

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 914 (Dodd) – As Amended June 6, 2018

SENATE VOTE: 38-0

SUBJECT: Local agency contracts: construction manager at-risk construction contracts.

SUMMARY: Expands the types of projects counties can deliver using the construction manager at risk (CMAR) contracting method. Specifically, **this bill:**

- 1) Authorizes a county, with approval of the board of supervisors, or a public entity, with approval of its governing body, to use CMAR contracts for the erection, construction, alteration, repair, or improvement of any infrastructure owned or leased by the county, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control, underground utility improvements, and bridges.
- 2) Defines “public entity” as any public entity in which the county board of supervisors is the governing body.

EXISTING LAW:

- 1) Requires, pursuant to the Local Agency Public Construction Act (LAPC Act), local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder under the traditional design-bid-build project delivery system.
- 2) Authorizes, until January 1, 2025, cities, counties, and specified special districts and transit agencies to use design-build for specified public works contracts in excess of \$1 million using either a low bid or best value process.
- 3) Provides the following parameters for cities and counties that use design-build:
 - a) Allows design-build for the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities;
 - b) Allows cities and counties that operate wastewater facilities, solid waste management facilities, or water recycling facilities to use design-build for the construction of such facilities, both local and regional; and,
 - c) Prohibits cities and counties from using design-build for the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.
- 4) Authorizes, until January 1, 2023, counties to use CMAR for the construction of buildings costing in excess of \$1 million and allows a county to award the contract to the lowest responsible bidder or by the best value method.

- 5) Prohibits a CMAR bidder from being prequalified or shortlisted or awarded a contract, unless the entity provides an enforceable commitment to the county that the entity and its subcontractors at every tier will use a skilled and trained workforce (STWF).
- 6) Exempts a project from the STWF mandate if the project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the county before January 1, 2018.

FISCAL EFFECT: None

COMMENTS:

- 1) **Local Government Contracting.** The LAPC Act requires local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder. This design-bid-build method is the traditional, and most widely-used, approach to public works construction. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local officials invite bids from the construction community and award the contract to the lowest responsible bidder. However, many local public agencies have grown frustrated with the traditional method of project delivery, design-bid-build, arguing that it is slower and more costly than other procurement methods. In response, the Legislature has adopted several bills over the last five years to give explicit authority to use alternate methods, such as design-build and CMAR.

Design-Build. State law allows state and local officials, until January 1, 2025, to use the design-build method for contracts to procure both design and construction services from a single company before the development of complete plans and specifications [SB 785 (Wolk), Chapter 931, Statutes of 2014]. Cities and counties can use the design-build method to construct buildings and related improvements and other specified types of public works that cost more than \$1 million. Under design-build, the agency contracts with a single entity — which can be a single firm, a consortium, or a joint venture — to design and construct a project. Before inviting bids, the agency prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the agency typically evaluates bids on a low-bid or best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price. The Department of General Services, the California Department of Corrections and Rehabilitation, cities, counties, transit districts, special districts operating wastewater, water recycling, or solid waste management facilities, and certain individual state and local agencies may use design-build.

SB 785 outlined a standardized design-build procurement process in which the awarding authority may prepare a list of qualified or short-listed entities, based on specified criteria. Once a list of qualified or short-listed entities is complete, the awarding authority may prepare a request for proposals (RFP) that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the awarding authority.

For projects utilizing low bid as the selection method, the competitive bidding process must involve lump-sum bids by the prequalified or short-listed design-build entities. Awards must be made to the design-build entity that is the lowest responsible bidder.

For those projects utilizing best value as a selection method, proposals must be evaluated using only the criteria and selection procedures specifically identified in the RFP. The awarding authority may reserve the right to request revisions and conduct negotiations with responsive proposers, if the authority specifies in the RFP how it will ensure that negotiations are conducted in good faith. The authority may hold discussions or negotiations with responsive proposers using the process specified in the RFP. Responsive proposers are ranked based on value provided. The contract must be awarded to the responsible design-build entity whose proposal is determined by the authority to have offered the best value to the public. Upon issuance of a contract award, the awarding authority must publicly announce its award, identifying the design-build entity to which the award is made, along with a written decision supporting its contract award and stating the basis of the award.

The state's design-build statutes also impose requirements for the use of skilled labor, the issuance of performance bonds, insurance coverage, and identification of subcontractors that will complete at least one-half of 1% of the value of a contract.

Construction Manager At-Risk. CMAR is another approach to public works construction and delivery, which combines elements of the design-bid-build and design-build methods, and uses construction project management services. CMAR allows the owner of a project to retain a "construction manager," who provides pre-construction services during the design period and later becomes the general contractor during the construction process. The owner signs separate contracts for design with one party and for construction services with the construction manager, similar to the design-bid-build method. The owner may establish the separate contracts at the same time, however, thereby allowing the design party and the construction manager to work together, similar to the design-build method. Before construction can begin on a project, the owner and construction manager must agree on either a fixed price or "guaranteed maximum price" for the project. The construction manager is responsible for delivering the project within the agreed upon price, thereby assuming the risk for cost-overruns. Counties, the California Administrative Office of the Courts, University of California, California State University System, school districts, and some cities have used the CMAR for building construction projects.

Under the CMAR method, project delivery can occur in sequential or concurrent phases. Projects that have multiple components lend themselves to this method because the design and construction of different aspects of the project can occur at different times. In effect, the overall project can be broken into multiple components, which the construction manager must bid to subcontractors. SB 328 (Knight), Chapter 517, Statutes of 2013, authorized counties to use CMAR for projects costing in excess of \$1 million, and allowed the county to award the contract to the lowest responsible bidder or by the best value method until January 1, 2018. Last year, AB 851 (Caballero), Chapter 821, Statutes of 2017, extended the sunset date to January 1, 2023, and granted this authority to the City of San Diego on projects over \$25 million. Additionally, AB 851 prohibited a CMAR entity from being prequalified or shortlisted or awarded a contract, unless the entity provides an enforceable commitment to

the county that the entity and its subcontractors at every tier will use a STWF. Existing CMAR authority is limited to the construction of buildings. County officials want to increase the opportunities for counties to utilize CMAR by expanding the types of projects that can be conducted to include infrastructure projects, excluding roads.

- 2) **Bill Summary.** SB 914 expands county authority to use the CMAR method for all infrastructure projects, except roads. This bill maintains the existing project cost threshold of in excess of \$1 million, the STWF requirements, and the January 1, 2023, program sunset date. Lastly, this bill extends CMAR authority to county dependent special districts where the board of supervisors is the governing body of the district. The California State Association of Counties is the sponsor of this bill.
- 3) **Author's Statement.** According to the author, "SB 914 grants counties the necessary flexibility to build projects they need in the most efficient manner possible, which translates to savings for both local governments and taxpayers. Authorizing the CMAR method of procurement for infrastructure projects will provide counties with a tool to deliver fiscally responsible public infrastructure projects; ensure high-quality construction at a guaranteed maximum price; reduce public sector liability; and ensure more timely completion of public works projects."
- 4) **Arguments in Support.** The Orange County Board of Supervisors argues that, "For complex projects, early contractor involvement is essential. Under the CMAR method, the CMAR entity acts as the general contractor during the construction phase and retains the responsibility for monitoring design changes under a guaranteed maximum price contract. Thus, using the CMAR method facilitates the completion and delivery of complex public works projects efficiently and cost effectively. Local agencies would benefit from a delivery method that delivers projects at a faster pace and lower cost. SB 914 accomplishes this by providing greater flexibility to the county by extending the use of the CMAR project delivery method to the construction, repair, or improvement of horizontal projects."
- 5) **Arguments in Opposition.** The Associated Builders and Contractors, Northern California Chapter argues that, "When the Legislature adopted a requirement that contractors on some construction projects use a STWF it was justified as 'significantly raising the standards for contractors, increasing the quality of construction, and protecting taxpayers and workers on construction projects.'"

"While many in the construction industry believe these mandates will exacerbate current shortages of construction workers, all contractors, union and non-union, should be treated the same as to skilled workforce mandates. If the state truly cares about significantly raising the standards for contractors, increasing the quality of construction and protecting taxpayers and workers on construction projects, then a STWF mandate needs to be a uniform standard across the industry on all projects, without exceptions for entities that enter into project labor agreements without an enforceable commitment that a STWF is being used. No contractor should get a free pass on demonstrating their commitment to a STWF in California."

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties [SPONSOR]
California Legislative Conference of the Plumbing, Heating, and Piping Industry
California Municipal Utilities Association
California State Association of Electrical Workers
California State Pipe Trades Council
Contra Costa Electric, Inc.
Counties of Contra Costa, Napa, Orange, San Bernardino, San Mateo, and Santa Barbara
International Union of Elevator Contractors
Napa-Solano Counties Buildings and Construction Trades Council
National Electrical Contractors Association, California Chapters
Rural County Representatives of California
State Building and Construction Trades Council, AFL-CIO
Urban Counties of California
Western States Council of Sheet Metal Workers

Opposition

Associated Builders and Contractors, Northern California Chapter (unless amended)

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