

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1549

Introduced by Senator Vargas

February 24, 2012

An act to add Chapter 6.6 (commencing with Section 6950) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1549, as amended, Vargas. Transportation projects: ~~construction Manager/General Contractor~~ *alternative project-method: delivery methods.*

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by state agencies for projects, as specified, and for local agencies for public works contracts, as specified. ~~This bill would, upon authorization by the California Transportation Commission, allow a consolidated San Diego regional transportation entity, as specified, or the Department of Transportation to engage in a Construction Manager/General Contractor project delivery method, as specified, for up to 20 total projects for either local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the local transportation entity or state highway, bridge, or tunnel projects by the Department of Transportation. This bill would allow the San Diego Association of Governments to utilize alternative project delivery methods, as defined, for public transit projects within its jurisdiction.~~ The bill would require ~~a transportation entity, as defined, the San Diego Association of Governments~~ to pay fees related to prevailing wage monitoring and enforcement into the State Public Works Enforcement Fund, a continuously appropriated fund, except as

specified, and, thus, would make an appropriation. The bill would also, *upon completion of a project*, require a progress report to be submitted by the ~~transportation agency to the commission every year following the award of a contract under these provisions, and would require the commission to submit an annual report to the Legislature that includes the information in the report submitted by the transportation agency, as specified.~~ *San Diego Association of Governments to its governing board and would require the report to be made available on its Internet Web site.* This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. The bill would provide that its provisions are severable.

This bill would make legislative findings and declarations as to the necessity of a special statute for San Diego regional transportation entities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.6 (commencing with Section 6950) is
 2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3
 4 CHAPTER 6.6. THE ALTERNATIVE PROJECT DELIVERY
 5 ~~DEMONSTRATION~~ PROGRAM: CONSTRUCTION MANAGER/GENERAL
 6 CONTRACTOR AUTHORITY

7
 8 6950. The Legislature finds and declares all of the following:
 9 (a) The alternative public works project delivery methods
 10 authorized under this chapter should be evaluated for the purposes
 11 of exploring whether the potential exists for reduced project costs,
 12 expedited project completion, or design features that are not
 13 achievable through the traditional project delivery methods.
 14 (b) The design sequencing and Construction Manager/General
 15 Contractor project delivery methods rely on existing

1 design-bid-build and design-build procurement methods
2 respectively and have been successfully used by both public and
3 private sector entities in California and other states for over a
4 decade on projects that require a quick startup as they allow
5 construction to begin before the design plans are complete for the
6 entire project.

7 (c) Both methods also have the benefit of allowing for earlier
8 collaboration between the project owner and construction
9 contractor. A demonstration program for alternative project
10 delivery methods will allow for a careful examination of the
11 benefits and challenges associated with these methods.

12 (d) This chapter shall not be deemed to provide a preference
13 for these project delivery methods over other delivery
14 methodologies.

15 6951. For purposes of this chapter, the following definitions
16 apply:

17 ~~(a) "Commission" means the California Transportation~~
18 ~~Commission.~~

19 (a) "Alternative project delivery method" means either
20 Construction Manager/General Contractor method or design
21 sequencing.

22 (b) "Construction Manager/General Contractor method" or
23 "CMGC" means a project delivery method using a best value
24 procurement process in which a construction manager is procured
25 to provide preconstruction services during the design phase of the
26 project and construction services during the construction phase of
27 the project. The contract for construction services may be entered
28 into at the same time as the contract for preconstruction services,
29 or at a later time. The execution of the design and the construction
30 of the project may be in sequential phases or concurrent phases.

31 (c) "Construction manager" means a partnership, corporation,
32 or other legal entity that is able to provide appropriately licensed
33 contracting and engineering services as needed pursuant to a
34 CMGC contract.

35 (d) "Design sequencing" means a method of project delivery
36 ~~using the design-bid-build contracting process~~ that enables the
37 sequencing of design activities to permit each construction phase
38 to commence when ~~30 percent or more of the design for that phase~~
39 is complete, instead of requiring design for the entire project to be
40 completed before commencing construction.

1 (e) “Department” means the Department of Transportation as
 2 established under Part 5 (commencing with Section 14000) of
 3 Division 3 of the Government Code.

4 (f) ~~“Local transportation entity”~~ “*San Diego Association of*
 5 *Governments*” means the consolidated agency created pursuant
 6 to Chapter 3 (commencing with Section 132350) of Division 12.7
 7 of the Public Utilities Code.

8 (g) ~~“Transportation entity” means the department or a local~~
 9 ~~transportation entity.~~

10 6952. (a) Subject to the limitations of this chapter, ~~a local~~
 11 ~~transportation entity, if authorized by the commission, the San~~
 12 ~~Diego Association of Governments may utilize the design~~
 13 ~~sequencing or CMGC methods of alternative project delivery for~~
 14 ~~projects that may be for local street or road, bridge, tunnel, or~~
 15 ~~methods for public transit projects within the jurisdiction of the~~
 16 ~~entity the San Diego Association of Governments.~~

17 (b) ~~Subject to the limitations of this chapter, the department, if~~
 18 ~~authorized by the commission, may utilize the design sequencing~~
 19 ~~or CMGC methods of procurement for state highway, bridge, or~~
 20 ~~tunnel projects.~~

21 (b) *The San Diego Association of Governments may enter into*
 22 *an alternative project delivery method contract pursuant to this*
 23 *chapter if, after evaluation of the traditional design-bid-build*
 24 *process of construction and of the alternative project delivery*
 25 *method in a public meeting, the San Diego Association of*
 26 *Governments makes a written finding that use of the alternative*
 27 *project delivery method on the specific project under consideration*
 28 *will accomplish one or more of the following objectives: reduce*
 29 *project costs, expedite the project’s completion, or provide features*
 30 *not achievable through the design-bid-build method. This finding*
 31 *must be made prior to the San Diego Association of Governments*
 32 *entering into an alternative project delivery method contract. In*
 33 *the alternative project delivery method proposal, the written*
 34 *findings shall be included as part of any application for state funds*
 35 *pursuant to this chapter.*

36 6953. ~~(a) Up to 20 projects shall be authorized under this~~
 37 ~~chapter. The transportation entities authorized to use the design~~
 38 ~~sequencing and CMGC project delivery methods pursuant to this~~
 39 ~~chapter shall endeavor to select projects that vary in size, type,~~
 40 ~~and geographical location.~~

1 ~~(b) The commission shall establish a peer review committee to~~
2 ~~conduct an evaluation of the projects selected to utilize the~~
3 ~~alternative project delivery methods under this chapter.~~

4 ~~6954.~~

5 6953. (a) Except as specified in subdivision (b), ~~the~~
6 ~~transportation entity~~ *the San Diego Association of Governments*
7 shall comply with subdivision (f) of Section 1771.5 of the Labor
8 Code and shall reimburse the Department of Industrial Relations
9 for its reasonable and directly related costs of performing prevailing
10 wage monitoring and enforcement on public works projects
11 pursuant to rates established by the department as set forth in
12 subdivision (h) of that section. All moneys collected pursuant to
13 this subdivision shall be deposited in the State Public Works
14 Enforcement Fund, created by Section 1771.3 of the Labor Code,
15 and shall be used only for enforcement of prevailing wage
16 requirements on those projects.

17 (b) In lieu of complying with subdivision (a), ~~the transportation~~
18 ~~entity~~ *the San Diego Association of Governments* may elect to
19 operate a labor compliance program approved by the Department
20 of Industrial Relations to monitor and enforce prevailing wage
21 requirements on the project if it requests and receives approval
22 from the department to use its own labor compliance program or
23 it enters into a collective bargaining agreement that binds all of
24 the contractors performing work on the project and that includes
25 a mechanism for resolving disputes about the payment of wages.

26 ~~6955.~~

27 6954. (a) All CMGC contracts awarded pursuant to this chapter
28 shall be subject to the procurement method requirements for
29 design-build contracts set forth in Chapter 6.5 (commencing with
30 Section 6800) of Part 1 of Division 2, except insofar as they may
31 conflict with the provisions of this chapter. The limitation on the
32 number of design-build projects authorized by that chapter shall
33 not apply to projects authorized under this chapter.

34 (b) All ~~contracts awarded using the design sequencing contracts~~
35 ~~awarded pursuant to this chapter~~ *project delivery method* shall be
36 subject to Chapter 10 (commencing with Section 4525) and Chapter
37 10.1 (commencing with Section 4529.10) of Division 5 of the
38 Government Code and Part 1 (commencing with Section 1100)
39 of, Chapter 1 (commencing with Section 10100) of Part 2 of, and
40 Part 3 (commencing with Section 20100) of, Division 2 of this

1 code, as applicable, except that construction may be commenced
 2 as specified in subdivision (d) of Section 6951.

3 ~~6956.~~

4 6955. (a) If a contract for CMGC services is entered into
 5 pursuant to this chapter and includes preconstruction services by
 6 the construction manager, ~~the transportation entity~~ *the San Diego*
 7 *Association of Governments* shall enter into a written contract with
 8 the construction manager for preconstruction services, under which
 9 ~~the transportation entity~~ *the San Diego Association of Governments*
 10 shall pay the construction manager a fee for preconstruction
 11 services in an amount agreed upon by ~~the transportation entity~~ *the*
 12 *San Diego Association of Governments* and the construction
 13 manager. The preconstruction services contract may include fees
 14 for services to be performed during the contract period; provided,
 15 however, ~~the transportation entity~~ *the San Diego Association of*
 16 *Governments* shall not request or obtain a fixed price or a
 17 guaranteed maximum price for the construction contract from the
 18 construction manager or enter into a construction contract with
 19 the construction manager until after ~~the transportation entity~~ *the*
 20 *San Diego Association of Governments* has entered into a services
 21 contract. ~~Every~~ A preconstruction services contract shall provide
 22 for the subsequent negotiation for construction of all or any ~~discreet~~
 23 *discrete* phase or phases of the project and shall provide for ~~the~~
 24 ~~awarding transportation entity~~ *the San Diego Association of*
 25 *Governments* to own the design plans and other preconstruction
 26 services work product. ~~A~~

27 (b) A contract for construction services will be awarded after
 28 the plans have been sufficiently developed and either a fixed price
 29 or a guaranteed maximum price has been successfully negotiated.
 30 In the event that a fixed price or a guaranteed maximum price is
 31 not negotiated, ~~the transportation entity~~ *the San Diego Association*
 32 *of Governments* may award the contract for construction services
 33 utilizing any other procurement method authorized by law.

34 (c) *Construction shall not commence on any phase, package,*
 35 *or element until the San Diego Association of Governments and*
 36 *the construction manager agree in writing on either a fixed price*
 37 *or guaranteed maximum price that the San Diego Association of*
 38 *Governments will pay for the construction to be commenced and*
 39 *the construction schedule for the project. The construction manager*
 40 *shall perform not less than 30 percent of the work covered by the*

1 *fixed price or guaranteed maximum price agreement reached.*
2 *Work that is not performed directly by the construction manager*
3 *shall be bid to subcontractors pursuant to Section 6956.*

4 6956. All subcontractors bidding on contracts pursuant to this
5 chapter shall be afforded the protections contained in Chapter 4
6 (commencing with Section 4100).

7 6957. (a) Notwithstanding any other provision of this chapter,
8 for a project authorized under this chapter that will be constructed
9 on state-owned right-of-way, the department is the responsible
10 agency for the performance of project development services,
11 including performance specifications, preliminary engineering,
12 prebid services, the preparation of project reports and
13 environmental documents, and construction inspection services.
14 The department is also the responsible agency for the preparation
15 of documents that may include, but need not be limited to, the size,
16 type, and desired design character of the project, performance
17 specifications covering quality of materials, equipment, and
18 workmanship, preliminary plans, and any other information deemed
19 necessary to describe adequately the needs of the transportation
20 entity.

21 (b) The department may use department employees or
22 consultants to perform the services described in subdivision (a),
23 consistent with Article XXII of the California Constitution.
24 Department resources, including personnel requirements, necessary
25 for the performance of those services shall be included in the
26 department's capital outlay support program for workload purposes
27 in the annual Budget Act.

28 6958. Nothing in this chapter affects, expands, alters, or limits
29 any rights or remedies otherwise available at law.

30 ~~6959. (a) Not later than June 30 of each year after a contract~~
31 ~~is awarded Upon completion of a project using the CMGC or~~
32 ~~design sequencing project an alternative project delivery method,~~
33 ~~the awarding transportation entity the San Diego Association of~~
34 ~~Governments shall submit prepare a progress report to the~~
35 ~~commission its governing body. The progress report shall include,~~
36 but shall not be limited to, all of the following information:

- 37 (1) A description of the project.
- 38 (2) The entity that was awarded the project.
- 39 (3) The estimated and actual costs of the project.
- 40 (4) The estimated and actual schedule for project completion.

1 (5) A description of any written protests concerning any aspect
2 of the solicitation, bid, proposal, or award of the project, including,
3 but not limited to, the resolution of the protests.

4 (6) An assessment of the prequalification process and criteria
5 utilized under this chapter if the ~~design-build~~ *CMGC* procurement
6 method is used.

7 (7) A description of the labor compliance program required
8 under Section ~~6954~~ *6953* and an assessment of the impact of this
9 requirement on a project.

10 (8) A description of the method used to evaluate the bid or
11 proposal, including the weighting of each factor and an assessment
12 of the impact of this requirement on a project.

13 (9) A description of any challenges or unexpected problems
14 that arose during the construction of the project and a description
15 of the solutions that were considered and ultimately implemented
16 to address those challenges and problems.

17 (10) Recommendations to improve the alternative project
18 delivery methods authorized under this chapter.

19 ~~(b) (1) The commission shall submit an annual report to the
20 Legislature that includes the information provided pursuant to
21 subdivision (a).~~

22 ~~(2) A report to be submitted pursuant to paragraph (1) shall be
23 submitted in compliance with Section 9795 of the Government
24 Code.~~

25 *(b) The progress report shall be made available on the San
26 Diego Association of Governments' Internet Web site.*

27 6960. The provisions of this chapter are severable. If any
28 provision of this chapter or its application is held invalid, that
29 invalidity shall not affect other provisions or applications that can
30 be given effect without the invalid provision or application.
31 Contracts awarded pursuant to this section shall be valid until the
32 project is completed.

33 SEC. 2. The Legislature finds and declares that a special law
34 is necessary and that a general law cannot be made applicable
35 within the meaning of Section 16 of Article IV of the California
36 Constitution because of the unique need for alternative contracting
37 authority for local *public* transportation projects under the
38 jurisdiction of ~~San Diego regional transportation entities~~ *the San
39 Diego Association of Governments.*

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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