



ACCM Insider

ACCM Holds Annual Conference

The Association for California Construction Managers (ACCM) held a successful Annual Conference on October 11, 2010 at the Westin South Coast Plaza in Costa Mesa.

The conference started with an overview by Jeff Baratta, of Piper Jaffray, of the current municipal bond market. Jeff has experience as a school district financial officer as well as advising school districts on financing. He explained that the last two years of cheap money might continue for awhile, but in the next year the interest rates for municipal bonds will probably increase as the effects of the economic stimulus start to increase inflationary pressures. School district bonds are being reviewed with more scrutiny because of the fear of risk by lenders. While school general obligation bonds are secured by property taxes,

lenders still are worried about possible unexpected risks. He indicated that the decline in assessed valuations was affecting school districts ability to see currently authorized bonds because of the Proposition 39 tax rate limits.

Victor Bullock of Lozano Smith discussed legal issues for construction managers. The most significant claims against CMs come from imprecise contract language that creates CM liability. He urged the members to define their contract terms and services so there is no confusion about who is doing what functions and what the functions entail. He used the example of a “constructability review” as a service that CMs provide, but not all CM contracts include language explaining exactly what is included in such a review and who has responsibility

for approving changes that are identified in such a review.

John Cumming, General Counsel at the Department of Industrial Relations (DIR), began his presentation with the announcement that DIR is reviewing the Labor Compliance Program regulations and could be making significant changes. This announcement started the discussion on what could happen next and how contractors, CMs, school districts and DIR will have to comply with the LCP requirements. However, that compliance could be on the prior law rather than the new regulations from Senate Bill 9 of the Second Extraordinary Session that was signed in February 2009. This announcement to ACCM was the second public announcement that changes were being considered and were possible. ACCM will update members as soon as we have definitive information from DIR.

In the afternoon, ACCM members were joined by school district representatives for a discussion of pre-qualification requirements, the state budget and school facility delivery methods. ACCM President Kris Meyer and Board Member Ed Miraou conducted the presentation on

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ACCM Celebrates Accomplishments

ACCM is proud of what it has accomplished over the last 15 years. As the facility industry continues over some rough waters, we would like to highlight some of the great successes we have had not only in 2010, but in years past.

2010

- Forming bond sale committee comprised of education organizations and labor to jointly advocate

for school bond sales. This was successful in Spring 2010 and was reformed in August 2010 for the same purpose.

- Formation of a coalition to advocate for the priority funding program which was adopted by the State Allocation Board (SAB) and was continued by the SAB with ACCM advocacy
- ACCM lobbyist, Dave Walrath advocated in support of AB 220

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and worked on a lease-revenue bond proposal after AB 220 failed passage in the Senate. Unfortunately, the lease-revenue bond did not move forward either.

Federal

- Member of Californians for School Facilities (CSF) and, as such, advocated for the Qualified School Construction Bonds with approximately \$2 billion in federal tax credit bonds to California, as well as the Qualified Zone Academy Bonds which have provided additional tax credit bonds for California's school facilities.

ACCM Calendar

November 2010

4 Officers' Conference Call-1 p.m.
18 General Membership Call-1 p.m.

December 2010

2 Officers' Conference Call-1 p.m.
16 General Membership Call-1 p.m.

January 2011

6 Officers' Conference Call-1 p.m.
20 General Membership Call-1 p.m.

February 2011

3 Officers' Conference Call-1 p.m.
22 General Membership Meeting
-Sacramento Convention Center
Time TBD

Meeting dates and times subject to change.



2009

- Supported AB 1120 (Niello) to provide incentives from DSA for school district constructability reviews. Unfortunately the bill was vetoed by the Governor.
- Successfully opposed SB 694 that would have instituted bidding for the lease-leaseback delivery method.
- Advocated for state bond sales to release funds for unfunded but approved construction and modernization projects.
- Released and placed online the updated ACCM model RFP/RFQ guidelines for school district use.

2007-2008

- Published "new school project cost report" and lobbied the State Allocation Board on grant adequacy issues
- Supported legislation to increase SFP grant levels (AB 100), clarify CM licensure (SB 355), authorize the Superintendent of Public Instruction to perform complete schools analysis (SB 1354), and simplify community college construction review (SB 588).
- Amended legislation to protect CM At-Risk for schools (AB 916).
- Opposed legislation to remove local authority over IORs (AB 2551), to restrict funding for districts that chose not to reuse plans (SB 1605), and to eliminate local oversight of prevailing wage (SB 191).
- Hosted interdisciplinary meeting on effect of DSA procedures on alternative delivery methods.
- Hosted ACCM "casino night" reception and "Understanding the CM Market in San Diego" workshop to allow members to network with districts.

2005-2006

- 100% membership support of successful Proposition 1D campaign.
- Published "ACCM Project Delivery Handbook".
- Instituted ACCM Annual Conference.
- Participated in SAB Grant Adequacy committees and K-14 outreach effort.
- Implemented ACCM seat on DSA Advisory Board.
- Supported legislation to authorize DSA collaborative process (AB 162) and increase funding for small district use of CM (AB 2148).
- Opposed legislation to prevent CMs from providing LCP services (AB 414).

2003-2004

- Amended legislation to support lease-leaseback for schools (AB 1486).
- Produced RFQ-RFP guidelines for school districts.
- Developed ACCM web site.
- Hosted "ACCM Shows Me the Money" and "Aloha" receptions for members to network with districts.
- Lobbied DIR on CM perspective re: off-site fabrication wage decisions.
- 100% membership support of successful Proposition 55 campaign.

2001-2002

- 100% membership support of successful Proposition 47 campaign.
- Supported legislation to provide \$25.3 Billion Bond for public school facilities (AB 16) and to codify design-build statute (AB 1402).
- Hosted "ACCM South of the Border" reception for members to network with districts.

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Legislation Update

Below is a list of legislation that ACCM either supported or opposed and were either amended, held in committee, vetoed, or chaptered.

AB 220 Brownley (D)

Would have enacted the Kindergarten-University Public Education Facilities Bond Act of 2010; Provided for the issuance of a specified amount of general obligations bonds to provide aid to school districts, county superintendents of schools, and county boards of education, the California Community Colleges, the University of California, the Hastings College of the Law, and the California State University to construct and modernize education facilities.

STATUS: Held in committee.

Position: Support

AB 635 Assembly Accountability and Administrative Review Committee

Provides that, for a project for the repair or replacement of a roof of a public school or community college, a material, product, thing, or service shall be considered equal if it meets specified requirements. Requires an architect, engineer, roof consultant, and other specified persons or entities to complete and sign a certification related to financial relationships in connection with such a project and to provide the certification to the school district or community college district.

STATUS: Signed by GOVERNOR.

AB 677 Solorio (D)

Would have amended existing law regarding public works contract prevailing wage requirements; Revised the definition of public works for

contracts to include the construction, alteration, demolition, installation, including the requirement that the work is performed in connection with the construction or maintenance of renewable energy generation capacity, located on property wholly or partially owned by the school district or community college district, or on public property, specifically to serve the district.

STATUS: Vetoed by GOVERNOR.

AB 701 Fong (D)

Would have amended existing law which requires a school district that seeks to let a contract involving a specified minimum expenditure to publish a notice calling for bids; Repealed the provisions requiring publication of a notice calling for bids in specified newspapers; Required the notice to be posted on the district's internet website or through an electronic portal, or on another website or portal if the district does not maintain a website.

STATUS: Stalled.

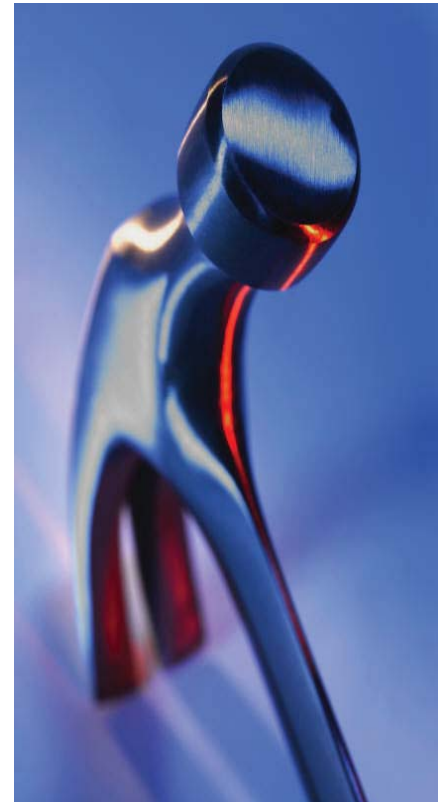
AB 729 Evans (D)

Extends the repeal date of existing law authorizing transit operators to enter into a design-build contract according to specified procedures. Requires a transit operator that uses the design-build process to report to the Legislative Analyst on each public works project procured through the design-build process within 120 days of the design-build project being put into operation or by a specified date, whichever occurs first.

STATUS: Signed by GOVERNOR.

AB 732 Jeffries (R)

Would have extended the operative date of existing law which autho-



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rizes the Department of Transportation to conduct the second phase of a pilot project through the utilization of design sequencing contracts for the design and construction of transportation projects, taking into consideration specified geographical consideration; and specifies that the project consist of not more than a specified number of transportation projects.

STATUS: Held in Committee

AB 828 Lieu (D)

Would have required the Buildings Standards Commission and other state agencies proposing green building standards to seek input from other agencies and specified groups; required any agency providing input to recommend whether the standard should be voluntary or mandatory: authorized the Energy Resources Conservation and Development Commission to develop and adopt voluntary energy efficiency standards.

STATUS: Vetoed by GOVERNOR.

AB 1062 Garrick (R)

Would have revised the definition of skilled labor force availability for purposes of public works contracting to a commitment to training the future construction workforce through apprenticeship and required the design-build entity to provide specified information from which it intends to request the dispatch of apprentices for use on the design-build contract.

STATUS: Stalled.

AB 1063 Garrick (R)

Relates to existing law authorizing school districts, community college districts and community college facility construction projects to enter

into design-build contracts. Relates to a provision specifying that the safety record of a bidder is deemed acceptable if it meets certain standards. Would have deleted a provision specifying that a bidder's safety record is deemed acceptable if the bidder is party to an alternative dispute resolution system.

STATUS: Stalled.

AB 1064 Garrick (R)

Would have amended existing law which exempts government entities entering into design-build contracts from the requirement that they establish and enforce a Labor Compliance Program or contract with a 3rd party to operate a Labor Compliance Program, if the design-build entity has entered into a collective bargaining agreement with specified arrangements. Removes the exemption.

STATUS: Stalled.

AB 1120 Niello (R)

Would have required the Department of General Services to distribute information on the use of constructability reviews of plans and specifications used for the construction of school facilities and the potential for cost savings that may be realized by the use of such reviews; defined constructability review; provided that one or more professionals, including mechanical, electrical, structural, or construction professionals would be authorized to conduct a review.

STATUS: Vetoed by GOVERNOR.

POSITION: Support

AB 1364 Evans (D)

Provides that any state agency that has entered into a grant agreement for the expenditure of state bond

funds where the state agency or grant recipient is, or may be, unable to comply with the terms of the agreement because of the suspension of funding for projects and contracts by the Pooled Money Investment Board shall have the authority to either renegotiate the deadlines and timetables for the deliverables within the grant agreement in order to address the suspension or to terminate the agreement.

STATUS: Signed by GOVERNOR.

AB 1523 Calderon C (D)

Would have provided that, during the period of a 1% sales and use tax increase above the rate of 7 1/4%, the bill would have excluded from that 1% rate of tax, the gross receipts from certain sales and uses of tangible personal property that are subject to a fixed price pursuant to a contract entered into prior to the operative date of the sales and use tax increase: provided that same exclusion for any increase in the tax rate on or after a specified date.

STATUS: Stalled.

AB 2216 Fuentes (D)

Relates to existing law which requires, for private and public contract construction contracts, a prime contractor or subcontractor to pay to any subcontractor, following receipt of each progress payment, the respective amount allowed the contractor on account of the work performed by the subcontractors. Would have required those amounts be paid not later than 7 days after receipt of each progress payment; related to surety and bond principal and to retention proceeds and progress payments on public works contracts.

STATUS: Failed to pass SENATE.

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AB 2560 Brownley (D)

Authorizes the California Department of Education to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of school districts and county offices of education. Authorizes the School Finance Authority to assign and distribute the same cap to or for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter schools. Authorizes charter school application.
STATUS: Signed by GOVERNOR.

SB 45 Padilla (D)

Would have provided that a contractor or subcontractor performing a public works project who is found by the Labor Commissioner to be in violation of the public works law, with the intent to defraud, for the

first time, is ineligible to be on or be awarded a contract for a project for specified periods of time, with a prescribed exemption related to apprenticeship requirements: provided that for a 2nd violation, the contractor or subcontractor shall be ineligible to bid or be awarded a contract.
STATUS: Vetoed by GOVERNOR.

SB 252 Denham (R)

Would have amended existing law that authorizes the governing board of a school district to establish a restricted fund to be known as the district deferred maintenance fund, for the purpose of major repair or maintenance of school facilities including major repair or replacement of electrical systems: defined the term electrical for these purposes and related provisions.
STATUS: Failed to pass SENATE.

SB 258 Oropeza (D)

Would have amended existing law that relates to required questionnaires that are submitted by prospective bidders on certain school district contracts: Required the questionnaire and the uniform system of rating bidders to contain substantially similar information, questions, and requirements as developed by the Department of Industrial Relations: required a district governing body to use certain bidding procedures for contracts valued at a specified amount.
STATUS: Held in committee.
POSITION: Oppose

SB 305 Corbett (D)

Would have required the Division of the State Architect to update the seismic safety inventory of school buildings and related reports to more accurately identify building deficiencies in school facilities cur-

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(Accomplishments, Continued from Page 2)

1998-2000

- Supported legislation to allow the use of bidding deductives and additives (AB 2182) and to clarify the use of design-build by school districts (AB 470).
- Added construction management as an allowable expense in the SFP.

1994-1998

- Lobbied the State Allocation Board (SAB) to ensure that construction management and program management would be eligible contracts funded by the state Lease-Purchase Program
- Sponsored legislation to fund con-

struction management by school districts.

Pre-1994

- Defeating proposals to reduce allowances to school districts using construction management.

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delivery methods. They also announced that ACCM is updating its delivery methods handbook and will provide it to school districts and ACCM members after the update is complete.

Trevin Sims of Lozano Smith presented on the legal issues for school district pre-qualification of bidders. He went through best practices because the law has few requirements

for pre-qualification, but using best practices can help school districts avoid challenges to rejecting a bidder through the qualification process. It was a very informative and interactive presentation. Last session legislation was proposed to require pre-qualification on all school district projects of \$1 million or greater. Although the legislation did not pass, there is every expectation that it will be reintroduced next year. The pre-

qualification presentation provided school districts with information on the current law and will help them if the law does change next year.

Dave Walrath provided a state budget and federal funds update for the participants. The budget was less than 72 hours old so the school district personnel and the ACCM members had the most up-to-date information.

Legislation, (Continued from Page 5)

rently being used for public school purposes: required the State Allocation Board to use the information and report the development of eligibility criteria for the Seismic Mitigation Program.

STATUS: Vetoed by GOVERNOR.

SB 334 Ducheny (D)

Relates to the Leroy F. Greene School Facilities Act, which requires the State Allocation Board to allocate to school districts funding for school facilities. Requires the board to determine the maximum total new construction grant eligibility of an applicant. Requires an increase made to the per-unhoused-pupil grant amounts also to be made to the per-unhoused-pupil who is a qualifying individual with exceptional needs grants amounts. Relates to funding for exceptional needs pupils.

STATUS: Signed by GOVERNOR.

POSITION: Support

SB 503 Kehoe (D)

Would have required the Controller to select one or more projects funded by any state general obligations bond act approved after a specified date, to be the subject of an audit: required the Controller to assign up to a specified number of auditor positions to conduct those audits: authorized the examination of any re-

cord of any agency, contractor, and other specified parties that relate to the use of bond funds: required the entity to determine if it is able to pay the estimated cost of the audit for the bond funds.

STATUS: Vetoed by GOVERNOR.

SB 592 Romero (D)

Amends existing law which requires that, prior to receiving funding, title to property used for a charter school facilities project shall be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system. Authorizes a local government entity or charter school to hold title to charter school project facilities. Requires applicants to provide documentary evidence that the district or school holds title to the project.

STATUS: Chaptered by Secretary of State. Chapter No. 192

SB 694 Correa (D)

Extends the time to request a review, and the time the State Uniform Construction Cost Accounting Commission has to review a public agency project that is to be performed after the rejection of all bids, and for a commission review of work for which evidence was provided that the work has exceeded the force account limits or has been improperly

classified as maintenance.

STATUS: Signed by GOVERNOR.

SB 802 Leno (D)

Would have required that, for private and public works of improvement, and in a public works contract, a prime contractor or subcontractor pay to any subcontractor, not later than 7 days of receipt of each progress payment: required that the written notice to be given to the surety and the bond principal be given prior to the completion of the project, or recordation of a notice of completion: prohibited retention proceeds from exceeding 5% of the payment to a contractor.

STATUS: Vetoed by GOVERNOR.

SB 1227 Runner G (R)

Would have authorized the Department of General Services to grant a request of a school district or community college district for review of a school construction project by a qualified plan review firm under contract with the department as it deems appropriate. Prohibited the occupancy of a school building that has been constructed, reconstructed, altered, or added to, until the department has issued a certification.

STATUS: Held in Committee.

POSITION: Oppose

