

Date of Hearing: April 2, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 695 (Medina) – As Introduced February 19, 2019

SUBJECT: Community college facilities: design-build contracts

SUMMARY: Extends the sunset on community college districts' (CCDs') authority to enter into design-build public works contracts and adopts the same "skilled and trained workforce" requirements applicable to the design-build authority of state agencies and local governments. Specifically, **this bill, as proposed to be amended:**

- 1) Extends the January 1, 2020 sunset date on CCDs authority to use the design-build method for district construction projects until January 1, 2030.
- 2) Applies existing provisions regarding the use of a skilled and trained workforce on state, school district, and local government design-build projects to community college design-build contracts advertised for bid or awarded on or after July 1, 2020.

EXISTING LAW:

- 1) Provides CCDs with the authority, until January 1, 2020, to enter into design-build contracts, according to a specified process. (Education Code (EC) Section 81700 et seq.)
- 2) Stipulates that for any K-12 district, state agency, or local government design build project, a design-build entity shall not be prequalified or shortlisted absent a commitment by that entity and all subcontractors to meet "skilled and trained workforce" requirements. (Education Code (EC) Section 17250.25(c)(1), Public Contract Code (PCC) Sections 10191(c)(1) and 22164(c)(1).)
- 3) Skilled and trained workforce means that all workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an approved apprenticeship program. For work performed after January 1, 2020, at least 60 percent of the skilled journeypersons employed to work on a design-build contract by the contractor and all subcontractors must be graduates of an apprenticeship program for the applicable occupation, except that, for specified occupations, such as bricklayer and carpenter, the minimum requirement is 30 percent. (PCC Section 2601(d).)
- 4) Stipulates that the above skilled and trained workforce requirements do not apply if any of the following requirements are met:
 - a) The public entity has entered into a project labor agreement (PLA), as specified.
 - b) The design-build project is being performed under the extension or renewal of a PLA entered into prior to January 1, 2017.
 - c) The design-build entity has entered into a PLA binding the entity and all its subcontractors to use a skilled and trained workforce. (EC Sect. 17250.25(c)(2), PCC Sections 10191(c)(2) and 22164(c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

Background. The traditional project delivery system for public works has been design-bid-build, whereby an architect/engineering firm is first awarded a design contract based on subjective criteria, and after detailed project plans and specifications are completed, a contract for the construction work, which accounts for over 80% of the project's costs, is awarded to the lowest responsible bidder based on competitive bidding. The state first began using an alternative delivery method - design-build – in the 1990s. Under design-build, the public agency enters into a single contract with an entity responsible for both project design and construction. The intent of using design-build is both to expedite project completion and reduce design and construction disputes between the public agency and the contract entity. Over the past 20 years, legislation has provided this authority to both state and local agencies, typically on a pilot basis initially and more broadly thereafter.

Purpose. In 2007, community colleges statewide were given statutory authority, until January 1, 2014, to undertake design-build projects. This authority was subsequently extended until January 1, 2020. AB 695 extends this authority for an additional 10 years, to 2030. The bill, *as to be amended*, also applies skilled and trained workforce requirements (described above) to community college projects as currently govern K-12, state agency, and local government design-build projects. These requirements would not be effective until July 1, 2020 in order to allow current design-build projects in the contract bidding and awarding stage to commence under existing processes.

Legislative Analyst's Reports. Prior legislation authorizing design-build for educational facilities required the Legislative Analyst's Office (LAO) to submit a report on the implementation of design-build contracting. The LAO issued this report on the use of design-build for K-12 construction projects based upon information submitted by one school district. The LAO had difficulty completing a report on design-build contracting by community colleges because it had not received any of the required information from community college districts in order to complete the report.

An unrelated LAO report in 2005 that reviewed design-build contracting across several public works sectors recommended eliminating any contract thresholds on the design-build authority in order to encourage greater use of this alternative contract delivery system. This report also noted that cities and counties using design-build have reported that it takes less staff time to construct a project and results in fewer claims, less litigation, and more price certainty.

In a 2014 report on the use of design-build by counties, the LAO found it difficult to draw general conclusions about the effectiveness of design-build compared to other project delivery methods (such as design-bid-build). The LAO concluded that it did not think the information it reviewed provided any evidence that would discourage the Legislature from granting design-build authority to local agencies *on an ongoing basis*. However, the office did recommend that the Legislature consider some changes such as creating uniform design-build statute for agencies that have design-build authority (such as counties, cities, and school districts), eliminating cost limitations, and requiring project cost to be a larger factor in awarding the design-build contract.

Prior Legislation.

- 1) SB 693 (Hueso), Chapter 774, Statutes of 2016, consolidated the "skilled and trained workforce" requirements of various provisions of existing law related to alternative construction delivery methods (including design-build) and defined the terms of these requirements. These provisions did not include the community colleges.
- 2) AB 1402 (Simitian), Chapter 421, Statutes of 2001, and AB 1000 (Simitian), Chapter 637, Statutes of 2002, allowed all K-12 and three community college districts, plus five projects in other community college districts, to utilize design-build, but only for projects where total costs were at least \$10 million. AB 1402 authorized K-12 districts to use this process until January 1, 2007, while AB 1000 authorized design-build for the five community college districts through January 1, 2008.
- 3) Proposition 1D (AB 127, Nunez and Perata, 2006) extended the sunset dates until 2010 and 2011, respectively.
- 4) SB 614 (Simitian), Chapter 471, Statutes of 2007, lowered the threshold for using design-build from \$10 million to \$2.5 million, extended the authority for design-build to all CCC districts, and extended the sunset dates for both K-12 and CCC district authorization until January 1, 2014.
- 5) SB 1509 (Simitian), Chapter 736, Statutes of 2012, extended the sunset dates for both K-12 and CCC district authorization until January 1, 2020.
- 6) AB 1358 (Dababneh), Chapter 752, Statutes of 2015, lowered the threshold for K-12 authority to \$1 million and extended the sunset date, for K-12 only, to January 1, 2025, which matched provisions enacted in 2014 to the state Departments of General Services and Corrections and Rehabilitation, respectively, and to local governments.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Community Colleges, Chancellor's Office
Community College Facility Coalition
Foothill-De Anza Community College District
Kern Community College District
Peralta Community College District
San Bernardino Community College District
San Diego Community College District

Opposition

None on file.

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