



## Summary of DBIA/CBA Legislation – December 2021

The legislation authorizes Design-Build as an option for public owners to use as an alternative delivery method for vertical infrastructure projects. The legislation does not eliminate traditional competitive bidding.

There are two Design-Build options for public entities to consider (excludes all horizontal infrastructure projects, Department of Transportation, municipalities and county):

- ▶ **Low Bid Design-Build – The bid package is developed by the public owner likely utilizing a bridging criteria professional (licensed architect or engineer). Teams of contractor/designer/engineer will collaborate on their bids. The team with the lowest bid will be awarded the contract.**
  - Low Bid Design-Build is an option on projects above \$5 million.
- ▶ **Best Value Design-Build – traditional Design-Build option for public owner.**
  - Best Value Design-Build is an option on projects above \$25 million
  - The selection criteria in the RFP and the price are the variables used to determine who is awarded the bid.
    - All design-build contractors will have their proposal scored based on technical points.
    - After all have been scored the scores will be announced.
    - The governmental entity shall then divide the design builder's price by the technical score to determine the "adjusted score."
    - The contract shall be awarded to the contractor with the lowest adjusted score.

Lowest responsible responsive bidder under Chapter 26 is the delivery method for all public projects under \$5 million.

The bid notice process is transparent and similar to current law for low bid. New items are:

- ▶ **The governmental entity may require the bidder to file with the governmental entity a statement showing the bidder's financial standing, equipment, and experience in the execution of like or similar work.**
- ▶ **A governmental entity may reject a bid if the governmental entity determines that the bidder has not performed in accordance with the terms of another contract for a public improvement awarded by a governmental entity to the bidder. Prior to rejecting a bid, the governmental entity must make a specific finding on the bidder's nonperformance and provide the bidder with the opportunity for a public hearing on the alleged nonperformance.**

The bid award process is transparent and is based on the low bid process.

A Construction Manager as Adviser (CMa) must be competitively bid as part of the total cost of a public improvement project.

A bridging criteria professional may be retained by the government entity as the government entity's representative to advise the government entity on design-build matters. The use of the bridging criteria professional shall be strictly to guide and administer the government's needs through the process.

Governmental entities or the state department of transportation shall not be authorized to enter into a Design-Build contract for public improvements relating to highway, bridge, or culvert construction.

The Board of Regents are treated the same as other public owners (except the DOT).

The legislation is silent on Construction Manager at Risk.