

- SUBJECT:** Authorizing design-build procurement for civil works projects
- COMMITTEE:** Government Reform — committee substitute recommended
- VOTE:** 5 ayes — Callegari, Pitts, Leibowitz, Miles, W. Smith  
0 nays  
2 absent — Berman, Rodriguez
- WITNESSES:** For — Thomas Burke, Design/Build Legislative Committee, DBIA SW Chapter; Steve Stagner, Texas Council of Engineering Companies; (*Registered but did not testify:* Aaron Day, City of Fort Worth; Dean Robbins, Texas Water Conservation Association)  
  
Against — Cyd Grimes, Texas County Purchasing Association  
  
On — Nancy Belinsky, San Antonio Water System
- BACKGROUND:** In 1997, the 75th Legislature enacted SB 583 by Ratliff, which clarified the authority of school districts to use alternative methods besides sealed competitive bids for construction projects. One of the methods approved was design-build contracts, which involves a contract with a single firm for the design and construction of a facility.  
  
In 2001, the 77th Legislature enacted SB 510 by Armbrister, which established procedures for cities, counties, and river authorities to use in entering into design-build contracts for construction, rehabilitation, alteration, or repair of facilities. The authorization was not extended to contracts for streets, bridges, water or wastewater projects, or other civil engineering construction projects.
- DIGEST:** CSHB 1886 would amend Local Government Code, ch. 271 to allow the use of design-build projects for civil works projects, including:
- roads and streets;
  - bridges;
  - utilities;

- water supply projects;
- water and wastewater plants;
- water distribution and wastewater conveyance facilities;
- airport runways and taxiways;
- storm drainage and flood control projects; and
- transit facilities.

The bill would establish several population brackets and timelines for authorizing design-build contracts:

- September 1, 2007, for cities with populations of more than 500,000;
- September 1, 2009, for cities with populations of more than 100,000;
- September 1, 2011, for cities with populations of more than 25,000; and
- September 1, 2013, for all cities.

The bill would amend Government Code, ch. 271 to change the definition of facility and to add hospital districts, water districts, river authorities and defense base development authorities as entities eligible to use design-build methods. Other portions would exclude a water or wastewater system owned by a city with a population of more than 1.2 million from the provisions of the bill. That definition would exclude the San Antonio Water System.

CSHB 1886 would establish criteria for submitting and evaluating the design criteria package. It would require the local government to assume the risks and costs for:

- scope changes and modifications;
- unknown or differing site conditions;
- regulatory permitting;
- natural disasters and other force majeure events; and
- property acquisition.

The bill would also require the local government entity to offer unsuccessful offerors a stipend, of up to one-half of 1 percent of the preliminary cost or budgeted cost, for requests for information beyond the original proposal. The local entity also would be allowed to negotiate an

additional fee to compensate the unsuccessful offeror for use of its intellectual property, including techniques, methods, processes, and other information contained in the original proposal.

Local entities would not be allowed to sign interlocal agreements to purchase engineering or architectural services from another entity, unless it was in conjunction with a specific facility owned, used, or financed jointly by the entities.

The bill would take effect on September 1, 2007, only if HB 447 by Callegari, revising standards for government construction contracts, was enacted.

**SUPPORTERS  
SAY:**

CSHB 1886 would grant cities, counties, and hospital and river authorities the same degree of flexibility to use design-build contracts for constructing civil works projects as now is allowed for building construction. This kind of authority is not new. Since 1995, the Legislature has approved these methods for use by school districts and universities, and other local entities have been using design-build and other methods since 2001.

The bill would not require any local government to use design-build procedures for civil works projects. If a governmental entity decided that this method was too complex or costly, it could continue to use traditional contracting methods. Local governments that chose to use these methods, however, would benefit from more subjective criteria, which would allow them to hire the contractor that provided the best value to the entity, not just the lowest price. While price is important, it is equally important to select experienced contractors in whom the entity has confidence that a facility will be completed and whose product best fits the needs of the entity. These local governments would remain accountable to voters, however, for the price of a project.

Admittedly, design-build is one of the more controversial construction delivery methods because it shifts the traditional and ethical relationships among owners, engineers, and contractors. Unlike traditional methods, engineers and contractors work together under a single contract, and the traditional checks and balances are removed. However, engineers must adhere to codes of professional conduct and state licensing requirements. Overall, CSHB 1886 would provide a workable compromise between engineers and design-build proponents.

The scheduled phase-in and population brackets would allow for larger cities with more resources to implement the program first and provide experience and examples for smaller entities.

Design companies should not be made to assume all the risks of a project. Also, it would be unfair if they are not compensated for additional efforts on unsuccessful contracts or use of their intellectual property by the government entity in contracts completed by other companies.

OPPONENTS  
SAY:

While extending the design-build method to civil works projects may be a good idea, the provisions of CSHB 1886 would be too complex, cumbersome, and confusing to be of use for local entities. It is too specific about how design-build projects would be offered or managed. Non-engineer procurement officials have shown that they are competent in managing construction projects, and they may decide to forego use of design-build, even if the bill becomes law.

The population brackets and time schedules are unnecessary. The design-build method should be made available to all cities at the same time. Also, tying application of the bill to the passage of HB 447 needlessly would complicate the legislative and public policy aspects of CSHB 1886.

NOTES:

HB 447 by Callegari, which would revise standards for contracts for government construction projects, passed the House on April 19.

Compared with the bill as introduced, the committee substitute would expand the definition of governmental entities, exempt San Antonio Water System, and prohibits the use of interlocal contracts for design-build contracts.