
AB 185 AUTHORIZES ALTERNATIVE DESIGN-BUILD CONSTRUCTION FOR K-12 SCHOOL DISTRICTS

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Governor Newsom signed the Education Omnibus Trailer Bill (AB 185) on September 27, 2022, which included authorization for K-12 school districts to use “alternative design-build” contracts for public works projects. This variation on an existing delivery method provides school districts with another option for public works contracting.

Existing Design-Build Statutes

Generally, in lieu of typical competitive bidding that involves two contracts (one for the architect, and one for the contractor), the design-build delivery method allows public entities to enter just one agreement with a design-build entity, which would complete design of the project and then construct it. Thus, the design-build entity must have both an architect and contractor on its team. The owner usually provides a partial design (the “bridging documents,” or “design criteria”), and the design-build entity then completes the design and performs the construction work for the price as defined in the contract documents.

Since 2016, use of design-build by school districts has been controlled by Education Code sections 17250.10 et seq. Under these statutes, a school district may only use design-build for projects over \$1,000,000, and must first issue a request for qualifications so it can prequalify or short-list design-build entities. The school district then issues a request for proposals to the prequalified entities, which may include the partial design of the project and a schedule for completion.

The school district may select the design-build entity based on low bid or best value. If best value is used, the request for proposals must include the factors that the school district will evaluate, including price (unless a stipulated sum is used), experience, and life-cycle costs. Unlike lease-leaseback, a best value scoring system is not required. Upon selection, the school district awards a contract for the work, which includes the schedule and price.

Alternative Design-Build Statutes

Pursuant to AB 185, the new alternative design-build procedures for school districts are, in most respects, the same as the standard design-build procedures summarized above. However, the differences are significant.

First, alternative design-build will only be available for projects over \$5,000,000.

Second, for purposes of the best value selection method, in lieu of a specific price in the proposal the design-build entity must propose “design cost, general conditions, overhead, and profit as a component of the project price.” After award of the contract based on the proposals, the school district evaluates costs based on the final design to set the price of construction, and the contract may be subject to further negotiation or amendment. If the school district and the design-build entity are unable to reach an agreement on construction price, the school district may terminate the contract.

Third, the school district must submit a report to the Legislature regarding its use of alternative design-build.

Use of alternative design-build may commence on January 1, 2023. However, any school district’s use of an alternative design-build methodology prior to that date under the existing design-build statutes would not be invalidated by the new alternative design-build statutes.

Takeaways

Alternative design-build appears to be the Legislature’s formal recognition and authorization of design-build variations that have already been in use in California. As a result of the passage of AB 185, school districts now have a choice between two valid design-build methods.

Especially for long-term projects, alternative design-build could provide an advantage over standard design-build because the design-build entity would not need to include as many price contingencies in its proposal due to the construction price not being calculated until the design is at or near completion. This transparency and reduced risk may also lead to more design-build entities submitting proposals.

For local public agencies other than school districts (community college districts, cities, counties, etc.), alternative design-build has not yet been authorized by the Legislature. Those agencies must use their existing design-build statutes, which are similar to the standard design-build statutes for school districts.

For more information about design-build for school districts or other types of local public agencies, or about other construction delivery methods, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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