

Date of Hearing: September 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 793 (Hill) – As Amended September 8, 2017

SENATE VOTE: 39-0

SUBJECT: Competitive bidding: design-build and best value construction contracting.

SUMMARY: Allows the Peninsula Health Care District (Peninsula HCD), the Midpeninsula Regional Open Space District (Midpen) and Santa Clara Valley Open-Space Authority (Santa Clara Valley OSA) to use design-build contracting for construction of buildings or other facilities in those districts, and expands a pilot program that allows seven counties to use best value contracting for specified projects until January 1, 2020. Specifically, **this bill:**

- 1) Allows, until January 1, 2023, Peninsula HCD, Midpen and Santa Clara Valley OSA, upon approval by their boards of directors, to use the design-build procurement process that existing law authorizes for local agencies to assign contracts for the construction of facilities or other buildings in those districts.
- 2) Provides, for the purposes of this bill, that all references to "local agency" in existing law authorizing local agencies to use design-build shall mean Peninsula HCD, Midpen and Santa Clara Valley OSA and their boards of directors.
- 3) Requires that, to the extent that any project utilizing design-build authorized by this bill is otherwise required to comply with the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Act), this bill shall not be construed as an exemption from that Act.
- 4) Exempts projects built by Midpen and Santa Clara Valley OSA from the existing \$1 million minimum project cost limitation that applies to the existing authority of local agencies to use design-build.
- 5) Expands a pilot program that allows seven counties to use best value contracting for specified projects until January 1, 2020, by doing the following:
 - a) Adds San Mateo County to the list of counties authorized to use the pilot program; and,
 - b) Allows counties in the pilot program to also use the program's best value construction contracting method to award individual annual contracts, which shall not exceed \$3 million, adjusted annually to reflect the percentage change in the California Consumer Price Index (CPI), for repair, remodeling, or other repetitive work to be done according to unit prices, and further specifies the following:
 - i) The contracts shall be based on plans and specifications for typical work. No annual contracts may be awarded for any new construction;

- ii) Best value criteria shall be applied to the annual contract for construction services, rather than to an individual, specific project. Annual contracts may be extended or renewed for two subsequent annual terms and a maximum of \$6 million over the subsequent two terms of the contract. Contract values shall be adjusted annually to reflect the percentage change in the California CPI; and,
 - iii) "Unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. "Repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.
- 6) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following:
- a) The unique circumstances relating to Peninsula HCD, Midpen and Santa Clara Valley OSA; and,
 - b) The unique need of San Mateo County to expedite project delivery on a five-year capital improvement plan for the development of eight new county projects; therefore, this authority is necessary to avoid unnecessary change orders, construction defects, delays, and litigation that ultimately cost taxpayers more than the savings that were realized by awarding a contract to the lowest bidder.
- 7) Provides that no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, changes the penalty for a crime or infraction, or changes the definition of a crime, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Bill Summary.** This bill allows, until January 1, 2023, Peninsula HCD, Midpen and Santa Clara Valley OSA to use the design-build procurement process that existing law authorizes for local agencies to assign contracts for the construction of facilities or other buildings in those districts. This bill also exempts projects built by Midpen and Santa Clara Valley OSA from the existing \$1 million minimum project cost limitation that applies to the existing authority of local agencies to use design-build, which means these two districts could utilize design-build for any project regardless of its cost.

Amendments adopted on September 8 add provisions that expand a pilot program allowing seven counties to use best value contracting for specified projects until January 1, 2020, by doing the following:

- a) Adding San Mateo County to the list of counties authorized to use the pilot program; and,

- b) Allowing counties in the pilot program to also use the program's best value construction contracting method to award individual annual contracts for repair, remodeling, or other repetitive work to be done according to unit prices – also known as job order contracting or a job order contract (JOC). These contracts cannot exceed \$3 million, adjusted for inflation, and must be based on plans and specifications for typical work. They also cannot be for new construction. Best value criteria must be applied to the annual contract for construction services, rather than to an individual, specific project. Annual contracts may be extended or renewed for two subsequent annual terms at a maximum of \$6 million over the subsequent terms. Contract values must be adjusted annually to reflect the percentage change in the California CPI. The bill defines "unit price" to mean the amount paid for a single unit of an item of work, and "typical work" to mean a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. "Repair, remodeling, or other repetitive work to be done according to unit prices" must not include design or contract drawings.

This bill is sponsored by Midpen.

- 2) **Author's Statement.** According to the author, "SB 793 is a district bill – it will save taxpayer dollars by allowing three special districts – the Peninsula Health Care District, the Santa Clara Valley Open-Space Authority, and the Midpeninsula Regional Open Space District to utilize design build on upcoming construction projects. Additionally, the bill will authorize San Mateo County to take advantage of a best value pilot program to facilitate and expedite their 5-year \$444 million Capital Improvement Plan and clarifies that those counties in the best value pilot program have the option to utilize job order contracting in conjunction with the best value pilot program."
- 3) **Best Value Pilot Program.** SB 762 (Wolk), Chapter 627, Statutes of 2015, established a pilot program until January 1, 2020, that allows the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba to award contracts for construction projects in excess of \$1 million to the bidder representing the best value. Participating counties must satisfy a number of requirements in order to use this authority, including:
 - a) Adopting and publishing procedures and required criteria that ensure all selections are conducted in a fair and impartial manner;
 - b) Evaluating at a public meeting the alternative of awarding the contract on the basis of the lowest bid price;
 - c) Making a written finding that awarding a contract on the basis of best value will reduce project costs, expedite project completion, and/or provide features not achievable via the low-bid method;
 - d) Preparing bid solicitations and providing notice as required by the Local Agency Public Construction Act (LAPC Act), and complying with the Subcontracting Fair Practices Act (Subcontracting Act) regarding subcontractors identified in a bid;
 - e) Establishing prequalification procedures in accordance with the LAPC Act;

- f) Including in bid solicitations the criteria and rating system a county will consider in evaluating bids;
 - g) Prequalifying or shortlisting only those contractors who provide an enforceable commitment to use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation, with specified exceptions;
 - h) Appointing an evaluation committee, which must evaluate bidders solely upon the criteria in the bid solicitations and assign a qualifications score to each bid;
 - i) Determining best value by dividing each bidder's price by its qualifications score, with the lowest cost per quality point representing the best value bid;
 - j) Publicly announcing bid awards, including the score of the selected contractor in relation to all other bidders; and,
 - k) Submitting a report to the Legislature, including information about the county's use of this bill's authority, before the pilot program sunsets on January 1, 2020.
- 4) **Job Order Contracting.** A JOC is a competitively bid, fixed price, indefinite quantity contract for the performance of minor construction, as well as the renovation, alteration, painting and repair of existing public facilities. A JOC is generally a multi-year contract that includes a base year and multiple "option years," and is awarded before the awarding agency has identified specific work that it needs the contractor to perform. A typical JOC involves a variety of tasks such as roofing, electrical work, plumbing and painting, that are required for all of a public agency's buildings for a period of years.

A JOC is a fixed price agreement in that it is based upon specified charges contained in a Unit Price Book (UPB), which is prepared by the public agency or by independent commercial sources. The UPB sets forth detailed repair and construction tasks, including task descriptions, specifications, units of measurement, and unit prices for each task ("Unit Price" means the amount paid for a single unit of an item of work). A contractor's bid is expressed in terms of a percentage of the specified UPB charges, such as 115%. The UPB is then used to determine the costs of each proposed project during the term of the contract. The total JOC value may be specified as a range with a certain guaranteed minimum. The award of annual contracts on a unit price basis enables what would otherwise be multiple separately-bid projects to be combined into one bid.

California counties have enjoyed the authority to use JOC since 1983, and the California State Association of Counties reports no known problems or issues with its use to date. Counties may award annual JOCs of up to \$3 million, adjusted annually to reflect the California CPI, to the lowest responsible bidder. No contracts are allowed for new construction, and no work may be performed for design or contract drawings.

- 5) **Recent Amendments.** This bill was amended since this committee heard it on July 12 to expand the best value pilot program to include San Mateo County. According to San Mateo County, "In April 2017, the San Mateo County Board of Supervisors approved a \$444.4 million Five-Year Capital Improvement Plan for the development of eight new County projects: Health System Campus, County Office Building #3, Government Center Parking

Structure, Lathrop House Relocation, Cordilleras Mental Health Facility, South San Francisco Health Campus, Maple Street Homeless Shelter, and County Radio Shop. With an ambitious plan to complete the projects over the next five years (2021), the County of San Mateo seeks authority to use this alternative procurement method as it would allow the County to exercise more discretion in the awarding of contracts to the bidder that is most likely to provide it and the taxpayers of San Mateo with the best project outcome for a fair price."

Recent amendments also seek to allow counties to use the best value pilot program procedures to award JOCs. According to the Gordian Group, which is requesting this provision, "When the best value pilot program was implemented in 2015 via SB 762 (Wolk), the concept was that best value could be used as an overlay to any of the existing procurement methods the counties already used. Unfortunately, due to conflicting interpretations of the language used in the authorizing language of the pilot program, it is not clear that best value can be used with JOC. This stems largely from the fact that JOC is a contract-based procurement method, rather than a project-based procurement method. As such, the current pilot program, which authorizes best value on 'projects' could be interpreted as not allowing best value on 'contracts.' The amendments remove the ambiguity and make clear that best value can be used with the same JOC authority that counties have always had."

For a full analysis of the provisions of this bill that were in place before the September 8 amendments, please refer to the Assembly Local Government Committee analysis dated July 12, 2017.

- 6) **Arguments in Support.** Midpen, sponsor of this bill, writes, "Design-build is an expedient method to deliver a project in which both the design and construction services are contracted at one time to a single entity known as the design-builder or design-build contractor. This arrangement allows a designer to work closer with a contractor to develop the design plans and ensure up front the constructability of the design specifications and the availability, cost effectiveness, and timing of the materials selection. Moreover, since design-build is not subject to the lowest bidder requirement of a more traditional design-bid-build process, the best, most qualified firm or team can be selected for a project. As a result, design-build often leads to overall cost savings, earlier project completion, and a greater attention to detail and quality work, all of which benefit the public taxpayer who is paying for and subsequently enjoying the use of these improvements.

"Moreover, unlike many agencies, Midpen projects are often located in remote areas, with minimal utilities and narrow, steep, and wooded access roads. These conditions make for unexpected hurdles not anticipated by most contractors who are accustomed to working in more urban settings. The ability to participate in design-build would ensure the selection of firms that are well qualified and equipped to work in these remote and rugged site conditions. In addition, design-build would also protect the public's natural resources by ensuring that contractors who work on these projects are well experienced and possess strong resource and conservation-minded practices who understand and value the importance of nesting seasons, species protection, and water quality. Midpen is proud to sponsor a bill that will help ensure that each of the subject entities maximizes the utility of their publicly entrusted funds."

The Gordian Group, in support, states, "JOC has been proven to save time and money for minor renovation, repair and maintenance projects. JOC is a successful tool and demand for

it is growing. Clarifying that the pilot program counties can use JOC with best value will help ensure that JOC remains a successful and efficient option for local governments."

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Midpeninsula Regional Open Space District [SPONSOR]
Association of California Healthcare Districts
California Special Districts Association
The Gordian Group
Peninsula Health Care District
San Mateo County
Santa Clara Valley Open Space Authority
State Building and Construction Trades Council

Opposition

None on file

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