

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 of, and to add Article 12 (commencing with Section 103394) to Chapter 5 of Part 15 of~~, Division 10 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 797, as amended, Gordon. ~~Santa Clara County Valley Transportation Authority: contracts. Transit districts: contracts.~~

Existing law creates the Santa Clara County Valley Transportation Authority with various powers and duties relative to transportation projects and services *in the County of Santa Clara*. ~~Existing law authorizes the authority to enter into contracts, as specified. Existing law creates the San Mateo County Transit District with various powers and duties relative to transportation projects and services in the County of San Mateo. Existing law authorizes the authority and the district to enter into contracts, as specified.~~

This bill would authorize the authority *and the district* to utilize the Construction Manager/General Contractor project delivery contract method for transit projects within ~~its jurisdiction~~ *their respective jurisdictions*, subject to certain conditions and requirements. The bill would require the authority *or district* 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.

1 100152. (a) Except as specified in subdivision (b), the authority
2 shall comply with subdivision (f) of Section 1771.5 of the Labor
3 Code and shall reimburse the Department of Industrial Relations
4 for its reasonable and directly related costs of performing prevailing
5 wage monitoring and enforcement on public works projects
6 pursuant to rates established by the department as set forth in
7 subdivision (h) of Section 1771.5 of the Labor Code on projects
8 using the CMGC project delivery method under this article. All
9 moneys collected pursuant to this subdivision shall be deposited
10 in the State Public Works Enforcement Fund, created by Section
11 1771.3 of the Labor Code, and shall be used only for enforcement
12 of prevailing wage requirements on those projects.

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

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

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

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

6 100154. Nothing in this article affects, expands, alters, or limits
7 any rights or remedies otherwise available at law.

8 100155. (a) Upon completion of a project using the CMGC
9 project delivery method, the authority shall prepare a progress
10 report to the board of directors. The progress report shall include,
11 but shall not be limited to, all of the following information:

- 12 (1) A description of the project.
- 13 (2) The entity that was awarded the project.
- 14 (3) The estimated and actual costs of the project.
- 15 (4) The estimated and actual schedule for project completion.
- 16 (5) A description of any written protests concerning any aspect
17 of the solicitation, bid, proposal, or award of the project, including,
18 but not limited to, the resolution of the protests.
- 19 (6) An assessment of the prequalification process and criteria
20 utilized under this article.
- 21 (7) A description of the method used to evaluate the bid or
22 proposal, including the weighting of each factor and an assessment
23 of the impact of this requirement on a project.
- 24 (8) A description of any challenges or unexpected problems
25 that arose during the construction of the project and a description
26 of the solutions that were considered and ultimately implemented
27 to address those challenges and problems.
- 28 (9) Recommendations to improve the CMCG project delivery
29 method authorized under this article.

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

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

38 *SEC. 2. Article 12 (commencing with Section 103394) is added*
39 *to Chapter 5 of Part 15 of Division 10 of the Public Utilities Code,*
40 *to read:*

1 Article 12. Construction Manager/General Contractor Project
2 Delivery Contracts

3
4 103394. For purposes of this article, the following terms shall
5 have the following meanings:

6 (a) “Construction Manager/General Contractor method” or
7 “CMGC” means the Construction Manager/General Contractor
8 method as defined in subdivision (b) of Section 6951 of the Public
9 Contract Code.

10 (b) “Construction manager” means a construction manager as
11 defined in subdivision (c) of Section 6951 of the Public Contract
12 Code.

13 103395. (a) Subject to the limitations of this article, the district
14 may utilize the CMGC project delivery method for public transit
15 projects within its jurisdiction.

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

29 103396. (a) Except as specified in subdivision (b), the district
30 shall comply with subdivision (f) of Section 1771.5 of the Labor
31 Code and shall reimburse the Department of Industrial Relations
32 for its reasonable and directly related costs of performing
33 prevailing wage monitoring and enforcement on public works
34 projects pursuant to rates established by the department as set
35 forth in subdivision (h) of Section 1771.5 of the Labor Code on
36 projects using the CMGC project delivery method under this
37 article. All moneys collected pursuant to this subdivision shall be
38 deposited in the State Public Works Enforcement Fund, created
39 by Section 1771.3 of the Labor Code, and shall be used only for
40 enforcement of prevailing wage requirements on those projects.

1 (b) *In lieu of complying with subdivision (a), the district may*
2 *elect to enter into a collective bargaining agreement that binds*
3 *all of the contractors performing work on the project and that*
4 *includes a mechanism for resolving disputes about the payment*
5 *of wages.*

6 103397. (a) *If a contract for CMGC services is entered into*
7 *pursuant to this article and includes preconstruction services by*
8 *the construction manager, the district shall enter into a written*
9 *contract with the construction manager for preconstruction*
10 *services, under which the district shall pay the construction*
11 *manager a fee for preconstruction services in an amount agreed*
12 *upon by the district and the construction manager. The*
13 *preconstruction services contract may include fees for services to*
14 *be performed during the contract period; provided, however, the*
15 *district shall not request or obtain a fixed price or a guaranteed*
16 *maximum price for the construction contract from the construction*
17 *manager or enter into a construction contract with the construction*
18 *manager until after the district has entered into a services contract.*
19 *A preconstruction services contract shall provide for the*
20 *subsequent negotiation for construction of all or any discrete phase*
21 *or phases of the project and shall provide for the district to own*
22 *the design plans and other preconstruction services work product.*

23 (b) *A contract for construction services will be awarded after*
24 *the plans have been sufficiently developed and either a fixed price*
25 *or a guaranteed maximum price has been successfully negotiated.*
26 *In the event that a fixed price or a guaranteed maximum price is*
27 *not negotiated, the district may award the contract for construction*
28 *services utilizing any other procurement method authorized by*
29 *law.*

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

35 103398. *Nothing in this article affects, expands, alters, or limits*
36 *any rights or remedies otherwise available at law.*

37 103399. (a) *Upon completion of a project using the CMGC*
38 *project delivery method, the district shall prepare a progress report*
39 *to the board of directors. The progress report shall include, but*
40 *shall not be limited to, all of the following information:*

- 1 (1) *A description of the project.*
- 2 (2) *The entity that was awarded the project.*
- 3 (3) *The estimated and actual costs of the project.*
- 4 (4) *The estimated and actual schedule for project completion.*
- 5 (5) *A description of any written protests concerning any aspect*
6 *of the solicitation, bid, proposal, or award of the project, including,*
7 *but not limited to, the resolution of the protests.*
- 8 (6) *An assessment of the prequalification process and criteria*
9 *utilized under this article.*
- 10 (7) *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 (8) *A description of any challenges or unexpected problems that*
14 *arose during the construction of the project and a description of*
15 *the solutions that were considered and ultimately implemented to*
16 *address those challenges and problems.*
- 17 (9) *Recommendations to improve the CMCG project delivery*
18 *method authorized under this article.*
- 19 (b) *The progress report shall be made available on the district's*
20 *Internet Web site.*
- 21 103399.1. (a) *The provisions of this article are severable. If*
22 *any provision of this article or its application is held invalid, that*
23 *invalidity shall not affect other provisions or applications that can*
24 *be given effect without the invalid provision or application.*
- 25 (b) *Contracts awarded pursuant to this article shall be valid*
26 *until the project is completed.*

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