



ACWA 2025 FALL CONFERENCE & EXPO

Procurement Pathways for Powering Water Infrastructure

December 2, 2025



12

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Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm's attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients' interests at every turn. BBK is recognized for decades of groundbreaking successes, loyal service, and a culture that respects and embraces different backgrounds, perspectives and experiences.



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Procurement Phase

- Preconstruction Phase
- **Procurement Phase**
- Construction Phase
- Post-Construction Phase

Traditional Procurement Pathways



- Typical project delivery methods
 - Design-bid-build
 - Bridging documents design-build

Alternative Procurement Pathways



- Alternative project delivery methods
 - Construction Manager/General Contractor (CM/GC)
 - (SB 598 - more to come in 2026)
 - Energy Conservation Contracts
 - (Government Code section 4217.10 *et seq.*)
 - Progressive Design-Build
 - (SB 706 (Public Contract Code section 22185 *et seq.*); SB 991 (Public Contract Code section 22170 *et seq.*))

Energy Conservation Contracts



- Government Code section 4217.10 *et seq.*
 - For thermal or electrical energy or conservation services provided by an energy conservation facility.
 - Allows for flexibility in procurement.
 - Can include financing of the energy conservation facility.
- Legal Considerations
 - Public agency must make certain findings prior to entering contract.
 - Legally sufficient procurement and contract documents.

Progressive Design-Build



- SB 706 (Public Contract Code section 22185 et seq.)
 - Most any type of project over \$5 million.
- 1-step RFQ process
 - Selection of the design-build entity is based on certain factors such as technical design and construction expertise along with other non-price related factors.
 - The local agency may require that a preliminary cost estimate be included in the design-build entities' responses and consider those costs in evaluating the statements of qualifications.

Progressive Design-Build



- Design and Construction
 - Once a design-build entity is awarded a contract, they can begin design and preconstruction activities sufficient to establish a GMP
 - After agreement on a GMP, the contract is amended to contract for completion of the design and construction of the project.
 - Any costs exceeding the GMP are the responsibility of the design-build entity.
 - If the parties do not reach agreement on a GMP, the local agency may solicit proposals from those firms that submitted SOQs or solicit pricing from other design-build entities and award a contract based on a best value basis.

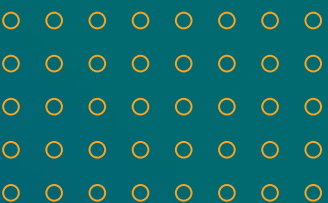
Progressive Design-Build



- Legal Considerations – Procurement Documents
 - Follow legislation and any funding source
 - Clear and concisely drafted
 - Make clear how entities will be evaluated and selected
 - Reserve rights to the local agency

Progressive Design-Build

- Legal Considerations – Contract Documents
 - Single contract covering both phases 1 and 2
 - Process for GMP amendment
 - Early procurement and work packages
 - Clear subcontractor procurement process
 - Process to cost self-performed work
 - Off ramps



Questions?

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