

**Senate Bill No. 1549**

CHAPTER 767

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.

[Approved by Governor September 29, 2012. Filed with  
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1549, 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 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, 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. The bill would also, except as provided, require the San Diego Association of Governments to pay fees related to these projects into the State Public Works Enforcement Fund, a continuously appropriated fund, thereby making an appropriation. Because this bill would subject these projects to certain prevailing wage enforcement requirements, the violation of which is a crime, it would impose 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.

Appropriation: yes.

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

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

CHAPTER 6.6. ALTERNATIVE PROJECT DELIVERY PROGRAM:  
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AUTHORITY

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

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

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

(c) Both methods also have the benefit of allowing for earlier collaboration between the project owner and construction contractor.

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

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

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

(b) “Construction Manager/General Contractor method” or “CMGC” means a project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.

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

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

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

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

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

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

6953. (a) Except as specified in subdivision (b), the San Diego Association of Governments shall comply with subdivision (f) of Section 1771.5 of the Labor Code and shall reimburse the Department of Industrial Relations for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of that section on projects using an alternative project delivery method under this chapter. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of complying with subdivision (a), the San Diego Association of Governments may elect to enter into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

6954. (a) If a contract for CMGC services is entered into pursuant to this chapter and includes preconstruction services by the construction manager, the San Diego Association of Governments shall enter into a written contract with the construction manager for preconstruction services, under which the San Diego Association of Governments shall pay the construction manager a fee for preconstruction services in an amount agreed upon by the San Diego Association of Governments and the construction manager. The preconstruction services contract may include fees for services to be performed during the contract period; provided, however, the San Diego Association of Governments shall not request or obtain a fixed price or a guaranteed maximum price for the construction contract from the construction manager or enter into a construction contract with the construction manager until after the San Diego Association of Governments has entered into a services contract. A preconstruction services contract shall provide for the subsequent negotiation for construction of all or any discrete phase or phases of the project and shall provide for the San Diego Association of Governments to own the design plans and other preconstruction services work product.

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

(c) The construction manager shall perform not less than 30 percent of the work covered by the fixed price or guaranteed maximum price agreement reached. Work that is not performed directly by the construction manager shall be bid to subcontractors pursuant to Section 6955.

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

6956. Nothing in this chapter affects, expands, alters, or limits any rights or remedies otherwise available at law.

6957. (a) Upon completion of a project using an alternative project delivery method, the San Diego Association of Governments shall prepare a progress report to its governing body. The progress report shall include, but shall not be limited to, all of the following information:

- (1) A description of the project.
- (2) The entity that was awarded the project.
- (3) The estimated and actual costs of the project.
- (4) The estimated and actual schedule for project completion.
- (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the project, including, but not limited to, the resolution of the protests.
- (6) An assessment of the prequalification process and criteria utilized under this chapter if the CMGC procurement method is used.
- (7) A description of the method used to evaluate the bid or proposal, including the weighting of each factor and an assessment of the impact of this requirement on a project.
- (8) A description of any challenges or unexpected problems that arose during the construction of the project and a description of the solutions that were considered and ultimately implemented to address those challenges and problems.
- (9) Recommendations to improve the alternative project delivery methods authorized under this chapter.

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

6958. (a) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) Contracts awarded pursuant to this section shall be valid until the project is completed.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of

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

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