LEGAL & LEGISLATIVE NEWS
Spring 2006

Force Majeure: Time May Not Be Money

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The standard force majeure provisions contained in contracts such as the AIA A201, and the Design-Build Institute of America's ("DBIA") Standard Form of General Conditions of Contract Between Owner and Design-Builder are generally vague, nondescript and buried within time extensions clauses. For the most part this isn't much of a problem. The vast majority of projects are never affected by the types of occurrences that trigger force majeure provisions. However, in the wake of Hurricane Katrina, the language and remedies afforded by these types of provisions are garnering significant attention.

The main reason that these clauses have been brought to the forefront is that they provide very little protection for a project, and in particular a contractor or CM at-risk, that is faced with a disaster with lasting impact such as Hurricane Katrina.

The typical force majeure provision is drafted to provide scheduling relief for delays caused by occurrences beyond a contractor's control. However, the types of occurrences anticipated: strikes, fire, and inclement weather, all have fixed endings. Events such as Hurricane Katrina, or in Southern California, a significant earthquake, create very different problems where, although the actual event moves on, the aftermath is cataclysmic and ongoing.

After Hurricane Katrina, the Gulf Coast was struck with astronomical labor costs, increased material costs, and reduced material supplies. In addition, to the purely contractual costs of completing a project in the post-Katrina Gulf Coast, there were numerous intangible costs as well. Paramount among these was a lack of available workers and a lack of housing for the workers that were available.

Although it may be easy to look at the disaster that struck the Gulf Coast region and think that nothing with such a lasting impact could happen in Southern California, the

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reality is that a disaster of Katrina's magnitude is perfectly plausible.

A classic example is a major earthquake, possibly followed by a tsunami. Such an earthquake could wreak havoc and an accompanying tsunami could easily level coastal communities throughout Southern California.

In the aftermath of such a disaster, unless a well-drafted force majeure provision is in place, most CMs at-risk and contractors will be left holding the bag for everything from increased costs, to delay resulting from the after-effects of the disaster.

The standard force majeure provision contained in AIA document A201-1997 states in Paragraph 8.3.1 that:

If the Contractor is delayed at any time in the commencement or progress of the Work . . . by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, . . . then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

In its standard form, this clause does not afford much protection when a project is disrupted by a major disaster that has lingering effects. It is important to note that a time extension is all that is warranted or required under the language of the AIA clause. Further, the time extension is only granted for a reasonable time, as determined by the architect.

Setting aside the fact that this clause does not allow for the financial impact that may result from a force majeure event, it is also unclear whether the provision will provide additional time for the lingering effects of a disaster. While the event itself and the immediate aftereffects of the event may be over in relatively short period of time, significantly more time may be necessary in order to replace displaced workers, damaged materials, lost equipment, or even a home office. Despite the fact that the force majeure event may have caused these hardships, the standard AIA contract provision does not specifically deal with these issues.

The DBIA Standard Form of General Conditions of Contract Between Owner and Design-Builder also contains a force majeure provision that is virtually identical to the AIA provisions, with one major difference. The DBIA provision, located in Paragraph 8.2.1 states in part:

If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order.

The major difference between the DBIA's provision and the AIA provision is that the DBIA does not set out who determines what a reasonable time is. Unlike the AIA force majeure provision, the DBIA contract contemplates that the parties will work together to determine what amount of time is reasonable. Once again, the lingering effects that

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may result from a natural disaster are not accounted for.

Now let's contrast the AIA and DBIA provisions with the force majeure provision contained in the standard Associated General Contractors ("AGC") contract. Not surprisingly, the standard AGC contract allows for the recovery of costs associated with a force majeure event. Paragraph 6.3.1 of the AGC contract states:

If the Contractor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Contractor, the Contractor shall be entitled to an equitable extension of the Contract Time. In addition, if the Contractor incurs additional costs as a result of such delay, the Contractor shall be entitled to an equitable adjustment in the Contract Price . . .

It should be noted, however, that even though the AGC provision allows for an equitable adjustment of the contract price, the adjustment is limited to actual cost and does not allow for profit.

The ability to recover time or money in the wake of a force majeure event with lingering effects will be determined by the language contained in the contract. Even though it is easy to overlook force majeure clauses, recent natural disasters have shown us that they can be vital if called into play. It is crucial to examine the language of a force majeure provision and understand what risks are allocated to whom in the event of a force majeure event with lingering effects such as Hurricane Katrina or a major earthquake or tsunami.

The specific event that triggers the force majeure clause in the contract is less important than how the parties to the contract resolve that event. In the above examples depending upon which contract provision is used, either the owner or the contractor may be placed in a very undesirable economic situation that cannot be overcome in the short term. It may be in both parties best interest to discuss the specific remedies to the situation that both now face in an effort to comply with the provisions of the contract.

Some owners may wish to suspend the contract for a mutually agreeable time if there can be an agreement reached that is beneficial to both parties. Forcing a contractor to perform only to have the business fail and bonding company called in will not improve the situation in most situations envisioned above. There will be labor and material shortages within any region experiencing a widespread natural disaster or political upheaval. It may be more advantageous to take a step back and assess the situation on the project and work towards a solution that can be accomplished within a reasonable timeline given the factors involved in the specific event. The old saying, "you can't squeeze blood out of a rock", comes to mind and it

would be counterproductive in most cases to move towards a specific remedy that cannot be performed due to circumstances outside the contractor's control.

Owners generally need to protect other assets and may need the contractor's efforts to work on other more pressing needs in an emergency situation. This would also be the case for contractors that need to regroup and limit damages on other sites in the event of a major catastrophe. It will all depend upon the magnitude and duration of the event which most contract clauses cannot foresee. Sometimes both parties may mutually agree to renegotiate some of the terms of the contract based upon mutual self interest that can be beneficial during a disaster recovery situation. In other words, sometimes the contract is not enough to bind the parties if there are forces beyond the control of both to continue a good faith effort within the contract's current structure.

In a hurricane disaster recovery most public agencies have emergency contract provisions already in place. If a hurricane such as Katrina or Andrew hit an area with severe devastation then those contracts are probably not worth the paper they are written on because the contractors will be unable to perform due to labor and material shortages. It would be in the best interest of all parties, including the public, to have the agency work with the contractors to provide the level of support that is available for the most pressing needs in the recovery effort. Sometimes you just have to sit down and talk about what is in the best interest of all parties in order to come to the best resolution given the circumstances.

When Is a Change Order Final?

One of the most frequently contested issues on a project relates to the scope and effect of executed change orders. When a change order is negotiated between parties and a contract is modified as a result, the discharge or the obligation to pay for the change order work and the performance of the work for the additional compensation is called an "accord and satisfaction."

Simply put, accord and satisfaction means the parties have agreed that, upon completion of the work required by the change order, any claims regarding that change will have been fully resolved, and no further claims concerning that contract change will be permitted. In this case, such claims are said to be discharged.

But does the executed change order preclude any further claim regarding that scope or impact from the change order work? It depends. If the negotiated change order contains release language (relinquishment of any further claims), then the answer depends on what specifically was released. In the event that the change order does not contain release language, whether the change order resolves any future impacts or compensation depends upon a close reading of the change order language itself.

In the second case, an analysis needs to be made as to whether there was consideration and a "meeting of the minds" between the owner, the architect or engineer, and the contractor as to the scope of the work and the discharge of any further obligations. In general, when the change order contains release language, this language determines the scope of the discharge. Unfortunately, many change orders negotiated on a construction project don't specify the scope for unstated impacts as a consequence of the change.

On the one hand, the owner or A/E typically argues that an accepted change order is all-inclusive and encompasses compensation both for direct and indirect impacts; however, the contractor usually states that a change order only covers the direct cost of the work, not the cost of the impact from the change because the impact is typically unknown when the change order is executed. Therefore, the argument follows; there could be no agreement about the scope of the change order compensation. With this dichotomy between owner or A/E and the contractor, how are their respective positions reconciled?

Since the courts look to whether the scope and compensation were discussed, there has to be something more than the subjective intent of either on e of the parties. In other words, a contractor or owner cannot claim what it intended based upon its own interpretation; instead, outside factors, such as letters, memos, contemporaneous statements and conduct, are examined. Courts look for evidence of mutual intent. Obviously, there is no mutual intent if an owner or A/E issues a unilateral change order.

The courts look to the language of the change order to determine the scope and, in particular, whether an agreement was reached as the result of bilateral negotiations. As such, factual analysis should be completed regarding the facts and circumstances surrounding those negotiations. It is important when negotiating change orders that the specific scope is identified, as well as the extent to which any claims are being reserved for future compensation, if applicable. It pays to document the negotiations.

Change orders can also contain release language that demonstrates an intent by the parties to compensate for and give up a claim. If a change order is intended to be a release too, it is important that the release language is specific. A generally-worded release is of no practical benefit, a release should address the cost of the work, the scope of the work, the time impact, delay costs, impact costs, and any assumptions which form the basis of the negotiation. Failure to address these issues only leads to problems with straggling claims or renegotiations of items one party or the other thought were concluded.

Before the change orders are executed, the parties should review and read any language carefully. Boiler-plate release language used over and over tends to undermine specific intent and may not reflect the actual bargain reached between the parties.

In almost every case, general releases should be avoided - they usually do more harm than good when it comes to resolving any claim at the end of a project. Unfortunately, owners and A/Es often find out - to their detriment - that poorly worded change orders, or change orders with reservation of rights, only lead to a renegotiation of items once thought complete.

Of course, if the magnitude of the change or claim is significant, effective use of a knowledgeable construction attorney in drafting language to resolve claims or change orders on the project can be most helpful; and, when the project is finally complete, many of the claims can be put to rest and not have to be negotiated.

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"Procurement of CM Services By Public Agencies: The California Statute'"

In 1974, the California Legislature codified a statute governing the Procurement of Professional Services (Government Code §§ 4525 to 4529.5). The statute was amended in 1987 to add "Construction Project Management." The statute applies to the procurement of "Construction Project Management" by state agencies and local agencies. It defines "Construction Project Management" as "…those services provided by a licensed architect, registered engineer, or licensed general contractor, which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects."

The statute provides that selection by a state or local agency for "Construction Project Management firms" shall be on the basis of "…demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required." In order to implement the foregoing method of selection, the state agency shall adopt by regulation and local agencies shall adopt by ordinance procedures that assure that Construction Project Management services are procured on the basis of "…demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies." Further, the procedure shall assure maximum participation of small business firms. In addition, the procedures specifically prohibit practices which might result in unlawful activity including, but not limited to, "…rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section…"

The statute further provides that in the procurement of Construction Project Services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a Statement of Qualification and Performance Criteria. When the selection is made by a state agency head, it shall be made through publications of the respective professional societies. The agency head shall, for each proposed project, evaluate the current Statements of Qualifications and Performance Data on file with the agency, together with those that may be submitted by other firms regarding the proposed project. The agency head shall then conduct discussions with no less than three (3) firms regarding the anticipated concepts and the relative utility of alternative methods of approach for the furnishing of the required services and then shall select therefrom, in order of preference, based upon the criteria established and published by the agency head, no less than three (3) of the firms deemed to be the "…most highly qualified to provide the services required." The same procedures are to be followed by the head of any local agency.

With regard to the negotiation of the contract, the state agency head or the local agency head shall negotiate a contract with "…the best qualified firm for…Construction Project Management Services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved." The same criteria is applicable to local agencies. Should the state agency head or the local agency head be unable to negotiate a satisfactory contract with the firm considered to be "…the most qualified…" at a price that the agency head determines to be "…fair and reasonable", the negotiations with that firm shall be formally terminated. The state agency head or the local agency head shall then undertake negotiations with the second most qualified firm. Failing to reach an accord with the second most qualified firm, the state agency head or local agency head shall terminate negotiations and then undertake negotiations with the third most qualified firm. If the state agency head or the local agency head is unable to negotiate a satisfactory contract with any of the selected firms, the state agency head or the local agency head shall then select additional firms in order of their competence and qualifications and continue the negotiations until an agreement is reached.

This law, likewise, provides that it does not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

Finally, the law provides that any firm proposing to provide Construction Project Management Services shall provide evidence that the individual or firm and its personnel "…carrying out on-site responsibilities…" shall have expertise and experience in the following areas: (1) construction project design, review and evaluation; (2) construction mobilization and supervision; (3) bid evaluation; (4) project scheduling; (5) cost benefit analysis; (6) claims, review and negotiation; and (7) general management and administration of a construction project.

It is clear by the foregoing statute that Construction Project Management Services is based upon demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Said statute does not require competitive bidding. The state agency or local agency identifies the best qualified firms based upon responses to requests for proposals and then negotiates a contract with the best qualified firm. Once the agency in question has identified the qualified firms, they may then negotiate a contract at a compensation which the agency determines is fair and reasonable.

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2006 Legislative Session/Construction Related Bills March 2006 Update

The current legislative session began January 4, 2006. Legislators had until February 24, 2006, to introduce bills. Over 1,600 bills were introduced before the deadline. The Legislature's next deadline is June 2, 2006, wherein it must pass bills out of their house of origin. Bills can then be amended until August 25, 2006. The final deadline for bills to be passed in each house is August 31, 2006. The Governor then has until September 30, 2006, to sign or veto the passed bills. The Governor can also choose to take no action on a bill and it will become law. Bills that become law will go into effect on January 1, 2007, unless they are passed with urgency status.

One bill from the 2005 session relating to construction was carried over to the 2006 session. The Governor vetoed AB 57 concerning prevailing wages but reconsideration of his veto was granted. The Legislature had until February 25, 2006, to act on AB 57. The consideration of the Governor's veto was stricken on February 23 and the bill is now dead. This bill would have prohibited an employer from taking credit against prevailing wage obligations from pension or other contributions unless the employer makes the contribution on no less than a quarterly basis.

More than 30 bills relating to the construction industry were introduced before the February 24 deadline. As bills are amended their subject matter can change substantially and the number of bills relating to the construction industry may change. Legislative information including the text of bills and their current status is available at http://www.leginfo.ca.gov/. The bills relating to the construction industry currently pending are summarized below.

Construction Defects

AB 2655: Construction Defects–Waterproofing System (Plescia) This bill relates to the determination of liability in residential construction defects. It will set forth standards governing shower and bath waterproofing systems and the waterproofing system behind ceramic tile. Current law sets forth standards governing shower and bath enclosures and ceramic tile with respect to water issues. This bill will amend Civil Code §896 if passed.

AB 2803: Attorney Advertising–Residential Construction Defects (Parra) This bill relates to direct mail solicitations by attorneys that urge the filing of claims for residential construction defects. It will require disclosure in the solicitation of alternatives to litigation and the potential adverse consequences of litigation. This bill will add to Business and Professions Code §6157.8 if passed.

AB 3043: Construction Defects–Pre-Litigation Procedure (Houston)

This bill relates to the written notice required to be given before the commencement of litigation arising from residential construction defects. It will require the written notice to also include citation to the applicable standards for home construction that are alleged to have been violated.

This bill will amend Civil Code §910 if passed.

SB 1581: Construction Defects–Litigation/Insurance (Dunn)

This bill provides that it is the intent of the Legislature to enact legislation relating to the resolution of construction defect claims and litigation and to also address the costs of liability insurance for builders, contractors and subcontractors.

Building Standards

AB 2160: Environment–Green Building Guidelines (Lieu)

This bill provides that it is the intent of the Legislature to enact legislation requiring state agencies to develop voluntary residential model green building guidelines.

AB 2496 Water Conservation–Low Flush Water Closets (Laird) This bill will require all buildings constructed after January 1, 2008, with tank type use water closets, to use a specified amount of water per flush that is less than currently allowed and to meet most performance standards of the American Society of Mechanical Engineers. It will also require the same standards for all buildings constructed after January 1, 2009, with flushometer type water closets and all urinals. Violation of these provisions will be a crime. This bill will amend Health and Safety Code §17921.3 if passed.

Subsurface Excavation

SB 1359: Subsurface Installations–Excavations (Torlakson) Existing law sets forth procedures for planned excavations near subsurface installations and provides that an excavator who fails to comply with these regulations is liable for any damage unless the owner or operator has not complied with regulations. This bill creates additional procedures for the excavator, the owner or operator and the regional notification center. This bill will amend Government Code §4216, §4216.2, §4216.3, §4216.4 and §4216.7 if passed.

SB 1605: Public Contracts–Public Works (Margett)

Existing law sets forth procedures to be followed when a contractor discovers hazardous waste, differing subsurface or latent conditions, or unknown physical conditions during excavations and requires an investigation by the public agency of the conditions. This bill specifies that the contractor notify the public entity in writing of any subsurface or latent physical conditions that differ from the conditions identified by the public entity at the time the contract was awarded.

This bill will amend Public Contract Code §7104 if passed.

Mechanics' Liens

AB 1902: Mechanics' Liens–Release of Property/Attorney's Fees (Villines)

Existing law relating to mechanics' liens provides that, where no action to enforce the lien has been brought, the owner can petition the court for a decree to release the property from the lien.

Further, the prevailing party can recover attorney's fees not to exceed $2,000. This bill will eliminate the $2,000 limitation. This bill will amend Civil Code §3154 if passed.

Contractors' Licenses

AB 2454: Contractors–Licensing (Nakanishi)

Existing law provides that a licensee who fails to maintain the required bond can be suspended or revoked, subject to certain procedural requirements. This bill will instead provide that failure to maintain a bond will result in automatic suspension without prior notice from the Contractors' State License Board. Reinstatement will be automatic if a valid bond is filed. This bill will repeal and add Business and Professions Code §7071.15 if passed.

AB 2455: Small Claims Court–Jurisdiction (Nakanishi) This bill will give the small claims court jurisdiction over actions based upon claims against defendant guarantors who are required to respond based upon the default, actions or omissions of another if the demand does not exceed $4,000 and either (a) the defendant guarantor charges a fee for its services or (b) the defendant guarantor is the Registrar of the Contractors' State License Board and the complaint is brought by other than a natural person. Further, it will clarify that the small claims court has jurisdiction in any action brought by a natural person against the Registrar of the Board where the demand does not exceed $7,500. This bill will amend Code of Civil Procedure §116.220 if passed.

AB 2456: Contractors–Licenses (Nakanishi) This bill will prohibit personnel of a suspended Contractors' State License Board license from serving as certain types of personnel for another licensee. It will also suspend a contractor's license if it employs personnel of record that have been assessed an outstanding liability, until the debt has been satisfied or the personnel of record have been disassociated. Outstanding liability includes taxes, penalties, interest and any fees that may be assessed by the Board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board. Violation of these provisions will be a crime. This

bill will amend Business and Professions Code §7145.5 if passed.

AB 2658: Contractors (Huff) Existing law allows the Contractors' State License Board to suspend or revoke a contractor's license and to require, as a condition of reinstatement, the full satisfaction of any resulting monetary obligation or debt except if it was adjudicated in a bankruptcy proceeding. This bill will instead provide that the contractor may not be required to satisfy the monetary obligation or debt to the extent it was discharged in a bankruptcy proceeding. It will include any obligation arising from settlement in bankruptcy or reorganization with creditors under federal law to the extent it is not discharged. This bill will amend Business and Profession Code §7102 and §7113.5 if passed.

AB 2897: Contractors–Revoked Licenses (Daucher) This bill will prohibit a member, officer, director, owner or partner of a contractor whose license was revoked from performing acts regulated by the law on behalf of a licensed contractor except as a bona fide non-supervising employee. A licensed contractor will also be prohibited from knowingly hiring those individuals, except as bona fide non-supervising employees. Violation of these provisions will be a crime. This bill will add Business and Professions Code §7121.6, §7121.7 and §7121.78 if passed.

Professions and Trades

AB 2914: Limited Liability Partnerships–Architecture (Leno) This bill relates to existing law that allows the formation of foreign limited liability partnerships and registered limited liability partnerships in the practice of architecture. It will extend indefinitely the current provisions set to expire January 1, 2007. This bill will amend Corporation Code §16101 and repeal §504 of Statutes of 1998 if passed.

AB 2119: Apprenticeship Standards (Maze)

This bill relates to the training, competency, and certification standards for electricians as set by the Division of Apprenticeship Standards. It will limit the definition of an electrician to persons working on systems of 100 volts or greater. This bill will amend Labor Code §3099 if passed.

SB 1365: Electrician Apprenticeships (Aanestad) This bill relates to uncertified persons who have registered with the Division of Apprenticeship performing electrical work under the direct supervision of a certified electrician. Current law allows for a certified electrician to supervise no more than one uncertified person. This bill will permit a certified electrician to supervise up to three uncertified persons. This bill will amend Labor Code §3099.4 if passed.

Public Works

AB 2331: Prevailing Wage Exclusion–Qualified Transfers (Villines)

This bill will exclude from prevailing wage requirements any project that is funded in whole or in part by a qualified transfer by a city, county or redevelopment agency of qualified real property to a nonprofit corporation. This bill will add Labor Code §1771.1 if passed.

AB 2372: Public Projects–Sanction for Noncompliance (Pavley) This bill relates to the California Uniform Public Construction Cost Accounting Act and its authorized bidding procedures. If a participating public agency is found to have not complied with the authorized bidding procedures on three occasions within a 10 year period, it will be prohibited from using the bidding procedures for a period of five years. This bill will add Public Contract Code §22044.5 if passed.

AB 2832: School Districts–Public Project Contracts (Runner) Existing law allows a school district to alter a public project contract as long as the change does not exceed a specified statutory amount or 10% of the original contract price, whatever is greater. For projects involving multiple contractors, this bill will provide that the contract may be altered so long as the change does not exceed the specified statutory amount or 10% of the aggregate amount of the total contract, whichever is greater. This bill will amend Public Contract Code §20118.4 if passed.

AB 2833: School Districts–Public Project Contracts (Runner) This bill will require school district contracts in the amount of $50,000 or more to be competitively bid. The current limit is $15,000 or more. This bill will also require completed proposal forms to be submitted 15 days prior to the dated fixed for the opening of bids. The current deadline is 5 days. This bill will amend Public Contract Code §20111 and §20111.5 if passed.

SB 1196: Local Government Omnibus Act of 2006 (Committee on Local Government)

This bill will, in part, increase the current limits relating to bidding when the Uniform Public Construction Cost Accounting Act is voluntarily used by local agencies on projects worth less than $100,000, This bill will, in part, amend Public Contact Code §22032 and §22034 if passed.

SB 1281–Public Contracts (Romero)

This bill will prohibit a state agency from entering into a contract with a contractor who does not have and adhere to a written policy providing its full-time employees with a not yet specified number of days of paid jury duty. This bill will add Public Contract Code §10295.7 of passed.

SB 1456: School Facilities–Construction, Rehabilitation and Modernization: Best Value Contracting (Lowenthal) The purpose of this bill is to provide school districts with an alternative bid valuation method. It will allow a school district to contract for construction, rehabilitation or modernization projects under a "best value" bid valuation process, as specified, if the cost of the project exceeds $2,000,000 and if there is a reasonable expectation of a net cost benefit. This bill will add Chapter 2.3 (commencing with §17248) to Part 10.5 of the Education Code if passed.

SB 1604: Public Contracts–Bids and Disputes (Margett) Current law prohibits a public contract from including bid specifications that would limit the bidding to one concern or product unless it is followed by the word "or equal" and allows the contractor a period of time before or after the award of the contract to submit data showing the concern or product is equal. This bill will instead make the period of time after the award of the contract only. It will also require a contractor to include a declaration under penalty of perjury that it has not participated in specified collusive activities. This bill will repeal Government Code §53068 and amend Public Contract Code §3400, §4104.5, §7105 and §7106 if passed.

Design-Build

AB 1838: Transportation Bond Acts of 2006, 2008, and 2012–Transportation Contracting (Oropeza) This bill will, in part, authorize certain state and local transportation entities to use design-build for specified transportation projects. It will also require the design-builder to include with its bid verification of certain information under penalty of perjury. This bill will further require a labor compliance program and the transportation entities to report to the Legislation on implementation of the design-build process. This bill will also authorize, until January 1, 2012, four additional design-sequencing transportation projects to the existing 12 authorized until January 1, 2010, in the pilot project. This bill will, in part, add Title 19 (commencing with§20209.20) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code if passed.

AB 2025: Design-Build Contracts (Niello)

This bill will authorize the Department of Transportation to contract using design-build fortransportation projects and require the establishment of a prequalification and selection process.

It will also require the design-builder to verify certain information under penalty of perjury.

This bill will add Article 8 (commencing with §228) to Chapter 1 of Division 1 of the Streets and Highways Code if passed.

AB 2580: Sanitation District Design-Build Contracts (Walters) This bill will authorize, until January 1, 2011, sanitation districts to enter into design-build contracts in excess of $1 million and require the projects to be awarded using the best value method. It will also require the design-builder to complete a standard questionnaire to be verified under penalty of perjury. This bill will add and repeal Public Contract Code §20785 if passed.

AB 2992: California State University–Competitive Bidding Report (Evans)

This bill will require the Trustees of the California State University to report to the Legislature on or before July 1, 2007, regarding the effec-

Upcoming Events

Some exciting events to look forward to in 2006 . . .

Date	Event	Type	Location
April 13	LAWA—Sponsor: CH2M Hill	*Dinner/Reception*	Downtown Los Angeles Marriott
April 20	Change Orders	*Legal Seminar*	The Grand Conference Center, Long Beach
April 27	Vision 2006 Conference	*Conference*	Downtown Los Angeles Marriott
April 27	Annual Awards Banquet (Scholarship & Project Awards)	*Special Event/Dinner*	Downtown Los Angeles Marriott
May 7-9	CMAA Spring Conference	*Legal Conference*	Philadelphia
May 18	Mechanic's Liens, Stop Notices and Bonds	*Seminar*	The Grand Conference Center, Long Beach
May 24	OCTA—Sponsor: Carter & Burgess	*Dinner*	The Grand Conference Center, Long Beach
June 8	Green Building – LEED	*Seminar*	The Grand Conference Center, Long Beach
September 18	Golf Tournament	*Special Event*	Skylinks, Long Beach

For more information regarding these evensts, please visit our Chapter's Web site at: **www.cmaasc.org** or the national Web site at: **www.cmaanet.org**

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tiveness of the competitive bidding process on design build projects. This bill will amend Public Contract Code §10708 if passed.

SB 1161: State Highways–Design-Sequencing Contracts (Alarcon) The Department of Transportation is currently authorized to conduct a pilot program until January 1, 2010, awarding design-sequencing contracts on not more than 12 projects. This bill will generally authorize the Department to use the design-sequencing contract method if certain requirements are met. This bill will amend Street and Highways Code §217, §217.7 and §217.9 and repeal §217.8 if passed.

SB 1165: Transportation Bond Acts of 2006, 2008 and 2102–Transportation Contraction (Dutton) This bill will, in part, authorize certain state and local transportation entities to use design-build for specified transportation projects. It will also require the design-builder to include with its bid verification of certain information under penalty of perjury. This bill will further require a labor compliance program and the transportation entities to report to the Legislation on implementation of the design-build process. This bill will also authorize, until January 1, 2012, four additional design-sequencing transportation projects to the existing 12 authorized until January 1, 2010, in the pilot project. This bill will, in part, add Title 19 (commencing with §20209.20) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code if passed.

SB 1431: Public Contracts–Design-Build Contracting: Cities, Counties, and Special Districts (Cox) This bill will permit any city, until January 1, 2017, to enter into design-build contracts. It would also authorize any county or special district, until January 1, 2017, to enter into design-build contracts and require contracts costing more than $2.5 million to be awarded to the lowest responsible bidder or by best value. The Legislative Analyst will be required to report to the Legislature regarding the effectiveness of the design-build program. This bill will amend Public Contract Code §21075.2 and §20133 and add and repeal Article 5.5 (commencing with §20193) of Chapter 1 of Part 3 of Division 2.

SB 1494: Top Priority Transportation Projects (McClintock) This bill will, in part, authorize the Department of Transportation or other implementing agency to use design-build and design-sequencing procedures for projects of statewide significance designated as top priority projects. This bill will add Streets and Highways Code §168 if passed.

CMAA Southern California News

Winter 2006

CMAA Southern California News is published for the members of the Southern California Chapter of the Construction Management Association of America for the purpose of informing the members of local and national news, chapter events and industry trends.

Articles published in CMAA Southern California News contain the opinions of the authors and do not necessarily represent the position of the CMAA Southern California Chapter.

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CMAA Newsletter published compliments of:

DMJM H&N | AECOM