Alternative Project Delivery Methods for

City Public Works Projects
I. Introduction

Cities in California have long been restricted in the manner they can award public works construction projects. Pursuant to Public Contract Code section 20162, general law cities are obligated to award construction contracts to “the lowest responsible bidder after notice.” Most charter cities follow this approach as well. This traditional project delivery method places primary importance on cost, and until recently has restricted most cities from utilizing many of the alternative project delivery methods available to the private sector (design-build, job-order contracting, construction manager at risk, integrated project delivery, all discussed below in more detail). However, an increasing number of statutes are being enacted authorizing designated public agencies, including cities, to use alternative project delivery methods under certain circumstances. While this is a welcome trend for most people involved with public works contracting, the scope of this authority is both limited and confusing. This paper will summarize the current statutory authority for cities to award public works projects pursuant to alternative project delivery methods and touch on some authority available only to other types of public agencies. In addition, this paper will explain why it is vitally important for cities to understand the limits of these statutes so as to avoid awarding public works contracts illegally.

Determining the statutory constraints that apply to a particular public works project is only the first step in selecting the best project delivery method. Where more than one project delivery method is available, careful thought should be given to which method is most advantageous for that particular project. The answer will vary depending on the size of the project, how quickly it must be delivered, the complexity of the work, how much risk the public agency is willing to assume, and other variables. For instance, awarding a project on a design-build basis allows a city to use a qualifications-based selection process, and can result in improved efficiency, quality and faster delivery. Design-build projects also allow for the inclusion of integrated project delivery principles (early involvement of trade contractors in the design process, and structuring of compensation based on successful project outcome). However, the significant procedural requirements that apply to design-build projects likely outweigh its benefits for smaller projects.

II. The Base-line: Design-Bid-Build

Until recently, most cities in California have been required to award all public works construction projects to the lowest responsible bidder. This is true of both general law cities which are obligated to comply with Public Contract Code section 20162, as well as many charter cities which are not subject to the Public Contract Code but are governed by the city’s charter and municipal code. This contract award method is commonly referred to as the “design-bid-build” project delivery method, because the design contract is awarded separately from the construction contract. After the design work is complete, the construction contract documents are advertised, contractors submit bids, the work is awarded to the lowest bidder, and the structure or public improvement is built. Thus, in order, the project goes through the design, bid and build phases.

There are several defining features of a design-bid-build contract award. First, the award must be made on the basis of cost (lowest bid submitted). A city cannot award a contract based on the qualitative factors of the contractors bidding for the work such as experience, financial capacity, references, safety record etc. Second, the low-bidder must submit a bid which is responsive to all of the requirements set forth in the contract documents. Third, the agency must confirm that the lowest bidder meets the requisite “responsibility” standard. “Responsible bidder” is defined as “a bidder who has demonstrated the attribute of
trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” (See Public Contract Code Section 1103.) Finally, the scope of services provided under the contract can’t include any professional services (such as construction management, engineering or architectural services). This is because California Government Code 4526 (known as the “Little Brooks Act”) requires that contracts for professional services for architectural, engineering, environmental, land surveying, or construction project management be awarded “on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” In other words, it can’t be awarded on the basis of cost. Thus, without specific statutory authority to combine professional services and construction work, a single contract awarded by a public agency can’t include both construction and professional services because two different contract award methods must be implemented.

It is important to note that competitive bidding requirements can vary between cities. For instance, in the case of general law cities, all “public projects” over $5000 must be awarded to the lowest responsible bidder. Under Public Contract Code section 20161, “public project” is defined as the “erection, improvement, painting, or repair of public buildings and works,” as well as “street or sewer work except maintenance or repair.” However, charter cities can set their dollar thresholds for competitive bidding significantly higher than $5000, and can also include work within gray areas such as maintenance and repair. Thus, the first step for any city embarking on a public works project is to have a firm understanding of the requirements and limitations of the applicable competitive bidding statute, charter or municipal code provision.

III. Design-Build

A design-build contract involves the award of a single contract for both the design and construction of a structure or public improvement. The primary advantage of awarding a project on a design-build basis is that the project will likely be completed sooner and cheaper than if two separate contracts are awarded for design work and construction work. By combining the design and construction, the design-build contractor has greater control over the schedule and can begin construction on some elements of a project while still designing other segments (commonly known as fast-tracking). The design-build contractor also controls the quality of the work more closely since it is responsible for both design and construction, and can work more efficiently as a result. Another advantage of awarding a project on a design-build basis for the public agency owner is that the responsibility for a successful outcome rests with a single entity rather than being split between two firms who are frequently motivated to take an adversarial posture when claims arise. Of course, the possibility for conflicts between the design-build contractor and public agency owner still exist, but they should be greatly reduced in comparison with the design-bid-build process.

Design-build contracting authority was not available to most general law cities until the passage of AB 642 which went into effect on January 1, 2009. (See Public Contract Code Section 20175.2). AB 642 expanded statutory design-build authority to all cities in California for projects over $1 million. While expansion of design-build authority to all cities is obviously welcome news for cities, it comes with significant procedural requirements. Following is a summary of the main features of the design-build authority for cities:

- Project must be in excess of $1 million. (Public Contract Code section 20175.2(a)(1).)
- Contracts can be awarded on the basis of either the lowest responsible bidder or best value. (Public Contract Code section 20175.2(a)(2).) Best value is defined as "a value
determined by objectives relative to price, features, functions, and life-cycle costs.” (Public Contract Code section 20175.2(c)(1).)

- Design-build authority can’t be used for “streets and highways, public rail transit, or water resource facilities and infrastructure.” (Public Contract Code section 20175.2(c)(4).)
- City must establish and comply with a Labor Compliance Program applicable to the design-build project, pursuant to Labor Code section 1771.5. (Public Contract Code section 20175.2(b)(5).)
- City must pre-qualify design-build entities using a standard questionnaire developed by the city. Note that the California Department of Industrial Relations has developed a model pre-qualification questionnaire for design-build projects.
- Pre-qualified design-build entities must compete based on proposals submitted pursuant to an RFP process.
- Design-build entities must identify all mechanical subcontractors with their proposal. (Public Contract Code section 20175.2(d)(3)(i).) All other subcontractors can be selected after contract award pursuant to the process set forth by the city, which at a minimum requires that the design-build entity provide public notice of the subcontracting opportunities and a deadline for expressing interest. (Public Contract Code section 20175.2(f).) This provision is different from at least one other design-build statute which requires subcontract awards to the lowest bidder.
- The winning design-build entity must obtain bonding to cover the contract amount for non-design services. (Public Contract Code section 20175.2(e)(1).) This provision clarifies an ambiguity in other design-build statutes which required bonding for the entire amount of the contract.
- The winning design-build entity must obtain errors and omissions insurance to cover all design and architectural services. (Public Contract Code section 20175.2(e)(1).)
- The city can’t withhold more than 5% in retention if a performance bond and payment bond are provided (which they should be since they are required). (Public Contract Code section 20175.2(k)(1).)
- The city must submit to the Legislative Analyst’s Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process that is completed after January 1, 2011 and before November 1, 2014. (Public Contract Code section 20175.2(l).)
- The statute will be repealed on January 1, 2016.

Nonetheless, despite the significant procedural requirements for general law cities to utilize the design-build authority, it presents a new and exciting opportunity for awarding construction projects in a potentially more efficient way.

As an aside, the legislature has gradually expanded design-build authority for public agencies. Currently, the following public agencies have some form of design-build authority: 1) “transit operators”; 2) cities; 3) Sonoma County Health Care District; 4) school districts; 5) community college districts; 6) counties; 7) Director of General Services for the State of California; 8) Los Angeles County Metropolitan Transportation Authority; 9) select public agencies pursuing wastewater or solid waste facilities; and most recently 10) “local transportation agencies.” For more details regarding these statutes, see the table attached to this paper.
IV. Public-Private Partnerships

“Public-private partnerships” have probably been the most discussed, and most misunderstood, project delivery method over the last several years. This is likely due in part to the fact that public private partnerships have achieved successful results on a variety of projects outside the United States. More importantly, the current financial difficulties many public agencies are experiencing limit the public funds available for infrastructure projects, making public private partnerships a more enticing option. However, before attempting to undertake a public works construction project pursuant to a public-private partnership, it is important to understand the applicable legislative authority and how it applies to a particular project.

The term “public-private partnership” covers a wide variety of arrangements between a public agency and the private sector, with the common feature among them being some form of private sector financing. In a sense, public-private partnerships are not really an alternative project delivery method, as much as an alternative project funding mechanism for public works projects. Technically, even garden-variety redevelopment agreements can be considered public-private partnerships.

Perhaps the most common public-private partnership structure involves a private entity financing and constructing a fee-generating facility (such as a toll road), and operating it for a set number of years in exchange for a percentage of the revenues generated. At the end of the agreement, the possession and operation of the facility is transferred back to the public agency. This approach allows an agency to construct a project it might not otherwise have the funding for, allows the contractor to profit from the revenues generated, and creates valuable infrastructure for use by the public. Public-private partnerships can be structured in a variety of ways, including as a design-build project and on a design-build-operate-maintain basis.

There are currently two statutes that authorize cities to enter into public-private partnerships for construction projects: 1) the Infrastructure Financing Act applicable to "local government agencies" under Government Code section 5956 et seq.; and 2) authority for Energy Conservation Contracts under Government Code section 4217.10 et seq.

As an aside, the Administrative Office of the Courts also has specific statutory authority for public-private partnerships under Government Code section 70391.5. In addition, recently approved legislation (SBX2 4; Ch.2, Stats. 2009) will allow the state and regional transit agencies broad authority to undertake public-private partnerships. For more details regarding these statutes, see the table attached to this paper.

V. Construction Manager at Risk

The construction manager at risk (“CM at risk”) project delivery method is also common in the private sector, although it is currently not available for general law cities. In its truest form, in the private sector, a CM at risk contract involves hiring a construction management firm after the design has been completed to take responsibility for the construction of the project. The contract award to the CM is usually made on a qualitative basis, and not strictly on price. Generally, the CM agrees to deliver the completed project to the owner for no more than a guaranteed maximum price. The CM will then award contracts to individual trade contractors to perform specific portions of the construction work. The CM can select trade contractors on whatever basis it prefers (lowest bidder, qualifications, familiarity, etc). The CM manages the construction work performed by the trade contractors, and may also choose to perform some of
the actual construction work, in which case the entity would function as a combined construction
manager and general contractor (CM/GC).

As with design-build contracting authority, utilizing a true CM at risk project delivery
method is not possible for general law cities without specific statutory authority, for several
reasons. First, unless each trade contract is competitively bid and awarded by the city, a CM at
risk contract does not satisfy the requirement to award contracts for construction work to the
lowest responsible bidder. Second, if the CM decides to perform some of the construction work
itself and act in part as a general contractor, the CM’s contract would also need to be awarded
to the lowest responsible bidder. Finally, awarding a contract to a CM prior to knowing which
trade contractors will perform the work poses potential issues with the subcontractor listing law,
which requires that a general contractor identify all subcontractors at the time it submits a bid.
(See Public Contract Code Section 4100 et. seq.) As a result, general law cities require specific
statutory authority to award a contract on a true CM at risk basis.

Currently, only the University of California has express statutory authority to award
contracts on a CM at risk basis. However, there are ways to structure a project which are
similar to a CM at risk contract and satisfy competitive bidding requirements, such as a “multi-
prime” approach. The multi-prime approach requires a city to award each trade contract
required for a project to the lowest bidder, and to award a contract to a CM on a qualitative
basis strictly to manage the various trade contractors. This “multi-prime” approach allows for
the inclusion of other collaborative contracting principles, as discussed further below in Section
VII.

VI. Multi-prime Approach

The multi-prime project delivery method provides a city with greater flexibility in selecting
the firm which is ultimately responsible for managing the project. After the design is completed
for the project, the city awards a contract to a construction management firm (CM) on a
qualitative basis to satisfy Government Code Section 4526. In other words, the CM is selected
pursuant to an RFP process which considers the interested CM firms’ experience, competence,
project approach etc., but not costs. Ideally, the city hires a CM with a high degree of
trustworthiness and reliability. The CM will not perform any construction work, but will manage
this work. The city then awards individual contracts to specific trade contractors (mechanical,
electrical, plumbing etc.) on a low bid basis to satisfy competitive bidding requirements. This is
where the term “multi-prime” arises, since the trade contractors are each awarded a separate
contract by the city and are not subcontractors to a general contractor. These trade contracts
are then managed by the CM, which performs its professional services for a fee. Note that
while a traditional CM at risk contract would be performed pursuant to a Guaranteed Maximum
Price and requires that the CM “hold” the subcontractors, this should be avoided by cities since it
effectively renders the CM a general contractor, which would then require a contract award
pursuant to competitive bidding. (See City of Inglewood v. Superior Court (1972) 7 Cal.3d
861.)

The “multi-prime” approach can be enhanced with the addition of certain Integrated
Project Delivery (“IPD”) principles, discussed in more detail in Section VIII.C below. For
instance, compensation on the project can be structured to include incentive bonuses for a
successful project outcome. By making such bonuses contingent upon a successful outcome
for the entire project, the incentive for collaboration among project team members will increase.
Trade contracts can even be structured to only guarantee direct costs and make profit and
bonus amounts contingent upon a successful project outcome. The trade contracts can also be
awarded prior to the completion of the design in order to allow trade contractors to consult during the design process. Under this approach, trade contractors would be asked to bid a combination of their hourly rate for consultation work, as well as their general conditions and fee during construction. Finally, Building Information Modeling can be used on a “multi-prime” project (or any project for that matter), which should greatly improve the resolution of design conflicts, communications between project team members, and effective maintenance over the life of the facility.

VII. Bidder Pre-qualification

For complex projects, or those which require particular expertise, implementing a bidder pre-qualification process can be very useful. Cities have the authority to pre-qualify bidders pursuant to Public Contract Code Section 20101(c) and (d). In essence, a pre-qualification process moves the bidder “responsibility” determination earlier in the bid process and separates it from the contract award. This allows a city to tailor more specific experience requirements for a particular project. When the experience requirements are drafted thoughtfully, the city benefits from narrowing the pool of contractors to only those that can truly perform the work. Of course, pre-qualification requires additional time and effort. Nonetheless, for complex projects there can be significant benefits in terms of the quality and level of experience in the pool of contractors bidding on a project. In turn, this can lead to better performance and fewer disputes between the city and the contractor on the project.

VIII. Alternative Project Delivery Methods Not Currently Available to Cities

This section summarizes alternative project delivery methods which general law cities do not currently have the authority to use. These options are useful for the public entities which have them, and they may eventually be made available to cities as well.

A. Job-Order Contracting

Many public agencies have recurring but relatively minor construction work, the scope and timing of which is difficult to know in advance. This work often involves repair, remodeling or other repetitive work. In California, the project delivery method known as job-order contracting (“JOC”) is well suited to address such work. JOC has been defined as follows:

“[A] competitively bid, firm fixed price, indefinite quantity contract for the performance of minor construction, ... [or] the renovation, alteration, painting, and repair of existing public facilities. A JOC, generally a multi-year contract including a base year and multiple option years, is bid and awarded prior to the identification of any specific projects to be performed. Thus, a typical JOC involves a variety of tasks such as the remodeling, renovation, and repair, including roofing, electrical, plumbing, and painting, of all a public agency’s buildings for a period of years.” (See 76 Op. Atty Gen. Cal. 126, pg 2 (1993).)

The pricing for JOC is frequently based on a unit price book, to which the contractor applies a percentage mark-up.¹

¹ According to an opinion issued by the California Attorney General’s office, “A JOC is a fixed price agreement in the sense that it is based upon specified charges contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction tasks, including task descriptions, specifications, units of measurement, and unit prices for each task. A
Again, as with design-build and CM at risk, JOC is not available to most public agencies without specific statutory authority. According to two advisory opinions issued by the California Attorney General, this is primarily because the open-ended nature of the scope of services does not comply with competitive bidding principles and because the Legislature has adopted express JOC authority where it intended to allow JOC. The first of these opinions addressed a general law city’s ability to award work on a JOC basis, and held that “a public works project does not encompass a combination of projects which are essentially unspecified at the time of bidding, except as may be otherwise expressly provided by law.” (Id. at 5.) Similarly, a subsequent opinion addressing a school district’s authority to award a project on a JOC basis held that: “No authority is granted for school districts to execute a JOC similar in terms to what the Legislature has granted to counties. Indeed, the unique features of a JOC, including the lack of information regarding specific projects at the time of submitting the competitive bids, is entirely inconsistent with the applicable low bid statute for school districts. (See 84 Op. Atty Gen. Cal. 5 (2001.) Thus, while JOC is a practical and efficient way to award certain kinds of ongoing work, a public agency should not award work on a JOC basis without specific authority.

Currently, only three public agencies have specified statutory authority for JOC: 1) counties; 2) California State Universities; and 3) the Los Angeles Unified School District. For more details regarding these statutes, see the table attached to this paper.

B. Lease/Lease-Back

The lease/lease-back project delivery method resembles a public-private partnership in some ways. The most common form of lease/lease-back involves a public agency leasing real property to a contractor under a ground lease for a nominal sum, who then agrees to construct facilities and lease them back to the public agency under a facilities lease. The lease payments made by the public agency to the contractor under the facilities lease generally amount to the cost of construction and the contractor’s overhead and profit. At the conclusion of the facilities lease (which may be terminated shortly after construction is complete), ownership of the real property and newly constructed facilities revert to the public agency.

Currently, only school districts and community college districts have specific statutory authority to award construction projects on a lease/lease-back basis. (See Education Code Sections 17406 and 81335.) These statutes have remarkably few restrictions on how the construction work must be awarded. In fact, the public agency is free to select its contractor in essentially any manner it chooses (low bid, RFP, direct negotiation, etc.). Progressive community college districts have been using this broad authority to incorporate a variety of Integrated Project Delivery principles into their projects (discussed below). Needless to say, agencies that don’t fall within this lease/lease-back statutory authority can not legally pursue a lease/lease-back project of this variety.

Contractor’s bid is expressed in terms of a percentage of the specified book charges such as 115 percent or 125 percent. The book is then used to determine the costs of each proposed project during the term of the contract, which is normally one or more years. The total JOC value may be specified as a range with a certain guaranteed minimum, typically from $50,000 to $250,000, and a maximum which may extend beyond $10 million.” (See 76 Op. Atty Gen. Cal. 126 (1993).)
C. Integrated Project Delivery

Integrated Project Delivery ("IPD") is perhaps the most progressive alternative project delivery method. IPD strives for a maximum level of collaboration between all parties working on the project, and has been defined as follows:

Integrated Project Delivery (IPD) is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. ("Integrated Project Delivery: A Guide," published jointly by the American Institute of Architects California Council and the American Institute of Architects.)

Contractually, the key elements of a pure IPD project are as follows: 1) a single agreement between the owner, designer (architect/engineer), general contractor, and trade contractors; 2) a waiver of the right to sue any of the other project team members; 3) involvement of the trade contractors from the outset of the project so that they can provide input during the design stage; 4) extensive reliance on Building Information Modeling ("BIM")\(^2\) for the design, construction, operation and maintenance of the structure; and 5) compensation and incentives structured to require a successful project outcome regardless of any individual firm’s performance.

Without specific statutory authority, however, public agencies can’t award a project on a pure IPD basis. This is due to the fact that a pure IPD project involves negotiated contracts with the designer, the general contractor and trade contractors. Ideally, selection of each of these project team members is based in large part on the firm’s comfort and flexibility with performing work on a collaborative IPD project. Of course, competitive bidding requirements do not allow selection of contractors on such a qualitative or informal basis.

While not a perfect fit, the design-build authority available to cities under the newly enacted Public Contract Code section 20175.2 can be used as a vehicle to implement several of the primary IPD principles. For instance, the design-build entity can select its subcontractor at the outset of the project before the design has been completed. This is ideal in that it allows the subcontractors to participate as consultants throughout the design process, imparting practical construction knowledge regarding the most efficient and effective ways to achieve the goals of the project. For those entities that have implemented IPD principals, most agree that early involvement of subcontractors consistently provides the most tangible benefits. Note that where a “bridge design” approach is used (30% design by a consultant before seeking proposals from design-build entities), the benefits of early involvement of subcontractors are necessarily diminished because they are less able to influence design decisions. Compensation for the design-build entity can also be structured to create incentives for a successful project outcome, and BIM can be implemented, both significant features of IPD contracts.

There is currently no statutory authority authorizing IPD for any public agencies in California. Recent efforts were made to introduce IPD legislation for state and local agencies, but the effort was not successful. Colorado has adopted an IPD statute which appears to apply

\(^2\) Building Information Modeling utilizes three dimensional computer imaging to represent building structures, and combines previously separate sets of documents (drawings, specifications, take-offs, construction details) into a single comprehensive database. BIM greatly reduces issues of drawing coordination and conflict resolution.
to virtually all public agencies, although it contemplates a contract between the public agency and a single entity rather than a multi-party contract between the agency and each project team member. Nonetheless, Colorado is demonstrating that a form of IPD can be brought to the public sector.

Hopefully, California will follow Colorado’s lead and IPD authority will soon be made available to at least some public agencies. The benefits of using IPD as the project delivery method are significant. First, IPD can result in cost benefits between 10-20% on a typical project. These savings arise as a result of considerably greater efficiencies throughout the design and construction stages of the project. IPD projects are also generally completed faster than a traditional design-bid-build approach. Note, however, that the complexity and novelty of the process requires significant education for most entities (and their legal counsel).

IX. Consequences for Awarding Contract in Contravention of Applicable Statute

In light of the confusing patchwork of statutory authority for alternative project delivery methods in California, there are real legal risks to cities for awarding public works projects without complying with applicable competitive bidding requirements. Stated simply, an illegally awarded contract is void, leaving the contractor with no legal right to complete the project. In such an instance, a city is subject to a lawsuit from a disgruntled bidder or taxpayer which can compel the agency to rescind the contract award, causing considerable delay. Under these circumstances, the city may owe the contractor “the reasonable costs, excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination that the contract is invalid.” (Public Contract Code Section 5110.) In the event that the project has progressed too far for a court to rescind the contract award, the court could allow the contract to stand and award damages to the bidder that was wrongfully denied the contract award. These damages have been limited to bid preparation costs and do not include lost profit or loss of added value to a contractor’s reputation. (See Kajima v. LACMTA (2000) 23 Cal.4th 305.) Thus, if an illegal contract award is challenged, the city could be faced with either: 1) rescission of the contract, delays related to re-awarding, and damages to the first contractor; or 2) completion of the contract with the original contractor but payment of damages to the wrongfully denied bidder. Obviously, both of these scenarios can be avoided through careful review of applicable statutory authority, charter or municipal code provision.

One approach to consider in the event that a proposed contract award does not fall squarely within the applicable contracting authority is to pursue a validation action. In short, California Government Code sections 53510 and 53511 allow local agencies, including cities, to bring an action to confirm the validity of a transaction of its “bonds, warrants, contracts, obligations or evidence of indebtedness.” (See also Code of Civil Procedure section 860.) Depending on the structure of the particular project, where a contract is directly linked to the city’s method of financing a project, a court may provide a ruling on the validity of a proposed contract in advance of contract award. (See Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.)

X. Conclusion

While there is an increasing consensus among those involved with public works construction projects that cities need a wider array of alternative project delivery methods, the statutory authority still lags behind. Accordingly, it is incumbent upon city leaders and legal counsel to carefully review the contracting requirements applicable to them. Where more than one project delivery method is available, careful thought should be given to which method is
most advantageous for that particular project. For those cities courageous enough to try new approaches like design-build and IPD, the benefits can be significant. Ultimately, the public as a whole benefits when our infrastructure is built more quickly, with greater quality and at a reasonable cost.
### STATUTORY AUTHORITY FOR ALTERNATIVE
### PROJECT DELIVERY METHODS FOR PUBLIC WORKS PROJECTS IN CALIFORNIA

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<th>Project Delivery Method</th>
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<td>Design/Build</td>
<td>Transit Operators</td>
<td>Public Contract Code (hereinafter “P.C.C.”) §20209.5</td>
<td>does not apply to highway projects</td>
</tr>
<tr>
<td>Design/Build</td>
<td>All cities</td>
<td>P.C.C. §20175.2 AB 642</td>
<td>applies to projects over $1 million</td>
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<td>Design/Build</td>
<td>Sonoma County Health Care District</td>
<td>H&amp;S Code §32132.5</td>
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<td>Design/Build</td>
<td>Calif. State University</td>
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<td>Design/Build</td>
<td>School Districts</td>
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<td>Design/Build</td>
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<td>Design/Build</td>
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<td>Design/Build</td>
<td>State of California Director of General Services</td>
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<td>Design/Build</td>
<td>State of California Director of General Services</td>
<td>Gov. Code §8169.5</td>
<td>Applies to contracts for Capital Area Plan</td>
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<td>Design/Build</td>
<td>Los Angeles County Metropolitan Transportation Authority</td>
<td>P.C.C. §20209.22-.44</td>
<td>for HOV lanes</td>
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<td>Design/Build</td>
<td>“Qualified Entity” = cities, counties, city and counties, and special districts</td>
<td>P.C.C. §20193</td>
<td>limited to 20 projects in these categories:</td>
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<tr>
<td></td>
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<td>1. regional and local wastewater treatment facilities</td>
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<td>2. regional and local solid waste facilities</td>
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<td>3. regional and local water recycling facilities</td>
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<td>Design/Build</td>
<td>“Local transportation entity”; Department of Transportation</td>
<td>P.C.C. §6801</td>
<td>SBX2 4, Cogdill (effective Jan. 1, 2010)</td>
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<td>Public Private Partnership</td>
<td>Administrative office of the Courts</td>
<td>Gov. Code § 70391.5</td>
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<tr>
<td>Public Private Partnership</td>
<td>“Public Agency” = the state, a county, city and county, city district, community college district, school district, joint powers authority etc.</td>
<td>Gov. Code §4217.10 - §4117.18</td>
<td>allows agencies to enter into ground lease with private contractor who constructs energy conservation facility and sells discounted energy to the agency for a period of years (20-30), before the agency takes possession of the facility.</td>
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<tr>
<td>Category</td>
<td>Description</td>
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<td>Note</td>
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<tr>
<td>Public Private Partnership</td>
<td>“Local Government Agencies” = city, county, city and county, including a chartered city or county, school district, community college district, public district, county board of education, joint powers authority, transportation commission or authority, or any other public or municipal corporation.</td>
<td>Gov. Code §5956-§5956.10 “Infrastructure Financing Act”</td>
<td>Authorizes any combination of: study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair or operate - used by BART for Oakland Airport connector project - only applies to revenue generating projects</td>
</tr>
<tr>
<td>Public Private Partnership</td>
<td>“Regional transportation agency”</td>
<td>P.C.C. §143</td>
<td>SBX 2 4, Cogdill (effective Jan. 1, 2010)</td>
</tr>
<tr>
<td>CM at Risk</td>
<td>University of California</td>
<td>P.C.C. §10503(c)</td>
<td>Requires prequalification of bidders</td>
</tr>
<tr>
<td>CM at Risk</td>
<td>Port of Oakland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CM at Risk</td>
<td>California State University</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job Order Contracting</td>
<td>Los Angeles Unified School District</td>
<td>P.C.C. §20919-§20919.15</td>
<td></td>
</tr>
<tr>
<td>Job Order Contracting</td>
<td>Cal. State University</td>
<td>PCC §10710</td>
<td></td>
</tr>
<tr>
<td>Job Order Contracting</td>
<td>Counties</td>
<td>P.C.C. §20128.5</td>
<td>Contract can’t exceed $3 million</td>
</tr>
<tr>
<td>Lease Lease-back</td>
<td>Community College Districts</td>
<td>Education Code §81335</td>
<td></td>
</tr>
<tr>
<td>Lease Lease-back</td>
<td>School Districts K-12</td>
<td>Education Code §17406</td>
<td>Can also be used as a revenue generating mechanism for existing assets</td>
</tr>
<tr>
<td>Best Value</td>
<td>UCSF</td>
<td>P.C.C.. §10506.4</td>
<td>This is a pilot project</td>
</tr>
<tr>
<td>Infrastructure Privatization</td>
<td>“Local Agency” = city, county, city and county, special district or county service area</td>
<td>Gov. Code §54250-54256</td>
<td>Local Government Privatization Act; applies to wastewater and sewer project</td>
</tr>
<tr>
<td>Competitive Negotiation</td>
<td>Transit agencies, transit districts, cities and counties</td>
<td>P.C.C. § 20216-20217</td>
<td>Authorizes competitive negotiation for computers, specialized communications and electronic equipment, specialized rail transit equipment, railcars, buses and ferries. The statute specifically prohibits award of construction contracts, but open question re: installation of equipment.</td>
</tr>
</tbody>
</table>