

ASSEMBLY BILL

No. 797

Introduced by Assembly Member Gordon

February 21, 2013

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:

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

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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.