

Date of Hearing: April 22, 2019

**ASSEMBLY COMMITTEE ON TRANSPORTATION**

Jim Frazier, Chair

AB 1475 (Bauer-Kahan) – As Amended April 12, 2019

**SUBJECT:** Construction Manager/General Contractor method: transportation projects

**SUMMARY:** Authorizes regional transportation agencies (RTAs) to utilize the construction manager/general contractor (CM/GC) procurement method on any transportation project that is not on the state highway system.

**EXISTING LAW:**

- 1) Sets forth provisions governing public works contracting. These provisions generally prohibit public agencies from contracting with the same firm for both the design and the construction phases of a project.
- 2) Generally requires public works construction contracts to be awarded to the lowest responsible bidder.
- 3) Authorizes the California Department of Transportation (Caltrans) to procure any number of projects through the CM/GC procurement method.
- 4) Authorizes RTAs to utilize CM/GC contracts, under limited circumstances.

**FISCAL EFFECT:** Unknown

**COMMENTS:** For decades, the traditional process for procuring contracts for the construction of public works projects has been the design-bid-build process. This process relies on the public entity (like Caltrans): 1) preparing, or causing to be prepared, a package of complete project design specifications and estimates; 2) putting the complete package out to bid for construction; and 3) awarding the construction contract to the lowest responsible bidder. The design-bid-build process was developed to protect taxpayers from extravagance, corruption, and other improper practices by public officials as well as to secure a fair and reasonable price for public works construction by injecting competition amongst bidders into the process.

Although design-bid-build generally results in the lowest cost construction contract, it is not without its drawbacks, including:

- 1) Projects generally take longer to complete because designs must be entirely completed, permits obtained, and right-of-way acquired before the construction contract can be awarded.
- 2) Designs prepared for a competitive low-bid procurement are developed to allow for a broad range of construction approaches. As a result, low-bid designs do not always equate to the most efficient designs possible, depending on a particular contractor's strengths or capabilities.

- 3) Because the project designer does not have the benefit of consulting with the entity that will ultimately be responsible for construction of the project, there may be significant issues that the designer does not anticipate, particularly issues related to the challenges of construction. This can result in change orders that ultimately drive up the price of the contract.
- 4) Low-bid is not always the least expensive option, once change orders and contractor claims are factored into the overall project costs.

In 2012, AB 2498 (Gordon), Chapter 752, authorized Caltrans to implement a pilot program providing Caltrans the use of CM/GC to procure construction contractors for no more than six projects, at least five of which with construction costs greater than \$10 million. CM/GC was, at the time, an emerging project delivery method that allowed Caltrans to engage a design and construction management consultant (or construction manager) to act as its consultant during the pre-construction phase and also as the general contractor during construction. During the design phase, the construction manager acts in an advisory role, providing constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations. Later, Caltrans and the construction manager can agree that the project design has progressed to a sufficient enough point that construction may begin. The two parties then work out mutually agreeable terms and conditions for the construction contract, and, if all goes well, the construction manager becomes the general contractor and construction on the project commences, often before design is entirely complete.

The CM/GC process provides continuity and collaboration between the design and construction phases of the project. Construction managers have an incentive to provide input during the design phase that will enhance ease of construction later because they know that they will have the opportunity to become the general contractor for the project. Furthermore, CM/GC promises to save project delivery time, provide earlier cost certainty, and transfer risks from Caltrans to the contractor. Additionally, CM/GC allows the public entity to design the project to compliment the private partner's strengths and capabilities, thereby avoiding the need to over-design the project to provide maximum competitiveness in a low-bid procurement.

Studies suggest that there are potential drawbacks of using CM/GC contracts. According to guidance published by the City of Seattle, for example, utilization of CM/GC does carry risks, including the fact that contracts are often difficult and complex, project teams can face steep learning curves, and therefore successful construction cost negotiations require experienced staff. Other literature on the use of CM/GC contracts is generally consistent with these concerns and cautions that CM/GC is not appropriate for every project. However, the same literature suggests that, if carefully implemented, CM/GC has the potential to significantly improve project delivery.

Following implementation of AB 2498, Caltrans reported to the Legislature initial success in utilizing CM/GC for the limited number of projects for which it was authorized. In light of that reported success, the Legislature has enacted a number of measures expanding the authority for both Caltrans and RTAs to utilize CM/GC. Last year the Legislature passed and the Governor signed SB 1262 (Beall), Chapter 465, Statutes of 2018, which completely eliminated the restriction on the number of projects Caltrans can procure through the CM/GC method.

This bill similarly provides authority for RTAs in the state to utilize CM/GC where they deem appropriate as long as it is not on the state highway system.

According to the author, “CM/GC method allows the regional transportation agency to engage a construction manager during the design process to provide input on the design. During the design phase, the construction manager provides advice including, but not limited to, scheduling, pricing, and phasing to assist the agency to design a more constructible project. This in turn provides more budgetary cost certainty and collaboration in the design process. This bill provides options for smaller municipalities to utilize the CM/GC procurement process for off highway construction projects.”

*Previous legislation:* SB 1262 (Beall), Chapter 465, Statutes of 2018, eliminated the restriction on the number of projects Caltrans can procure through the CM/GC procurement method.

AB 115 (Committee on Budget), Chapter 20, Statutes of 2017, expands Caltrans authority to utilize CM/GC from 12 to up to 24 projects.

AB 2126 (Mullin), Chapter 750, Statutes of 2016, expanded Caltrans authority to utilize CM/GC from 6 to up to 12 projects.

AB 1171 (Linder), Chapter 413, Statutes of 2015, authorized regional transportation agencies (RTAs) to use CMGC contracts, under limited circumstances.

AB 1724 (Frazier) of 2014 would have granted RTAs broad authority to use CMGC. AB 1724 passed the Assembly but was held in Senate Transportation and Housing Committee.

AB 797 (Gordon), Chapter 320, Statutes of 2013, authorized the Santa Clara Valley Transportation Authority and the San Mateo County Transit District to use CMGC contracting on transit projects.

AB 2498 (Gordon), Chapter 752, Statutes of 2012, authorized Caltrans to use CMGC on no more than six projects, at least five of which must have construction costs greater than \$10 million.

SB 1549 (Vargas), Chapter 767, Statutes of 2012, authorized the San Diego Association of Governments to use CMGC contracting on transit projects.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

None on file

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