

LEGISLATIVE DEVELOPMENTS

GOVERNOR BROWN APPROVES ASSEMBLY BILL 2551, WHICH BROADENS PUBLIC CONTRACTING OPTIONS FOR SURFACE WATER STORAGE PROJECTS

Governor Brown signed Assembly Bill 2551 (AB 2551) on September 28, 2016. The bill aims to streamline the construction of local agency water storage projects. Specifically, the bill allows water storage projects to utilize alternative methods of public contract procurement that are intended to speed up the contracting process. Rather than requiring that a storage project's bids for design and construction occur in two distinct and separate phases, the bill provides greater flexibility to a local entity and new options for contracting. These new contracting options include allowing local agencies to procure both design and construction services from a single company or, alternatively, choosing a construction manager to provide pre-construction services during design and who later becomes the general contractor.

Background

Before AB 2551 was passed, water storage projects undertaken by local agencies were required to use a design-bid-build method, which split the process of public contract procurement into two phases. In the first phase, the local agency would solicit bids for a project's design separate and apart from any future work related to the project. During the second phase, the local agency would solicit bids for construction of the project pursuant to the design that was selected during the first phase, thereby requiring a wholly separate public bidding process.

Further, the design-build-operate method of public contracting, where there is one bid to design, build, and then operate the proposed new facility, was expressly prohibited. Additionally, a local agency's water storage project was to be awarded to the lowest responsible bidder only, without regard to the overall best value for the project.

In AB 2551, the California Legislature found that this process was too limiting. Specifically, it did not allow for benefits made available through other methods of contracting including:

...reduced project costs, expedited project start and completion, simplified project controls and accountability, and design features.

Assembly Bill 2551

AB 2551 was co-authored by James Gallagher, Kristen Olsen, and Rudy Salas, all whom represent portions of the Sacramento and San Joaquin valleys. The bill's purpose is to simplify the public contracting process for eligible water storage projects. Eligible storage projects that are those identified in the CALFED Bay—Delta Program Record of Decision dated August 28, 2000 and that receive funding from Proposition 1 passed by the voters in 2014. These projects include storage options such as Sites Reservoir, Temperance Flat Reservoir, an expansion of Los Vaqueros Reservoir, certain in-delta storage projects, and an expansion of storage in Shasta Lake.

The bill adds Public Contract Code §§ 20928 through 20928.4 and outlines three new options for public contracting. The new contracting options available to local agencies include: 1) "design-build" contracts; 2) "construction manager at risk" contracts; and 3) "design-build-operate" contracts. The design-build method allows a local entity to procure both design and construction services from a single company. The construction manager at risk method allows a local entity to choose a construction manager to provide pre-construction services during design, who then later becomes the general contractor during the construction process. The design-build-operate option grants a single contract agreement to an entity that is chosen to design, construct and operate the new facility or any major capital improvement. These new options are intended to reduce the time local agencies must spend on the contracting process and achieve efficiencies in design and construction, as well as future operations.

In addition to establishing new avenues for public contracting, AB 2551 allows the eligible contracts to

be awarded on the basis of “best value” to the public rather than exclusively to the lowest responsible bidder. Factors in considering what is the best value for the agency include: 1) price; 2) technical design, procurement, and construction expertise; 3) proposed construction approach, sequencing, and methods; 4) compliance with the requirements of performance specification; 5) ability to meet the milestone schedule dates; 6) ability to meet the quality requirements; 7) proposed risk allocation; 8) safety record sharing; and 9) life-cycle costs over 15 or more years. Thus, a local agency may now take additional factors into account in awarding an eligible contract. Indeed, the local agency is now able to view the design, construction, and operation of the project in a more holistic method that is based on overall value when awarding contracts.

Conclusion and Implications

As the California Water Commission finalizes its Water Storage Investment Program regulations this year, local agencies will soon turn to utilize the improved procurement options made available by AB 2551, which was enacted with zero “no” votes in the Assembly, Senate and all committees. The new methods of procurement will allow local agencies greater flexibility and provide greater efficiencies in procuring contracts for the design, construction, and operation of eligible storage projects. The full text of AB 2551 appears online at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2551
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