

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1724

Introduced by Assembly Member Frazier

February 14, 2014

An act to add Chapter 6.7 (commencing with Section 6970) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, as amended, Frazier. Construction Manager/General Contractor method: regional transportation agencies.

Existing law generally sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by local agencies for public works contracts. Existing law authorizes the Department of Transportation, the Santa Clara County Valley Transportation Authority, and the San Mateo County Transit District to use the Construction Manager/General Contractor project delivery method for transit projects within their respective jurisdictions, subject to certain conditions and requirements.

This bill would authorize regional transportation agencies, as defined, to use the Construction Manager/General Contractor project delivery method, as specified, to design and construct certain projects. ~~The bill would require a regional transportation agency, within 180 days after the completion of any project using the Construction Manager/General Contractor project delivery method, to prepare a report that describes each project and provides relevant data, as specified. The bill would~~

also require that report to be posted on the regional transportation agency's Internet Web site, and would require the agency to notify the Chair of the Assembly Committee on Transportation and the Chair of the Senate Committee on Transportation and Housing that the report is available online. *The bill would require specified information provided to a regional transportation agency to be verified under oath. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.*

The

This bill would further require a regional transportation agency using the Construction Manager/General Contractor project delivery method to comply with certain prevailing wage provisions and to reimburse the Department of Industrial Relations for its reasonable and related enforcement costs, as specified. By requiring these reimbursements to be deposited into the State Public Works Enforcement Fund, a continuously appropriated fund, the bill would make an appropriation.

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. Fiscal committee: yes. State-mandated local program: ~~no~~yes.

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

1 SECTION 1. Chapter 6.7 (commencing with Section 6970) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3

4 CHAPTER 6.7. CONSTRUCTION MANAGER/GENERAL
5 CONTRACTOR METHOD: REGIONAL TRANSPORTATION AGENCIES

6

7 6970. For purposes of this chapter, the following definitions
8 apply:

9 (a) "Best value" means a value determined by objective criteria,
10 including, but not limited to, price, features, functions, life-cycle
11 costs, and other criteria deemed appropriate by the regional
12 transportation agency.

13 (a)

1 (b) “Construction manager” means a partnership, corporation,
2 or other legal entity that is able to provide appropriately licensed
3 contracting and engineering services as needed pursuant to a
4 Construction Manager/General Contractor method contract.

5 (b)

6 (c) “Construction Manager/General Contractor method” means
7 a project delivery method in which a construction manager is
8 procured to provide preconstruction services during the design
9 phase of the project and construction services during the
10 construction phase of the project. The contract for construction
11 services may be entered into at the same time as the contract for
12 preconstruction services, or at a later time. The execution of the
13 design and the construction of the project may be in sequential
14 phases or concurrent phases.

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

18 (d) “Preconstruction services” means advice during the design
19 ~~phase~~ *phase*, including, but not limited to, scheduling, pricing, and
20 phasing to assist the regional transportation agency to design a
21 more constructible project.

22 (e) “Project” means the construction of a highway, bridge,
23 expressway, or tunnel.

24 (f) “Regional transportation agency” means any of the following:

25 (1) A transportation planning agency described in Section 29532
26 or 29532.1 of the Government Code.

27 (2) A county transportation commission established under
28 Section 130050, 130050.1, or 130050.2 of the Public Utilities
29 Code.

30 (3) Any other local or regional transportation entity that is
31 designated by statute as a regional transportation agency.

32 (4) A local transportation authority designated pursuant to
33 Division 12.5 (commencing with Section 131000) or Division 19
34 (commencing with Section 180000) of the Public Utilities Code.

35 (5) The Santa Clara Valley Transportation Authority established
36 pursuant to Part 12 (commencing with Section 100000) of Division
37 10 of the Public Utilities Code.

38 6974. (a) The Construction Manager/General Contractor
39 method may be used by a regional transportation agency pursuant
40 to this chapter if, after evaluation of the traditional design-bid-build

1 process of construction and of the Construction Manager/General
2 Contractor method in a public meeting, the regional transportation
3 agency makes a written finding that use of the Construction
4 Manager/General Contractor method on the specific project ~~under~~
5 ~~consideration~~ will accomplish one or more of the following
6 objectives: reduce project costs, expedite the project's completion,
7 or provide features not achievable through the design-bid-build
8 method. This finding shall be made prior to the regional
9 transportation agency entering into a Construction
10 Manager/General Contractor method contract.

11 (b) Except as specified in subdivision (c), the regional
12 transportation agency shall comply with subdivision (f) of Section
13 1771.5 of the Labor Code, and shall reimburse the Department of
14 Industrial Relations for its reasonable and directly related costs of
15 performing prevailing wage monitoring and enforcement on public
16 works projects pursuant to rates established by the department as
17 set forth in subdivision (h) of Section 1771.5 of the Labor Code
18 on projects using the Construction Manager/General Contractor
19 method under this chapter. All moneys collected pursuant to this
20 subdivision shall be deposited in the State Public Works
21 Enforcement Fund, created by Section 1771.3 of the Labor Code,
22 and shall be used only for enforcement of prevailing wage
23 requirements on those projects.

24 (c) In lieu of complying with subdivision ~~(a)~~, (b), the regional
25 transportation agency may elect to enter into a collective bargaining
26 agreement that binds all of the contractors performing work on the
27 project and that includes a mechanism for resolving disputes about
28 the payment of wages.

29 ~~(d) (1) Within 180 days after the completion of a project using~~
30 ~~the Construction Manager/General Contractor method, the regional~~
31 ~~transportation agency shall prepare a report including all of the~~
32 ~~following:~~

33 ~~(A) Data on initial cost estimates, actual cost upon completion,~~
34 ~~and the reasons for any difference.~~

35 ~~(B) Estimated time for completion, actual time of completion,~~
36 ~~and the reasons for any difference.~~

37 ~~(C) The number and dollar value of any change orders for all~~
38 ~~projects completed using the Construction Manager/General~~
39 ~~Contractor method.~~

1 ~~(2) A report required by this subdivision shall be posted on the~~
2 ~~regional transportation agency's Internet Web site. The regional~~
3 ~~transportation agency shall notify the Chair of the Assembly~~
4 ~~Committee on Transportation and the Chair of the Senate~~
5 ~~Committee on Transportation and Housing that the report is~~
6 ~~available online.~~

7 6976. A Construction Manager/General Contractor method
8 project shall progress as follows:

9 ~~(a) A regional transportation agency that intends to use the~~
10 ~~Construction Manager/General Contractor method shall adopt a~~
11 ~~procedure for the evaluation and selection of a construction~~
12 ~~manager in a public meeting. The procedure shall include a~~
13 ~~two-phased request for qualifications (RFQ). Under Phase 1 of the~~
14 ~~RFQ, the Construction Manager (CM) is identified using a~~
15 ~~qualifications-based selection process. In Phase 2 of the RFQ, the~~
16 ~~CM transitions to the General Contractor (GC) who completes the~~
17 ~~work under either a fixed price or guaranteed maximum price.~~

18 ~~(b) The procedures adopted by the regional transportation agency~~
19 ~~shall include, at a minimum, all of the following:~~

20 ~~(1) The criteria for membership in its selection panel.~~

21 ~~(2) The evaluation criteria and relative weighting of the~~
22 ~~evaluation criteria for scoring and ranking the construction manager~~
23 ~~qualifications.~~

24 ~~(3) If the regional transportation agency intends to establish a~~
25 ~~preliminary list of the highest qualified firms who will be~~
26 ~~subsequently interviewed prior to ranking the final list, the~~
27 ~~evaluation criteria and relative weighting of the evaluation criteria~~
28 ~~for scoring and ranking the construction manager interviews and~~
29 ~~the method used to rank the final list using a combination of RFQ~~
30 ~~and interview criteria.~~

31 ~~(4) The minimum number, if any, of proposers who must~~
32 ~~respond to the regional transportation agencies RFQ for the agency~~
33 ~~to use the Construction Manager/General Contractor method.~~

34 ~~(5) The maximum number, if any, of construction manager firms~~
35 ~~who will be deemed qualified to continue to the interview phase,~~
36 ~~if used, or to the negotiations.~~

37 ~~(6) The process by which it will use an independent cost~~
38 ~~estimator (ICE) as part of its negotiation for fixed price or~~
39 ~~guaranteed maximum price construction services contract.~~

1 ~~(7) Any specific subcontracting requirements deemed necessary~~
 2 ~~by the regional transportation agency in addition to that required~~
 3 ~~by existing statutes.~~

4 (a) (1) A regional transportation agency shall establish a
 5 procedure for the evaluation and selection of a construction
 6 manager through a request for qualifications (RFQ). The RFQ
 7 shall include, but not be limited to, the following:

8 (A) If the entity is a partnership, limited partnership, or other
 9 association, a list of all of the partners, general partners, or
 10 association members known at the time of the bid submission who
 11 will participate in the Construction Manager/General Contractor
 12 method contract, including, but not limited to, subcontractors.

13 (B) Evidence that the members of the entity have completed, or
 14 demonstrated the experience, competency, capability, and capacity
 15 to complete projects of similar size, scope, or complexity, and that
 16 proposed key personnel have sufficient experience and training to
 17 competently manage and complete the construction of the project,
 18 as well as a financial statement that assures the regional
 19 transportation agency that the entity has the capacity to complete
 20 the project, construction expertise, and an acceptable safety record.

21 (C) The licenses, registration, and credentials required to
 22 construct the project, including information on the revocation or
 23 suspension of any license, registration, or credential.

24 (D) Evidence that establishes that the entity has the capacity to
 25 obtain all required payment and performance bonding, liability
 26 insurance, and errors and omissions insurance.

27 (E) Any prior serious or willful violation of the California
 28 Occupational Safety and Health Act of 1973, contained in Part 1
 29 (commencing with Section 6300) of Division 5 of the Labor Code,
 30 or the federal Occupational Safety and Health Act of 1970 (Public
 31 Law 91-596), settled against any member of the entity, and
 32 information concerning workers' compensation experience history
 33 and worker safety program.

34 (F) Information concerning any debarment, disqualification,
 35 or removal from a federal, state, or local government public works
 36 project. Any instance in which an entity, its owners, officers, or
 37 managing employees submitted a bid on a public works project
 38 and were found to be nonresponsive, or were found by an awarding
 39 body not to be a responsible bidder.

1 (G) Any instance in which the entity, or its owners, officers, or
2 managing employees, defaulted on a construction contract.

3 (H) Any violations of the Contractors' State License Law
4 (Chapter 9 (commencing with Section 7000) of Division 3 of the
5 Business and Professions Code), excluding alleged violations of
6 federal or state law including the payment of wages, benefits,
7 apprenticeship requirements, or personal income tax withholding,
8 or of the Federal Insurance Contributions Act (26 U.S.C. Sec.
9 3101 et seq.) withholding requirements settled against any member
10 of the entity.

11 (I) Information concerning the bankruptcy or receivership of
12 any member of the entity, including information concerning any
13 work completed by a surety.

14 (J) Information concerning all settled adverse claims, disputes,
15 or lawsuits between the owner of a public works project and any
16 member of the entity during the five years preceding submission
17 of a bid pursuant to this section, in which the claim, settlement,
18 or judgment exceeds fifty thousand dollars (\$50,000). Information
19 shall also be provided concerning any work completed by a surety
20 during this period.

21 (K) In the case of a partnership or other association that is not
22 a legal entity, a copy of the agreement creating the partnership or
23 association and specifying that all partners or association members
24 agree to be fully liable for the performance under the contract.

25 (L) For the purposes of this paragraph, a construction
26 manager's safety record shall be deemed acceptable if his or her
27 experience modification rate for the most recent three-year period
28 is an average of 1.00 or less, and his or her average total
29 recordable injury/illness rate and average lost work rate for the
30 most recent three-year period does not exceed the applicable
31 statistical standards for its business category or if he or she is a
32 party to an alternative dispute resolution system as provided for
33 in Section 3201.5 of the Labor Code.

34 (2) The information required pursuant to this subdivision shall
35 be verified under oath by the entity and its members in the manner
36 in which civil pleadings in civil actions are verified. Information
37 that is not a public record pursuant to the California Public
38 Records Act (Chapter 3.5 (commencing with Section 6250) of
39 Division 7 of Title 1 of the Government Code) shall not be open
40 to public inspection.

1 **(b)** For each RFQ, the regional transportation agency shall
2 generate a final list of qualified persons or firms that participated
3 in the RFQ prior to entering into negotiations on the contract or
4 contracts to which the RFQ applies.

5 **(c)** (1) For each RFQ, the regional transportation agency shall
6 establish a selection panel to evaluate and rank proposals. A person
7 who is a member of the selection panel shall not be a contractor
8 under the contract or provide construction services, materials, or
9 other services under the contract. The regional transportation
10 agency shall generate a final list of qualified persons or firms that
11 participated in the RFQ prior to entering into negotiations on the
12 contract or contracts to which the RFQ applies.

13 **(2)** The regional transportation agency and its selection panel
14 shall not request or consider fees, price, man-hours, or any other
15 cost information in its evaluation and ranking of proposals and
16 establishment of the final list for that contract.

17 **(d)** (1) For each RFQ, the regional transportation agency shall
18 enter into separate negotiations for the contract with the highest
19 qualified person or firm on the final list for that contract. However,
20 if the RFQ is for multiple contracts and specifies that all of the
21 multiple contracts will be awarded to a single construction
22 manager, there may be a single negotiation for all of the multiple
23 contracts. The negotiations shall include consideration of
24 compensation and other contract terms that the regional
25 transportation agency determines to be fair and reasonable to the
26 regional transportation agency. In making this decision, the regional
27 transportation agency shall take into account the estimated value,
28 the scope, the complexity, and the nature of the professional
29 services or construction services to be rendered. If the regional
30 transportation agency is not able to negotiate a satisfactory contract
31 with the highest qualified person or firm on the final list, regarding
32 compensation and on other contract terms the regional
33 transportation agency determines to be fair and reasonable, the
34 regional transportation agency shall formally terminate negotiations
35 with that person or firm. The regional transportation agency may
36 undertake negotiations with the next most qualified person or firm
37 on the final list in sequence until an agreement is reached or a
38 determination is made to reject all persons or firms on the final
39 list.

1 (2) If a contract for construction services is entered into pursuant
2 to this chapter and includes preconstruction services by the
3 construction manager, the regional transportation agency shall
4 enter into a written contract with the construction manager for
5 preconstruction services under which contract the regional
6 transportation agency shall pay the construction manager a fee for
7 preconstruction services in an amount agreed upon by the regional
8 transportation agency and the construction manager. The
9 preconstruction services contract may include fees for services to
10 be performed during the contract period provided, however, the
11 regional transportation agency shall not request or obtain a fixed
12 price or a guaranteed maximum price for the construction contract
13 from the construction manager or enter into a construction contract
14 with the construction manager until after the regional transportation
15 agency has entered into a services contract. A preconstruction
16 services contract shall provide for the subsequent negotiation for
17 construction of all or any discreet phase or phases of the project.

18 (3) A contract for construction services shall be awarded after
19 the plans have been sufficiently developed and either a fixed price
20 or a guaranteed maximum price has been successfully negotiated.
21 In the event that a fixed price or a guaranteed maximum price is
22 not negotiated, the regional transportation agency shall not award
23 the contract for construction services.

24 (4) The regional transportation agency is not required to award
25 the construction services contract.

26 (5) Construction shall not commence on any phase, package,
27 or element until the regional transportation agency and construction
28 manager agree in writing on either a fixed price that the regional
29 transportation agency will pay for the construction to be
30 commenced or a guaranteed maximum price for the construction
31 to be commenced and construction schedule for the project. The
32 construction manager shall perform not less than 30 percent of the
33 work covered by the fixed price or guaranteed maximum price
34 agreement reached. Work that is not performed directly by the
35 construction manager shall be bid to subcontractors pursuant to
36 Section 6705.

37 (e) In the event the regional transportation agency and the
38 construction manager cannot successfully negotiate a fixed price
39 or guaranteed maximum price contract, the regional transportation
40 agency shall be able to, at its sole discretion, publicly advertise

1 and award the construction contract using ~~the plans and~~
2 ~~specifications developed with the preconstruction services provided~~
3 ~~by construction manager input a lowest responsible bidder or best~~
4 ~~value method.~~ The construction manager shall not be excluded
5 from submitting a bid on this type of contract.

6 6978. All subcontractors bidding on contracts pursuant to this
7 chapter shall be afforded the protections contained in Chapter 4
8 (commencing with Section 4100). ~~The construction manager shall~~
9 ~~do all of the following:~~

10 ~~(a) Provide public notice of the availability of work to be~~
11 ~~subcontracted in accordance with the publication requirements~~
12 ~~applicable to the competitive bidding process of the regional~~
13 ~~transportation agency.~~

14 ~~(b) Provide a fixed date and time on which the subcontracted~~
15 ~~work will be awarded in accordance with the procedure established~~
16 ~~pursuant to this chapter.~~

17 ~~(c) Comply with any subcontracting procedures adopted by the~~
18 ~~regional transportation agency that were included in the regional~~
19 ~~transportation agency’s RFQ. If the regional transportation agency~~
20 ~~has adopted procedures to prequalify public works contractors,~~
21 ~~the construction manager may use the procedures to prequalify~~
22 ~~subcontractors.~~

23 6980. Contracts awarded pursuant to this chapter shall be valid
24 until the project is completed.

25 6982. Nothing in this chapter is intended to affect, expand,
26 alter, or limit any rights or remedies otherwise available at law.

27 *SEC. 2. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*