

**ASSEMBLY BILL**

**No. 797**

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**Introduced by Assembly Member Gordon**

February 21, 2013

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An act to add Article 4 (commencing with Section 100150) to Chapter 5 of Part 12 of Division 10 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 797, as introduced, Gordon. Santa Clara County Valley Transportation Authority: contracts.

Existing law creates the Santa Clara County Valley Transportation Authority with various powers and duties relative to transportation projects and services. Existing law authorizes the authority to enter into contracts, as specified.

This bill would authorize the authority to utilize the Construction Manager/General Contractor project delivery contract method for transit projects within its jurisdiction, subject to certain conditions and requirements. The bill would require the authority to reimburse the Department of Industrial Relations for certain costs of performing wage monitoring and enforcement on projects using this contracting method, and would require those funds to be used by the department for enforcement of prevailing wage requirements on those projects.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Article 4 (commencing with Section 100150) is  
2 added to Chapter 5 of Part 12 of Division 10 of the Public Utilities  
3 Code, to read:

4  
5 Article 4. Construction Manager/General Contractor Project  
6 Delivery Contracts  
7

8 100150. For purposes of this article, the following terms shall  
9 have the following meanings:

10 (a) “Construction Manager/General Contractor method” or  
11 “CMGC” means the Construction Manager/General Contractor  
12 method as defined in subdivision (b) of Section 6951 of the Public  
13 Contract Code.

14 (b) “Construction manager” means a construction manager as  
15 defined in subdivision (c) of Section 6951 of the Public Contract  
16 Code.

17 100151. (a) Subject to the limitations of this article, the  
18 authority may utilize the CMGC project delivery method for public  
19 transit projects within its jurisdiction.

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

33 100152. (a) Except as specified in subdivision (b), the authority  
34 shall comply with subdivision (f) of Section 1771.5 of the Labor  
35 Code and shall reimburse the Department of Industrial Relations  
36 for its reasonable and directly related costs of performing prevailing  
37 wage monitoring and enforcement on public works projects  
38 pursuant to rates established by the department as set forth in

1 subdivision (h) of Section 1771.5 of the Labor Code on projects  
2 using the CMGC project delivery method under this article. All  
3 moneys collected pursuant to this subdivision shall be deposited  
4 in the State Public Works Enforcement Fund, created by Section  
5 1771.3 of the Labor Code, and shall be used only for enforcement  
6 of prevailing wage requirements on those projects.

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

11 100153. (a) If a contract for CMGC services is entered into  
12 pursuant to this article and includes preconstruction services by  
13 the construction manager, the authority shall enter into a written  
14 contract with the construction manager for preconstruction services,  
15 under which the authority shall pay the construction manager a  
16 fee for preconstruction services in an amount agreed upon by the  
17 authority and the construction manager. The preconstruction  
18 services contract may include fees for services to be performed  
19 during the contract period; provided, however, the authority shall  
20 not request or obtain a fixed price or a guaranteed maximum price  
21 for the construction contract from the construction manager or  
22 enter into a construction contract with the construction manager  
23 until after the authority has entered into a services contract. A  
24 preconstruction services contract shall provide for the subsequent  
25 negotiation for construction of all or any discrete phase or phases  
26 of the project and shall provide for the authority to own the design  
27 plans and other preconstruction services work product.

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

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

1 100154. Nothing in this article affects, expands, alters, or limits  
2 any rights or remedies otherwise available at law.

3 100155. (a) Upon completion of a project using the CMGC  
4 project delivery method, the authority shall prepare a progress  
5 report to the board of directors. The progress report shall include,  
6 but shall not be limited to, all of the following information:

7 (1) A description of the project.

8 (2) The entity that was awarded the project.

9 (3) The estimated and actual costs of the project.

10 (4) The estimated and actual schedule for project completion.

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

14 (6) An assessment of the prequalification process and criteria  
15 utilized under this article.

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

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

23 (9) Recommendations to improve the CMCG project delivery  
24 method authorized under this article.

25 (b) The progress report shall be made available on the authority's  
26 Internet Web site.

27 100156. (a) The provisions of this article are severable. If any  
28 provision of this article 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 (b) Contracts awarded pursuant to this article shall be valid until  
32 the project is completed.