

CLIENT NEWS BRIEF

New Bill Overhauls the Design-Build Construction Delivery Method for School Districts

Although the 'design-build' construction delivery method has been available to California school districts for several years, this method has been used somewhat infrequently, as districts have opted for more traditional construction methods, like design-bid-build (Public Contract Code § 20111, *et seq.*), or alternatives like lease-leaseback (Education Code § 17406). The Legislature recently amended the current laws governing the design-build method for school districts. The changes make the method more accessible and more streamlined, and to give school districts more flexibility. However, the Legislature also imposed a new requirement of a skilled and trained workforce.

Design-build is a construction delivery method by which an owner retains a single entity to provide architectural, engineering, and construction services under a single contract. Although Education Code section 17250.10 *et seq.* has permitted school districts to utilize the design-build method since 2000, the method has not been widely used. Under present law, school districts are only authorized to use design-build for those construction projects exceeding \$2.5 million. Current law also requires a district to make a formal written finding that use of the design-build method will accomplish certain objectives, and requires a district to establish a process to prequalify bidders using a standard questionnaire developed by the Department of Industrial Relations. Also, while the district has some leeway in awarding a contract under design-build (and can consider more than just lowest price), a school district is still required to use the following designated factors to represent at least 50% of the total weight or consideration given to any criteria used by the district: price, technical expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

On October 10, 2015, Governor Jerry Brown signed Assembly Bill (AB) 1358, which makes several changes to the design-build method specific to school districts. The changes brought by AB 1358 apply to any request for proposal (RFP) issued on or after on July 1, 2016. Most notably, AB 1358 lowers the threshold from \$2.5 million to \$1 million, expanding the pool of projects eligible to be awarded through design-build. AB 1358 also somewhat simplifies the process for letting and awarding design-build contracts. First, a district's governing board is no longer required to make specific written findings regarding the benefits of using the design-build method. Second, a district is allowed to develop its own prequalification questionnaire and rating system. Third, AB 1358 gives more freedom to a district when awarding the contract on factors others than lowest price. While a school district is still required to consider certain factors (price, technical design and construction experience, and life-cycle costs over 15 or more years), the district now has discretion on how these factors are weighted and what other factors, if any, the district should consider.

Another significant change brought by AB 1358 is the addition of a "skilled and trained workforce" requirement. Specifically, any entity seeking prequalification for a school district's design-build project must provide an enforceable commitment to the district that the entity, and every subcontractor at every tier, will use a skilled and trained workforce to perform all work on the project. This enforceable commitment can be made by the design-build entity in one of

November 2015
Number 71



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three ways: (i) stating in the contract that it will comply with the labor requirements, with monthly written confirmation from the contractor, and with payments to the contractor ceasing if the confirmation is not received; (ii) agreeing to become a party to the school district's project labor agreement for the project, if one already exists; or (iii) entering a new project labor agreement for the project. This new requirement is similar to recent changes made to lease-leaseback projects, which also become subject to a 'skilled and trained workforce' obligation. (For a further discussion of recent changes to lease-leaseback and lease-to-own agreements, [see Client News Brief No. 51, September 2015.](#))

Even though school districts have been slow to use design-build contracts, other public agencies have used the design-build method and found it advantageous. Given the current uncertainty surrounding lease-leaseback construction agreements, and the fact that some school districts have sought alternatives to the design-bid-build method, AB 1358 may allow the design-build method to become a viable and beneficial construction delivery method for California school districts moving forward, as long as school districts are also prepared to accept the new labor requirements.

If you have questions regarding the implications of AB 1358, or have any planned or anticipated construction projects and would like to discuss construction delivery methods, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).