transportation Commission, and redevelopment agencies.

In their stead, SB 785 created a new chapter of the Public Contract Code (PCC) for local agency design-build projects (PCC §§22160 et seq.) which remains in effect until January 1, 2025. The new design-build requirements are similar to those of the repealed statutes, but differ in at least a few respects depending on the agency concerned. You may wish to consult with legal counsel regarding the details of the new requirements that may apply to your particular agency and project.

The new design-build requirements apply only to certain types of local agencies and projects:

- Cities and counties, for projects such as buildings and related improvements, sanitation wastewater treatment facilities, and park and recreation facilities, but not construction of other infrastructure; as well as construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, and regional and local water recycling facilities.
- Special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities, for projects such as construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities.
- Any transit district, municipal operator, consolidated agency, joint powers authority formed to provide transit service, any county transportation commission, or other agency responsible for the construction of transit projects, for transit capital projects (other than state highway construction or local street or road projects) that begin project solicitation on or after January 1, 2015.

Under the new design-build framework, qualifying projects generally may use design-build if the project is valued at over \$1 million, except for projects on the state highway system. The contract may be awarded by on the basis of either the lowest bid or the best value to the agency. However, no cost threshold exists for a transit district project relating to technology and equipment designed to enhance safety, disaster preparedness, and homeland security efforts.

The procurement process remains similar to many of the repealed statutes. The local agency must first prepare a set of documents setting forth the scope and estimated price of the project, after which the agency must prepare and issue a request for qualifications in order to pre-qualify or "short-list" the design-build entities. In order to be pre-qualified, a design-build entity must provide an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation.



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Based on the previously-prepared set of documents as described above, the agency must then prepare a request for proposals that invites the pre-qualified entities to submit competitive sealed proposals. If the agency is using lowest bid to select a contractor, the contract must be awarded to the lowest responsible bidder. For projects using the best value method of selecting a design-build entity, the statute describes a detailed procedure for evaluating the proposals and negotiating with the entities.

If you have any questions regarding the details of this new law, or design-build construction projects in general, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).