

Date of Hearing: June 25, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

SB 1262 (Beall) – As Amended June 21, 2018

SENATE VOTE: 38-0

SUBJECT: Construction Manager/General Contractor project delivery method: Department of Transportation

SUMMARY: Eliminates the restriction on the number of projects the California Department of Transportation (Caltrans) can procure through the construction manager/general contractor procurement method (CM/GC). Specifically, **this bill:**

- 1) Transitions Caltrans from conducting a pilot program testing the utilization of CM/GC through a limited number of projects to fully authorizing Caltrans to utilize CM/GC whenever it determines its use to be appropriate.
- 2) Requires Caltrans to use its employees or consultants under contract with Caltrans to perform all project design and engineering services for at least two-thirds of the projects with which it procures using CM/GC.
- 3) Recasts Caltrans reporting requirements related to its use of CM/GC to reflect the ongoing nature of the new authority.

EXISTING LAW:

- 1) Authorizes Caltrans to use CM/GC to procure contractors for construction of up to 24 projects with at least 10 of the 24 projects having a cost greater than \$10 million.
- 2) Requires Caltrans to use its employees or consultants under contract with Caltrans to perform all project design and engineering services for at least 16 of the 24 projects with which it procures using CM/GC.
- 3) Requires all CM/GC projects administered by Caltrans to use its employees or consultants under contract with Caltrans to perform all construction inspection services, as specified.
- 4) Requires Caltrans to prepare and submit to the Legislature an annual report related to Caltrans' experience in utilizing CM/GC.
- 5) Sets forth provisions governing the process for procuring CM/GC services and requires Caltrans and CM/GC applicants to follow specific requirements.

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, Statutes of 2012, 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 Caltrans to design the project to compliment the CM/GC'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, however. According to guidance published by the City of Seattle, for example, utilization of CM/GC does carry risks, including:

- 1) The contracts are often difficult and complex.
- 2) The procurement process takes longer and consumes greater project staff time than traditional design-bid-build contracts.
- 3) Project teams face steep learning curves.
- 4) Successful construction cost negotiations require experienced staff.

Other literature on the use of CM/GC contracts is generally consistent with Seattle's guidance regarding concerns for associated risks 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 significant initial success in utilizing CM/GC for the limited number of projects it was authorized to use. In light of that reported success, the Legislature passed and Governor Brown signed into law AB 2126 (Mullin), Chapter 750, Statutes of 2016, subsequently doubling the number of CM/GC projects Caltrans was authorized to carry out while preserving all the design, engineering, inspection, and reporting requirements established in AB 2498. Additionally, last year the Legislature passed and the Governor signed AB 115 (Committee on Budget), Chapter 20, Statutes of 2017, which authorized Caltrans to execute an additional 12 CM/GC projects.

According to the author, “Last year the Legislature took a pragmatic and common sense approach to invest in the state’s infrastructure needs through the Road Repair and Accountability Act of 2017 [SB 1 (Beall), Chapter 5, Statutes of 2017]. As the State begins to deliver projects with SB 1 funds, it makes sense to utilize every available tool to cut costs and expedite completion of projects. Roads and bridges across the state are in disrepair because of a massive backlog on infrastructure projects estimated to be upwards of \$130 billion. It is important that the state is granted maximum flexibility to achieve savings on some of California’s largest infrastructure projects. SB 1262 offers such flexibility to Caltrans, by granting the permanent authority to use CM/GC which has been proven to save money and shorten project timelines, meaning taxpayer dollars can go further and Californians are able to utilize infrastructure repairs more quickly. Given the demonstrated efficiencies offered by the CM/GC approach, the Legislature would be well served in granting Caltrans expanded authority to utilize the CM/GC project delivery model. Conversely, particularly in light of the rising workload that the implementation of SB 1 will entail, failure to grant this authority would represent a failure of legislative stewardship of literally billions of dollars of taxpayer dollars over the course of the coming decade.”

Committee Comment: Caltrans anticipates that it will realize substantial savings through the use of CM/GC on construction projects. Since no projects have been completed, however, Caltrans has not formally reported on the differences between initial cost estimates and actual costs, estimated and actual dates of completion, the reason for any differences, and the number and dollar value of any change orders for all projects completed using CM/GC. Absent this data, the Legislature has not been informed about whether CM/GC results in lower costs and accelerated project delivery compared to the design-bid-build method. The Committee may wish to consider

whether it is prudent to provide unlimited CM/GC authority until the Legislature has adequate data to effectively evaluate the pilot program.

Previous Legislation: 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 2498 (Gordon), Chapter 752, Statutes of 2012, authorized Caltrans to implement a pilot program to utilize CM/GC for up to 6 projects.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Department of Transportation (Sponsor)
AAA Northern California, Nevada & Utah
Automobile Club of Southern California
San Bernardino County Transportation Authority

Opposition

None on file

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