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AB-1932 Public contracts: construction manager at-risk construction contracts. (2021-2022)

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Assembly Bill No. 1932

CHAPTER 435

An act to amend Section 20146 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 19, 2022. Filed with Secretary of State September 19, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1932, Daly. Public contracts: construction manager at-risk construction contracts.

Existing law authorizes, until January 1, 2023, a county, with approval of the board of supervisors, or a public entity, of which the members of the county board of supervisors make up the members of the governing body of that public entity, with the approval of its governing body, to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, owned or leased by the county, subject to certain requirements, including that the method may only be used for projects that are in excess of \$1,000,000.

This bill would extend those provisions until January 1, 2029, and would also make a nonsubstantive change.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20146 of the Public Contract Code is amended to read:

20146. (a) A county, with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A construction manager at-risk construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a construction manager at-risk entity that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.

(b) For purposes of this section, the following definitions apply:

(1) "Best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

(2) "Construction manager at-risk contract" means a competitively procured contract by a county or public entity with an individual, partnership, joint venture, corporation, or other recognized legal entity, that is appropriately licensed in this state, including a contractor's license issued by the Contractors' State License Board, and that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(3) "Public entity" means a public entity of which the members of the county board of supervisors make up the members of the governing body of that public entity.

(c) (1) A construction manager at-risk entity shall not be prequalified or shortlisted or awarded a contract unless that entity provides an enforceable commitment to the county or public entity that the construction manager at-risk entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeshipable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following conditions are met:

(A) The county or public entity has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the construction manager at-risk entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the county or public entity before January 1, 2018.

(C) The construction manager at-risk entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(d) Subcontractors that were not listed by a construction manager at-risk entity as partners, general partners, or association members in a partnership, limited partnership, or association in the entity's construction manager at-risk bid submission shall be awarded by the construction manager at-risk entity in accordance with the process set forth by the county. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The construction manager at-risk entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county or public entity.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(e) A county or public entity that elects to proceed under this section and uses a construction manager at-risk contract for a building project shall make a copy of the contract available for public inspection on its internet website and notify the appropriate policy committees of the Legislature with instructions on finding and accessing the stored contract.

(f) (1) If the county or public entity elects to award a project pursuant to this section, retention proceeds withheld by the county or public entity from the construction manager at-risk entity shall not exceed 5 percent if a performance and payment bond issued by an admitted surety insurer is required in the solicitation of bids.

(2) In a contract between the construction manager at-risk entity and any subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the county or public entity and the construction manager at-risk entity. If the construction manager at-risk entity provides written notice to any subcontractor that is not a member of the construction manager at-risk entity, before or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the construction manager at-risk entity, then the construction manager at-risk entity may withhold retention proceeds in excess of the percentage specified in the contract between the county or public entity and the construction manager at-risk entity from any payment made by the construction manager at-risk entity to the subcontractor.

(g) If the county or public entity elects to award a project pursuant to this section, the contract between the county or public entity and the construction manager at-risk entity shall be subject to subdivision (b) of Section 2782 of the Civil Code. Any contract between the construction manager at-risk entity and a contractor or subcontractor shall be subject to Section 2782.05 of the Civil Code.

(h) This shall remain in effect only until January 1, 2029, and as of that date is repealed.