

ASSEMBLY BILL

No. 1171

Introduced by Assembly Member Linder

February 27, 2015

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1171, as introduced, Linder. Construction Manager/General Contractor method: regional transportation agencies: projects on expressways.

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 Diego Association of Governments 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 on expressways that are not on the state highway system if the projects are developed in accordance with an expenditure plan approved by voters as of January 1, 2014. 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 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: no. Fiscal committee: yes.

State-mandated local program: 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 PROJECTS ON EXPRESSWAYS

6

7 6970. (a) This chapter provides for an alternative procurement
8 procedure for certain transportation projects performed by a
9 regional transportation agency.

10 (b) The Construction Manager/General Contractor method
11 allows the regional transportation agency to engage a construction
12 manager during the design process to provide input on the design.
13 During the design phase, the construction manager provides advice
14 including, but not limited to, scheduling, pricing, and phasing to
15 assist the agency to design a more constructible project.

16 (c) The Legislature finds and declares that utilizing a
17 Construction Manager/General Contractor method requires a clear
18 understanding of the roles and responsibilities of each participant
19 in the process. The Legislature also finds and declares that
20 cost-effective benefits are achieved by shifting the liability and
21 risk for cost containment and project schedule to the construction
22 manager and by permitting the coherent phasing of projects into
23 discrete contract increments.

24 6971. For purposes of this chapter, the following definitions
25 apply:

26 (a) "Construction manager" means a partnership, corporation,
27 or other legal entity that is able to provide appropriately licensed
28 contracting and engineering services as needed pursuant to a
29 Construction Manager/General Contractor method contract.

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

10 (c) “Preconstruction services” means advice during the design
11 phase, including, but not limited to, scheduling, pricing, and
12 phasing to assist the regional transportation agency to design a
13 more constructible project.

14 (d) “Project” means the construction of a highway, bridge, or
15 tunnel.

16 (e) “Regional transportation agency” means an entity as
17 designated pursuant to paragraph (4) of subdivision (i) of Section
18 6820.

19 6972. (a) A regional transportation agency may utilize the
20 Construction Manager/General Contractor method of procurement
21 to design and construct projects on expressways that are not on
22 the state highway system if the projects are developed in
23 accordance with an expenditure plan approved by voters as of
24 January 1, 2014.

25 (b) The entity responsible for the maintenance of the local streets
26 and roads within the jurisdiction of the expressway shall be
27 responsible for the maintenance of the expressway.

28 6973. (a) Construction Manager/General Contractor method
29 projects shall progress as set forth in subdivision (a) of Section
30 6703, except that any references to “department” shall mean the
31 regional transportation agency.

32 (b) For each request for qualifications (RFQ), the regional
33 transportation agency shall generate a final list of qualified persons
34 or firms that participated in the RFQ prior to entering into
35 negotiations on the contract or contracts to which the RFQ applies.

36 (c) (1) For each contract included in the RFQ, the regional
37 transportation agency shall enter into separate negotiations for the
38 contract with the highest qualified person or firm on the final list
39 for that contract. However, if the RFQ is for multiple contracts
40 and specifies that all of the multiple contracts will be awarded to

1 a single construction manager, there may be a single negotiation
2 for all of the multiple contracts. The negotiations shall include
3 consideration of compensation and other contract terms that the
4 regional transportation agency determines to be fair and reasonable
5 to the department. In making this decision, the regional
6 transportation agency shall take into account the estimated value,
7 the scope, the complexity, and the nature of the professional
8 services or construction services to be rendered. If the regional
9 transportation agency is not able to negotiate a satisfactory contract
10 with the highest qualified person or firm on the final list, regarding
11 compensation and on other contract terms the regional
12 transportation agency determines to be fair and reasonable, the
13 regional transportation agency shall formally terminate negotiations
14 with that person or firm. The regional transportation agency may
15 undertake negotiations with the next most qualified person or firm
16 on the final list in sequence until an agreement is reached or a
17 determination is made to reject all persons or firms on the final
18 list.

19 (2) If a contract for construction services is entered into pursuant
20 to this chapter and includes preconstruction services by the
21 construction manager, the regional transportation agency shall
22 enter into a written contract with the construction manager for
23 preconstruction services under which contract the regional
24 transportation agency shall pay the construction manager a fee for
25 preconstruction services in an amount agreed upon by the regional
26 transportation agency and the construction manager. The
27 preconstruction services contract may include fees for services to
28 be performed during the contract period provided, however, the
29 regional transportation agency shall not request or obtain a fixed
30 price or a guaranteed maximum price for the construction contract
31 from the construction manager or enter into a construction contract
32 with the construction manager until after the regional transportation
33 agency has entered into a services contract. A preconstruction
34 services contract shall provide for the subsequent negotiation for
35 construction of all or any discreet phase or phases of the project.

36 (3) A contract for construction services shall be awarded after
37 the plans have been sufficiently developed and either a fixed price
38 or a guaranteed maximum price has been successfully negotiated.
39 In the event that a fixed price or a guaranteed maximum price is

1 not negotiated, the regional transportation agency shall not award
2 the contract for construction services.

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

5 (5) Construction shall not commence on any phase, package,
6 or element until the regional transportation agency and construction
7 manager agree in writing on either a fixed price that the regional
8 transportation agency will pay for the construction to be
9 commenced or a guaranteed maximum price for the construction
10 to be commenced and construction schedule for the project. The
11 construction manager shall perform not less than 30 percent of the
12 work covered by the fixed price or guaranteed maximum price
13 agreement reached. Work that is not performed directly by the
14 construction manager shall be bid to subcontractors pursuant to
15 Section 6705, except that any references to “department” shall
16 mean the regional transportation agency.

17 6974. Contracts awarded pursuant to this chapter shall be valid
18 until the project is completed.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.