

AMENDED IN ASSEMBLY JUNE 20, 2012

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: alternative project 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~~

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 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 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~~-no. 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 PROGRAM:
5 CONSTRUCTION MANAGER/GENERAL CONTRACTOR AUTHORITY
6

7 6950. The Legislature finds and declares all of the following:

8 (a) The alternative public works project delivery methods
9 authorized under this chapter should be evaluated for the purposes
10 of exploring whether the potential exists for reduced project costs,
11 expedited project completion, or design features that are not
12 achievable through the traditional project delivery methods.

13 (b) The design sequencing and Construction Manager/General
14 Contractor project delivery methods rely on existing
15 design-bid-build and design-build procurement methods
16 respectively and have been successfully used by both public and
17 private sector entities in California and other states for over a
18 decade on projects that require a quick startup as they allow
19 construction to begin before the design plans are complete for the
20 entire project.

21 (c) Both methods also have the benefit of allowing for earlier
22 collaboration between the project owner and construction
23 contractor. A demonstration program for alternative project
24 delivery methods will allow for a careful examination of the
25 benefits and challenges associated with these methods.

1 (d) This chapter shall not be deemed to provide a preference
2 for these project delivery methods over other delivery
3 methodologies.

4 6951. For purposes of this chapter, the following definitions
5 apply:

6 (a) “Alternative project delivery method” means either
7 Construction Manager/General Contractor method or design
8 sequencing.

9 (b) “Construction Manager/General Contractor method” or
10 “CMGC” means a project delivery method using a best value
11 procurement process in which a construction manager is procured
12 to provide preconstruction services during the design phase of the
13 project and construction services during the construction phase of
14 the project. ~~The contract for construction services may be entered~~
15 ~~into at the same time as the contract for preconstruction services,~~
16 ~~or at a later time.~~ The execution of the design and the construction
17 of the project may be in sequential phases or concurrent phases.

18 (c) “Construction manager” means a partnership, corporation,
19 or other legal entity that is able to provide appropriately licensed
20 contracting and engineering services as needed pursuant to a
21 CMGC contract.

22 (d) “Design sequencing” means a method of project delivery
23 that enables the sequencing of design activities to permit each
24 construction phase to commence when the design for that phase
25 is complete, instead of requiring design for the entire project to be
26 completed before commencing construction.

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

30 (f) “San Diego Association of Governments” means the
31 consolidated agency created pursuant to Chapter 3 (commencing
32 with Section 132350) of Division 12.7 of the Public Utilities Code.

33 6952. (a) Subject to the limitations of this chapter, the San
34 Diego Association of Governments may utilize the alternative
35 project delivery methods for public transit projects within the
36 jurisdiction of the San Diego Association of Governments.

37 (b) The San Diego Association of Governments may enter into
38 an alternative project delivery method contract pursuant to this
39 chapter if, after evaluation of the traditional design-bid-build
40 process of construction and of the alternative project delivery

1 method in a public meeting, the San Diego Association of
2 Governments makes a written finding that use of the alternative
3 project delivery method on the specific project under consideration
4 will accomplish one or more of the following objectives: reduce
5 project costs, expedite the project's completion, or provide features
6 not achievable through the design-bid-build method. This finding
7 must be made prior to the San Diego Association of Governments
8 entering into an alternative project delivery method contract. In
9 the alternative project delivery method proposal, the written
10 findings shall be included as part of any application for state funds
11 pursuant to this chapter.

12 ~~6953. (a) Except as specified in subdivision (b), the San Diego~~
13 ~~Association of Governments shall comply with subdivision (f) of~~
14 ~~Section 1771.5 of the Labor Code and shall reimburse the~~
15 ~~Department of Industrial Relations for its reasonable and directly~~
16 ~~related costs of performing prevailing wage monitoring and~~
17 ~~enforcement on public works projects pursuant to rates established~~
18 ~~by the department as set forth in subdivision (h) of that section.~~
19 ~~All moneys collected pursuant to this subdivision shall be deposited~~
20 ~~in the State Public Works Enforcement Fund, created by Section~~
21 ~~1771.3 of the Labor Code, and shall be used only for enforcement~~
22 ~~of prevailing wage requirements on those projects.~~

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

32 ~~6954.~~

33 ~~6953. (a) All CMGC contracts awarded pursuant to this chapter~~
34 ~~shall be subject to the procurement method requirements for~~
35 ~~design-build *professional services* contracts set forth in Chapter~~
36 ~~6.5 (commencing with Section 6800) of Part 1 of Division 2 Section~~
37 ~~132352.4 of the Public Utilities Code, except insofar as they may~~
38 ~~conflict with the provisions of this chapter. The limitation on the~~
39 ~~number of design-build projects authorized by that chapter shall~~
40 ~~not apply to projects authorized under this chapter.~~

1 (b) All contracts awarded using the design sequencing project
2 delivery method shall be subject to Chapter 10 (commencing with
3 Section 4525) and Chapter 10.1 (commencing with Section
4 4529.10) of Division 5 of the Government Code and Part 1
5 (commencing with Section 1100) of, Chapter 1 (commencing with
6 Section 10100) of Part 2 of, and Part 3 (commencing with Section
7 20100) of, Division 2 of this code, as applicable, except that
8 construction may be commenced as specified in subdivision (d)
9 of Section 6951.

10 ~~6955.~~

11 6954. (a) If a contract for CMGC services is entered into
12 pursuant to this chapter and includes preconstruction services by
13 the construction manager, the San Diego Association of
14 Governments shall enter into a written contract with the
15 construction manager for preconstruction services, under which
16 the San Diego Association of Governments shall pay the
17 construction manager a fee for preconstruction services in an
18 amount agreed upon by the San Diego Association of Governments
19 and the construction manager. The preconstruction services contract
20 may include fees for services to be performed during the contract
21 period; provided, however, the San Diego Association of
22 Governments shall not request or obtain a fixed price or a
23 guaranteed maximum price for the construction contract from the
24 construction manager or enter into a construction contract with
25 the construction manager until after the San Diego Association of
26 Governments has entered into a services contract. A preconstruction
27 services contract shall provide for the subsequent negotiation for
28 construction of all or any discrete phase or phases of the project
29 and shall provide for the San Diego Association of Governments
30 to own the design plans and other preconstruction services work
31 product.

32 (b) A contract for construction services will be awarded after
33 the plans have been sufficiently developed and either a fixed price
34 or a guaranteed maximum price has been successfully negotiated.
35 In the event that a fixed price or a guaranteed maximum price is
36 not negotiated, the San Diego Association of Governments may
37 award the contract for construction services utilizing any other
38 procurement method authorized by law.

39 ~~(c) Construction shall not commence on any phase, package,~~
40 ~~or element until the San Diego Association of Governments and~~

1 ~~the construction manager agree in writing on either a fixed price~~
2 ~~or guaranteed maximum price that the San Diego Association of~~
3 ~~Governments will pay for the construction to be commenced and~~
4 ~~the construction schedule for the project. The construction manager~~
5 shall perform not less than 30 percent of the work covered by the
6 fixed price or guaranteed maximum price agreement reached. Work
7 that is not performed directly by the construction manager shall
8 be bid to subcontractors pursuant to Section ~~6956~~ 6955.

9 ~~6956.~~

10 6955. All subcontractors bidding on contracts pursuant to this
11 chapter shall be afforded the protections contained in Chapter 4
12 (commencing with Section 4100).

13 ~~6957.~~

14 6956. (a) Notwithstanding any other provision of this chapter,
15 for a project authorized under this chapter that will be constructed
16 on state-owned right-of-way, the department is the responsible
17 agency for the performance of project development services,
18 including performance specifications, preliminary engineering,
19 prebid services, the preparation of project reports and
20 environmental documents, and construction inspection services.
21 The department is also the responsible agency for the preparation
22 of documents that may include, but need not be limited to, the size,
23 type, and desired design character of the project, performance
24 specifications covering quality of materials, equipment, and
25 workmanship, preliminary plans, and any other information deemed
26 necessary to describe adequately the needs of the transportation
27 entity.

28 (b) The department may use department employees or
29 consultants to perform the services described in subdivision (a),
30 consistent with Article XXII of the California Constitution.
31 Department resources, including personnel requirements, necessary
32 for the performance of those services shall be included in the
33 department's capital outlay support program for workload purposes
34 in the annual Budget Act.

35 ~~6958.~~

36 6957. Nothing in this chapter affects, expands, alters, or limits
37 any rights or remedies otherwise available at law.

38 ~~6959.~~

39 6958. (a) Upon completion of a project using an alternative
40 project delivery method, the San Diego Association of

1 Governments shall prepare a progress report to its governing body.
2 The progress report shall include, but shall not be limited to, all
3 of the following information:

- 4 (1) A description of the project.
- 5 (2) The entity that was awarded the project.
- 6 (3) The estimated and actual costs of the project.
- 7 (4) The estimated and actual schedule for project completion.
- 8 (5) A description of any written protests concerning any aspect
9 of the solicitation, bid, proposal, or award of the project, including,
10 but not limited to, the resolution of the protests.

11 (6) An assessment of the prequalification process and criteria
12 utilized under this chapter if the CMGC procurement method is
13 used.

14 ~~(7) A description of the labor compliance program required~~
15 ~~under Section 6953 and an assessment of the impact of this~~
16 ~~requirement on a project.~~

17 ~~(8)~~
18 (7) A description of the method used to evaluate the bid or
19 proposal, including the weighting of each factor and an assessment
20 of the impact of this requirement on a project.

21 ~~(9)~~
22 (8) A description of any challenges or unexpected problems
23 that arose during the construction of the project and a description
24 of the solutions that were considered and ultimately implemented
25 to address those challenges and problems.

26 ~~(10)~~
27 (9) Recommendations to improve the alternative project delivery
28 methods authorized under this chapter.

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

31 ~~6960.~~
32 ~~6959.~~ (a) The provisions of this chapter are severable. If any
33 provision of this chapter or its application is held invalid, that
34 invalidity shall not affect other provisions or applications that can
35 be given effect without the invalid provision or application.

36 ~~Contracts~~
37 (b) *Contracts* awarded pursuant to this section shall be valid
38 until the project is completed.

39 SEC. 2. The Legislature finds and declares that a special law
40 is necessary and that a general law cannot be made applicable

1 within the meaning of Section 16 of Article IV of the California
2 Constitution because of the unique need for alternative contracting
3 authority for local public transportation projects under the
4 jurisdiction of the San Diego Association of Governments.

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