



**October 2008**

**New Law Significantly Expands the  
Authorized Use of Design-Build Contracts  
by Cities and Certain Qualified Entities**

Effective January 1, 2009, Assembly Bill 642 allows cities to enter into design-build contracts for building construction projects in excess of \$1,000,000. It also authorizes certain qualified entities to enter into design-build contracts for the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

Design-build is a project delivery method whereby (in contrast to the traditional "design-bid-build") the design and construction aspects are contracted for with a single entity, defined in AB 642 as the "design-build entity." This system is used to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

Section 20175.2 of the Public Contract Code currently authorizes design-build for cities within Solano and Yolo Counties, and the cities of Stanton and Victorville, until January 1, 2011. AB 642 amends this section to significantly expand this authorization by allowing any city, with approval of the city council, to enter into design-build contracts for qualifying building construction projects in excess of \$1,000,000, and extends these provisions until January 1, 2016. Eligible projects include the construction of a building and improvements directly related to the construction of a building, but not streets and highways, public rail transit, or water resource facilities and infrastructure. The new law imposes significant bidding and approval standards on design-build contracts. A four-step process is specified: (i) preparation of documents setting forth the scope of the project, including performance specifications; (ii) preparation of a request for proposals inviting competitive, sealed proposals; (iii) establishment of a procedure to prequalify design-build entities using a standard questionnaire developed by the city; and (iv) establishment of a procedure for final selection of the design-build entity. A labor compliance program is also required. The enactment of AB 642 reflects the Legislature's desire to enable more cities to use cost-effective options for building and modernizing public facilities and recognizes the national trend to allow public entities to use design-build contracts as a project delivery method.

AB 642 also adds Section 20193 to the Public Contract Code. This section authorizes a "qualified entity" to use the design-build approach

on certain projects in excess of \$2,500,000. For purposes of this statute, "qualified entity" means an entity that meets both of the following criteria: (i) the entity is a city, a county, a city and county, or a special district; and (ii) the entity operates wastewater facilities, solid waste management facilities, or water recycling facilities. Qualified entities must comply with existing procedures for soliciting bids and awarding contracts for design-build projects. Only a limited number of design-build projects will be authorized by the Office of Planning and Research for qualified entities interested in using the design-build approach.

The Public Works Practice Group at Richards, Watson & Gershon is prepared to assist cities and qualified entities with using design-build contracts for construction of public improvements. Our attorneys have experience in the preparation, review, and implementation of design-build contracts for public entities.

FOR ADVICE FROM RW&G CONCERNING DESIGN-BUILD CONTRACTS OR AB 642, PLEASE CONTACT DEBBIE Y. CHO AT [DCHO@RWGLAW.COM](mailto:DCHO@RWGLAW.COM), MIKE ESTRADA AT [MESTRADA@RWGLAW.COM](mailto:MESTRADA@RWGLAW.COM), LARRY S. WIENER AT [LWIENER@RWGLAW.COM](mailto:LWIENER@RWGLAW.COM), OR ANY OF THE LAWYERS IN THE FIRM'S **PUBLIC WORKS** PRACTICE GROUP OR **PUBLIC LAW** DEPARTMENT.

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